JUDGMENT OF THE COURT
17 April 1986 *

In Case 133/84

United Kingdom of Great Britain and Northern Ireland, represented by B. E. McHenry, of the Treasury Solicitor's Department, acting as Agent, assisted by G. Barling, Barrister, with an address for service in Luxembourg at the British Embassy, 28 boulevard Royal,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, P. Karpenstein, and by D. G. Lawrence, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Decisions Nos 84/212/EEC and 84/213/EEC of 8 February 1984 on the clearance of the accounts presented by the United Kingdom in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, expenditure for 1978 and 1979 are void in so far as they disallow certain expenditure in respect of seed production aid and sales from intervention storage of skimmed-milk powder and butter,

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans, U. Everling and K. Bahlmann (Presidents of Chambers), O. Due, Y. Galmot and C. Kakouris, Judges,

* Language of the Case: English.

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

after hearing the Opinion of the Advocate General delivered at the sitting on 11 December 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By application lodged at the Court Registry on 17 May 1984 the United Kingdom of Great Britain and Northern Ireland brought an action under the first paragraph of Article 173 of the EEC Treaty in which it requested the Court to declare void Commission Decisions Nos 84/212/EEC and 84/213/EEC of 8 February 1984 on the clearance of the accounts presented by the United Kingdom in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, expenditure for 1978 and 1979 (Official Journal 1984, L 110, pp. 41 and 44).

2 The proceedings instituted before the Court are concerned with the application of two sets of rules relating, on the one hand, to seed production aid for peas and field beans and, on the other, to sales of skimmed-milk powder and butter.

3 With regard to peas and field beans, the Commission refused to charge to the European Agricultural Guidance and Guarantee Fund (EAGGF), for the 1978 financial year, the sum of UKL 389 674.76 and, for the 1979 financial year, UKL 879 175.26 in respect of seed production aid. With regard to sales of skimmed-milk powder and butter, the Commission refused to charge to the EAGGF, for the 1978 financial year, the sum of UKL 1 662 in respect of skimmed-milk powder and, for the 1979 financial year, the sum of UKL 71 946.92 in respect of skimmed-milk powder and UKL 586 571.56 in respect of butter; the skimmed-milk powder and the butter came from intervention stocks.

I — The applicant's conclusions relating to aid for the production of peas and field beans

4 In its conclusions the United Kingdom requests the Court to declare void the Commission's decisions concerning expenditure incurred by the United Kingdom on payments to producers in respect of seed production aid for peas and field beans which was disallowed by the Commission in its contested decisions on the ground that the products were exported to other Member States where they were used in the manufacture of animal feedingstuffs, in respect of which separate aid was paid to the manufacturers concerned. It is appropriate to describe the two aid schemes in question.

1. *The seed production aid scheme*

5 Article 1 of Regulation (EEC) No 2358/71 of the Council of 26 October 1971 on the common organization of the market in seeds (Official Journal, English Special Edition, 1971 (III), p. 894) establishes a common organization of the market covering the following products, designated by reference to their respective Common Customs Tariff headings: dried leguminous vegetables for sowing (ex heading 07.05), hybrid maize for sowing (heading 10.05 A), oil seeds and oleaginous fruit for sowing (ex heading 12.01) and seeds, fruit and spores, of a kind used for sowing (heading 12.03). Article 3 (1) of the regulation provides that aid may be granted 'for the production of basic seed or certified seed' where the situation on the Community market for one or more of the products covered by the regulation and the foreseeable development of the market 'do not ensure producers a fair income'. According to the second recital in the preamble to the regulation, which refers to the need to 'keep prices competitive with world prices for these products', the purpose of the aid is to 'stabilize the market and . . . ensure a fair income to the producers concerned'.

6 The rules for the implementation of the aforesaid aid are set out in Regulation (EEC) No 1674/72 of the Council of 2 August 1982 laying down general rules for granting and financing aid for seed (Official Journal, English Special Edition, 1972 (III), p. 827) and in Regulation (EEC) No 1686/72 of the Commission of 2 August 1972 on certain detailed rules for aid for seed (Official Journal, English Special Edition, 1972 (III), p. 831).

