JUDGMENT OF THE COURT (Second Chamber)

7 February 2002 *

In Case C-328/00,

REFERENCE to the Court under Article 234 EC by the Bayerisches Verwaltungsgericht Regensburg (Germany) for a preliminary ruling in the proceedings pending before that court between

Maria Weber,

Martin Weber

and

Freistaat Bayern,

on the validity of Commission Regulation (EEC) No 525/93 of 8 March 1993 establishing the value of the final regional reference amounts for producers of soya beans, rape seed, colza seed and sunflower seed for the 1992/93 marketing year (OJ 1993 L 56, p. 18),

* Language of the case: German.

THE COURT (Second Chamber),

composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges,

Advocate General: C. Stix-Hackl,

Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Commission of the European Communities, by C. Schmidt and M. Niejahr, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 25 October 2001,

gives the following

Judgment

1 By order of 30 August 2000, received by the Registry of the Court on 6 September 2000, the Bayerisches Verwaltungsgericht (Bavarian Administrative

Court) Regensburg referred to the Court for a preliminary ruling under Article 234 EC five questions on the validity of Commission Regulation (EEC) No 525/93 of 8 March 1993 establishing the value of the final regional reference amounts for producers of soya beans, rape seed, colza seed and sunflower seed for the 1992/93 marketing year (OJ 1993 L 56, p. 18).

2 These questions arose in proceedings between Mr and Mrs Weber, the only members of Martin Weber GdbR, a firm constituted under German law ('Gesellschaft des Bürgerlichen Rechts'), and Freistaat Bayern in respect of the amount of compensatory payments to oil-seed producers that the Amt für Landwirtschaft und Bodenkultur (Office for Agriculture and Arable Farming, 'the Office') Regensburg, had granted them under Regulation No 525/93.

Legislative background

3 Council Regulation (EEC) No 3766/91 of 12 December 1991 establishing a support system for producers of soya beans, rape seed, colza seed and sunflower seed (OJ 1991 L 356, p. 17) introduced a system based on the principle of direct compensatory payments to producers of a fixed sum per hectare, varying according to the average yields of the different regions of the Community.

4 According to Article 1(3) of Regulation No 3766/91, the marketing year for the products covered by that Regulation runs from 1 July to 30 June.

5 Article 3(1) of Regulation No 3766/91 provides:

'A projected reference price for oil-seeds is set at ECU 163 per tonne.'

6 According to the explanations provided by the Commission in its written observations, that reference price represents 'the expected medium-term equilibrium price for oilseeds on a stabilised world market'.

7 Article 3(2) provides:

'A Community reference amount for oil-seeds is set at ECU 384 per hectare.'

8 According to the Commission that sum is a theoretical value representing the projected average amount of the compensatory payment per hectare within the Community.

9 The amount of the compensatory payment to be paid to producers is established in two stages.

10 First, in accordance with Article 3(3) of Regulation No 3766/91, the Commission establishes, for each production region identified pursuant to Article 2 of that regulation, a 'projected regional reference amount' reflecting the comparison between the average Community cereals or oil-seeds yield and the relevant average yield for the region in question.

11 Second, the Commission, in accordance with the 'management committee procedure' laid down in Article 38 of Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organisation of the market in oils and fats (OJ, English Special Edition 1965-1966, p. 221), establishes, before 30 January in each marketing year, a 'final regional reference amount', in accordance with Article 3(4) of Regulation No 3766/91.

12 Article 3(4) provides:

'... the Commission ... shall calculate a final regional reference amount based on the observed reference price for oil-seeds. The final calculation shall be made by substituting the observed reference price for the projected reference price; no account shall be taken of price variations within 8% of the projected reference price.'

13 It follows that, if the observed reference price under Article 3(4) of Regulation No 3766/91 differs by more than 8% from the projected reference price, the final regional reference amount is to be established by adjusting the projected regional reference amount in proportion to the variation in question.

14 Article 3(5) of Regulation No 3766/91 authorises the Commission to make the final calculations separately for each oil-seed.

15 Article 3(6) of Regulation No 3766/91 provides that the publication of the projected and final regional reference amounts in the *Official Journal of the European Communities* is to include a succinct explanation of the calculations made.

16 Due to the delays resulting from the implementation of the new system, the Member States were authorised by Commission Regulation (EEC) No 1405/92 of 27 May 1992 establishing the value of the advance payments to be made to producers of soya beans, rape seed, colza seed and sunflower seed for the 1992/93 marketing year (OJ 1992 L 146, p. 56) to make advance payments to producers equal to 50% of the projected regional reference amount derived from the data supplied to the Commission in support of their regionalisation plans.

17 On 5 March 1993 the Commission adopted Regulation (EEC) No 515/93 establishing the value of the projected regional reference amounts for producers of soya beans, rape seed, colza seed and sunflower seed for the 1992/93 marketing year (OJ 1993 L 55, p. 43). The projected regional reference amount for Bavaria (Germany) was fixed at ECU 517.42 (DEM 1 218.10) per hectare.

