JUDGMENT OF THE COURT (Third Chamber)

28 February 2008 *

In Case C-446/06,

REFERENCE for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 13 October 2006, received at the Court on 31 October 2006, in the proceedings

A.G. Winkel

v

Minister van Landbouw, Natuur en Voedselkwaliteit,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, U. Lõhmus, J.N. Cunha Rodrigues, A. Ó Caoimh and P. Lindh (Rapporteur), Judges,

* Language of the case: Dutch.

Advocate General: Y. Bot,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Winkel, by Mr Winkel himself,

— the Netherlands Government, by H.G. Sevenster and C.M. Wissels, acting as Agents,

— the French Government, by G. de Bergues and A.-L. During, acting as Agents,

— the Commission of the European Communities, by F. Erlbacher and M. van Heezik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 December 2007,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 3(f) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal (OJ 1999 L 160, p. 21), as amended by Council Regulation (EC) No 1512/2001 of 23 July 2001 (OJ 2001 L 201, p. 1) ('Regulation No 1254/1999').

2 The reference has been made in proceedings between Mr Winkel and the Minister van Landbouw, Natuur en Voedselkwaliteit (the Minister for Agriculture, Nature and Food Quality) ('the Minister for Agriculture') concerning the refusal of the latter to grant Mr Winkel a suckler cow premium for certain cows on the ground that they did not fulfil the conditions imposed by national law.

Legal framework

Community legislation

Regulation No 1254/1999

3 Article 3(f) and (g) of Regulation No 1254/1999 defines the terms 'suckler cow' and 'heifer' as follows:

'(f) *suckler cow* shall mean a cow belonging to a meat breed or born of a cross with a meat breed, and belonging to a herd intended for rearing calves for meat production,

(g) *heifer* shall mean a female bovine animal from the age of eight months which has not yet calved.'

4 The first and fifth subparagraphs of Article 6(2) and Article 6(3) and (7) of Regulation No 1254/1999 provide:

'2. The suckler cow premium shall be granted to any producer:

…

provided that he keeps, for at least six consecutive months from the day on which the application is lodged a number of suckler cows at least equal to 60% and of heifers at most equal to 40% of the number for which the premium was requested.

…

For the purposes of determining the number of eligible animals … whether cows belong to a suckler herd or to a dairy herd shall be established on the basis of the

beneficiary's individual reference quantity as defined in Article 16(3) of Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [OJ 1999 L 160, p. 48] and the average milk yield.

3. The producers' entitlement to the premium shall be limited by the application of an individual ceiling as defined in Article 7.

…

7. Detailed rules for the application of this Article and, in particular, those relating to the definition of the concept of suckler cow referred to in Article 3 shall be adopted and the average milk yield shall be determined by the Commission in accordance with the procedure laid down in Article 43.'

Regulation (EC) No 2342/1999

5 Commission Regulation (EC) No 2342/1999 of 28 October 1999 laying down detailed rules for the application of Regulation No 1254/1999 as regards premium schemes (OJ 1999 L 281, p. 30) ('the implementing regulation') defines 'cows belonging to a meat breed' in Article 14:

'Cows belonging to the bovine breeds set out in Annex I to this Regulation shall not be considered to be cows belonging to a meat breed as referred to in Articles 3(f) … of Regulation (EC) No 1254/1999.'

6 Under Article 45 of that regulation, Member States are required to adopt all suitable measures necessary to ensure that that regulation is applied properly.

Regulation (EC) No 2419/2001

7 Article 38 of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 2001 L 327, p. 11) provides for reductions and even exclusions in respect of the aid applied for where controls reveal irregularities in the aid application.

8 Article 41 of that regulation, however, allows account to be taken of natural circumstances such as the death of an animal as a consequence of a disease or an accident for which the farmer cannot be held responsible. Article 48 of that regulation provides, in addition, for account to be taken of cases of force majeure and exceptional circumstances.

