JUDGMENT OF THE COURT (Second Chamber)
8 November 2001 *

In Case C-228/99,

REFERENCE to the Court under Article 234 EC by the Tribunale civile e penale di Cagliari (Italy) for a preliminary ruling in the proceedings pending before that court between

Silos e Mangimi Martini SpA

and

Ministero delle Finanze,

on the interpretation and validity of Commission Regulations (EC) Nos 1521/95 of 29 June 1995 and 1576/95 of 30 June 1995 fixing the export refunds on cereal-based compound feedingstuffs (OJ 1995 L 147, p. 65, and OJ 1995 L 150, p. 64),

* Language of the case: Italian.

THE COURT (Second Chamber),

composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges,

Advocate General: L.A. Geelhoed,

Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Silos e Mangimi Martini SpA, by F. Capelli, avvocato,

— the Commission of the European Communities, by F. Ruggeri Laderchi, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral submissions of Silos e Mangimi Martini SpA, represented by F. Capelli, and the Commission, represented by L. Visaggio, acting as Agent, at the hearing on 31 January 2001,

after hearing the Opinion of the Advocate General at the sitting on 3 April 2001,

gives the following

Judgment

1 By order of 21 May 1999, received at the Court of Justice on 14 June 1999, the Tribunale civile e penale di Cagliari referred five questions to the Court for a preliminary ruling under Article 234 EC on the interpretation and validity of Commission Regulations (EC) Nos 1521/95 of 29 June 1995 and 1576/95 of 30 June 1995 fixing the export refunds on cereal-based compound feedingstuffs (OJ 1995 L 147, p. 65, and OJ 1995 L 150, p. 64).

2 The questions have been raised in the course of proceedings brought by Silos e Mangimi Martini SpA (hereinafter 'Silos') against the Ministero delle Finanze (Ministry of Finance) concerning the payment of export refunds for cereal-based compound feedingstuffs.

Legal context

3 Article 9(1) of Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals (OJ 1992 L 181, p. 21), as amended by the Act concerning the conditions of accession of the Republic of

Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21 and OJ 1995 L 1, p. 1) (hereinafter 'Regulation No 1766/92'), provides:

'Imports into the Community, or exports therefrom, of any of the products listed in Article 1 shall be subject to the submission of an import or export licence which may be issued by Member States to any applicant, irrespective of the place of his establishment in the Community. Where the levy or refund is fixed in advance, the advance fixing shall be noted on the licence which serves as supporting document for such advance fixing.

The import or export licence shall be valid throughout the Community. The issue of such a licence shall be conditional on the lodging of a security guaranteeing that importation or exportation will be effected during the period of validity of the licence; the security shall be forfeited in whole or in part if the transaction is not effected, or is only partially effected, within that period.'

4 Article 13 of Regulation No 1766/92 provides:

'1. To the extent necessary to enable the products listed in Article 1 to be exported in the state referred to therein or in the form of goods listed in Annex B on the basis of quotations or prices for those products on the world market, the difference between those quotations or prices and prices in the Community may be covered by an export refund.

2. The refund shall be the same for the whole Community. It may be varied according to use or destination.

The refund shall be granted on application.

Refunds shall be fixed at regular intervals in accordance with the procedure laid down in Article 23.

Where necessary the Commission may, at the request of a Member State or on its own initiative, alter the refunds in the intervening period.

3. The amount of the refund applicable to exports of products listed in Article 1 and of goods listed in Annex B shall be that applicable on the day of exportation.

4. However, in the case of products listed in Article 1(1)(a) and (b), the refund applicable on the day on which application for the licence is lodged, adjusted for the threshold price which will be in force during the month of exportation, shall be applied to an export to be effected during the period of validity of the licence if the applicant so requests when applying for the licence.

A corrective amount may be fixed. It shall be applied to refunds fixed in advance. The corrective amount shall be fixed according to the procedure set out in Article 23. However, where necessary the Commission may alter the corrective amounts.