18 On 8 March 1993 the Commission adopted Regulation (EEC) No 525/93, Annex II to which shows that the final regional reference amount for Bavaria was also fixed at ECU 517.42 (DEM 1 218.10) per hectare.

19 Annex I to Regulation No 525/93 provides a 'succint explanation of the calculation of the final regional reference amounts', which is as follows:

'An observed reference price, which represents the average price recorded on the world market during the 1992/93 marketing year, has been determined separately for each oil-seed.

These observed reference prices have been calculated using quotations and executed transaction prices, expressed on a Rotterdam equivalent basis, for bulk consignments of oil-seeds delivered in representative port areas. The prices and quotations were recorded during the period July 1992 to January 1993. Wherever possible, account was taken of both the current month and the term delivery prices of the transactions and quotations.

The values of the observed reference prices are such that no adjustment of the projected regional reference amounts, pursuant to the provisions of Article 3(4) of Regulation (EEC) No 3766/91, is necessary.

...

For the 1992/93 marketing year the final regional reference amounts are confirmed as being of the same value as the projected regional reference amounts, and are set out in Annex II.'

The dispute in the main proceedings and the national court's questions

20 On 24 May 1992 Martin Weber GdbR applied to the Office for direct payments to oilseed producers for the 1992 harvest in respect of an area of 6.37 hectares of rape seed. Its application was registered on 29 May 1992.

21 By decision of 23 September 1992, the Office granted an advance payment of DEM 3 879.65 to the applicants, corresponding to 50% of the projected regional reference amount. The calculation was based on a rate of DEM 609.05 per hectare for Bavaria. The applicants lodged an objection against the decision, on the basis that the advance payment did not cover losses resulting from the fall in prices.

22 By decision of 28 April 1993, the Office awarded the applicants a total support of DEM 7 759.79 calculated on the basis of the final regional reference amount for Bavaria of DEM 1 218.10 per hectare. The applicants also lodged an objection against that decision, with a request that no ruling be made on it until the Court of Justice had delivered judgment in the action which was to be brought before it.

23 By application lodged at the Registry of the Court on 11 May 1993, the applicants brought an action for the annulment of Regulation No 525/93. By judgment in Case T-482/93 *Weber* v *Commission* [1996] ECR II-609 the Court of First Instance, to which the case had been referred by order of the President of the Court of Justice of 27 September 1997, dismissed the application as inadmissible on the ground that the applicants were not individually concerned by that regulation.

24 On 4 December 1997, the Upper Palatine government rejected the applicants' objection on the ground that the Office's decision of 28 April 1993 based on Regulation No 525/93 was lawful.

25 On 9 January 1998 the applicants brought an action before the Bayerisches Verwaltungsgericht Regensburg seeking annulment of that decision and submitted that a reference for a preliminary ruling should be made to the Court of Justice under subparagraph (b) of the first paragraph of Article 177 of the EC Treaty [now subparagraph (b) of the first paragraph of Article 234 EC].

26 In support of the their application the applicants submitted, first, that Regulation No 525/93 is contrary to Article 190 of the EC Treaty (now Article 253 EC) in that it contains an inadequate statement of reasons and, second, that it infringes the principle of Community law prohibiting arbitrary action.

27 Taking the view that the resolution of the action before it depends on the validity of Regulation No 525/93 the Bayerisches Verwaltungsgericht Regensburg decided to stay proceedings and refer the following questions to the Court:

'(1) Was the Commission, when establishing the final regional reference amount, entitled, notwithstanding the wording of Annex I of Regulation (EEC) No 525/93, to leave out of account reference prices from months in the period between 1 July 1992 and January 1993, to include in its calculation reference prices from months after that period, and to replace missing information on reference prices by an estimate?

(2) Was it permissible to increase the prices established for Hamburg and Fac Atlant by the addition of notional freight costs of ECU 3.8 per tonne?

(3) When determining the final reference price, was it permissible to use as a basis purely arithmetically determined average prices, without taking into account the different quantities marketed in the individual months of the calculation period?

(4) If questions 1, 2 and 3 are answered in the affirmative, is Regulation (EEC) No 525/93 defective as regards its criteria for calculating the final regional reference amount in that it fails to state reasons within the meaning of Article 190 of the EC Treaty (now Article 253 EC)?

(5) Would that failure to state reasons be so material that it would lead to the nullity, in whole or in part, of the regulation?'

The first, second and third questions

28 As regards the first three questions, which should be considered together, it is clear from the Commission's written observations that, in calculating the final regional reference amounts as laid down in Regulation No 525/93, the Commission, first of all, also took into account estimated forward prices for February and March 1993 relating to transactions carried out in January 1993; second, in two instances it did not take into account average prices supplied by the Member States; third, it increased certain prices by including a flat-rate amount of ECU 3.8 per tonne to cover freight costs; and, fourth, it did not carry out a weighting of the prices adopted according to the quantities actually marketed during the months in question.

29 The Commission nevertheless considers that, in doing so, it did not commit an irregularity such as to render Regulation No 525/93 invalid.

