JUDGMENT OF THE COURT (Fifth Chamber)
25 March 2004 *

In Case C-118/02,

REFERENCE to the Court under Article 234 EC by the Tribunal Supremo (Spain) for a preliminary ruling in the proceedings pending before that court between

Industrias de Deshidratación Agrícola SA

and

Administración del Estado,

on the interpretation of, in particular, Council Regulation (EC) No 603/95 of 21 February 1995 on the common organisation of the market in dried fodder (OJ 1995 L 63, p. 1) and Commission Regulation (EC) No 785/95 of 6 April 1995 laying down detailed rules for the application of Regulation No 603/95 (OJ 1995 L 79, p. 5),

* Language of the case: Spanish.

THE COURT (Fifth Chamber)

composed of: P. Jann (Rapporteur), acting for the President of the Fifth Chamber, C.W.A. Timmermans, A. Rosas, A. La Pergola and S. von Bahr, Judges,

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Industrias de Deshidratación Agrícola SA, by J.-A. Leciñena Martinez, abogado,

— the Kingdom of Spain, by N. Díaz Abad, acting as Agent,

— the Commission of the European Communities, by S. Pardo Quintillán, acting as Agent,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting of 10 September 2003,

gives the following

Judgment

1 By order of 6 February 2002, received at the Court on 29 March 2002, the Tribunal Supremo (Spanish Supreme Court) referred for a preliminary ruling several questions on the interpretation of, in particular, Council Regulation (EC) No 603/95 of 21 February 1995 on the common organisation of the market in dried fodder (OJ 1995 L 63, p. 1) (hereinafter the 'parent regulation') and Commission Regulation (EC) No 785/95 of 6 April 1995 laying down detailed rules for the application of Regulation No 603/95 (OJ 1995 L 79, p. 5) (hereinafter the 'implementing regulation'). These questions were raised in proceedings brought by a processing undertaking relating to a Royal Decree applying to the dried fodder sector.

Legal background

Community legislation

2 The common organisation of the market in dried fodder was established by the parent regulation. Article 1 of that regulation establishes a system of flat-rate aid for certain products made from the processing of dried fodder, namely:

— Flours and pellets of lucerne artificially heat-dried

— Flours and pellets of lucerne otherwise dried and ground

— Lucerne, sainfoin, clover, lupins, vetches and similar fodder products, artificially heat-dried, except hay and fodder kale and products containing hay

— LucerneLuceL, sainfoin, clovers, lupins, vetches, honey lotus, chickling pea and birdsfoot, otherwise dried and ground

— ProteiPProtein concentrates obtained from lucerne juice and from grass juice

— Dehydrated products obtained exclusively from solid residue and juice resulting from the preparation of the concentrates referred to in the first indent.

The amount for which aid may be granted is subject to restrictions, in order to limit the production of dried fodder in the Community. Two maximum guaranteed quantities are fixed for that purpose, one for artificially heat-dried fodder and the other for sun-dried fodder, and those quantities are distributed among the Member States. Should those quantities be exceeded, the aid for dried fodder is reduced in the Member States.

Article 8 of the parent regulation lays down a number of conditions that require to be met if there is to be an entitlement to aid under Article 1 of that regulation. Article 8 sets out, in particular, requirements as to the maximum moisture content and the minimum crude protein content, and provides that the dried fodder must be of sound, genuine and merchantable quality.

5 By the implementing regulation, the Commission of the European Communities laid down rules for the application of the parent regulation.

National legislation

6 In Spain, Royal Decree No 283/1999 of 22 February 1999 (*Boletín Oficial del Estado* No 46/1999 of 23 February 1999, p. 7463) (hereinafter the 'Royal Decree') sets out the national rules relating to the aid scheme for dried fodder. Article 5 of the Royal Decree relates to the requirements to be met by processing undertakings. Article 5(3) provides:

'Fodder for dehydration is fodder which arrives at the processing plant chopped, not baled, with a moisture content of at least 30 per cent, which is held for a maximum period between entering the processing plant and beginning the processing treatment of less than 24 hours, and which comes from plots of land situated no more than 100 kilometres from the corresponding processing plant, save, with respect to the lastmentioned condition, where the use of appropriate specialised transport justifies a greater distance. Furthermore, only consignments of fodder having an average moisture content of at least 35 per cent on entering the processing plant, measured at least every 10 days, will qualify for aid.'

