OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 1 June 1988 *

Mr President,
Members of the Court,

1. The Verwaltungsgericht Frankfurt am Main requests the Court to interpret the provisions of two regulations relating to import and export transactions in beef and veal and to rule upon the validity of a third measure by which the Commission temporarily suspended the advance fixing of export refunds on such goods.

On Friday 10 February 1984, Moksel, a German company, lodged with the Bundesanstalt für landwirtschaftliche Marktordnung in Frankfurt am Main (hereinafter referred to as 'BALM') 155 applications for the issue of the same number of export licences for beef, with advance fixing of export refunds and monetary compensatory amounts. By decision of 14 May 1984 BALM rejected these applications under Regulation No 387/84 of 15 February 1984 (Official Journal 1984, L 46, p. 39), which entered into force on 17 February 1984. Pursuant to that measure, which was adopted under the procedure in cases of urgency, the Commission had suspended the advance fixing of refunds for the period from 17 to 21 February 1984.

In accordance with Article 8a (2) of Regulation No 2377/80 of 4 September 1980 (Official Journal 1980, L 241, p. 5) — a provision which was inserted by Regulation No 2798/81 of 28 September 1981 (Official Journal 1981, L 275, p. 24) — the licences in question were to be issued 'on the fifth working day following the day on which the application is lodged, unless *special measures* are taken during that period' (emphasis added). In BALM's view, Regulation No 387/84 was to be understood as a measure of this kind.

Since Saturdays could not be taken into account in calculating the five working days, the fifth day was Friday 17 February, and thus fell within the period of suspension provided for by Regulation No 387/84. Hence the rejection of the applications lodged by Moksel, which challenged the decision before the Frankfurt Verwaltungsgericht. That court, acting pursuant to Article 177 of the EEC Treaty, referred four questions to the Court of Justice, which may be summarized as follows:

(1) May applications for advance fixing lodged before a period of suspension, but in respect of which the date of issue falls within such a period, be properly rejected?

(2) If so, may Saturdays be excluded from the calculation of the five-day period provided for by Regulation No 2377/80?

(3) Can Regulation No 387/84 be regarded as valid from the point of view of the obligation to state reasons and, if so,

* Translated from the Italian.

was it applied correctly in this case as regards the condition of extreme urgency?

(4) If the three preceding questions are answered in the negative, can BALM issue an advance fixing certificate with retroactive effect?

In the present proceedings, Moksel and the Commission of the European Communities submitted written observations and appeared at the hearing.

2. Let me first give a brief outline of the relevant Community legislation. The legal basis of Regulation No 387/84 — whereby, as I have said, the Commission suspended the advance fixing of refunds — is Article 5 (4) of Regulation No 885/86 of 28 June 1968 (Official Journal, English Special Edition 1968 (I), p. 237), as amended by Regulation No 1504/76 of 21 June 1976 (Official Journal 1976, L 168, p. 7). In accordance with this provision, in a case of 'extreme urgency' the Commission may derogate from the usual procedure, which provides for the 'Management Committee' to be consulted first (see Article 27 of Regulation No 805/68 of 27 May 1968, Official Journal, English Special Edition 1968 (I), p. 187), and suspend 'after examination of . . . all the information available to it' the advance fixing of refunds for a maximum of three working days.

Finally, I should observe that this same provision states in its last subparagraph that applications 'lodged during the period of suspension shall be rejected.' It is, however, silent as regards the treatment of pending applications.

3. In its first question, the national court asks for this latter point to be elucidated: that is to say, it wishes to know whether applications lodged before the period of suspension but on which a decision is to be taken by the authorities during that period must be granted or rejected.

In this regard I should point out that in a case identical in law and in fact to this one, except that it concerned dairy products, the Court held as follows: 'a measure suspending the advance fixing of export refunds [adopted by the Commission in accordance with the conditions laid down in Community law] must be regarded [within the meaning of the legislation in force] as a "special measure". Consequently . . . [once the measure has been adopted], an application for advance fixing submitted prior to the suspension but on which a decision is to be taken during the waiting period must be rejected in the same way as applications submitted during the period of suspension' (judgment of 27 October 1983 in Case 276/82 *De Beste Boter* [1983] ECR 3331, at paragraphs 11 and 16).

Despite the doubts and reservations expressed by the national court with regard to that judgment, there is nothing to justify a different or contrary solution in this case. Indeed, as is clear from that judgment and from the opinion of Advocate General Verloren van Themaat, the system of 'suspension of the application of the provisions for the advance fixing of levies and export refunds in different sectors of the common organization of the market . . . was set up "in the interest of stable trading conditions". The possibility of adopting special measures tends . . . to avoid "in cases of abnormal resort to this system

by the persons concerned, . . . difficulties on the market in question".' (paragraph 7 of the judgment).

It was for the same practical reasons that Regulations Nos 1504/76 and 798/81 (Articles 5 (4) and 8a respectively) were adopted in the beef and veal sector. It is clear from all these provisions that the possibility in certain situations of suspending the advance fixing of levies and refunds is intended to 'protect the operation of the system . . . against sudden, massive and very often speculative exports' (paragraph 14 of the judgment). It is true that Article 5 (4) provides that only applications lodged during the period of suspension are to be rejected. However, for the reasons which have just been mentioned it is clear that 'the effectiveness of the suspension would be severely impaired' if the provision for rejection could not also be extended to applications made before that period. It follows that, as the Court concluded in *De Beste Boter*, 'the rejection of such applications is not contrary to Article 5 (4)' (paragraph 19).

