JUDGMENT OF THE COURT (Eighth Chamber)

5 June 2008 *

In Case C-534/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Corte Suprema di Cassazione (Italy), made by decision of 23 November 2006, received at the Court on 27 December 2006, in the proceedings

**Industria Lavorazione Carni Ovine Srl**

v

**Regione Lazio,**

THE COURT (Eighth Chamber),

composed of G. Arestis, President of Chamber, J. Malenovský and T. von Danwitz (Rapporteur), Judges,

* Language of the case: Italian.

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

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Industria Lavorazione Carni Ovine Srl, by G. Fontana and P. Galli, avvocati,

— the Italian Government, by I. M. Braguglia, acting as Agent, and by G. Aiello, avvocato dello Stato,

— the Greek Government, by I. Chalkias and I. Pouli, acting as Agents,

— the Commission of the European Communities, by C. Cattabriga, acting as Agent,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

## Judgment

1 The reference for a preliminary ruling concerns the interpretation of Article 13 of Council Regulation (EEC) No 866/90 of 29 March 1990 on improving the processing and marketing conditions for agricultural products (OJ 1990 L 91, p. 1).

2 That reference was made in the context of proceedings between Industria Lavorazione Carni Ovine Srl ('ILCO') and the Regione Lazio concerning the latter's refusal to pay financial assistance granted to ILCO.

### Legal context

3 Article 13 of Regulation No 866/90 provides: '[t]he following investments shall be excluded: … investments in the processing or marketing of products from third countries'.

4 Article 17(2) of that regulation, entitled 'Procedures for payment of the aid', provides:

'The authority or intermediary referred to in paragraph 1 shall check the supporting documents relating to the expenditure of the final recipients and ensure that they are in order before paying the Community contribution.'

5 Article 24 of Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1), as amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20), provides:

'Reduction, suspension and cancellation of assistance

1. If an operation or measure appears to justify neither part nor the whole of the assistance allocated, the Commission shall conduct a suitable examination of the case in the framework of the partnership …

2. Following this examination, the Commission may reduce or suspend assistance in respect of the operation or a measure concerned if the examination reveals an irregularity or a significant change affecting the nature or conditions for the implementation of the operation or measure for which the Commission's approval has not been sought.

3. Any sum received unduly and to be recovered shall be repaid to the Commission. …'

**The dispute in the main proceedings and the question referred**

6 ILCO obtained a grant of financial assistance equal to 50% of eligible expenditure, half of which was funded from the budget of the Regione Lazio and half by the European Agricultural Guidance and Guarantee Fund (EAGGF), for the construction in two stages of a plant for the slaughter, processing and preservation of sheepmeat in the territory of the municipality of Acquapendente.

7 On 17 October 1996 the Regione Lazio decided to make initial provision for payment of the balance of the assistance still owing to ILCO.

8 However, during that month, on completion of an on-the-spot inspection, the regional authorities found that sheep from non-member countries had been slaughtered at the co-financed plant.

9 The Regione Lazio having, for that reason, decided to suspend payment of the balance of the financial assistance, ILCO applied to the Tribunale di Roma (Rome District Court) for an order for payment of the sum of ITL 1 617 575 382, which was granted by order of 5 June 1997.

10 It may be seen from ILCO's observations that on 19 June 1997 the Commission fixed the deadline for the payments to be made to ILCO at 31 December 1997 and that the Regione Lazio informed the Commission, by letters sent to it during the months of June, August and October 1997, that the judicial investigations in progress might continue beyond that date and asked for information on the procedure to be followed.

11 On 1 October 1997 the Regione Lazio brought an action against the order of the Tribunale di Roma of 5 June 1997, which was dismissed by judgment of 26 March 1999.

12 That judgment was, however, overturned on appeal by the Corte d'Appello di Roma (Appeal Court, Rome), by judgment of 9 September 2002.

