JUDGMENT OF THE COURT (Fifth Chamber)
12 October 1995 *

In Case C-104/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunale Civile e Penale di Ravenna for a preliminary ruling in the proceedings pending before that court between

Cereol Italia Srl

and

Azienda Agricola Castello Sas,

on the interpretation of Council Regulation (EEC) No 1491/85 of 23 May 1985 laying down special measures in respect of soya beans (OJ 1985 L 151, p. 15), of Council Regulation (EEC) No 2194/85 of 25 July 1985 adopting general rules concerning special measures for soya beans (OJ 1985 L 204, p. 1), and of Commission Regulation (EEC) No 2537/89 of 8 August 1989 laying down detailed rules for the application of the special measures for soya beans (OJ 1989 L 245, p. 8), as amended by Commission Regulation (EEC) No 150/90 of 19 January 1990 (OJ 1990 L 18, p. 10),

* Language of the case: Italian.

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann (Rapporteur), P. Jann and L. Sevón, Judges,

Advocate General: C. O. Lenz,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Cereol Italia, by Roberto Ridolfi, of the Ravenna Bar,

— Azienda Agricola Castello, by Fausto Capelli, of the Milan Bar, and

— the Commission of the European Communities, by Eugenio de March, Legal Adviser, acting as Agent, assisted by Alexandre Carnelutti, of the Paris Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Azienda Agricola Castello and the Commission at the hearing on 15 June 1995,

after hearing the Opinion of the Advocate General at the sitting on 13 July 1995,

gives the following

Judgment

1 By order of 3 March 1994, received at the Court on 29 March 1994, the Tribunale Civile e Penale di Ravenna (Civil and Criminal Court, Ravenna) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty seven questions on the interpretation of Council Regulation (EEC) No 1491/85 of 23 May 1985 laying down special measures in respect of soya beans (OJ 1985 L 151, p. 15, hereafter 'Regulation No 1491/85'), of Council Regulation (EEC) No 2194/85 of 25 July 1985 adopting general rules concerning special measures for soya beans (OJ 1985 L 204, p. 1, hereafter 'Regulation No 2194/85'), and of Commission Regulation (EEC) No 2537/89 of 8 August 1989 laying down detailed rules for the application of the special measures for soya beans (OJ 1989 L 245, p. 8, hereafter 'Regulation No 2537/89'), as amended by Commission Regulation (EEC) No 150/90 of 19 January 1990 (OJ 1990 L 18, p. 10, hereafter 'Regulation No 150/90').

2 Those questions were raised in the course of a dispute between Cereol Italia Srl (hereafter 'Cereol'), a soya processor, and Azienda Agricola Castello Sas (hereafter 'Castello'), a soya bean producer, concerning payment of LIT 112 509 187, representing the amount of Community aid paid to Cereol which that company was required to repay by the Azienda di Stato per gli Interventi nel Mercato Agricolo (State Board for Intervention on the Agricultural Markets) (hereafter 'AIMA').

3 Regulation No 1491/85 introduced an aid system for soya bean production in the Community, described as a system of aid 'to the first purchaser'. Under that system, aid equivalent to the difference between the guide price fixed by the Community and the world market price is granted to any person who has concluded a 'cultivation contract' providing for payment to the producer of a price at least equal to the minimum price fixed by the Community (Article 2).

4 The information which must be included in the cultivation contract is set out in Article 6(2) of Regulation No 2537/89. That provision, adopted pursuant to Article 2(8) of Regulation No 1491/85, states that information on the following must be included:

'...

(e) the actual area sown with soya beans, in hectares and ares;

(f) the particulars necessary for the identification of the areas in question ...;

(g) the yields obtained by the producer at the previous harvest;

...'

5 Article 6(3), as amended by Regulation No 150/90, adds that:

'After the contract has been signed, the areas indicated in accordance with paragraph 2(e) and (f) may not be used by the producer for any other purpose than for cultivating soya beans, except in cases of *force majeure*.

