JUDGMENT OF THE COURT (Third Chamber)
20 January 2000 *

In Case C-414/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Verwaltungsgericht Schwerin (Germany) for a preliminary ruling in the proceedings pending before that court between

Landerzeugergemeinschaft eG Groß Godems

and

Amt für Landwirtschaft Parchim

on the interpretation of Article 16 of Commission Regulation (EEC) No 4115/88 of 21 December 1988 laying down detailed rules for applying the aid scheme to promote the extensification of production (OJ 1988 L 361, p. 13), as amended by Commission Regulation (EEC) No 838/93 of 6 April 1993 (OJ 1993 L 88, p. 16),

* Language of the case: German.

THE COURT (Third Chamber),

composed of: J.C. Moitinho de Almeida, President of the Chamber, C. Gulmann and J.-P. Puissochet (Rapporteur), Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Landerzeugergemeinschaft eG Groß Godems, by C. Columbus, Rechtsanwältin, Berlin,

— the Commission of the European Communities, by M. Niejahr and K.-D. Borchardt, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 11 November 1999,

gives the following

Judgment

1 By order of 17 September 1998, received at the Court Registry on 20 November 1998, the Verwaltungsgericht (Administrative Court) Schwerin referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) three questions on the interpretation of Article 16 of Commission Regulation (EEC) No 4115/88 of 21 December 1988 laying down detailed rules for applying the aid scheme to promote the extensification of production (OJ 1988 L 361, p. 13), as amended by Commission Regulation (EEC) No 838/93 of 6 April 1993 (OJ 1993 L 88, p. 16).

2 Those questions were raised in proceedings between Landerzeugergemeinschaft (Agricultural Producer Group) eG Groß Godems (hereinafter 'the Landerzeugergemeinschaft') and the Amt für Landwirtschaft (Office for Agriculture) Parchim (hereinafter 'the Amt') concerning the withdrawal of extensification aid paid by that body.

3 Regulation No 4115/88 was adopted on the basis of Article 1b of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures (OJ 1985 L 93, p. 1), as last amended by Council Regulation (EEC) No 1137/88 of 29 March 1988 (OJ 1988 L 108, p. 1). As is clear from its Article 3, its purpose is *inter alia* to make the grant of extensification aid conditional upon an undertaking by the producer to make a real reduction in output.

4 Under Article 4 the reduction in output is to be ensured by the farmer according to the procedure laid down by the Member States, which may provide for two methods, a 'quantitative' method, based on the actual reduction in quantitative terms, in accordance with Article 6 of Regulation No 4115/88, and a 'production methods' method, based on the adoption of less intensive production methods, in accordance with Article 8 of that regulation.

5 Regulation No 4115/88 also lays down the checks to be carried out by Member States and the measures to be taken to penalise failure to comply with undertakings given by the beneficiary. In that connection, in particular, Article 16, as amended by Regulation No 838/93, provides:

'1. Where checks on the number of units of area (hectares), livestock (LSU), weight (tonnes) or volume (m^3) show a discrepancy of at least 2% and 0.2 units up to 10% and two units between the number of units for which the aid is requested and the number of units measured, the aid shall be calculated on the basis of the latter number of units, reduced by the margin of excess. That reduction shall also apply to aid paid in advance, except where the beneficiary can prove that the discrepancy is not intentional or the result of negligence on his/her part.

2. If the excess exceeds the limits given in paragraph 1, no aid shall be due for the period covered by the undertaking to carry out extensification, without prejudice to any additional penalty which may be appropriate. Aid paid for previous years, however, shall not be recovered if the beneficiary can prove that the discrepancy is not intentional or the result of negligence on his/her part.

3. Member States shall impose financial penalties as a minimum sanction in the event of failure to comply with undertakings made, other than undertakings referred to in paragraphs 1 and 2, except in cases of force majeure or failure to comply with undertakings as a result of other factors beyond the control of the beneficiary. In the case of serious infringements of these undertakings and particularly in the case of attempted fraud by the beneficiary or his/her successors, no aid shall be due for the period covered by the undertaking to carry out extensification, without prejudice to any additional penalty which may be appropriate.'

