JUDGMENT OF THE COURT
30 NOVEMBER 1972[1]

Wasaknäcke Knäckebrotfabrik GmbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel[2] (Reference for a preliminary ruling by the Bundesverwaltungsgericht)

Case 32/72

Summary

1. Agriculture — Common organization of the market — Common wheat and rye of bread-making quality — Carry-over payment within the meaning of Article 9 of Regulation No 120/67 — Conditions of grant — Absolute limitation period for making an application

(Regulation No 602/68 of the Commission, Article 3)

2. Community law — Specific and essential rules of common application — Additional national measures authorized — Exceptions to rules of common application — Not permissible

1. The time-limit laid down in Article 3 of Regulation No 602/68/EEC of the Commission for the submission of applications for carry-over payments under Article 9 of Regulation No 120/67/EEC of the Council is an absolute limitation period.

2. The power assigned to Member States by the Community regulations to adopt additional measures gives no authority to adopt measures which create exceptions to a specific rule of common application which is essential for the operation of a market organization mechanism.

In Case 32/72

Reference to the Court under Article 177 of the EEC Treaty by the VIIth Senate of the Bundesverwaltungsgericht for a preliminary ruling in the action pending before that court between

WASAKNÄCKE KNÄCKEBROTFABRIK GMBH, now WASA GMBH, Celle,

and

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND FUTTERMITTEL, Frankfurt am Main,

1 — Language of the Case: German.

2 — CMLR.

on the interpretation of the first sentence of the second indent of Article 3 of Regulation No 602/68/EEC of the Commission of 16 May 1968 (JO No L 114, p. 13) on the conditions for granting carry-over payments for common wheat and rye of bread-making quality in stock at the end of the 1967/1968 marketing year.

THE COURT

composed of: R. Monaco, President of Chamber, President, P. Pescatore, President of Chamber, A. M. Donner, A. Trabucchi (Rapporteur) and J. Mertens de Wilmars, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:
Article 9 of Regulation No 120/67/EEC of the Council of 13 June 1967 (OJ, Special Edition, p. 33) provides that a carry-over payment may be granted in respect of stocks remaining at the end of the marketing year of, among other things, common wheat and rye harvested in the Community. For this purpose, Article 3 of Regulation No 602/68/EEC of the Commission of 16 May 1968 (OJ L 114) contains the following rules:

'In order to benefit the carry-over payment which is granted by the competent authority of the Member State in whose territory the stocks are to be found, the applicant must:

— have declared to the aforementioned competent authority, by registered letter, by telex message or by telegram sent not later than 7 June 1968, his intention to apply where appropriate to be granted the carry-over payment and also the quantities of each of the cereals referred to in Article 1 held by him on 31 May 1968, with details of the agent and the warehouse where the stocks may be inspected;

— have submitted to the same competent authority, by registered letter, telex message or telegram sent not later than 5 August 1968, a request for compensation, giving details of the aforementioned stocks of cereals held by him on 31 July 1968. Such a request must, at the least, contain the information and declarations referred to in the Annex hereto.'

According to Article 5(1)of the said regulation, the competent authorities of each Member State were entrusted with the task of carrying out the necessary inspection of stocks. This article provided

in addition in paragraph 2 that 'The competent authorities of the Member States shall adopt all additional measures required to take account of the particular conditions within its territory and in particular the times at which stocks and their movements are submitted to inspection'.

On 22 May 1968 and 19 July 1968 the German Ministry for Agriculture and Forests published official notices indicating the detailed rules of this system and announcing the decree governing its implementation. That decree, which was enacted on 3 August 1968 and published on 6 August 1968 (Banz 68, No 144), provided that the application, which was to be made on a form, could be validly lodged up to 12 August 1968 as regards applications which had been submitted in proper time by telex message or telegram.

By letter of 6 June 1968, the applicant in the main action, which operates a flour-mill, had informed the Niedersächsische Landesverwaltungsamt of its intention to apply for the carry-over payment. By letter of 31 July 1968 it sent the said body the monthly report on the state of the stocks in the wheat mills. On 7 August 1968 it sent its applications for carry-over payments which reached the competent authority on 9 August 1968.