The first question should therefore be answered in the affirmative.

4. The considerations discussed above lead me straight into an examination of the third question, directed at the validity of Regulation No 387/84. The national court, as has been seen, doubts whether there is an adequate statement of the reasons for the measure. It also considers that the factual precondition for the valid adoption of a specific measure such as suspension, namely extreme urgency, was not met in this case.

Those remarks cannot be upheld. As to the first point, I should observe that according to the first recital in the preamble to the regulation, it was decided to suspend advance fixing on account of the price 'uncertainty' prevailing on the beef market. In those circumstances, it goes on, 'the reduction in refunds . . . from 11 February 1984 could lead to *speculative* advance fixing of refunds' (emphasis added). Regard being had to the nature and purpose of the measure in question, it seems to me that these explanations 'show . . . unequivocally the reasoning of the Community authority . . . so as to inform the persons concerned of the justifications for the measure . . . and to enable the Court to exercise its power of review' (judgment of 28 October 1982 in Joined Cases 292 and 293/81 *Lion and Loiret & Haentjens* v *FIRS* [1982] ECR 3887, at paragraph 18). I may add that the Court reached a similar conclusion as regards Regulation No 2993/80, which had a statement of reasons and substantive provisions similar, *mutatis mutandis*, to those of the measure now before us (*De Beste Boter*, paragraph 10).

As regards the second observation of the Verwaltungsgericht, it appears from the case-file that at the beginning of 1984 the average price of beef on the world market (which is the point of reference for determining the amount of the export refund) underwent a sharp rise of more than 4%.

That increase naturally gave rise to an adjustment downwards of the abovementioned amount, promptly effected by the adoption of Regulation No 355/84 of 10 February 1984 (Official Journal 1984, L 40, p. 18), which entered into force on the following day.

The information supplied by the Commission indicates, moreover, that in spite of the promptness with which that action was taken, on 10 February alone, the last day on which certificates at the 'old' (more favourable) rate of refunds could be obtained, applications for export licences with advance fixing were lodged in respect of a total of 15 880 tonnes of meat, that is to say 10 or 20 times greater than the usual tonnage. The Commission, furthermore, was not aware of these applications and of those lodged between Friday 10 and Monday 13 February 1984 until Monday 13 February at 16.00 hours. In such circumstances, suspension would appear to be the only effective means afforded to the Commission by Community law in order to protect the system of advance fixing against 'sudden, massive and . . . speculative exports', to which market situations like that described give rise. The adoption of such a measure is therefore fully justified.

In its second question, the national court wishes to know whether the term 'Werktag' (Article 8a) should be given the same meaning as the word 'Arbeitstag', which appears in Regulation No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits in Community instruments (Official Journal, English Special Edition 1971 (II), p. 354). If that were the case, Saturday would have to be excluded from the calculation of the five-day period provided for in Article 8a. Here again, the answer must be in the affirmative. I should point out that under Article 2 (2) of Regulation No 1182/71, 'all days other than holidays, Sundays and Saturdays . . . ' are deemed to be 'working days' and that under Article 8a the issue of export licences must take place at the latest 'on the fifth working day following the day on which the application is lodged.' Whilst it is true that in the German and Spanish versions of those regulations the disputed term is rendered by two different words ('Arbeitstage' and 'Werktage'; 'dias habiles' and 'dia laborable') the fact remains that the Danish, English, French, Italian, Dutch and Portuguese texts use the same term (arbejdsdage/arbejdsdag; working days/working day; jours ouvrables/jour ouvrable; giorni lavorativi/giorni lavorativo; werkdagen/werkdag; dias úteis/dia útil).

That said, it is well known that where the language versions of a Community provision differ 'the need for a uniform application of Community law and the pinciple of equality require that . . . a provision . . . which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the Community . . . (which) must take into account the context of the provision and the purpose of the relevant regulations' (judgment of 18 January 1984 in Case 327/82 *Ekro* v *Produktschap voor Vee en Vlees* [1984] ECR 107, at paragraph 11).

It cannot be disputed that in fixing a mandatory period of five days for the issue of the certificates in question Article 8a

sought to lay down an identical waiting period in all the national legal systems. The abovementioned requirements of uniformity and equality therefore require that the term 'Werktag' used in the German version of the provision be given the meaning of 'Arbeitstag' prevailing in the other language versions. This solution is, moreover, the only one which complies with the rules of Regulation No 1182/71 on the computation of time in Community instruments.

6. In the light of the conclusions I have come to in points 3 to 5, the last question raised by the national court is devoid of purpose.

7. Having regard to all the foregoing considerations, I propose that the Court reply to the question raised by the Verwaltungsgericht Frankfurt am Main by order of 22 January 1987 in the case pending before that court between Moksel and BALM as follows:

(a) Article 5 (4) of Regulation No 885/68, as amended by Article 1 of Regulation No 1504/76, must be interpreted as meaning that applications for advance fixing of refunds on the export of beef submitted prior to the period of suspension laid down by the Commission pursuant to the applicable legislation but falling to be decided within that period must be rejected.

(b) The term 'Werktag' in the German version of Article 8a (2) of Regulation No 2377/80 must be interpreted as meaning that it does not refer to Saturdays, in the same way as is provided in Article 2 (2) of Regulation No 1182/71 on the computation of periods and time-limits laid down in instruments adopted by the Council and the Commission.

(c) An examination of the questions referred to the Court has not revealed any factor of such a nature as to affect the validity of Commission Regulation No 387/84 of 15 February 1984.