JUDGMENT OF THE COURT (Third Chamber)
12 March 1987 *

In Case 215/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesverwaltungsgericht [Federal Administrative Court] for a preliminary ruling in the proceedings pending before that court between

Bundesanstalt für landwirtschaftliche Marktordnung [Federal Office for the Organization of Agricultural Markets]

and

Raiffeisen Hauptgenossenschaft eG, a cooperative society,

on the interpretation of the fifth indent of Article 6 (1) of Commission Regulation (EEC) No 1570/77 of 11 July 1977 on price increases and reductions applicable to intervention in cereals (Official Journal 1977, L 174, p. 18),

THE COURT (Third Chamber)

composed of: Y. Galmot, President of the Chamber, U. Everling and J. C. Moitinho de Almeida, Judges,

Advocate General: G. F. Mancini
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

Raiffeisen Hauptgenossenschaft eG, a cooperative society, the plaintiff in the main proceedings, by Mr Festge, Rechtsanwalt of Hamburg,

the Bundesanstalt für landwirtschaftliche Marktordnung, the defendant in the main proceedings, by Mr Stockburger, Rechtsanwalt of Frankfurt am Main, in the written procedure,

* Language of the Case: German.

the Commission of the European Communities, by Dierk Booss, Legal Adviser,

having regard to the Report for the Hearing and further to the hearing on 24 September 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 11 December 1986,

gives the following

Judgment

1 By order of 9 May 1985, which was received at the Court on 17 July 1985, the Bundesverwaltungsgericht referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions concerning the interpretation and validity of the fifth indent of Article 6 (1) of Commission Regulation (EEC) No 1570/77 of 1 July 1977 on price increases and reductions applicable to intervention in cereals.

2 Those questions arose in a dispute between a cooperative society, Raiffeisen Hauptgenossenschaft eG (hereinafter referred to as 'Raiffeisen'), the plaintiff in the main proceedings, and the Bundesanstalt für landwirtschaftliche Marktordnung [Federal Office for the Organization of Agricultural Markets, hereinafter referred to as 'the Federal Office'].

3 Raiffeisen brought an action before the Verwaltungsgericht [Administrative Court] challenging the decisions of the Federal Office rejecting its claims for the grant of a special price increase for a total quantity of 29 706 tonnes of bread rye harvested in 1978 and bought into intervention by the Federal Office between August 1978 and January 1979. Those claims were rejected on the ground that the rye did not satisfy the quality requirements laid down in the fifth indent of Article 6 (1) of Regulation No 1570/77, which provides that intervention agencies may apply, at the time of intervention, a special price increase in respect of rye where its particularly good quality is suited to bread-making, provided that 'the amylogram units, based on full milling, including the germ, with a hardening temperature of the starch of at least 63°C, are not less than 200 units'.

4 According to the Federal Office, the fact that at a hardening temperature of the starch of 63°C the minimum figure of 200 amylogram units, based on full milling, including the germ, is reached on a falling amylogram curve is insufficient for the application of the special price increase.

5 The Verwaltungsgericht accepted the argument of the Federal Office and dismissed the action as unfounded. On appeal, however, the Verwaltungsgerichtshof [Higher Administrative Court] decided that the price increase should be granted on the ground that it was irrelevant whether the required coordinate was reached at a time when the viscosity of the starch paste was increasing or decreasing.

6 The Federal Office lodged an appeal on a point of law against that decision with the Bundesverwaltungsgericht which stayed the proceedings and referred to the Court the following questions:

'1. How is the expression "hardening temperature" contained in the fifth indent of Article 6 (1) of Commission Regulation (EEC) No 1570/77 of 11 July 1977 on price increases and reductions applicable to intervention in cereals, as originally enacted, that is to say before its amendment by Article 1 (4) of Commission Regulation (EEC) No 2160/84 of 26 July 1984, to be interpreted, and in particular is it to be interpreted as meaning that:

(a) all temperatures passed through during the hardening process constitute "hardening temperatures", or

(b) only the temperature reached at the time of maximum viscosity constitutes the "hardening temperature"?