7 According to the preamble to Regulation No 1674/72, the aid may be granted only for the production of basic seed or certified seed and those products should be clearly defined (second recital); moreover, if the system of aid is to function properly, a supervision system is needed to ensure that aid is granted only in respect of products qualifying for it (fifth recital). The regulation therefore provides that basic seed and certified seed must be produced either under duly registered growing contracts or directly by the seed establishment or the breeder. In the latter case, production is to be attested by a growing declaration, which must also be duly registered. Moreover, the seed establishments and breeders must also be officially approved or registered. The Member States are under an obligation to introduce a system of administrative supervision to ensure that the conditions required for the grant of aid are fulfilled (Articles 2, 3 and 5 of the regulation taken together).

8 Finally, Article 3 of Regulation No 1686/72 provides that aid is to be granted to the seed grower in response to an application submitted after the harvest.

2. *The feed aid scheme*

9 This scheme is defined in Council Regulation (EEC) No 1119/78 of 22 May 1978 laying down special measures for peas and field beans used in the feeding of animals (Official Journal 1978, L 142, p. 8). According to the first recital in the preamble to that regulation, the production of peas and field beans intended for animal feed is of increasing importance to the Community and, in order to encourage the development of this production, which is subject to direct competition from products imported from outside the Community, it is necessary to provide for appropriate support measures. Moreover, Article 1 (1) of the regulation provides for the grant of aid for 'peas, excluding chick peas, falling within subheading 07.05 B I of the Common Customs Tariff' and for 'field beans falling within subheading 07.05 B III of the Common Customs Tariff'. The aid is to be granted for peas and field beans 'harvested in the Community which are used in the manufacture of animal feedingstuffs'. According to Article 2 (2), 'aid shall be granted only to manufacturers of animal feedingstuffs who satisfy the conditions necessary to qualify for aid [and] have concluded contracts with producers of peas and field beans or other natural or legal persons providing for the payment to such producers of a price no lower than the minimum price. The minimum price shall

be fixed at a level which . . . enables producers to obtain a fair return'. According to the fourth recital in the preamble, the purpose of that minimum price is to enable farmers to benefit from the system of aid. Article 2 (3) provides that 'aid shall be paid by the Member State on whose territory the manufacture of the animal feed in question takes place'.

10 The rules for the implementation of the aforesaid aid are set out in Council Regulation (EEC) No 1418/78 of 19 June 1978 adopting general rules in connection with the special measures for peas and field beans used in the feeding of animals (Official Journal 1978, L 171, p. 5) and in Commission Regulation (EEC) No 1526/78 of 30 June 1978 laying down detailed rules for the application of the special measures for peas and field beans used in the feeding of animals (Official Journal 1978 L 179, p. 1).

11 Article 4 of Regulation No 1418/78 provides that, 'in order to benefit under the said arrangements [for aid], any producer who has sown an area to peas or field beans which are intended for the manufacture of feedingstuffs shall submit . . . a declaration comprising all the details necessary for the identification of the areas concerned to the competent authority of the Member State on whose territory the product has been sown'. Moreover, Article 5 of that regulation makes the grant of aid subject *inter alia* to the condition that the manufacturer has 'submitted . . . to the competent authority of the Member State on whose territory the peas and field beans will be used in feedingstuffs a contract referring to quantities of peas or field beans produced on an area which has been the subject of the declaration referred to in Article 4 . . . '. Furthermore, Article 7 provides that entitlement to the aid is to be acquired when the peas and field beans are used for the production of feedingstuffs. Finally, according to Article 11, the competent authorities of the Member States are to exchange all the information necessary to ensure that the conditions for the grant of aid have been fulfilled where the peas or field beans were produced in a Member State other than that in which they are to be used in feedingstuffs.