As a consequence, any change in the use to be made of areas indicated which may take place after the contract has been signed but before it has been lodged with the competent agency must be the subject of an amendment to the contract correcting such areas and specifying the reason for the change.

In addition, any change in the use to be made of all or part of the areas indicated occurring in the three months preceding the date laid down for the beginning of harvesting of soya beans covered by the contract must be notified by the producer to the competent agency, to the agency responsible for control and to the first purchaser each time that such a change involves more than 10% of the area indicated and more than one hectare of area. Such notification must be made in writing within eight working days from the date on which the change took place.'

6 Article 29a, which was added to Regulation No 2537/89 by Regulation No 150/90, provides that:

'Should an irregularity be discovered on the occasion of a control or verification the following provisions shall apply, without prejudice to any other measures applicable.

1. An irregularity consequent on a deliberately false declaration or serious negligence by the producer on the occasion of conclusion of the contract referred to in Article 6 or of its execution, in particular as regards the accuracy of the information referred to in Article 6(2) or compliance with the provisions of Article 6(3), shall render the contract invalid for the purposes of this regulation, render the

beans under the contract ineligible for aid and exclude the producer from the benefit of the provisions of this regulation throughout the following marketing year.

...

4. The sanctions specified in this regulation ... shall be determined on the basis of the nature and gravity of the infringement and at the level necessary to ensure proper operation of the mechanism in question.'

7 On 27 May 1991, Cereol and Castello concluded a cultivation contract for the 1991/1992 marketing year which provided that 93 hectares and 22 ares would be sown with soya beans.

8 On 7 October 1991, the Agricultural Inspectorate, Treviso, carried out an inspection and found that only 77 hectares had been sown.

9 AIMA took the view that, since it had not been notified accordingly, this reduction in the area sown constituted a breach of Article 6(3) of Regulation No 2537/89, as amended. Relying on Article 29a of that regulation, it proceeded to avoid the cultivation contract, declared the beans produced under that contract to be ineligible for aid and excluded Castello from entitlement to aid for the following marketing year. It accordingly requested Cereol to reimburse the aid which it had received.

10 Cereol in turn brought proceedings against Castello before the Tribunale Civile e Penale di Ravenna in which it requested that Castello be ordered to pay to it an amount equal to that of the aid which it was required to reimburse.

11 Castello argued before the national court that the penalty which had been imposed on Cereol was unlawful. It contended that Article 29a of Regulation No 2537/89, as amended, was invalid and was in any event not applicable to its case since, contrary to what AIMA claimed, Castello had not breached the Community rules.

12 The national court, having doubts as to the validity and scope of the applicable Community legislation, submitted the following questions for a preliminary ruling:

'1. Was the aim of Council Regulations (EEC) No 1491/85 and No 2194/85 (having regard in particular to the eighth recital in the preamble, to Article 2 and to Article 5(1) of the latter) for the period up to the 1992/93 marketing year (in other words, prior to Council Regulations No 3766/91 and No 1765/92) to ensure the payment of aid in respect of soya beans produced solely within the Community territory, calculated in accordance with the quantity actually produced, the primary obligation for the producer interested in the aid being to produce the soya within the territory of one of the Member States?

2. Is the duty to notify, set out in Article 6(3) of Commission Regulation (EEC) No 2537/89, one of the methods designed to enable the Community origin of the product to be determined, and as such should it, in the light of previous Community case-law, be considered a secondary obligation in relation to the primary obligation referred to in Question 1?

3. If the reply to the first two questions is in the affirmative: has the Commission, in adopting Article 29a of Regulation (EEC) No 2537/89, introduced by Regulation (EEC) No 150/90 (imposing serious penalties if the producer is negligent in the execution of the contract, in particular in the observance of Article 6(3)), exceeded the powers conferred on it by the Council in Article 2(8) of Regulation

(EEC) No 1491/85 by imposing the penalty, in the case of failure to fulfil one of the secondary obligations, of loss of the entitlement flowing from fulfilment of the primary obligation, thus misusing its powers?