6 It is clear from the order for reference that the Extensivierungs-Richtlinie Mecklenburg-Vorpommern of 1 September 1991 (Directive of the Minister for

Agriculture of the *Land* Mecklenburg-Vorpommern concerning extensification, hereinafter 'the Richtlinie'), regulates the extensification of agricultural production by the 'production methods' method provided for by Articles 4 and 8 of Regulation No 4115/88, by applying the rules of organic farming. In particular, under Paragraphs 2.5(a) and 4.2.1 of the Richtlinie, the use of synthetic nitrogen compounds is prohibited after the conversion of the farming operation to less intensive production methods.

7 By decision of 24 January 1992, the Amt granted the Landerzeugergemeinschaft annual aid for extensification of its agricultural production over a five-year period on its undertaking to carry out extensification on its land during that period. The amount of that annual aid, initially set at DEM 298 650, on the basis of an area of 352.95 ha cultivated with surplus products and an area of 495.49 ha cultivated with non-surplus products, was amended by subsequent decisions. Aid for the financial years 1991/1992 and 1992/1993 was actually paid.

8 In the course of a check carried out on 17 June 1994 it was found that the Landerzeugergemeinschaft had that very day spread synthetic fertilizer on an arable area of 56.85 hectares. The Amt took the view that the Landerzeugergemeinschaft had breached its undertaking to use less intensive production methods and not to use nitrogenous fertilizer on areas subject to extensification, and that that deliberate contravention constituted a serious infringement within the meaning of Article 16(3) of Regulation No 4115/88, as amended. By decision of 2 December 1994, it therefore annulled its decision to grant annual aid and all the amending decisions and demanded repayment of the sums already paid.

9 As the objection lodged by the Landerzeugergemeinschaft against that decision was dismissed, it brought an action in the Verwaltungsgericht Schwerin. Taking

the view that the dispute turned on the interpretation of Article 16 of Regulation No 4115/88, as amended, the Verwaltungsgericht decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does the penalty laid down by the first sentence of Article 16(1) of Regulation (EEC) No 4115/88, as amended by Regulation (EEC) No 838/93, still apply where the discrepancy between the number of units for which the aid is requested and the number of units measured is not more than 10% of the area but more than two hectares?

2. Does the reduction with regard to aid paid in advance, laid down by the second sentence of Article 16(1) of Regulation (EEC) No 4115/88, as amended by Regulation (EEC) No 838/93, extend back only to the point in time when the areas under cultivation ceased to be farmed extensively or is the discrepancy to be calculated and deducted for the whole period of the undertaking?

3. What are the criteria for determining whether there is a serious infringement within the meaning of Article 16(3) of Regulation (EEC) No 4115/88, as amended by Regulation (EEC) No 838/93?'

The first question

10 By its first question the national court is asking whether the method of calculating the reduction of extensification aid laid down by Article 16(1) of Regulation No 4115/88, as amended, is applicable where the discrepancy between the number of units for which the aid is requested and the number of units measured exceeds two hectares but is less than 10% of the surface for which aid is requested.

11 The plaintiff in the main proceedings and the Commission submit that the Court should answer that question in the affirmative. They argue that the reduction method laid down by Article 16(1) of Regulation No 4115/88, as amended, applies as long as the two maximum limits laid down by that paragraph have not both been exceeded, any other interpretation being contrary to the proportionality of the system of penalties provided for by Regulation No 4115/88, as amended.

12 It is clear from the wording of Article 16(1) of Regulation No 4115/88, as amended, that the reduction provided for by that article applies where the discrepancy found is between the two minimum limits (2% and 0.2 ha) and the two maximum limits (10% and 2 ha) which it establishes. The use of the word 'and' to link the two limits in each case indicates that they are cumulative. The provision in question therefore applies where the minimum limits have both been attained and the maximum limits have not both been exceeded.