12 Regulation No 1526/78 specifies the minimum information which needs to be included in the declarations concerned and the information which Member States must give each other to identify areas in which peas and field beans used in a Member State other than the producing State have been grown. Article 1 of the regulation defines the term 'producer' as meaning 'any . . . person growing peas or field beans for use in the manufacture of feedingstuffs'. Article 5 (2) provides that

the declaration must include 'the areas sown with peas or field beans for use as animal feed . . . '. Article 7 (d) stipulates that the contract must state *inter alia* 'the place to which the harvested product is to be delivered'. Finally, Articles 10 and 11 provide that, where the products are exported to another Member State, the authorities of the two Member States concerned are to cooperate in verifying the information entered on the declaration.

13 Finally, Council Regulation (EEC) No 2036/82 of 19 July 1982 adopting general rules concerning special measures for peas and field beans (Official Journal 1982, L 219, p. 1), which has been applicable since 1 August 1982, provides in Article 12 that the aid for peas and field beans used in animal feed 'may not be granted for products which are eligible for the system of aid provided for in Regulation (EEC) No 2358/71 . . . ' The purpose of that provision is explained in the 15th recital in the preamble to Regulation No 2036/82, which states that, 'since the purpose of the aid for peas and field beans to be used for human or animal consumption is not the same as that of aid for peas and field beans to be used as seed, it should be expressly stipulated, in the interest of clarity, that only one type of aid may be granted in respect of such products'.

3. *The cumulative payment of aid*

14 In its application the United Kingdom puts forward two submissions challenging the two decisions in question. Its primary submission is that the Commission's interpretation of the Community rules, to the effect that prior to the adoption of Regulation No 2036/82 there was a prohibition on the cumulative payment of seed and feed aid in respect of the same crop, is erroneous; in the alternative it submits that the Commission's refusal to charge the expenditure incurred to the EAGGF constitutes a breach of the principle of the protection of legitimate expectations.

(a) Erroneous interpretation of Community rules

15 The United Kingdom contends in the first place that until the adoption of Regulation No 2036/82 there was no provision of Community law prohibiting, either

expressly or by implication, the cumulative payment of the two forms of aid, which were granted under two quite separate schemes. In its view, the independence of the two aid schemes is apparent from the fact that the schemes entered into force on different dates and that the beneficiaries, the end uses of the subsidized products and the conditions which must be satisfied in order to qualify for aid under each scheme differ. In practice, growers cannot foresee whether the crop will qualify as basic seed or as certified seed or whether it will ultimately be used for sowing or for another purpose.

16 Moreover, the United Kingdom maintains that there is no general principle of law prohibiting the cumulative payment of the two forms of aid. In its view, although cumulative payment is undesirable, it is perfectly lawful. With regard to the point that Regulation No 2358/71 applies to products intended for sowing and designates those products by reference to the relevant Common Customs Tariff headings, the United Kingdom stresses that it is sufficient if, at any particular point in time, the products satisfied the condition that they must be 'for sowing'. Since the products, which are identical, may be classified under different tariff headings and since they are classified well before they reach the final consumer, the United Kingdom maintains that the right to seed production aid cannot subsequently be revoked if, for reasons beyond the grower's control, the products have not been used for sowing.

17 In reply the Commission emphasizes, first of all, that the regulations governing the two kinds of aid cover different products. Regulation No 2358/71 applies to products intended for sowing, namely those falling under tariff subheading 07.05 A, whereas Regulation No 1119/78 applies to products falling under tariff subheading 07.05 B. Accordingly, in the Commission's view, the aids are intended to support two different economic activities. Secondly, the Commission maintains that the aims of the two aid schemes are also different; the purpose of one scheme is to keep prices competitive, whilst the purpose of the other is to encourage the production of the products concerned. Finally, the declarations made and the evidence furnished by the recipients of the two forms of aid are not the same, as is apparent from Article 2 of Regulation No 1674/72 and Article 4 of Regulation No 1418/78.

18 In the first place, it must be remembered that, by virtue of Article 3 (1) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the

common agricultural policy (Official Journal, English Special Edition, 1970 (I), p. 218), the expenditure incurred by the United Kingdom for the 1978 and 1979 financial years in respect of aid for peas and field beans may be charged to the EAGGF only if it was incurred in conformity with Community rules.