...

7. Where examination of the market situation shows that the application of the provisions concerning the advance fixing of the export refund has given rise, or may give rise, to difficulties, a decision may be taken, in accordance with the procedure laid down in Article 23, to suspend the application of those provisions for the period strictly necessary.

In cases of extreme urgency, the Commission may, after examination of the situation on the basis of all the information available to it, decide to suspend advance fixing for a maximum of three working days.

Applications for licences accompanied by applications for advance fixing lodged during the period of suspension shall be rejected.'

5 Article 23 of Regulation No 1766/92 provides:

'1. Where the procedure laid down in this Article is to be followed, the Chairman shall refer the matter to the Committee, either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time-limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event the Commission may defer application of the measures which it has adopted for not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within one month.'

6 Article 1 of Commission Regulation (EEC) No 1913/69 of 29 September 1969 on the granting and the advance fixing of the export refund on cereal-based compound feedingstuffs (OJ, English Special Edition, First Series 1969 II, p. 403), as amended by Commission Regulation (EC) No 1707/94 of 13 July 1994 (OJ 1994 L 180, p. 19), provides as follows:

'During a given month the export refund on cereal-based compound feedingstuffs shall be fixed per tonne of cereals contained in the compound feedingstuffs, taking account of the following criteria:

(a) the average of the refunds granted during the previous month for the most commonly used basic cereals, adjusted on the basis of the threshold price for these cereals in force during the current month;

(b) the average of the levies for the most commonly used basic cereals, calculated for the first 25 days of the previous month and adjusted on the basis of the corresponding threshold price in force during the current month;

(c) outlets and conditions of sale for the products in question on the world market;

(d) the need to avoid disturbances on the Community market;

(e) the economic aspects of the exports concerned.'

7 Under Article 3(1) and (2) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1):

'1. The day of export means the date on which the customs authority accepts the export declaration in which it is stated that a refund will be applied for.

2. The date of acceptance of the export declaration shall determine:

(a) the rate of the refund where the refund is not fixed in advance;

(b) any adjustments to be made to the rate of the refund where it is so fixed.'

8 The Commission regularly fixes the export refunds on cereal-based compound feedingstuffs. Thus, Commission Regulation (EC) No 1415/95 of 22 June 1995 fixing the export refunds on cereal-based compound feedingstuffs (OJ 1995 L 140, p. 24), which entered into force on 23 June 1995, fixed the amount of the refunds for maize and maize-based products at ECU 74.93 per tonne. Commission Regulations Nos 1521/95 and 1576/95, which entered into force on 30 June and 1 July 1995 respectively, did not fix any amount for those refunds and, therefore, in practice withdrew them. Commission Regulation (EC) No 1652/95 of 6 July 1995 (OJ 1995 L 156, p. 38), which entered into force on 7 July 1995, restored the refunds and fixed their amount at ECU 62.51 per tonne.

Main proceedings

9 Silos is an Italian company which produces and exports finished and half-finished animal feeds. In May 1995 it obtained two export licences for 3 000 tonnes each of cereal-based animal feed, valid until 30 June 1995. The goods covered by the two licences were exported on several occasions, the last consignments having been completed on 30 June 1995. The customs declarations relating to those last exports were accepted by the competent customs authorities on 30 June 1995.

10 Silos applied to the Italian authorities for the payment of export refunds of ITL 383 616 074. They rejected the application on the ground that Regulation No 1521/95 had fixed the amount of the refunds for exports completed on 30 June 1995 at ECU 0 per tonne. Silos brought an action against the Ministero delle Finanze seeking judgment against it for the payment of the sum claimed. In its action, Silos requested the national court to refer several questions for a preliminary ruling concerning the interpretation and validity of Regulations Nos 1521/95 and 1576/95. In particular, Silos submitted that Regulation No 1521/95 was invalid because it contained no statement of reasons, that Regulation No 1576/95 had impliedly revoked Regulation No 1521/95 making Regulation

No 1415/95 applicable on 30 June 1995, that Regulation No 1576/95 was invalid because it contained no statement of reasons and that Regulation No 1521/95 was not applicable to exports for which licences had been obtained prior to 30 June 1995.