National legislation

9 Article 1(p) of the Rules on EC animal premiums (Regeling dierlijke EG-premies), as amended by decision of 30 July 2002 (*Staatscourant* 2002, No 143, p. 10; 'the Netherlands rules') defines the concept of 'suckler cow' in terms identical to those of Article 3(f) of Regulation No 1254/1999.

10 Under Article 6.1(d) of the Netherlands rules, in the version applicable until 2 June 2003, a premium is granted to the producer only for suckler cows which, in the year in question, have calved at least once and whose calves have not been removed from the herd within four months after their birth.

11 From 2 June 2003, Article 6.1(d) of the Netherlands rules was amended as follows:

'A premium shall be granted to the producer only for suckler cows which have calved at least once in the period which starts to run 20 months before the date on which the application period in question started and ends four full months after that date and whose calves have not been removed from the herd within four months after their birth.'

The facts in the main proceedings and the questions referred for a preliminary ruling

12 Mr Winkel applied for premiums for seven suckler cows in respect of 2002 and 2003.

13 In respect of 2002, the Minister for Agriculture first allowed Mr Winkel's application by paying him a premium of approximately EUR 1 300, before revoking his decision and demanding that Mr Winkel reimburse that amount on the ground that four of the cows in question had not suckled their calves for at least four months after their

birth. The Minister for Agriculture also excluded Mr Winkel from receiving income support amounting to almost EUR 900, to be offset against the aid payable in respect of 2003 to 2005, pursuant to Article 38 of Regulation No 2419/2001.

14 In respect of 2003, the Minister for Agriculture granted Mr Winkel a premium of approximately EUR 1 100 for six suckler cows. The premium was refused for one cow on the ground that it had not suckled its calf for four months after its birth.

15 Mr Winkel raised objections against the request for reimbursement of the premium for 2002, the exclusion from income support in respect of the same year and the rejection of his application for a premium in respect of one cow in 2003. The Minister for Agriculture dismissed those objections by decision of 26 October 2004. Mr Winkel appealed against that decision to the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) (Netherlands).

16 That court states that two documents were presented to it by the Minister for Agriculture. The first is an interpretative note of the Directorate-General for Agriculture of the Commission of the European Communities of 16 December 1999, in which the Commission states that the calves of suckler cows must remain with their mothers other than in exceptional cases.

17 The second document is a report of 3 June 2002 by the same Directorate-General describing checks carried out by the Netherlands authorities following a Commission inspection. That report states that almost 25% of the calves born in 2000 belonging to herds intended for rearing purposes had left their herd in the four months following their birth. The Commission states that, other than in duly reasoned exceptional cases, each calf must remain with its mother for an average of four months for the purposes of award of the suckler cow premium.

18 The national court is, however, uncertain as to whether, by imposing conditions on the frequency of calving and the length of suckling at the level of each suckler cow and not at that of the herd as a whole, a Member State is introducing requirements which are incompatible with the Community rules.

19 It is in those circumstances that the College van Beroep voor het bedrijfsleven decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Are rules which, as regards the right to a suckler cow premium, require, on the basis of usual animal husbandry practice, that a cow has calved at least once in the period which runs from twenty months before to four months after the date on which the application period started and that its calf was not removed from the herd within four months after its birth, compatible with Article 3(f) of Regulation (EC) No 1254/1999?

(2) If the answer to Question 1 is in the negative, what criteria must be applied to establish whether the herd is intended for rearing calves for meat production and which cows belong to that herd?'

The first question

Preliminary comments

20 According to the case-file, the applicable conditions in the Netherlands governing eligibility for the suckler cow premium relate to both the frequency of calving and the length of suckling.

21 The condition relating to the frequency of calving changed during the period at issue in Mr Winkel's appeal. Up to 2 June 2003, in order to be classified as suckler cows, cows in respect of which a premium was applied for had to have calved at least once in the year in question. From 2 June 2003, it was sufficient that the cows in question had calved once within a defined two-year period.

22 The condition relating to the length of suckling, by contrast, did not change and provides that the calves must have remained with their mother for a period of four months after their birth.