19 With regard to the question whether the cumulative payment of the two forms of aid in respect of the same products is in conformity with Community rules, it should be noted that the peas and field beans in question were ultimately used in the manufacture of animal feed. Consequently, since the other conditions were met, entitlement to feed aid was acquired by the manufacturer under the first paragraph of Article 7 of Regulation No 1418/78.

20 As far as the other conditions are concerned, it must be pointed out, in particular, that the manufacturers of animal feed were required to present the contracts concluded with growers in the United Kingdom or with the purchaser providing for the payment to the growers of a price no lower than the minimum price, in accordance with Article 2 (2) of Regulation No 1119/78.

21 Furthermore, it must be emphasized that the system of supervision established by Articles 4 and 5 of Regulation No 1418/78 and by Articles 1, 5, 10 and 11 of Regulation No 1526/78 is intended to prevent any misuse of the aid. In that regard, the Commission has stated, without being contradicted by the United Kingdom, that the documents concerning the products in question which were issued in the United Kingdom and transmitted to the authorities of the importing Member States made no reference to the fact that seed production aid had already been paid in respect of those products.

22 In those circumstances, owing to the fact that the peas and field beans were used in the manufacture of animal feed, the importing Member States were obliged to grant feed aid to the manufacturers.

23 With regard to the expenditure incurred by the United Kingdom, it must be pointed out that Articles 1 and 3 of Regulation No 2358/71 refer only to products intended for sowing.

24 It follows from those provisions that aid is to be granted exclusively in respect of products which are actually intended for sowing. The purpose of the aid would not be achieved if it were granted in respect of products which, although satisfying the criteria for being regarded as 'seed', were used for purposes other than sowing, such as the manufacture of animal feed.

25 That is so notwithstanding the fact that, in contrast to the provisions of the feed-aid scheme, Regulation No 2358/71 does not make the aid expressly conditional on the end use of the products concerned. Products actually used in the manufacture of animal feed are not covered by Regulation No 2358/71, whose purpose, as is apparent from the second recital in its preamble, is to stabilize the market in seeds and not to encourage production of animal feed. Moreover, peas and field beans which satisfy the criteria for being classified as 'basic seed' or as 'certified seed' cease to qualify as 'seeds' within the meaning of Regulation No 2358/71 if they are used in the manufacture of animal feed. The fact that the products in question were at a particular point in time intended for sowing is immaterial where they have been processed into animal feed and have not actually been used for sowing.

26 In that connection it must be emphasized that, in order to prevent the aid from being granted in respect of other products, the aforementioned system of supervision was established. Articles 2, 3 and 5 of Regulation No 1674/72 and Article 3 of Regulation No 1686/72 provide, firstly, that the aid may be granted only to the seed grower and, secondly, that the Member States must ensure that the conditions for the grant of aid are fulfilled. It is apparent from those provisions that the recipients of the aid may not, in relation to the same products, be simultaneously or successively seed growers and producers of peas and field beans intended for animal feed. In order to receive both forms of aid it was necessary for the United Kingdom producers, on the one hand, either to grow the products concerned under a growing contract or to have their production attested by a growing declaration (Article 2 of Regulation No 1674/72) (both documents having to be registered with the United Kingdom authorities) and, on the other, to lodge a declaration, also with the United Kingdom authorities, that they had sown an area to peas or field beans for use in the manufacture of animal feed (Article 5 of Regulation No 1526/78). It is clear that the documents relating to seed production and the declaration concerning the areas sown are mutually exclusive.

In a case of this kind where, moreover, the United Kingdom authorities had not informed the authorities of the importing Member States that production aid had already been granted, the aid scheme applicable is determined by the actual end use of the product.

27 In that regard, the United Kingdom relies on two arguments. It observes firstly that, for the 1978 financial year, no area declarations were required and, secondly, that for the 1979 financial year it was unnecessary to make two contradictory declarations as to the eventual use of the crop, the grower having no control over its end use.