11 Before the national court, the Ministero delle Finanze argued that Silos should have brought an action for annulment of Regulations Nos 1521/95 and 1576/95 on the basis of Article 173 of the EC Treaty (now, after amendment, Article 230 EC) and that, in the absence of such an action, any application on the part of Silos for a reference to the Court of Justice for a preliminary ruling was inadmissible.

12 In considering the interpretation and validity of Regulations Nos 1521/95 and 1576/95, the Tribunale civile e penale di Cagliari decided to stay the proceedings and refer to the Court of Justice for a preliminary ruling the following questions:

'(1) Does Commission Regulation No 1576/95 of 30 June 1995 repeal Commission Regulation No 1521/95 of 29 June 1995 and, if so, must the latter be held to have had no legal effects on 30 June 1995?

(2) Must Commission Regulation No 1521/95 of 29 June 1995 be interpreted as meaning that it may be applied to exports already underway and already completed on the same day on which the regulation itself was published and thus made available to the operators concerned?

(3) Is Commission Regulation No 1521/95 of 29 June 1995 invalid and thus of no legal effect for lack of a statement of reasons?

(4) Is Commission Regulation No 1576/95 of 30 June 1995 likewise invalid and thus of no legal effect for lack of a statement of reasons?

(5) Do the exports of 30 June 1995 fall within the scope of Commission Regulation (EC) No 1415/95 of 22 June 1995 as a result of the invalidity of the abovementioned regulations, or by the repeal referred to in Question 1?'

The second question

13 By its second question, which should be considered first, the referring court is asking essentially whether Regulation No 1521/95 was applicable to the exports underway or completed on the date of its publication for which no advance fixing of the export refund had been requested.

14 In that regard, it must be stated that it follows from the combined effect of Article 13(3) of Regulation No 1766/92 and Article 3(1) and (2) of Regulation No 3665/87 that, if there has been no application for an advance fixing of the refund, the operative event to be taken into account in determining which regulation is applicable, and consequently the amount of the refund, is the acceptance by the competent customs service of the export declaration in which it is stated that a refund will be claimed. It follows that, if there is no request for

advance fixing, the regulation which applies to an application for an export refund is that which is in force on the date of acceptance of the export declaration containing the application.

15 According to the case-law of the Court of Justice, a regulation can validly enter into force on the date of its publication (see, *inter alia*, the judgment in Case 57/72 *Westzucker* [1973] ECR 321, paragraph 19). The Court has also held that, in the absence of evidence to the contrary, a regulation is to be regarded as published throughout the Community on the date borne by the *Official Journal of the European Communities* containing the text of that regulation (Case 98/78 *Racke* [1979] ECR 69, paragraph 17). The Court has stated in this respect that, should evidence be produced indicating that that date does not correspond to the date on which the issue was in fact available, in the version in the language of the party, at the Office of Official Publications of the European Communities at Luxembourg, regard must be had to the later date (*Racke*, cited above, paragraph 15, and Case C-370/96 *Covita* [1998] ECR I-7711, paragraph 27).

16 Given that, in the present case, Regulation No 1521/95 was, under its Article 2, to enter into force on 30 June 1995 and that it is not alleged that the *Official Journal of the European Communities* dated 30 June 1995 containing the text of that regulation was not actually available on that date in its Italian version at the Office of Publications, it must be held that Regulation No 1521/95 was published and entered into force on that date.

17 In those circumstances, the second question must be answered to the effect that Regulation No 1521/95 was applicable to the exports for which the competent customs services accepted, on the date of its publication, the export declaration stating that an export refund was going to be claimed but for which no advance fixing of the export refund had been requested.