13 As the plaintiff in the main proceedings and the Commission point out, any other interpretation would be contrary to the general scheme of the system of penalties laid down by Regulation No 4115/88, as amended. That system lays down different penalties according to the seriousness of the infringement established and, in particular, takes account, through the use of both percentage and absolute thresholds, of differences in the scale of the operations concerned.

14 The answer to the first question must therefore be that Article 16(1) of Regulation No 4115/88, as amended, must be interpreted to mean that the method of calculating the reduction of extensification aid which it lays down is

applicable where the discrepancy between the number of units for which the aid is requested and the number of units measured exceeds two hectares but is less than 10% of the surface for which aid is requested.

The second question

15 By its second question the national court is asking whether the reduction of extensification aid laid down by the second sentence of Article 16(1) of Regulation (EEC) No 4115/88, as amended, is confined to the period after the infringement was established or covers the whole period of the undertaking given by the beneficiary of the aid.

16 The plaintiff in the main proceedings takes the view that the reduction of extensification aid must be confined to the period after the infringement. It argues that this interpretation must be inferred *a contrario* from the clear wording of Article 16(2) and (3), according to which 'no aid shall be due for the period covered by the undertaking to carry out extensification.'

17 The Commission takes the opposing view that the reduction must also cover the period before the infringement if the beneficiary of the aid does not prove that the discrepancy between the number of units for which aid is requested and the number of units measured is neither intentional nor the result of negligence on its part. The Commission argues that the phrase '[t]hat reduction shall also apply to aid paid in advance' in the second sentence of Article 16(1) of Regulation No 4115/88, as amended, reflects the intention of the legislature to reduce aid for the whole of the period covered by the undertaking given.

18 It is clear from the wording of the second sentence of Article 16(1) of Regulation No 4115/88, as amended, that the reduction also applies to aid paid before the infringement, unless the beneficiary can prove that the discrepancy is not intentional or the result of negligence on its part. Except in such a case, the reduction must therefore relate to the whole of the period covered by the undertaking given by the beneficiary of the aid.

19 Contrary to the arguments of the plaintiff in the main proceedings, the wording of Article 16(2) and (3) of Regulation No 4115/88, as amended, does not allow any other interpretation of the provision in question. Those paragraphs cover more serious penalties, consisting, in particular, in the total withdrawal of aid, whereas Article 16(1) concerns only its reduction, even if such reduction applies to the whole of the period covered by the undertaking.

20 The answer to the second question must therefore be that the reduction of extensification aid laid down by the second sentence of Article 16(1) of Regulation No 4115/88, as amended, covers the whole period of the undertaking given by the beneficiary of the aid, unless the latter can prove that the discrepancy between the number of units for which aid was requested and the number of units measured is neither intentional nor the result of negligence on its part.

The third question

21 In the light of the answers given to the first two questions, there is no need to reply to the third question.

Costs

22 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 (Third Chamber),

in answer to the questions referred to it by the Verwaltungsgericht Schwerin by order of 17 September 1998, hereby rules:

1. **Article 16(1) of Commission Regulation (EEC) No 4115/88 of 21 December 1988 laying down detailed rules for applying the aid scheme to promote the extensification of production, as amended by Commission Regulation (EEC) No 838/93 of 6 April 1993, must be interpreted to mean that the method of calculating the reduction of extensification aid which it lays down is**

applicable where the discrepancy between the number of units for which the aid is requested and the number of units measured exceeds two hectares but is less than 10% of the surface for which aid is requested.

2. The reduction of extensification aid laid down by the second sentence of Article 16(1) of Regulation No 4115/88, as amended by Regulation No 838/93, covers the whole period of the undertaking given by the beneficiary of the aid, unless the latter can prove that the discrepancy between the number of units for which aid was requested and the number of units measured is neither intentional nor the result of negligence on its part.

Moitinho de Almeida Gulmann Puissochet

Delivered in open court in Luxembourg on 20 January 2000.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Third Chamber