JUDGMENT OF THE COURT (Second Chamber)

7 October 2004 *

In Case C-312/02,

ACTION for annulment under Article 230 EC, lodged at the Court on 4 September 2002,

Kingdom of Sweden, represented by K. Renman, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by K. Simonsson, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Swedish.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann, J.N. Cunha Rodrigues (Rapporteur), R. Schintgen and F. Macken, Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted by the parties,

after hearing the Opinion of the Advocate General at the sitting on 17 June 2004,

gives the following

Judgment

1 By its application, the Kingdom of Sweden seeks the partial annulment of Commission Decision 2002/524/EC of 26 June 2002 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2002 L 170, p. 77) ('the contested decision') in so far as it excludes from Community financing expenditure of SEK 18 555 850 incurred by Sweden.

Relevant provisions

Community legislation

2 Article 5(2)(c) of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218), as amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1) ('Regulation No 729/70'), provides:

'[The Commission] shall decide on the expenditure to be excluded from the Community financing referred to in Articles 2 and 3 where it finds that expenditure has not been effected in compliance with Community rules.

Before a decision to refuse financing is taken, the results of the Commission's checks and the replies of the Member State concerned shall be notified in writing, after which the two parties shall endeavour to reach agreement on the action to be taken.

If no agreement is reached, the Member State may ask for a procedure to be initiated with a view to mediating between the respective positions within a period of four months, the results of which shall be set out in a report sent to and examined by the Commission, before a decision to refuse financing is taken.

...'

3 As set out in Article 8(1) of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L 158, p. 6), as amended by Commission Regulation (EC) No 2245/1999 of 22 October 1999 (OJ 1999 L 273, p. 5) ('Regulation No 1663/95'):

'If, as a result of an enquiry, the Commission considers that expenditure has not been effected according to Community rules, it shall notify the Member State concerned of the results of its checks and indicate the corrective measures to be taken to ensure future compliance ...'

4 Article 15(3) of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12) provides:

'The payments referred to in this Regulation are to be paid over to the beneficiaries in their entirety.'

5 Article 30a of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187), which was inserted into that regulation by Article 1(5) of Council Regulation (EEC) No 2066/92 of 30 June 1992 (OJ 1992 L 215, p. 49) ('Regulation No 805/68'), reads as follows:

'The amounts to be paid pursuant to this Regulation shall be paid in full to the beneficiaries.'

National legislation

6 Le Förordningen (1997:183) om kartavgift i ärenden om jordbruksstöd (Regulation of 17 April 1997 concerning fees for maps in the context of agricultural aid) required all applicants for Community aid for a given area to pay a fee in order to receive the map showing that area. That map had to be attached to the aid application.

7 That regulation was repealed on 1 July 2000 and was therefore applicable only in 1998 and 1999.

Facts

8 On 24 October 2000, the Kingdom of Sweden received a written communication from the Commission under Article 8(1) of Regulation No 1663/95 informing it that the fees charged for maps were not authorised deductions in connection with aid for arable crops and that part of the expenditure declared had to be excluded from Community financing.

9 On 26 June 2002, following the mediation procedure provided for in Article 5(2)(c) of Regulation No 729/70, the Commission adopted the contested decision. In that decision it excluded from Community financing expenditure of SEK 18 555 850

declared by the Kingdom of Sweden on the ground of the latter's non-compliance with Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68.

The action

10 In this action, the Kingdom of Sweden claims that the Court should:

— first, declare Decision 2002/524/EC void in so far as it excludes from Community financing expenditure of SEK 18 555 850 incurred by Sweden;

— in the alternative, reduce the amount to be excluded from Community financing to SEK 11 817 748;

— in the further alternative, reduce the amount to be excluded from Community financing to SEK 12 436 091;

— order the Commission to pay the costs.

11 The Commission claims that the Court should dismiss the action and order the applicant to pay the costs.

The principal claim

12 The Swedish Government relies on two pleas in support of its principal claim, the first alleging infringement of Article 5(2)(c) of Regulation No 729/20 and Article 8(1) of Regulation No 1663/95, and the second wrongful application of Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68.