23 The first question must therefore be understood as seeking to ascertain, essentially, whether Article 3(f) of Regulation No 1254/1999 precludes national rules which make the right to a suckler cow premium subject to conditions consistent with usual animal husbandry practice that require, first, a certain frequency of calving and secondly, that the calf should have been suckled by its mother for a period of four months after its birth.

Observations of the parties

24 Mr Winkel and the Commission submit that Article 3(f) of Regulation No 1254/1999 precludes conditions such as those laid down in the Netherlands rules.

25 Mr Winkel takes the view that the usual animal husbandry practice on which those conditions are based is vague and variable, as demonstrated by the change to the condition relating to the frequency of calving.

26 The Commission considers, first, that the definition in Article 3(f) is exhaustive and that the Member States could not add other conditions. Secondly, it argues, the suckler element must be assessed at the level of the herd as a whole rather than at the level of individual cows. Finally, conditions such as those introduced in the Netherlands rules preclude account from being taken of exceptional cases in which the length of suckling or the frequency of calving could not be complied with.

27 The Netherlands and French Governments put forward the opposite opinion.

28 The Netherlands Government states that it introduced the conditions at issue, in particular the condition on the length of suckling, in order to take account of criticism expressed by the Commission following an inspection carried out by Commission staff. Furthermore, the Netherlands Government claims that the suckling requirement does not in any way preclude account from being taken of exceptional cases, such as emergency slaughtering involving accidental death of a calf, in accordance with the provisions of Regulation No 2419/2001.

29 The French Government takes the view that, in the absence of clarification at Community level, it is for the Member States to define the concept of cows forming part of a herd intended for rearing calves for meat production in compliance with the objectives of the Community legislation. The conditions laid down in the Netherlands rules are, it submits, fully compatible with those objectives.

The Court's reply

30 In order to answer the question referred, it is necessary to examine the wording of Articles 3(f) and 6 of Regulation No 1254/1999 as well as that of Article 14 of the implementing regulation, in the light of the objective of those regulations and of Regulation No 2419/2001 on control of the payment of premiums.

31 Article 3(f) of Regulation No 1254/1999 defines 'suckler cow' by reference to two criteria. Under the first, the cow must be a 'meat' cow, determined by its belonging to a meat breed or its origin deriving from a cross with that breed. The second requires that it belong to a herd intended for rearing calves for meat production.

32 Article 6 of Regulation No 1254/1999 establishes the conditions for eligibility for the suckler cow premium and, accordingly, provides in Article 6(2) for an obligation on the producer to keep, for at least six consecutive months from the date of the application, a number of suckler cows at least equal to 60% and of heifers at most equal to 40% of the number for which the premium was requested.

33 As the Advocate General notes in point 47 of his Opinion, that provision makes it necessary to give a precise definition of a 'suckler cow' in order to distinguish it from other cows such as dairy cows or heifers.

34 In that respect, Article 6(7) of Regulation No 1254/1999 entrusts the Commission with the task of adopting detailed rules for the application of premium schemes provided for by that article and, in particular, to define the concept of 'suckler cow' referred to in Article 3(f) of that regulation.

35 In Article 14 of the implementing regulation, the Commission specified which cows are not considered to belong to a meat breed within the meaning of Article 3(f), while requiring the Member States, in Article 45 of that regulation, to adopt all suitable measures necessary to ensure that that regulation is applied properly.

36 It must be stated that, in Article 14, the Commission merely excludes from the concept of 'suckler cow' those cows which belong to certain bovine breeds, without further defining that concept for the purpose of determining the conditions of eligibility for the premium. In particular, the Commission does not set out the criteria which would make it possible to conclude that a cow belongs to a herd intended for rearing calves for meat production.

37 By contrast, the Commission imposes on the Member States the task of adopting the measures necessary to ensure that the implementing regulation is properly applied. The responsibility of defining what constitutes a suckler cow for that purpose therefore lies, ultimately, with the Member States.