4. If Question 3 is answered in the negative: does Article 29a of Commission Regulation (EEC) No 2537/89, introduced by Commission Regulation (EEC) No 150/90, which provides that for any serious negligence by the producer in the execution of the contract (in particular as regards compliance with Article 6(3)) the penalty shall be that the contract is rendered invalid, the beans produced under the contract are ineligible for aid and the producer is excluded from the benefit of the aid throughout the following marketing year, infringe the principle of proportionality as defined by the Court of Justice?

5. If Question 4 is answered in the negative: should the expression "change in the use to be made of areas indicated [in the contract]" used in Article 6(3) of Commission Regulation (EEC) No 2537/89 be understood as referring only to the use of part of the area for an agricultural product other than that declared in the contract?

6. If Question 5 is answered in the negative: does the duty to notify any change in use of part of the areas indicated which occurs in the three months preceding the date laid down for the beginning of harvesting, as set out in the third subparagraph of Article 6(3) of Commission Regulation (EEC) No 2537/89, still apply when the

changes occurred before the three months preceding the actual date of the beginning of the harvest of the soya beans which form the subject-matter of the contract?

7. If Question 5 is answered in the negative: does the duty to notify any change in use involving more than 10% of the area indicated in the contract, as set out in the third subparagraph of Article 6(3) of Commission Regulation (EEC) No 2537/89, still apply in cases where several changes have occurred over time, none of them of itself involving more than 10% but which, taken as a whole, exceed that percentage?'

The first four questions

13 The first four questions submitted by the national court concern the validity of Article 29a of Regulation No 2537/89, as amended, and may be dealt with together.

14 The national court asks whether it was possible for the Commission, without exceeding the limits of the power delegated to it by Article 2(8) of Regulation No 1491/85 and without infringing the principle of proportionality, to provide that irregularities resulting from serious negligence on the part of the producer and concerning the obligation under Article 6(3) of Regulation No 2537/89 to inform the competent national agencies of changes to the areas sown should be penalized by the invalidity of the cultivation contract and the exclusion of the producer from entitlement to aid for the current marketing year and the following marketing year, as laid down in Article 29a(1) of that regulation.

15 Castello submits that this latter provision is invalid. It argues that a penalty as severe as loss of entitlement to aid may attach to the obligation to grow soya beans within the territory of the Community, which is the primary obligation under the system of aid introduced in 1985, but may not attach to the obligation to notify changes of a certain extent in the use of the areas sown, which is no more than a secondary obligation under the system of aid.

16 The Commission, on the other hand, takes the view that the provision in question is valid. It argues that the obligation to indicate changes made to the areas sown is essential in order to enable the competent public authorities to ensure that only beans actually produced within the territory of the Community will benefit from the aid, and that to penalize a breach of that obligation by loss of entitlement to aid for the current marketing year and the following marketing year does not infringe the principle of proportionality or exceed the ambit of the powers delegated to the Commission by the Council.

17 According to the information provided to the Court by the Commission, which has not been contested, soya beans harvested in the Community account for only a small percentage of the beans processed within the Community. Under a system such as that introduced by the Council in 1985, which provides that processors are to be granted aid according to the quantities of soya beans produced and processed within the Community, it is vital that the origin of the beans should be capable of verification in order to ensure that the aid benefits exclusively beans harvested within the Community, the only beans whose production is to be encouraged.

18 The information on areas sown, which must be included in the cultivation contracts, happens precisely to form part of the system of control and proof introduced in order to verify the origin of beans.

19 In order for the system to operate properly, it is necessary that such information should be reliable. If there is no reliable information on the areas sown, it will be difficult, in the light of the yields indicated in the cultivation contracts, to check that the quantities of beans declared by the first purchaser, which form the basis for calculating the amount of aid, have in fact been harvested within Community territory and not imported from non-member countries. In particular, as the Commission points out, it would not be possible, in the absence of such information, to cross-check other information which producers and first purchasers are otherwise required to provide to the competent national authorities, such as stock records and financial accounts.