By decision of 15 November 1968 the defendant in the main action rejected these applications on the ground that they had not been made within the period laid down in Article 3 of Regulation No 602/68/EEC.

The Verwaltungsgericht upheld the applicant's action for the annulment of this decision refusing the carry-over payment. By judgment of 1 March 1971 the appeal court annulled that judgment and dismissed the action on the ground, in particular, that in making its application for the carry-over payment, the firm concerned had not observed the period laid down by the said EEC Regulation, since the monthly report which it had sent on 31 July 1968 could not be regarded as an application for the payment in question.

On appeal by the company for the reversal of the judgment obtained in the lower court, the Bundesverwaltungsgericht decided, on 21 April 1972, to suspend the proceedings and refer the matter to the Court of Justice of the European Communities for a ruling on the following questions:

'Is the time-limit laid down in the first sentence of the second indent of Article 3 of Regulation No 602/68/EEC of the Commission of 16 May 1968 (OJ L 114, p. 13) whereby an applicant must make the application not later than 5 August 1968, an absolute limitation period the non-observance of which always entails loss of the right to the carry-over payment?

or

Can account be taken of an application sent three days after the expiry of the time-limit and received the following day when despite its late submission it can be established, by reason of the particular circumstances of the case, that this application for the carry-over payment is justified and dealing with it causes no difficulties for the Administration? Does consideration of a late application depend on whether the delay is due to fault?'

The order referring the matter to the Court was received at the Registry on 13 June 1972.

In the grounds of its decision the German court observes that the time-limit in question is calculated very fairly if one takes account of the fact that the state of the stocks existing on 31 July 1968 should have been communicated before 5 August, in other words within the limits of a period including a weekend.

Should the Court of Justice consider that this period is not simply a procedural measure but an absolute limitation period, it is still necessary to ascertain in what cases it can be exceeded. In this connexion the German judge states as follows:

'It is beyond dispute that the claim of the applicant firm is justified on the merits and that the application drawn up on the prescribed form was received 4 days after the expiry of the period although the defendant granted, so as to allow the form

time to arrive, a time-limit of up to 12 August 1968, which the applicant observed. It can therefore be inferred from this that the defendant had not yet examined the other applications at the time when the applicant's application was received.'

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities written observations were submitted by Wasaknäcke Knäckebrotfabrik, represented by L. Luther, E. Jahn, W. Hofer and W. Happ, and by the Commission of the European Communities, represented by its Legal Adviser, P. Kalbe.

Having heard the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

The oral observations of Wasaknäcke Knäckebrotfabrik and of the Commission were presented at the hearing on 19 October 1972.

The Advocate-General delivered his opinion at the hearing on 8 November 1972.

II — Observations submitted in accordance with Article 20 of the Statute of the Court of Justice

The observations submitted in accordance with Article 20 of the Statute of the Court may be summarized as follows:

1. *Observations of Wasaknäcke Knäckebrotfabrik*

Wasaknäcke Knäckebrotfabrik, the applicant before the German court, is of the opinion that the period referred to in the first sentence of the second indent of Article 3 of Regulation No 602/68/EEC of the Commission should not be considered a time-limit within the technical sense of the term for the following reasons:

— it is too short, particularly if account is taken of the fact that here it comprised only two or, at most, three working days; otherwise, this period would be contrary to good faith and should be considered to be invalid;

— the Community rules do not provide expressly that non-observance of the period in question entails loss of rights in all cases and without exception. Such an express provision would be necessary, having regard to the exceptionally short duration of the period.

The applicant in the main action also makes the observation that the German Administration had not sent it the forms required for the application in question until 7 August 1968, in other words two days after the expiry of the period.