The first question

18 As regards the first question, it is sufficient to note that, contrary to the contention of Silos, the fact that one regulation is followed by another with identical content and containing no reference to the earlier regulation does not lead to the conclusion that the second regulation revoked the first.

19 As the Commission has pointed out, the revocation of a legislative act is an exceptional measure with retrospective effects and can therefore only be explicit.

20 However, in the present case, neither the preamble to nor the provisions of Regulation No 1576/95 contain any indication of the possible retrospective effect of that regulation, or any express reference to Regulation No 1521/95, which is alleged to have been revoked. It follows that Regulation No 1576/95, having entered into force on 1 July 1995, could not have validly revoked Regulation No 1521/95 and did not therefore affect its applicability on 30 June 1995.

21 In those circumstances, the answer to the first question must be that Regulation No 1576/95 did not revoke Regulation No 1521/95 and did not therefore affect the applicability of the latter on 30 June 1995.

The fourth question

22 As regards the fourth question, it must be observed that, in accordance with Article 2 thereof, Regulation No 1576/95 entered into force on 1 July 1995.

23 It must also be noted that, according to paragraph 21 of this judgment, Regulation No 1576/95 had no effect on the applicability of Regulation No 1521/95 on 30 June 1995.

24 Since it is established in the main proceedings that the exports which gave rise to the proceedings before the national court took place on 30 June 1995, Regulation No 1576/95 is not applicable to those exports. Therefore, its validity obviously has no bearing on the resolution of the main proceedings.

25 There is therefore no need to reply to the fourth question.

The third question

26 By its third question, the referring court is asking essentially whether Regulation No 1521/95 is invalid on the ground that it does not meet the requirement to state reasons contained in Article 190 of the EC Treaty (now Article 253 EC).

27 In that regard, it must be pointed out that it follows from the settled case-law of the Court that the statement of reasons required by Article 190 of the EC Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the institution which enacted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review. Furthermore, the statement of reasons for a measure is not required to specify the matters of fact or of law dealt with, provided that the measure falls within the general scheme of the body of measures of which it forms part (Case C-244/95 *Moskof* [1997] ECR I-6441, paragraph 57).

28 However, it is also accepted that, although the reasons for a decision in a line of consistent decisions may be given in a summary manner, for example by a reference to those decisions, the Community authority must give an explicit account of its reasoning if the decision goes appreciably further than the previous decisions (Case 350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 15, and to that effect, *Moskof*, paragraph 54).

29 In the present case, the statement of reasons in Regulation No 1521/95 does not satisfy that requirement. The statement of reasons, which is identical to that in Regulation No 1415/95, by which the Commission had increased the amount of the refunds for the products at issue in the main proceedings by raising it to ECU 74.93 per tonne, provides no particular explanation of the reasons which led the Commission, one week after the adoption of the latter regulation, to withdraw, in effect, the said refunds by reducing their amount to ECU 0 per tonne.

30 The mere reference to the possibilities and conditions for sale on the world market, to the need to avoid disturbances on the Community market and to the economic aspect of the exports cannot, contrary to the Commission's submission, constitute a sufficient statement of reasons for a regulation which, like Regulation No 1521/95, breaks with the Commission's usual practice, which consists of fixing the amount of the refunds by reference to the difference between the prices of the products concerned on the Community market, on the one hand, and on the world market, on the other.

31 In the light of those considerations, the third question must be answered to the effect that Regulation No 1521/95 does not satisfy the requirement to state reasons, arising from Article 190 of the EC Treaty, and is therefore invalid.

The fifth question

32 By its fifth question the referring court is asking essentially whether the invalidity of Regulation No 1521/95 means that the export refunds for cereal-based feedingstuffs, the application for which was made in the export declarations accepted by the competent customs service on 30 June 1995, and for which no advance fixing had been requested, are to be calculated in accordance with Regulation No 1415/95.