The main proceedings and the questions referred

7 By application lodged with the Tribunal Supremo on 31 March 1999, the company Industrias de Deshidratación Agrícola SA brought proceedings for the annulment of Article 5(3) of the Royal Decree.

It claims that the adoption of this provision exceeds the competence of the Member States in the field of the common organisation of the market in question.

As it had doubts as to the extent of that competence, the Tribunal Supremo, by order of 6 February 2002, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is a national provision which makes the grant of aid for the drying of green or fresh fodder subject to the condition that the fodder for drying is delivered to processing undertakings chopped, and not baled, compatible with the second paragraph of Article 249 EC, Article 10 EC, the second subparagraph of Article 34(2) EC, Regulation [No 603/95] and Regulation [No 785/95]?

(2) Is a national provision which makes the grant of aid for the drying of green or fresh fodder subject to the condition that the fodder must reach the processing plant with a moisture content of over 30% and an average moisture content, on entry to the processing undertaking, of at least 35%, measured at least every ten days, compatible with the second paragraph of Article 249 EC, Article 10 EC, the second subparagraph of Article 34(2) EC, Regulation [No 603/95] and Regulation [No 785/95]?

(3) Is a national provision which makes the grant of aid for the drying of green or fresh fodder subject to the condition that the fodder must be kept at the processing plant for a maximum of 24 hours before it is processed compatible with the second paragraph of Article 249 EC, Article 10 EC, the second subparagraph of Article 34(2) EC, Regulation [No 603/95] and Regulation [No 785/95]?

(4) Is a national provision which makes the grant of aid for the drying of green or fresh fodder subject to the condition that the fodder must come from plots of land situated at a maximum distance of 100 kilometres from the corresponding processing plant, unless, in the latter case, a greater distance may be justified by the use of appropriate specialised transport, compatible with the second paragraph of Article 249 EC, Article 10 EC, the second subparagraph of Article 34(2) EC, Regulation [No 603/95] and Regulation [No 785/95]?'

The questions referred

10 By these questions, which it is appropriate to consider together, the national court is essentially asking whether the parent regulation and the implementing regulation should be interpreted as meaning that they preclude national provisions which lay down specific requirements with respect to green or fresh fodder for processing, linked to the manner of delivery, the moisture content, the time for processing and their growth within a specified area.

Observations submitted to the Court

11 According to the applicant in the main proceedings, the answer to the questions should be that the national legislation in question is not compatible with Community law. It submits that Article 5(3) of the Royal Decree exceeds the competence of the Spanish State, which is limited to monitoring the use of aid granted for the drying of fodder and to administering the system of payments in the context of the common organisation of the market in question.

The parent regulation specifies the various conditions to be met by the processing undertakings and crops processed by them in order to benefit from aid. These do not, however, include any provisions regulating the method of harvesting of fodder for drying or requiring that one method of harvesting be used rather than one or more other methods, nor do they specify a maximum period during which raw materials may be kept at the processing plant before being dried, nor, furthermore, do they include any provisions limiting the maximum distance between the producers of the raw materials and the processing plant. As the Community legislation constitutes an exhaustive scheme, it is not within the competence of the Member States to impose additional conditions of this nature.

The Spanish Government and the Commission take the opposite view.

They argue that where a market is subject to common organisation, the Member States have in principle only a residual legislative competence, but that they remain free to regulate matters that are not governed by Community law.

In the present case, neither the parent regulation nor the implementing regulation currently define the notion of green or of fresh fodder, and, accordingly, the raw materials. It is only the finished product, namely dried fodder, which qualifies for aid under Article 1 of the parent regulation, which is exhaustively described in the implementing regulation.

In such circumstances, Member States have a residual competence in order to give content to the notion of fresh fodder, subject to the condition that any rules introduced for that purpose do not conflict with Community law and do not impede the proper working of the common organisation of the market.