13 According to the Commission's observations, it is clear from the checks carried out that 7.4% of the total number of animals slaughtered by ILCO at the co-financed plant in 1997, 1998 and 2000 came from outside the Community.

14 Moreover, the observations of ILCO and the Commission note that on 26 September 2002 the Commission proposed that the Regione Lazio should, without ordering a reduction under Article 24 of Regulation No 4253/88, as amended by Regulation No 2082/93, reduce the balance owing to ILCO by an amount equal to 11.47 % of the total amount of the assistance. By decision of 18 October 2002, the Regione Lazio accepted that proposal.

15 On 9 January 2003 ILCO lodged an appeal in cassation against the judgment of the Corte d'Appello di Roma of 9 September 2002, claiming, in particular, infringement of Article 13 of Regulation No 866/90.

16 ILCO argued before the Corte Suprema di Cassazione (Supreme Court of Cassation) that, that article providing solely that Community assistance cannot be granted in order to finance projects for the processing of products from third countries, it does not follow that a trader who has obtained financing and used it in accordance with Community rules, and who has complied with the obligations entered into and achieved the objectives set out in the programme concerned should not also be able to slaughter animals from third countries.

17 Considering that ILCO's appeal in cassation must be dismissed if Article 13 of Regulation No 866/90 required the co-financed plant to be used exclusively for the processing of products of Community origin, the Corte Suprema di Cassazione stayed proceedings and referred the following question to the Court of Justice:

'Must Article 13 of … Regulation … No 866/90 … be interpreted as meaning that financing must be excluded in cases in which, notwithstanding implementation of the specific programme for which the financing was obtained, the marketing and/or processing (in addition) of products which are not from the Community takes place along with the marketing and/or processing of products from the Community in the amounts required by the programme?'

**Concerning the question referred for a preliminary ruling**

18 It is to be stated, first of all, that the Court is asked expressly to interpret Article 13 of Regulation No 866/90, and not Article 24 of Regulation No 4253/88, which provides the legal basis for any decision by the Commission reducing, suspending or cancelling financial assistance.

19 Since it is clear from the order for reference that the dispute in the main proceedings relates to the financial assistance granted to ILCO as a whole, it is necessary to decide whether, in circumstances such as those in the main proceedings, Article 13 of Regulation No 866/90 entitles the competent authority, in the context of its legal relationship with the final recipient, to refuse altogether to pay the financial assistance granted to the latter.

20 In their observations, ILCO and the Commission state that the marketing or processing of sheep from third countries cannot exclude financing as a whole. The Greek Government, for its part, contends that, on certain conditions, the recipient of the assistance may use the co-financed plant also for the processing and marketing of sheep from third countries.

21 The Italian Government, for its part, advocates a strict interpretation of Article 13 of Regulation No 866/90, excluding all Community financial assistance in cases where products from outside the Community have been marketed or processed at the plant in receipt of such assistance. In support of that view, the Italian Government argues that the Community legislature included an express provision with regard to any derogation from the requirements laid down in that article.

22 That view cannot, however, be accepted. It is appropriate to point out that, in circumstances such as those in the main proceedings, there is no question of formal derogation from the requirements laid down in that article. It is more a case of whether the competent authority is in a position to refuse altogether payment of the assistance granted where it subsequently appears that an investment for which assistance has been granted has been used to some extent for the marketing or processing of products from third countries. In that regard, it is appropriate to consider the requirements arising under Article 13 of Regulation No 866/90 and from the principle of proportionality.

23 As regards the interpretation of Article 13 of Regulation No 866/90, it is appropriate to point out that that provision, as can be seen from its wording, does not lay down any express obligation on the recipient of financial assistance, but imposes requirements with regard to the granting of such assistance.

24 However, the fact that in Article 13 the Community legislature prohibits only the financing of an investment project for the marketing or processing of products from third countries would imply, logically, that the recipient must, when the assisted project is carried out, comply with the Community objective for its financing, as the Greek Government rightly points out in its observations. If the recipient of financial assistance were free to use co-financed plant for the marketing or processing of products from outside the Community, the objective of that provision of Article 13 of Regulation No 866/90, namely to improve the marketing and processing of Community agricultural products, would not be achieved.