Alternatively, should the Court consider that it is an absolute limitation period, the applicant in the main action refers to the case-law of the Bundessozialgericht whereby the prolongation of an absolute limitation period prescribed by law is admissible when the other conditions required for entitlement are satisfied and when, by a short delay, the party concerned does not in any way affect the purpose for which the time-limit was established. It points out that, having regard to the fact that on 12 August 1968 the defendant in the main action had not begun to examine the applications referred to in Article 3 of Regulation No 602/68/EEC and that, *a fortiori*, it had not given a ruling on them, the exercise of its task relating to the applications for carry-over payments could not be compromised by the making of the application on 7 August 1968. The objective of the Community rules in question, which is to avoid granting carry-over payments in respect of cereals from the new harvest, would not in any case be compromised by slightly exceeding the time-limit prescribed. This interpretation is consistent with the position adopted by the competent national authority for the following marketing year, that of 1968/1969, since faced with precisely the same situation, it practically extended in a general way the relevant time-limit until 12 August 1969. This proves that by dint of experience it had been judged that the aim of the EEC rules could be fully

achieved only by an adequate extension of time-limits.
In this case, no fault is attached to the fact that the time-limit was exceeded. In fact, after the German Federal Minister had, in his official notice of 22 May 1968, announced that in certain cases he was extending until 12 June 1968 the time-limit for the declaration of intention provided for in the first paragraph of Article 3 of Regulation No 602/68/EEC (a time-limit the expiry of which was fixed by this Article for 7 June 1968) and had announced his intention of setting out the rest of the procedure in a decree, the applicant could expect that the regulating decree announced would be published in time for 5 August 1968 or that, at the very least, the time-limit affecting it would be extended for a reasonable time. Since the applicant submitted its application on 7 August 1968, in other words the day following the publication of the decree, it would be wrong to consider it to have exceeded the time-limit, all the more so because on 6 June 1968 it had informed the competent administrative authorities of its intention to apply for the carry-over payments in respect of the quantities which it had mentioned in its declaration.
The applicant in the main action maintains, finally, that by its declaration of intention of 6 June 1968 it had already acquired a future right to the grant of a carry-over payment in respect of the cereals which on 31 July 1968 were stored in its warehouses. This right cannot be denied it because the German administrative authorities did not promulgate within good time the decree which they had expressly announced.

2. *Observations of the Commission*

The *Commission* first of all makes the point that the aim of the carry-over payment in dispute is to prevent or, at least, to discourage the sale to the intervention agency of stocks existing at the end of a marketing year, when they could still be sold on the market. This temptation could be due to the fact that the intervention prices are not increased for the months of June and July because at this time there are already cereals on the market which, coming from the new harvest, have consequently not borne the costs of storage.
In order, as far as possible, to avoid risks of abuse, which increase the greater the time from the day designated for fixing the level of stocks, it was necessary to inspect the stocks held on 31 July as soon after that date as possible. This explains why those concerned had to be made to submit their applications within a very short time. A simple theoretical time-limit would in no way have been sufficient to make the undertakings act with the required diligence.
It is clear from the words used in Article 3 of Regulation No 602/68/EEC that the acquisition of a right to a carry-over payment depends on whether the application is submitted within the time fixed. It is therefore an absolute limitation period in respect of which there is no provision for derogation. Having regard to the requirement of uniformity of Community law, including the stage of its implementation, national authorities have the power to decide, unilaterally and in their discretion, to derogate from Community rules only where they are clearly authorized by Community law. Nothing of this sort exists in the rules under consideration. Article 5(2) of Regulation No 602/68 which authorizes Member States to enact all additional measures necessary to take account of the particular conditions in their territory relates exclusively to paragraph (1) of this article which imposes on Member States the obligation of carrying out the necessary inspections.
It is also idle to maintain that a different interpretation is necessitated by higher constitutional principles. In fact, observance of the time-limit in question does not in any way impose an insufferable burden on undertakings. Those concerned knew a long time in advance of the possibility of and the conditions for receiving a carry-over payment and they had in consequence several months to prepare their application in such a way that they had to give on the day designated only the quantity of cereals to be considered. Since the granting of financial benefits from tax resources is

subject only to this small effort on the part of undertakings and since the grant thereof does not depend on their offering any consideration, it is not possible to argue that fundamental legal principles require that Article 3 should not apply where the time-limit for submitting the application has been exceeded in circumstances where there has been no fault. The legal position of the applicant in the main action is not altered by the fact that the competent German body was late in sending it the forms since the validity of the applications did not depend expressly on those forms.