17 As regards the last point, the Commission notes that practices resulting in loss of moisture in green and fresh fodder for drying have arisen in Spain, involving not only a reduction in the work required for artificial drying, which is the justification for the high level of aid for that type of product, but also an increase in the production of dried fodder, leading to a risk of the maximum guaranteed quantities being exceeded, and, ultimately, the penalisation of producers in other Member States, who will suffer from the overall reduction in the maximum quantities. The Spanish Government can, therefore, take steps to prevent this by introducing appropriate legislative measures.

18 The Spanish Government submits that the legislation in question was drawn up with the essential aim in mind of combating abuse and fraud, and of guaranteeing the quality of the products, as Article 8 of the parent regulation requires.

Answer of the Court

19 It should be pointed out that the Court has held that where there is common organisation of the market in a given sector, the Member States can in principle no longer take action through national provisions adopted unilaterally (Case 154/77 *Dechmann* [1978] ECR 1573, paragraph 16). Their legislative competence can only be residual and is limited to situations which are not governed by the Community rules and to cases where those rules expressly give them power to act (Case 48/85 *Commission* v *Germany* [1986] ECR 2549, paragraph 12).

20 It should also be noted that where there is a regulation on the common organisation of the market in a given sector, Member States are under an obligation to refrain from taking any measures which might undermine or create

exceptions to it. Rules which interfere with the proper functioning of a common organisation of the market are also incompatible with such common organisation, even if the matter in question has not been exhaustively regulated by it (Case C-507/99 *Denkavit* [2002] ECR I-169, paragraph 32, and Case C-332/00 *Belgium* v *Commission* [2002] ECR I-3609, paragraph 29).

21 In the present case, as Article 1 of the parent regulation makes clear, the common organisation of the market in the dried fodder sector covers a number of products made from the processing of green or fresh fodder. As the Advocate General noted at points 33 and 34 of her Opinion, fresh fodder does not itself form part of this common organisation of the market.

22 Accordingly, neither the parent regulation nor the implementing regulation lay down conditions which fresh fodder for drying requires to meet, of the kind specified in Article 5(3) of the Royal Decree. Likewise, Article 8 of the parent regulation, which lays down the minimum quality standards to be complied with, expressly refers to dried fodder and not to fresh fodder.

23 The Member States thus remain free in principle to lay down the specific conditions which apply to the latter category of products. Any inequality in treatment arising as a result would, as the Advocate General notes at point 42 of her Opinion, not go beyond what necessarily results from this situation. The second paragraph of Article 249 EC, Article 10 EC and the second subparagraph of Article 34(2) EC are therefore not affected.

24 As regards the question of whether the conditions specified in the national legislation are capable of impeding the proper working of the common organisation of the market in question, the Spanish Government and the

Commission have emphasised, without being challenged, that the essential aim of the legislation was to combat abuse and fraud, and to guarantee the quality of the raw materials for the products entitled to aid.

25 In those circumstances, and for the reasons set out by the Advocate General at points 37 to 41 of her Opinion, the conditions laid down in the national legislation in question do not impede the proper working of the common organisation of the market in question.

26 The answer to the questions must therefore be that the parent regulation and the implementing regulation must be interpreted as meaning that they do not preclude national provisions which lay down specific requirements with respect to green or fresh fodder for processing, linked to the method of delivery, the moisture content, the time within which processing must take place and the growth of such fodder within a specified area.

Costs

27 The costs incurred by the Spanish Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings 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 Tribunal Supremo by order of 6 February 2002, hereby rules:

Council Regulation (EC) No 603/95 of 21 February 1995 on the common organisation of the market in dried fodder and Commission Regulation (EC) No 785/95 of 6 April 1995 laying down detailed rules for the application of Regulation No 603/95 must be interpreted as meaning that they do not preclude national provisions which lay down specific requirements with respect to green or fresh fodder for processing, linked to the method of delivery, the moisture content, the time within which processing must take place and the growth of such fodder within a specified area.

Jann Timmermans Rosas

La Pergola von Bahr

Delivered in open court in Luxembourg on 25 March 2004.

R. Grass V. Skouris

Registrar President