30 In this connection it should be observed, first, that Regulation No 3766/91, which was the basis for the adoption of Regulation No 525/93, merely states in Article 3(4) that final regional reference amounts are to be calculated on the basis of the observed reference price for oil-seeds and that the final calculation is to be made by substituting the observed reference price for the projected reference price.

31 However, Regulation No 3766/91 does not define the precise method to arrive at the observed reference price. According to Article 3(6) of that regulation, it is for the Commission to give a succint explanation of the calculations made when it publishes final regional reference amounts.

32 Second, Community institutions enjoy wide discretion in the area of the common agricultural policy corresponding to the responsibilities given to them by the EC Treaty (see, in particular, Case C-375/96 *Zaninotto* [1998] ECR I-6629, paragraph 64, and Case C-189/01 *Jippes and Others* [2001] ECR I-5689 paragraph 80).

33 Given the existence of such discretion, the Court must confine itself to examining whether the exercise of the discretion is not vitiated by a manifest error or misuse of power or whether the institution in question has not manifestly exceeded the limits of its discretion (see, in particular, Case C-354/95 *National Farmers' Union* [1997] ECR I-4559, paragraph 50, *Jippes and Others*, cited above, paragraph 80, and Case C-301/97 *Netherlands* v *Council* [2001] ECR I-8853, paragraph 74).

34 It does not, however, appear that the Commission committed a manifest error or misuse of power or manifestly exceeded the limits of its discretion.

35 Under Article 3(4) of Regulation No 3766/91, it is only where the observed reference price differs from the projected reference price by more than 8% that the projected regional reference amounts have to be adjusted so as to become the final regional reference amounts.

36 It is also clear from the Commission's explanations, which are not disputed, that the projected reference price for oil-seeds, as established by Article 3(1) of Regulation No 3766/91, corresponded to the expected medium-term equilibrium price for oil-seed on a stabilised world market.

37 In these circumstances, it does not seem unreasonable that, in order to ensure that the observed reference prices were comparable with the projected reference price, the Commission, in calculating the final regional reference amounts, on the one hand, made estimates in order to include forward prices which, being calculated on the basis of a longer period, were therefore a more stable element than spot prices, and, on the other hand, took no account of prices which related to a small number of transactions and were therefore not representative of the equilibrium price throughout the 1992/93 marketing year.

38 The same applies to the increase in some prices by the addition of flat-rate freight costs of ECU 3.8 per tonne, which the Commission added in order to adapt the prices in different port areas of the Community to the level of those at Rotterdam (Netherlands).

39 As Rotterdam is the principal port of the Community, it was reasonable for the Commission to consider that prices there were representative of the world market; moreover, as it explained, the projected reference price as determined under Article 3(1) of Regulation No 3766/91 had also been calculated 'on a Rotterdam basis'.

40 Nor does it appear that the Commission manifestly exceeded the limits of its discretion when, in the absence of the necessary information from the Member States, it did not weight the prices in accordance with the quantities which had actually been marketed but determined the observed reference prices simply on the basis of arithmetically determined average prices.

41 It follows from the foregoing, that Regulation No 525/93 is not rendered invalid on any of the grounds referred to in the first three questions.

The fourth and fifth questions

42 With regard the fourth and fifth questions, namely whether Regulation No 525/93 is invalid, in whole or in part, for infringement of the obligation to state reasons under Article 190 of the Treaty, it must be observed that the statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the institution which enacted the measure, so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review. It is not necessary, however, for details of all relevant factual and legal aspects to be given, in so far as the question whether the statement of grounds for a measure meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, in particular, Joined Cases C-15/98 and C-105/99 *Italy and Sardinia Lines* v

Commission [2000] ECR I-8855, paragraph 65, and *Netherlands* v *Commission*, cited above, paragraphs 187 and 188).

43 The first recital of Regulation No 525/93 refers explicitly to Article 3(4) of Regulation No 3766/91 and notes that the final regional reference amount is to be calculated by substituting the observed reference price for the projected reference price.

44 Moreover, as required by Article 3(6) of Regulation 3766/91, the method of calculation of the final regional reference amounts is succintly set out in Annex I to Regulation 525/93.

45 The necessary conclusion is therefore that Regulation No 525/93, as a measure which simply gives effect to Regulation No 3766/93, provides an adequate statement of reasons for the method of calculating the final regional reference amounts.

46 It follows from all of the foregoing considerations that examination of the questions submitted has disclosed no factor of such a kind as to affect the validity of Regulation No 525/93.

Costs

47 The costs incurred by the Commission, 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 (Second Chamber),

in answer to the questions referred to it by the Bayerisches Verwaltungsgericht Regensburg by order of 30 August 2000, hereby rules:

Consideration of the questions submitted has disclosed no factor of such a kind as to affect the validity of Commission Regulation (EEC) No 525/93 of 8 March 1993 establishing the value of the final regional reference amounts for producers of soya beans, rape seed, colza seed and sunflower seed for the 1992/93 marketing year.

Colneric Schintgen Skouris

Delivered in open court in Luxembourg on 7 February 2002.

R. Grass

Registrar

N. Colneric

President of the Second Chamber