28 Those arguments cannot be upheld.

29 With regard to the 1979 financial year, it must be pointed out that, according to Article 7 of Regulation No 1526/78, a contract concluded by a manufacturer of animal feed either with a producer of peas and field beans or with a buyer must at least specify the place to which the harvested product is to be delivered and the minimum price referred to in Article 2 (2) of Regulation No 1119/78. It is quite clear from those provisions that contracts concluded by a grower must indicate the end use of the products concerned, namely the manufacture of animal feed. Unlike those rules, the growing declaration or growing contract shows unequivocally that the products concerned must be seeds and, consequently, that they must ultimately be used for sowing. Accordingly, the Commission is right to emphasize that, by making a declaration concerning the areas sown, the producer evinces the intention of bringing his crop within the scope of the rules on feed aid, which precludes the application of the seed aid scheme.

30 With regard to the 1978 financial year, Article 5 (4) of Regulation No 1526/78 does indeed provide that no declaration concerning the areas sown is required for peas and field beans harvested before 31 October 1978. None the less that proviso does not exempt a producer from the obligation to specify in the contract concluded with the buyer or with the manufacturer of animal feed the place to which the harvested product is to be delivered and the minimum price. Moreover, the temporary exemption from the obligation to declare the areas sown to peas or

field beans does not alter the rule that feed aid may be granted only to a producer growing peas or field beans intended for use in the manufacture of feedingstuffs (Article 1 of Regulation No 1526/78).

31 In that regard it must also be borne in mind that even before the adoption of the feed-aid scheme the United Kingdom perceived the danger that producers might have their crops certified as seed even though much of the crop was to be sold for use as animal feed. Accordingly, it was for the United Kingdom to organize its system of supervision in such a manner as to avoid the cumulative payment of aid contrary to the structure and the objectives of the two aid schemes in question or, in the event of cumulative payment, to secure the repayment of the seed aid granted.

32 It follows from the foregoing considerations that the first submission must be rejected.

(b) Protection of legitimate expectations

33 In its second submission, the United Kingdom relies in the alternative on the principle of the protection of legitimate expectations in so far as the cumulative payment of aid is held to be unlawful. In its view, the two aid schemes are so different from one another that any illegality in the cumulative payment of the aid is entirely covert in nature. It maintains that the Commission itself did not mention the possibility that such cumulative payment might be unlawful until the end of 1980 and that it had stated on numerous occasions that, in the event of both forms of aid being paid, it was the feed aid which was unlawful. Finally, it observes that Article 12 of Regulation No 2036/82 prohibits the payment of feed aid if seed production aid has already been granted.

34 The Commission emphasizes, however, that Article 12 of Regulation No 2036/82 is of a declaratory nature and that most of the Member States interpreted the two aid schemes in question as meaning that the cumulative payment of aid was unlawful.

35 This submission also fails.

36 It must be said at once that the argument that the illegality of the cumulative payment of the two forms of aid is of a covert nature cannot be accepted. The difference in the end uses of the products qualifying for the aid and in the objectives of the two aid schemes is so great that it is inconceivable that both forms of aid may be paid in respect of the same product.

37 Nor has the United Kingdom succeeded in establishing that its erroneous interpretation of the two aid schemes is attributable to the Commission's conduct. On the contrary, by the United Kingdom's own admission, since 1975 it has frequently held discussions with the Commission concerning the question of entitlement to dual aid, in the course of which a difference of opinion emerged.

38 With regard to the Commission's failure to apply Article 12 of Regulation No 2036/82, it should be noted, in the first place, that Article 12 has no retroactive effect and cannot therefore be applied in this case. Furthermore, the ground relied upon by the Commission in support of the solution which it adopted, namely that the importing Member States acted in good faith in placing reliance on the documents issued by the United Kingdom, which made no mention of the fact that seed aid had already been granted, must be recognized as valid.

39 It follows from the foregoing considerations that the expenditure incurred by the United Kingdom in the 1978 and 1979 financial years in respect of seed aid for peas and field beans was not incurred in accordance with Community rules and is not therefore chargeable to the EAGGF. Accordingly, the applicant's conclusions on this point must be rejected.

II — The applicant's conclusions relating to expenditure incurred in financing sales of skimmed-milk powder and butter

40 The applicant's conclusions are concerned with the consequences of an alteration in the representative exchange rate applied under the common agricultural policy. The question at issue is which date must be taken into account for the conversion into national currency of prices expressed in units of account.