The first plea

13 In its first plea, the Swedish Government maintains that the contested decision infringes Article 5(2)(c) of Regulation No 729/70 and Article 8(1) of Regulation No 1663/95, in so far as the written communication referred to in Article 8(1) of Regulation No 1663/95, which was received by the Swedish authorities on 24 October 2000, did not contain an evaluation of the expenditure to be excluded from Community financing.

14 It suffices to state, as the Swedish Government itself conceded in its reply to the objection raised by the Commission in the defence, that the wording of Article 8(1) of Regulation No 1663/95 as amended by Regulation No 2245/1999, which entered into force on 30 October 1999 and therefore applied at the material time, no longer requires the Commission to include an evaluation of the expenditure to be excluded in its communication to the Member States.

15 The first plea must therefore be rejected as unfounded.

The second plea

16 In its second plea, the Swedish Government claims that the charging of fees for the issue of maps is not an infringement of Article 15(3) of Regulation No 1765/92 or of Article 30a of Regulation No 805/68, since those fees cannot be regarded as administrative fees for the processing of aid applications.

17 Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68 provide that the amounts to be paid shall be paid 'in their entirety' and 'in full' to the beneficiaries.

18 It follows that those regulations do not authorise any deductions from the amounts to be paid to the farmers.

19 The Court has already held that Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68 prohibit national authorities from making a deduction from the payments made or from demanding the payment of administrative fees relating to applications and having the effect of reducing the amount of the aid (Joined Cases C-36/97 and C-37/97 *Kellinghusen and Ketelsen* [1998] ECR I-6337, paragraph 21).

20 The Swedish Government claims nevertheless that the fees charged for the issue of maps were not intended to cover the administrative costs borne by the authorities concerned. Unlike the case in *Kellinghusen and Ketelsen*, cited above, the processing

of applications and the grant of aid were not dependent on the payment of those fees, since the latter were demanded separately.

21 Such an argument cannot be accepted.

22 As the Advocate General maintained with good reason in paragraph 17 of his Opinion, if the prohibition on deductions is not simply a standard clause, it cannot be interpreted in a purely formal manner as covering only deductions which are actually made on the occasion of payments. Thus the prohibition on any deduction must of necessity extend to all charges which are directly and inseparably linked to the amounts disbursed.

23 In a letter sent to the Commission on 2 February 1998, the Swedish Government conceded that it had considered various possibilities for financing the issue of maps and that it had opted for the levying of a fee on them.

24 Further, according to the national legislation, an aid application could not be submitted unless a map supplied by the national authorities was attached to the file.

25 In those circumstances, it must be stated that there was a direct relationship between the aid applications made by farmers and the charging of a fee for the maps, and that that had the effect of reducing the amount of the aid actually received by the beneficiaries.

26 The Swedish Government observes, in addition, that the Commission did not make any financial corrections so far as concerns 1998, because it accepted that the farmers had been able to benefit from the maps for purposes other than aid applications. It pleads that that circumstance should have given the Commission a reason, in assessing the financial correction for 1999, to take account of the arrival of new applicants and the fact that the maps had to be updated every year.

27 The Commission replies that the fees for the maps collected in both 1998 and 1999 were administrative fees incompatible with Community legislation. However it acknowledged that the fees collected in 1998 could, although to a relatively slight extent, be regarded as consideration for a service rendered to the farmers by making available a map which could be of use in running their farms. That argument did not apply to the map fees collected in 1999.

28 According to settled case-law, if the Commission did not carry out the correction due in respect of a previous year, but tolerated the irregularities on grounds of fairness, the Member State concerned does not acquire any right to demand that the same position be taken with regard to the irregularities with respect to the following financial year by virtue of the principle of legal certainty or the principle of protection of legitimate expectations (see Case C-55/91 *Italy* v *Commission* [1993] ECR I-4813, paragraph 67, and Case C-373/99 *Greece* v *Commission* [2001] ECR I-9619, paragraph 56).