2. If part (a) of Question 1 is answered in the affirmative, how is the fifth indent of Article 6 (1) as a whole to be interpreted, and in particular is it to be interpreted as meaning that:

(a) the coordinate of not less than 200 units at a hardening temperature of at least 63°C must be reached on a rising amylogram curve, or

(b) is it sufficient if, at a hardening temperature of at least 63°C, the units on a redescending amylogram curve are not less than 200?

3. If part (b) of Question 1 or part (a) of Question 2 is answered in the affirmative, does Community law contain a general principle of equality corresponding to Article 3 (1) of the Grundgesetz [Basic Law] of the Federal Republic of Germany, to the effect that the Council and the Commission, when enacting regulations, are under an obligation, in laying down the rules applicable to factual situations, to treat the same (equivalent) situations in the same manner and therefore to attach the same legal consequences to them?

4. If Question 3 is answered in the affirmative, is the fifth indent of Article 6 (1) of the aforementioned regulation contrary to the obligation of equal treatment and therefore unlawful in so far as, as is alleged by the plaintiff,

   (a) the bread rye referred to in that provision, the amylogram units of which (based on full milling, including the germ) are not less than 200 on the rising amylogram curve at a hardening temperature of at least 63°C, and

   (b) the bread rye at issue, the amylogram units of which (based on full milling, including the germ) in certain cases

      (i) reach 610 or 470 units on the rising amylogram curve at a hardening temperature of 61°C, and, subsequently,

      (ii) still reach 560 or 390 units on the falling amylogram curve at a hardening temperature of 63°C

   are of the same quality and should therefore qualify for the same price increase based on quality?'

7 Reference is made to the Report for the Hearing for the relevant provisions of Community law and the observations of the parties in the main proceedings and the Commission, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

First question

8 In its first question, the national court seeks in substance to ascertain the temperature to which the expression 'hardening temperature' in the fifth indent of Article 6 (1) of Regulation No 1570/77 refers.

9 Raiffeisen contends that it is clear from an analysis of the operation whereby the viscosity of rye-flour is measured and recorded by means of a Brabender amylograph that the expression 'hardening temperature' comprises the whole range of temperatures recorded during the measuring process, between 25°C and 90°C or, at the very least, between 48°C and 75°C, since it is during the latter stage that the hardening increases or decreases more sharply. Accordingly, it is sufficient if, at a hardening temperature of at least 63°C, the units on a descending amylogram curve are not less than 200.

10 On the other hand, the Federal Office and the Commission maintain that the expression 'hardening temperature' refers solely to the temperature reached at the time of maximum viscosity.

11 It should be noted that Article 7 (2) of Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1), as amended by Council Regulation (EEC) No 1143/76 of 17 May 1976 (Official Journal 1976, L 130, p. 1), provides in particular that if the quality of the cereal is different from the standard quality for which the intervention price has been fixed, the intervention price is to be adjusted in accordance with scales of price increases and reductions. In addition, the aforesaid article provides that, when the intervention price is fixed, a special price increase may be applied for bread-making rye with certain quality characteristics.

12 As regards that special price increase, Article 6 (1) of Regulation No 1570/77 defines the quality characteristics required, that is to say the rye must be of particularly good quality, which is defined in detail, and thus be suitable for bread-making.

13 Accordingly, it would appear that Article 6 (1) of Regulation No 1570/77 is designed to ensure that only rye the quality of which is not only higher than the

standard quality for which the intervention price is fixed, but is particularly high, qualifies for a special price increase.

14 The quality requirement thus laid down is, moreover, reinforced by a comparison with Article 5 (2) of Regulation (EEC) No 1629/77 (Official Journal 1977, L 181, p. 26) concerning common wheat of bread-making quality, which must be 'sound, fair and of marketable quality' in order to be accepted for buying-in at the special intervention price.

15 Raiffeisen's interpretation of the provision in question fails to take account of the quality objectives referred to therein. It is clear from the information provided by the experts at the hearing that, in general, apart from certain very special situations, where the number of amylogram units in products is high but the hardening temperature of those products is less than 63°C at the summit of the amylogram curve, the crust detaches itself appreciably, there is tendency for water to accumulate beneath the crust and the elasticity of the crumb is very weak or even defective.