33 In that regard, it must be stated that it follows from the case-law of the Court that, contrary to the Commission's submission, a declaration by the Court that a regulation which has impliedly revoked another is invalid entails, in principle, the right of the parties concerned to be placed in the same situation as if the revocation had not taken place (see, to this effect, Case 201/87 *Cargill* [1989] ECR 489, paragraph 21).

34 It follows that the effect of Regulation No 1521/95 being invalid is that the export refunds, the application for which was made by Silos in the export declarations accepted on 30 June 1995, are to be calculated in accordance with Regulation No 1415/95.

35 As regards the Commission's request that the Court should limit the effects in time of the declaration of invalidity of Regulation No 1521/95, it must be recalled that the Court has consistently held (see, for example, Joined Cases C-38/90 and C-151/90 *Lomas and Others* [1992] ECR I-1781, paragraph 23) that, where it is justified by overriding considerations of legal certainty, the second paragraph of Article 231 EC, which is also applicable by analogy to a reference under Article 234 EC for a preliminary ruling on the validity of a measure adopted by the Community institutions, confers on the Court a

discretion to decide, in each particular case, which specific effects of a regulation that has been declared void must be regarded as definitive.

36 In accordance with that case-law, the Court has used the possibility of limiting the temporal effect of a declaration that a Community measure is invalid where overriding considerations of legal certainty involving all the interests, public as well as private, at stake in the cases concerned precluded the calling into question of the charging or payment of sums of money effected on the basis of that measure in respect of the period prior to the date of the judgment (see, *inter alia*, Case 4/79 *Providence agricole de la Champagne* [1980] ECR 2823, paragraphs 45 and 46, and Case 41/84 *Pinna* [1986] ECR 1, paragraph 28).

37 In the present case, it must be recognised, first, that the regime put in place by Regulation No 1521/95 applied only during an extremely short period, that is to say a single day, and that the exports covered by that regulation are therefore relatively few and easily identifiable. Second, the Commission has advanced no arguments concerning overriding considerations of legal certainty which might support the temporal limitation of the effects of the declaration of invalidity of Regulation No 1521/95.

38 In those circumstances, there are no grounds for limiting the effects of this judgment in time.

39 In view of those considerations, the fifth question is to be answered to the effect that, as a result of the invalidity of Regulation No 1521/95, export refunds for cereal-based feedingstuffs, the application for which was made in export declarations accepted by the competent customs service on 30 June 1995 and

for which advance fixing had not been requested, are to be calculated in accordance with Regulation No 1415/95.

Costs

40 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 (Second Chamber),

in answer to the questions referred to it by the Tribunale civile e penale di Cagliari by order of 21 May 1999, hereby rules:

1. Commission Regulation (EC) No 1521/95 of 29 June 1995 fixing the export refunds on cereal-based compound feedingstuffs applied to the exports for which the competent customs service accepted, on the date of its publication,

export declarations stating that an export refund was going to be claimed and for which advance fixing of the export refund had not been requested.

2. Commission Regulation (EC) No 1576/95 of 30 June 1995 fixing the export refunds on cereal-based compound feedingstuffs did not revoke Regulation No 1521/95 and therefore had no effect on the applicability of the latter regulation on 30 June 1995.

3. Commission Regulation No 1521/95 does not satisfy the requirement to state reasons laid down in Article 190 of the EC Treaty (now Article 253 EC) and is therefore invalid.

4. As a result of the invalidity of Commission Regulation No 1521/95, the export refunds for cereal-based feedingstuffs, for which the application was made in export declarations accepted by the competent customs service on 30 June 1995 and for which advance fixing had not been requested, are to be calculated in accordance with Commission Regulation (EC) No 1415/95 of 22 June 1995 fixing the export refunds on cereal-based compound feedingstuffs.

Colneric Schintgen Skouris

Delivered in open court in Luxembourg on 8 November 2001.

R. Grass

Registrar

N. Colneric

President of the Second Chamber