25 As to whether the recipient's failure to comply with such an obligation entitles the competent authority to refuse altogether to pay the financial assistance, it is to be noted that the principle of proportionality, which is a general principle of Community law and has been affirmed on numerous occasions in the case-law of the Court of Justice, in particular with regard to the common agricultural policy, must be observed as such both by the Community legislature and by the national legislatures and courts which apply Community law. That principle requires that measures adopted by Community institutions should not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handel and ZVK* [2008] ECR I-69, paragraphs 33 and 35, and the case-law cited therein).

26 In that regard, it is necessary, in accordance with settled case-law, to check whether the obligations at issue in circumstances such as those in the main proceedings are to be regarded as principal obligations whose observance is of fundamental impor-

tance to the proper functioning of a Community system and whose infringement may be punished by total forfeiture of the financial assistance concerned, without there being any breach of the principle of proportionality, or whether they are secondary obligations whose infringement should not be punished with the same rigour as is applied to the failure to fulfil a principal obligation (see, by analogy, with regard to the total forfeiture of a security, Case 21/85 *Maas* [1986] ECR 3537, paragraph 15, and the case-law cited therein).

27 It is clear that Article 13 of Regulation No 866/90 does not provide any information explaining the scope of the recipient's obligation, in particular regarding the temporal continuance of that obligation, the effect that particular circumstances might have on that obligation and the impact of the existence of a special programme setting objectives with regard to the use of the co-financed plant.

28 In that connection, the Greek Government and the Commission rightly point out that there are legitimate reasons that may cause a recipient of assistance to use the subsidised plant subsequently also for the marketing or processing of products from third countries. Thus, in circumstances such as those in the main proceedings, the fact that the bovine-spongiform-encephalopathy epidemic led to a significant increase in the demand for sheepmeat, which reduced the availability of that product on the Community market, is likely to constitute such a legitimate reason, as the Commission contends.

29 Furthermore, it is to be pointed out that the amount of products from the Member States processed at the co-financed plant at issue in the main proceedings corresponds to the amount provided for by the specific programme under which the financial assistance was granted and that only 7.4% of the total number of animals slaughtered at that plant came from outside the Community.

30 It is therefore necessary to consider that, taking into account the particular features of the case in the main proceedings referred to in paragraphs 28 and 29 above, and the fact that Article 13 of Regulation No 866/90 gives no details as to the scope of the obligation arising under it for the recipient of financial assistance not to use co-financed plant for the marketing or processing of products from third countries, in circumstances such as those at issue in the main proceedings there can be no finding that a principal obligation has been infringed leading to total forfeiture of the financial assistance concerned. That view is supported, moreover, by the agreement reached between the Regione Lazio and the Commission to reduce the balance of the assistance concerned by an amount equal to 11.47% of the total assistance without the Commission having taken a decision to reduce or even cancel that assistance.

31 In the light of the above, the answer to the question referred must be that, on a proper construction of Article 13 of Regulation No 866/90, in circumstances such as those of the case in the main proceedings, payment of financial assistance is not excluded in cases of the marketing or processing of products including products originating beyond the territory of the Community, when the specific programme for which that financial assistance was granted has been observed, in so far as products originating within the Community have been marketed or processed in the quantities provided for.

**Costs**

32 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

**On a proper construction of Article 13 of Council Regulation (EEC) No 866/90 of 29 March 1990 on improving the processing and marketing conditions for agricultural products, in circumstances such as those of the case in the main proceedings, payment of financial assistance is not excluded in cases of the marketing or processing of products including products originating beyond the territory of the Community, when the specific programme for which that financial assistance was granted has been observed, in so far as products originating within the Community have been marketed or processed in the quantities provided for.**

[Signatures]