16 It follows from the information supplied to the Court that only the process known as the 'Brabender method', according to which the maximum viscosity must be reached at a temperature of not less than 63°C, is compatible with the objectives pursued by the relevant Community rules.

17 Furthermore, that method corresponds to that adopted by the International Association for Cereal Chemistry on 10 March 1976, a few months prior to the adoption of Commission Regulation (EEC) No 1833/76 of 28 July 1976 (Official Journal 1976, L 203, p. 28); the first recital in the preamble to that regulation stated that since 'the criteria as to quality required for granting the special increase no longer correspond to present commercial practices', it was necessary to amend the rules in force in accordance with market practices. To that end, the Commission adopted the method referred to in Article 6 (1) of Regulation No 1570/77.

18 It is thus apparent that the introduction of the temperature factor by Regulation No 1833/76 would be meaningless unless there was a relationship between temperature and maximum viscosity. No method which fails to take account of that relationship is known to science and such a method would not add anything to the previous situation with a view to ensuring the attainment of the objectives pursued by the new rules.

19 Even if it may be accepted that the wording of Article 6 of Regulation No 1570/77 is unclear, a prudent trader cannot disregard the considerations which have just been mentioned and must interpret the provision in question as referring to the Brabender method.

20 In those circumstances, the answer to the first question must be that the expression 'hardening temperature' in the fifth indent of Article 6 (1) of Commission Regulation No 1570/77 of 11 July 1977 must be interpreted as referring to the temperature of at least 63°C which is reached at the time of maximum viscosity of the dough.

Second question

21 In view of the answer given to the first question, the second question no longer has any purpose.

Third and fourth questions

22 The third and fourth questions are concerned with the possibility that the relevant rules of Community law may be contrary to the principle of equal treatment.

23 In that regard, it must be pointed out that the Court has consistently held that the general principle of equality is one of the fundamental principles of Community law and that this principle requires that similar situations shall not be treated differently unless differentiation is objectively justified.

24 Raiffeisen contends that, according to the Aberham Laboratory Report, the results of the baking tests and analyses carried out show that rye for which the number of units on the amylogram curve is 470 to 610 at a temperature of 61°C must be regarded as being of the same quality as rye for which the number of units at a hardening temperature of at least 63°C is not less than 200 on the rising amylogram curve. In that regard, Raiffeisen also refers to the article by Professor A. Bolling and Dr D. Weipert, attached as Annex 3 to the order for reference.

25 The Commission, on the other hand, maintains that only a measurement carried out in accordance with the Brabender method, under which maximum viscosity is reached at a temperature of 63°C, makes it possible to establish that rye is of particularly good quality within the meaning of Article 6 (1) of Regulation No 1570/77. Accordingly, if the path of the amylogram curve is different, the quality of the rye may be good but it would no longer correspond to the particularly good uniform quality desired by the Community legislature.

26 It must be pointed out that, as stated earlier, the Brabender method has gained international recognition. In those circumstances the Commission has not exceeded its discretion in such matters by considering that rye which reaches its maximum viscosity at a temperature of less than 63°C is not of the same quality as rye which satisfies the criterion laid down by the rules in question.

27 Accordingly, the answer to the third and fourth questions must be that the fifth indent of Article 6 (1) of Commission Regulation No 1570/77 does not violate the principle of equality by confining the possibility of granting a special price increase to producers of rye the quality of which satisfies the criteria laid down in that provision.

Costs

28 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Bundesverwaltungsgericht, by order of 9 May 1985, hereby rules:

(1) The expression 'hardening temperature' in the fifth indent of Article 6 (1) of Commission Regulation (EEC) No 1570/77 of 11 July 1977 must be interpreted as referring to the temperature of at least 63°C which is reached at the time of maximum viscosity of the dough.

(2) The fifth indent of Article 6 (1) of Commission Regulation (EEC) No 1570/77 does not violate the principle of equality by confining the possibility of granting a special price increase to producers of rye the quality of which satisfies the criteria laid down in that provision.

Galmot Everling Moitinho de Almeida

Delivered in open court in Luxembourg on 12 March 1987.

P. Heim
Registrar

Y. Galmot
President of the Third Chamber