38 Accordingly, it is necessary to determine whether the Member States may, for the purposes of defining that concept, refer to the usual animal husbandry practice within their territory.

39 In that respect, according to the observations submitted to the Court, animal husbandry practice varies from one Member State to another. The French Government submits that, in France, the minimum suckling period for a calf intended for meat production is estimated at four weeks. The Netherlands Government and the Commission state that, in the Netherlands, the duration of suckling is generally four months.

40 As evidenced by the report of 3 June 2002, referred to in paragraph 17 of this judgment, the Commission's Directorate-General for Agriculture itself referred to those practices, criticising the Netherlands authorities for taking the view that cows which have not suckled their calves for at least four months in accordance with the usual practice in that Member State would be eligible.

41 In the absence of a precise definition of the concept of 'suckler cow' in the implementing regulation for the purpose of determining the conditions of eligibility for the premium, it is open to the Member States to provide that clarification by taking as a basis the usual animal husbandry practice within their territory. The application of conditions at the level of individual cows rather than at the level of the herd as a whole strengthens legal certainty because it is clear and facilitates the monitoring of the regularity of premium applications by the competent national authorities. In principle, such application is not therefore incompatible with Regulations No 1254/1999 and No 2419/2001 or with the implementing regulation.

42 It is none the less necessary to determine whether requirements such as those introduced in the Netherlands rules comply with the objective of those regulations.

43 As regards the requirement of calving within a specified period, this is designed to ensure that eligible cows contribute to the continuation of a herd intended for rearing calves, this being a necessary condition for meat production in accordance with Article 3(f) of Regulation No 1254/1999.

44 As regards the requirement that calves remain in the herd in order to ensure suckling for a minimum length of time, this is designed to ensure that the herd is in fact intended for meat production and not for milk production. As the French Government has submitted, in dairy herds, as opposed to suckler herds intended for meat production, calves are generally separated from their mother and sold immediately after birth in order to improve the efficiency of milk production.

45 It follows that the conditions relating to the frequency of calving and the length of suckling based on the usual animal husbandry practice in a Member State, such as those at issue in the main proceedings, make it possible to define the concept of 'suckler cow' for the purposes of determining the conditions of eligibility for the premium and of checking that premium applications relate to eligible animals in compliance with the objectives of Regulation No 1254/1999, the implementing regulation and Regulation No 2419/2001.

46 The adoption by the Member States of such conditions may thus constitute useful clarification for implementation of the Community legislation without, however, precluding account from being taken of exceptional circumstances provided for by that legislation.

47 In that regard, the Netherlands Government noted in its written observations that there is nothing to prevent the national authorities from derogating, inter alia, from the condition relating to the four-month duration of suckling by reason of natural circumstances within the meaning of Article 41 of Regulation No 2419/2001 or exceptional circumstances within the meaning of Article 48 of that regulation.

48 Consequently, the Commission's criticism that the application of such conditions makes it impossible to take into account exceptional circumstances, such as the death of a calf shortly after its birth, appears to be unfounded.

49 Having regard to the foregoing considerations, the answer to the question referred must be that Article 3(f) of Regulation No 1254/1999 does not preclude national rules which make the right to a suckler cow premium subject to conditions consistent with usual animal husbandry practice that require, first, a certain frequency of calving and secondly, that the calf should have been suckled by its mother for a period of four months after its birth.

The second question

50 In the light of the answer to the first question, there is no need to answer the second question, which was posed only in the case that Article 3(f) should preclude a Member State from laying down conditions relating to calving and length of suckling such as those provided for in the Netherlands rules.

Costs

51 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 (Third Chamber) hereby rules:

Article 3(f) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal, as amended by Council Regulation (EC) No 1512/2001 of 23 July 2001, does not preclude national rules which make the right to a suckler cow premium subject to conditions consistent with usual animal husbandry practice that require, first, a certain frequency of calving and secondly, that the calf should have been suckled by its mother for a period of four months after its birth.

[Signatures]