41 Regulation (EEC) No 1134/68 of the Council of 30 July 1968 laying down rules for the implementation of Regulation (EEC) No 653/68 on conditions for alterations to the value of the unit of account used for the common agricultural policy

(Official Journal, English Special Edition, 1968 (II), p. 396) provides in Article 4 (2) that, 'for transactions carried out pursuant to provisions on the common agricultural policy . . . , the sums owed to or by a Member State, . . . expressed in national currency and representing amounts fixed in those provisions in units of account, shall be paid on the basis of the relationship between the unit of account and the national currency which obtained at the time when the transaction or part transaction was carried out'. Article 6 provides that, 'for the purposes of this regulation, the time when a transaction is carried out shall be considered as being the date on which occurs the event, as defined by Community rules or, in the absence of and pending adoption of such rules, by the rules of the Member State concerned, in which the amount involved in the transaction becomes due and payable'.

42 For the conversion into national currency of the price of the skimmed-milk powder and butter sold, the United Kingdom intervention board applied the 'green' rate of the pound sterling in force on the date on which the contract of sale was concluded. According to the Commission, the intervention board should have applied the rate in force on the date on which the skimmed-milk powder and the butter were taken over by the purchaser.

43 In that regard, it must be remembered that, in its judgment of 28 January 1986 in Case 129/84 (*Italian Republic* v *Commission* [1986] ECR 309), the Court emphasized that, 'in providing that a transaction is to be regarded as being carried out on the date on which occurs "the event [by virtue of] which the amount involved in the transaction becomes due", as defined by Community rules or, "in the absence of and pending adoption of such rules", by the law of the Member State concerned, Article 6 of Regulation No 1134/68 clearly envisages Community rules defining the said event. In the milk products sector no such definition exists, and it is not possible to substitute for such a definition a set of arguments based on the rules concerning the sale of butter at reduced prices, particularly since the rules contained in the various regulations are not the same.'

44 The United Kingdom has stated that the application of the exchange rate in force on the date on which the contract is concluded is a practice consistent with its national law, which treats the contract as 'the event [by virtue of] which the amount involved in the transaction becomes due'. That statement has not been

challenged by the Commission. In those circumstances, the Court considers that the United Kingdom was right to apply the rate in force on the date on which the contract was concluded since, in the absence of Community rules on the matter, it was entitled to interpret that term in accordance with the criteria laid down by its national law.

45 Consequently, the expenditure incurred in financing sales of skimmed-milk powder and butter at reduced prices was properly incurred and the Commission's decisions must be declared void in so far as the Commission refused to charge such expenditure to the EAGGF.

46 It follows from all the foregoing considerations that the contested decisions must be declared void in so far as the Commission refused to charge to the EAGGF, as expenditure incurred in financing certain sales of skimmed-milk powder at reduced prices, the sum of UKL 1 662 for the 1978 financial year and the sum of UKL 71 946.92 for the 1979 financial year and, as regards sales of butter, the sum of UKL 586 571.56 for the 1979 financial year. For the rest the application must be dismissed.

Costs

47 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. However, under Article 69 (3) where each party succeeds on some and fails on other heads, the Court may order that the parties bear their own costs in whole or in part. Since the United Kingdom has been successful in some of its submissions, it is appropriate to make such an order.

On those grounds,

THE COURT

hereby:

(1) Declares that Commission Decisions Nos 84/212/EEC and 84/213/EEC of 8 February 1984 are void, in so far as the Commission refused to charge to the EAGGF, as expenditure incurred in financing certain sales of skimmed-milk powder at reduced prices, the sum of UKL 1 662 for the 1978 financial year and the sum of UKL 71 946.92 for the 1979 financial year and, as regards sales of butter, the sum of UKL 586 571.56 for the 1979 financial year;

(2) For the rest, dismisses the application;

(3) Orders the parties to bear their own costs.

Mackenzie Stuart Koopmans Everling

Bahlmann Due Galmot Kakouris

Delivered in open court in Luxembourg on 17 April 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President