Grounds of judgment

1 By decision of 21 April 1972, received at the Court on 13 June 1972, the Bundesverwaltungsgericht, in pursuance of Article 177 of the EEC Treaty, submitted various questions on the interpretation of Article 3 of Regulation No 602/68/EEC of the Commission of 16 May 1968 (JO L 114, p. 13) concerning the conditions for granting carry-over payments in respect of common wheat and rye of bread-making quality in stock at the end of the 1967/1968 marketing year. This article provided, *inter alia*, that in order to qualify for the carry-over payment under Article 9 of Regulation No 120/67/EEC of the Council of 13 June 1967 (OJ, Special Edition, 1967, p. 33) the applicant had to submit an application for the carry-over payment by registered letter, telex message or telegram sent to the competent authority not later than 5 August 1968. The Court is asked to give a ruling on whether this time-limit is an absolute limitation period, the non-observance of which always entails the loss of the right to the carry-over payment.

2 By providing that the grant of the carry-over payment shall be conditional upon the submission of the application within a predetermined time-limit, the wording of Article 3 tends to establish that this time-limit is strict. This interpretation is confirmed by the fiction attributed to this time-limit within the framework of the intervention machinery instituted by Regulation No 120/67 of the Council on the common organization of the market in cereals. In order to ensure that the price guarantee given to producers remains fully effective throughout the marketing year, Article 6 of that regulation provides that the intervention price shall be the subject of monthly increases phased over all or part of the marketing year. In order to avoid massive quantities of cereals being offered for intervention upon the expiry of the monthly increases in intervention prices at a time when a large part of the cereals in stock could be sold directly on the market before the beginning of the new marketing year, Article 9 of Regulation No 120/67 provides that a carry-over payment may be granted in respect of stocks of cereals harvested in the Community.

3 However, since for some cereals the new harvest begins before 31 July, which is the end of the marketing year, necessary measures had to be taken to prevent newly-harvested cereals from benefiting improperly from the carry-over payment under Article 9. It is for this purpose that Article 3 of Regulation No 602/68 of the Commission provides that to receive the carry-over payment in question an applicant must make a declaration of stocks held on 31 May 1968, to be sent to the competent authority not later than 7 June, and must make an application for the carry-over payment setting out stocks held on 31 July, to be sent to the same competent authority not later than 5 August. The shortness of the time-limit laid down for the application for the carry-over payment is not, moreover, such as to prevent the operation of the system of which it is an essential element. The need to ensure equal conditions for the granting of the carry-over payment necessitates the application of uniform time-limits.

4 For these reasons, the rules in question do not provide any possibility of extending the time-limits laid down by Article 3 of Regulation No 602/68. The power which Article 5 of that regulation grants to the authorities of every Member State to adopt 'all additional measures required to take account of the particular conditions within its territory' cannot include the adoption of measures creating exceptions to a specific rule of common application, such as the duration of the time-limit mentioned, which is of essential importance for the operation of the intervention mechanism. Consequently, neither proof that the application is in fact justified, nor the fact that the delay is not due to fault is sufficient to justify the admission of applications for carry-over payments submitted after the expiry of the time-limit laid down in this connexion by Article 3 of Regulation No 602/68.

Costs

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

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the applicant in the main action and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 120/67/EEC of the Council of 13 June 1967 and to Regulation No 602/68/EEC of the Commission of 16 May 1968;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions submitted by the Bundesverwaltungsgericht by decision of that court of 21 April 1972, hereby rules:

1. **The time-limit laid down in Article 3 of Regulation No 602/68/EEC of the Commission for the submission of applications for carry-over payments under Article 9 of Regulation No 120/67/EEC of the Council is an absolute limitation period;**

2. **Neither proof that the application is in fact justified nor the fact that the delay is not due to fault is sufficient to justify the admission of applications for carry-over payments submitted after the expiry of the time-limit laid down in Article 3 of Regulation No 602/68/EEC of the Commission.**

Monaco Pescatore

Donner Trabucchi Mertens de Wilmars

Delivered in open court in Luxembourg on 30 November 1972.

A. Van Houtte
Registrar

P. Pescatore
President
(President of Chamber)