20 The reliability of information on the areas sown can be guaranteed only if producers notify the competent national authorities of changes in the use of the areas indicated in the cultivation contract and which, pursuant to the first subparagraph of Article 6(3) of Regulation No 2537/89, as amended, must be used exclusively for the cultivation of soya beans, except in cases of *force majeure*.

21 It is for this purpose that the second subparagraph of Article 6(3) of Regulation No 2537/89 provides that producers must, by way of an amendment to the contract, indicate any change in the areas sown which may take place before the contract has been lodged with the competent national agency, and that the third subparagraph of Article 6(3) provides that changes in excess of a specified amount must be notified to that agency if they occur after the contract has been lodged.

22 The obligation imposed on the producer to declare changes to the competent agency, as provided for in Article 6(3) of Regulation No 2537/89, thus constitutes an obligation essential to the proper functioning of the system of aid and is therefore of fundamental importance to that system.

23 However, the first subparagraph of Article 29a(1) of Regulation No 2537/89, as amended, provides for failure to comply with that obligation to be penalized only if it is the result of deliberate conduct or serious negligence on the part of the producer. Furthermore, this provision must, in the light of Article 29a(4), be understood as allowing the competent national authorities to impose one or more of the penalties to which it refers, depending on the seriousness of the breach which the producer is alleged to have committed, as was argued by the Commission and accepted by Castello at the hearing.

24 The Court has consistently held that the infringement of obligations whose observance is of fundamental importance to the proper functioning of a Community system may be penalized by forfeiture of a right conferred by Community legislation, such as entitlement to aid (see the judgments to that effect in Case 122/78 *Buitoni* v *FORMA* [1979] ECR 677 and in Case 21/85 *Maas* v *Bundesanstalt für landwirtschaftliche Marktordnung* [1986] ECR 3537).

25 By providing for penalties which may go as far as forfeiture of entitlement to aid for the current marketing year and for the following marketing year in the case where a soya bean producer, deliberately or by reason of serious negligence on his part, breaches an obligation as important for the proper functioning of the aid system as is the obligation to notify changes in the areas sown, the Commission did not infringe the principle of proportionality or exceed the limits of the implementing powers conferred on it by Article 2(8) of Regulation No 1491/85, which include the power to provide for appropriate penalties (see the judgment in Case C-357/88 *Hopermann* v *Bundesanstalt für landwirtschaftliche Marktordnung* [1990] ECR I-1669, paragraph 7).

26 It is for the national court to determine whether a producer's failure is the result of deliberate conduct or serious negligence on his part and whether the penalty chosen is, pursuant to Article 29a(4) of Regulation No 2537/89, as amended, proportionate to the failure established in the light of the need to ensure that the system of aid in question functions properly.

27 In those circumstances, the reply to the national court must be that examination of the first four questions referred for a preliminary ruling has revealed nothing capable of affecting the validity of Article 29a of Regulation No 2537/89, as amended by Regulation No 150/90.

The last three questions

28 The last three questions submitted by the national court concern the interpretation of Article 6(3) of Regulation No 2537/89. The national court seeks to determine whether the obligation to notify laid down in that provision applies to a reduction in areas sown such as that effected by Castello.

29 The national court first of all asks whether the 'change' referred to in Article 6(3) covers reductions in areas cultivated by a producer by reason of heavy rain during a marketing year. Next, it asks whether producers are required to notify the competent national authority of changes arising more that three months prior to the date scheduled for the harvest but after the signing of the contract. Finally, the national court asks whether these producers are obliged to notify changes none of which individually exceeds 10% of the area originally declared in the cultivation contract but which, taken as a whole, do exceed that threshold.

30 As stated above, the aid system can only function well if the national authorities have reliable information on the areas under cultivation, which, except in cases of *force majeure*, must be used exclusively for soya cultivation, and if those authorities are thus informed, in principle, of all changes, of whatever nature and origin they may be, which arise in the use to which those areas are put.

