JUDGMENT OF THE COURT (Sixth Chamber)
20 June 1991 *

In Case C-365/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven for a preliminary ruling in the proceedings pending before that court between

Cargill BV

and

Produktschap voor Margarine, Vetten en Oliën

on the validity of Commission Regulation (EEC) No 1358/89 of 18 May 1989 amending Regulation (EEC) No 735/85 fixing the amount of the subsidy on oil seeds, the validity of Regulation No 735/85 and the jurisdiction of the national court to determine claims for damages and default interest in that respect,

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, T. F. O'Higgins, M. Díez de Velasco, C. N. Kakouris and F. A. Schockweiler, Judges,

Advocate General: J. Mischo,
Registrar: J. A. Pompe, Deputy Registrar,

* Language of the case: Dutch.

after considering the observations submitted on behalf of:

— Cargill BV, by E. H. Pijnacker Hordijk, of the Amsterdam Bar,

— the Commission of the European Communities, by Robert Fischer, Legal Adviser, and by Patrick Hetsch, a member of its Legal Department, acting as Agents,

having regard to the Report for the Hearing,

after hearing oral argument presented by the parties at the hearing on 7 February 1991,

after hearing the Opinion of the Advocate General at the sitting on 21 March 1991,

gives the following

Judgment

1 By order of 10 November 1989, which was received at the Court Registry on 4 December 1989, the College van Beroep voor het Bedrijfsleven (Administrative court of last instance in matters of trade and industry) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions concerning the validity of Commission Regulation No 1358/89 of 18 May 1989 amending Regulation No 735/85 fixing the amount of the subsidy on oil seeds (Official Journal 1989 L 135, p. 22), and of Commission Regulation (EEC) No 735/85 of 21 March 1985 fixing the amount of the subsidy on oil seeds (Official Journal 1985 L 80, p. 18), as well as on the consequences to be drawn should either or both of those regulations be declared invalid.

2 Those questions arose in proceedings between Cargill BV (hereinafter 'Cargill') and the Produktschap voor Margarine, Vetten en Oliën (hereinafter 'the Produktschap') concerning the payment of subsidies for processing oil seeds provided for, pursuant to Article 27 of Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the

markets in oils and fats (Official Journal, English Special Edition 1966, p. 221), by Regulation No 735/85.

3 The documents before the Court reveal that, on the basis of Article 27 of Regulation No 136/66/EEC, which provides for a subsidy to be granted for oil seed harvested and processed within the Community, the Commission adopted Regulation No 735/85 fixing the amount of the subsidy and the corresponding exchange rates for the ECU to be applied as from 22 March 1985.

4 On 22 March 1985 Cargill purchased 10 000 tonnes of sunflower seed in France; on the same day, it submitted applications for advance fixing of the subsidy for processing those products to the competent Netherlands intervention agency. Pursuant to the second paragraph of Article 5 of Council Regulation (EEC) No 1594/83 of 14 June 1983 on the subsidy for oil seeds (Official Journal 1983 L 163, p. 44), the certificates relating to that subsidy should have been issued no later than on the afternoon of 23 March 1985.

5 After finding an error in Regulation No 735/85 regarding the exchange rates to be used for converting final aid into the currency of the processing Member State where that State is not the country of production, an error leading to the grant of a higher subsidy than that laid down by Article 27 of Regulation No 136/66, the Commission, on the basis of Article 8 of Regulation 1594/83, adopted Regulation (EEC) No 756/85 of 22 March 1985 (Official Journal 1985 L 81, p. 38), whereby it suspended advance fixing of the subsidy for sunflower seed in the case of certificates the application for which had been lodged on 22 March 1985.

6 On the same day the Commission adopted Regulation (EEC) No 755/85 (Official Journal 1985 L 81, p. 36), by which it re-established the correct amount of the subsidy with effect from the following day.

7 By decision of 25 March 1985, the Produktschap, the Netherlands intervention agency, dismissed the applications for advance-fixing certificates submitted by Cargill on the ground that advance fixing had been suspended.

8 In appeal proceedings against that decision, the national court referred to the Court for a preliminary ruling two questions on the validity of Regulation No 756/85 and on the consequences of its possible invalidity.

9 By judgment of 28 February 1989 (in Case 201/87 [(1989] ECR 489), the Court ruled as follows: 'Having regard to Article 8(1) of Council Regulation No 1594/83, Commission Regulation No 756/85 is invalid. So long as Commission Regulation No 735/85 has not been declared to be invalid, the invalidity of Commission Regulation No 756/85 means that the Produktschap must issue to Cargill BV with retroactive effect the advance-fixing certificates applied for on 22 March 1985 and pay it the subsidy in the sum fixed by Commission Regulation No 735/85.'

10 Following that judgment, the Commission adopted Regulation No 1358/89, which corrects, with retroactive effect, the exchange rates for the ECU contained in Annex III to Regulation No 735/85 in respect of applications for advance fixing lodged on 22 March 1985.