29 In the light of all of the foregoing considerations, the second plea must be rejected.

The alternative claims

30 The Swedish Government relies on two pleas in support of its first alternative claim, alleging respectively infringement of Article 5(2)(c) of Regulation No 729/20 and Article 8(1) of Regulation No 1663/95, and wrongful application of Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68.

The first plea

31 In its first plea, the Swedish Government maintains that the contested decision was adopted in infringement of Article 5(2)(c) of Regulation No 729/70 and Article 8(1) of Regulation No 1663/95, in so far as the written communication referred to in Article 8(1) of Regulation No 1663/95 only concerns the financing of aid for arable crops.

32 According to the Swedish Government, no reference was made to the maps of fodder areas in that communication. However, pursuant to Article 8(1) of Regulation No 1663/95, the Commission should have indicated clearly the measures covered by its action in that document, which was received by the Swedish authorities on 24 October 2000.

33 As pointed out by the Advocate General in point 21 of his Opinion, first, it was only by a note of 18 May 2001 that the Swedish Government sent the Commission, at the latter's request, detailed information on the fodder area aid paid. Following that note, on 1 August 2001 the Commission sent the Swedish Government a second

formal communication in accordance with Article 8(1) of Regulation No 1663/95. Secondly, the Swedish Government cannot use the fact that the Commission made no reference to the maps of arable areas in the communication of 24 October 2000 to maintain that it was unable to determine the corrective measures to take, since Sweden had abolished the map fees for both arable and fodder areas as from 1 July 2000.

34 It follows that the first plea must be rejected.

The second plea

35 In its second plea, the Swedish Government claims that Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68 do not serve to justify the Commission's decision to exclude from financing an amount corresponding to fees paid for the issue of maps relating to areas for which agro-environmental or regional aid was also sought.

36 In the view of the Swedish Government, the Commission allowed the map fees paid by the farmers who requested both types of aid but, in calculating the amount to be excluded from Community financing, it did not take into account the areas for which both arable or fodder area aid and agro-environmental or regional aid had been sought.

37 It should be remembered that, as the Court has held in paragraph 19 of this judgment, Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68 prohibit national authorities from making a deduction from the payments made or from demanding the payment of administrative fees relating to applications and having the effect of reducing the amount of the aid.

38 The fact that some farmers applied for both aid under Regulation No 1765/92 or Regulation No 805/68 and agro-environmental or regional aid for the same areas does not have any bearing on the prohibition on the Member States from making deductions from the amounts received by the beneficiaries as aid for arable crops or fodder areas.

39 The second recital in the preamble to Regulation No 1765/92 expressly shows that the compensatory payments are to compensate the loss of income caused by the reduction of the institutional prices in the context of the new support system for producers of certain arable crops. Moreover, according to the third recital in the preamble to Regulation No 2066/92, which inserted Article 30a into Regulation No 805/68, the purpose of the premium referred to is to grant substantial compensation to the producers affected by the consequences of the reduction in the intervention price for beef.

40 It is common ground that those objectives can be achieved only if the compensatory aid is paid in full to the farmers affected by the consequences of the price reductions (see *Kellinghusen and Ketelsen*, cited above, paragraph 19).

41 The Swedish Government's interpretation of Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68 would render them redundant by giving the Member States the opportunity to avoid obligations which flow from those articles, and could therefore jeopardise the achievement of the aforementioned objectives.

42 The plea alleging wrongful application of Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68 must therefore be rejected.

43 In the further alternative, the Swedish Government claims that, if the Court decides that the fodder areas must be included in the calculation of the amount to be excluded from Community financing, it should exclude from that calculation the fees for maps relating to areas for which agro-environmental or regional aid was also sought.

44 In support of that claim, the Swedish Government repeats the arguments relied on in connection with the second plea of its first alternative claim. Those arguments cannot be accepted, on the grounds stated in paragraphs 39 to 41 of this judgment.

45 Since the Kingdom of Sweden has been unsuccessful in all of the pleas put forward, the action must be dismissed in its entirety.

Costs

46 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of Sweden has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Second Chamber) hereby:

1. Dismisses the action;

2. Orders the Kingdom of Sweden to pay the costs.

Signatures.