31 In view of this objective, the words 'change in the use to be made of areas indicated' featuring in Article 6(3) of Regulation No 2537/89 must be broadly understood in such a way as to cover all changes occurring to areas declared for sowing. In particular, that expression covers the reductions made to cultivated areas as a result of natural occurrences such as heavy rain.

32 Although this point was not expressly raised by the national court, it is necessary to point out, in view of the observations of Castello, that by providing that the areas declared in the cultivation contract be reserved for the growing of soya, 'except in cases of *force majeure*', the first subparagraph of Article 6(3) is designed simply to release the producer, in exceptional cases, from his obligation to use the areas in question exclusively for growing soya beans. That provision does not, however, exempt the producer from the obligation, laid down in the second and third subparagraphs of Article 6(3), to inform the competent authorities of such a change in the use to which areas are put.

33 In view of the objective of control and fraud prevention pursued by Article 6 of Regulation No 2537/89, any change made after the signing of the contract but before the beginning of the harvest must be notified to the competent public authority either in the form of an amendment to the cultivation contract, as provided for in the second subparagraph of Article 6(3) of Regulation No 2537/89, or, when it exceeds the thresholds laid down in the third subparagraph of Article 6(3), in the form of a notification by the producer to the competent agency, to the agency responsible for control and to the first purchaser, as provided for in this latter provision.

34 In this regard, the fact that the third subparagraph of Article 6(3) refers to changes occurring 'in the three months preceding the date laid down for the beginning of harvesting of soya beans' cannot exempt changes occurring after the contract has been lodged but more than three months before the beginning of the harvest from being subject to compulsory notification. Were they so exempt, and were one to

assume that cultivation contracts could be lodged more than three months prior to the beginning of the harvest, producers could alter the areas under cultivation without the competent agencies being informed, increasing the risk of fraud which the notification system is specifically designed to prevent.

35 The need to have reliable information on areas sown also justifies the obligation to notify the competent agency of changes which, individually or collectively, involve more than 10% of the area indicated in the cultivation contract and, where relevant, amendments to it, and more than one hectare of this area. In particular, if they are not to increase the risk of fraud, the words 'each time that ... a change involves more than [these thresholds]' in the third subparagraph of Article 6(3) of Regulation No 2537/89 cannot be understood as covering only changes which, taken separately, exceed both of those thresholds.

36 In those circumstances, the answer to the last three questions submitted by the national court should be that Article 6(3) of Regulation No 2537/89 must be understood as meaning that soya producers must notify the competent agency of any change in the areas indicated in the cultivation contract, in particular any reduction in those areas, even if it is attributable to natural occurrences, such as heavy rainfall, where such a change occurs before the lodging of the contract, as well as all changes which occur after lodging of the cultivation contract and which, individually or collectively, involve more than 10% of the areas indicated in the cultivation contract and more than one hectare.

Costs

37 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Tribunale Civile e Penale di Ravenna by order of 3 March 1994, hereby rules:

1) **Examination of the first four questions referred for a preliminary ruling has revealed nothing capable of affecting the validity of Article 29a of Commission Regulation (EEC) No 2537/89 of 8 August 1989 laying down detailed rules for the application of the special measures for soya beans, as amended by Commission Regulation (EEC) No 150/90 of 19 January 1990.**

2) **Article 6(3) of Regulation No 2537/89, as amended, must be understood as meaning that soya producers must notify the competent agency of any change in the areas indicated in the cultivation contract, in particular any reduction in those areas, even if it is attributable to natural occurrences, such as heavy rainfall, where such a change occurs before the lodging of the contract, as well as all changes which occur after lodging of the cultivation contract and which, individually or collectively, involve more than 10% of the areas indicated in the cultivation contract and more than one hectare.**

Edward Moitinho de Almeida

Gulmann Jann Sevón

Delivered in open court in Luxembourg on 12 October 1995.

R. Grass
Registrar

D. A. O. Edward
President of the Fifth Chamber