11 In order to resolve the dispute definitively, the national court, taking the view that the judgment of the Court of 28 February 1989 left open the question of the validity of Regulation No 735/85 and that the adoption of Regulation No 1358/89 raised the question of its validity in relation to the principle of legal certainty, considered it appropriate to seek a ruling from the Court for the second time on the following questions:

'(1) Is Commission Regulation (EEC) No 1358/89 of 18 May 1989 invalid in the light of the considerations set out in this judgment?

If Question 1 is answered in the affirmative:

(2) Is Commission Regulation (EEC) No 735/85 of 21 March 1985 invalid on account of any incorrectness in the rates laid down therein for conversion into the currency of the processing Member State when the latter is a country other than the country of production and can it therefore not be used as the basis for granting subsidy, as requested by the plaintiff?

If Question 1 is answered in the affirmative and Question 2 in the negative:

(3a) Should ancillary claims such as those set out in paragraph 3(c) and (d) of this judgment be assessed on the basis of Article 178 in conjunction with the second paragraph of Article 215 of the EEC Treaty, or should such claims be regarded as being wholly or partly ancillary claims which should be decided on by the national court having jurisdiction with regard to the principal claim?

If Questions 1 and 2 are answered in the affirmative:

(3b) In the light of the considerations set out thereon in this judgment what consequences at Community level and at national level, respectively, should follow as regards legal redress from the declaration that Regulations (EEC) Nos 1358/89 and 735/85 are invalid, if they are in fact invalid?'

12 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

13 Since the validity of Regulation No 1358/89 depends on that of Regulation No 735/85, it is appropriate to examine the Question 2 first.

Validity of Regulation No 735/85

14 First of all, it must be borne in mind that, according to Article 27(1) of Regulation No 136/66,

'Where the target price in force for a species of seed is higher than the world market price for that seed determined in accordance with the provisions of Article 29, a subsidy shall be granted for seed of that species harvested and processed within the Community. Subject to exceptions . . . this subsidy shall be equal to the difference between these prices.'

It follows that the subsidies granted pursuant to that provision are in breach thereof whenever the actual amount of those subsidies exceeds the difference between the target price and the world market price for a particular species.

15 It must also be pointed out that, so far as the rate for converting the ECU into French francs is concerned, it is common ground that Regulation No 735/85 contained an error of more than 10% compared with the rate published on 21 and 22 March in the 'C' Series of the *Official Journal of the European Communities*, and that this error itself gave rise to the incorrect fixing of the amount of the final aid, thereby vitiating the legality of that regulation.

16 The answer to be given to the national court must therefore be that Regulation No 735/85 is invalid since it was adopted in breach of Article 27 of Regulation No 136/66.

Validity of Regulation No 1358/89

17 It should be noted that the only doubt expressed by the national court concerns the question whether this regulation was adopted in breach of the principle of legal certainty.

18 In that regard, while it must be acknowledged that any Community institution which establishes that a measure which it has just adopted is tainted with illegality has the right to withdraw it within a reasonable period, with retroactive effect, that right may be restricted by the need to fulfil the legitimate expectations of a beneficiary of the measure, who has been led to rely on the lawfulness thereof (see the judgment in Case 14/81 *Alpha Steel* v *Commission* [(1982] ECR 749).

19 Accordingly, it is necessary to examine whether, in the present case, the Commission has complied with those requirements.

20 So far as concerns the manner in which the Commission took account of the expectations which the persons concerned might have had that Regulation No 735/85 was lawful, it is appropriate to point out that the error contained in that measure was so obvious that several traders already contacted the Commission on 22 March 1985, the very day on which the regulation was published, in order to bring the error to its attention and to ascertain what steps it intended to take. In those circumstances, a prudent trader could not have been led to rely on the lawfulness of a measure containing an error of that kind.

21 With regard to the need to act within a reasonable period, it should be noted that in its judgment in Case 201/87 the Court ruled only on the legality of the suspension measure contained in Regulation No 756/85, while leaving open the question of the possible invalidity of Regulation No 735/85.

22 The conclusion must be drawn that, taking account of the stage reached in the main proceedings, and having regard to the fact that Regulation No 1358/89 was adopted less than three months after the judgment in Case 201/87 had revealed the need to adopt a measure withdrawing an act on the validity of which the Court had not had the opportunity to adjudicate, the regulation in question was adopted within a reasonable period.

23 The answer to be given to the national court must therefore be that examination of Question 1 has not disclosed any factor of such a kind as to affect the validity of Regulation No 1358/89.

Question 3

24 In the light of the answers given to Questions 1 and 2, Question 3 has become devoid of purpose.

Costs

25 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 (Sixth Chamber),

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven, by order of 10 November 1989, hereby rules:

(1) Commission Regulation (EEC) No 735/85 of 21 March 1985 fixing the amount of the subsidy on oil seeds is invalid;

(2) Examination of Question 1 has disclosed no factor of such a kind as to affect the validity of Commission Regulation (EEC) No 1358/89 of 18 May 1989 amending Commission Regulation (EEC) No 735/85.

Mancini O'Higgins

Díez de Velasco Kakouris Schockweiler

Delivered in open court in Luxembourg on 20 June 1991.

J.-G. Giraud
Registrar

G. F. Mancini
President of the Sixth Chamber