JUDGMENT OF THE COURT (Fourth Chamber)

14 September 2000 *

In Case C-369/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court), for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Minister of Agriculture, Fisheries and Food,

ex parte **Trevor Robert Fisher and Penny Fisher**, trading as 'TR & P Fisher',

on the interpretation of Articles 3(1) and 9 of Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and

* Language of the case: English.

control system for certain Community aid schemes (OJ 1992 L 355, p. 1) and of Article 9 of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36),

THE COURT (Fourth Chamber),

composed of: D.A.O. Edward, President of the Chamber, P.J.G. Kapteyn (Rapporteur) and H. Ragnemalm, Judges,

Advocate General: S. Alber,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Mr and Mrs Fisher, by H. Mercer, Barrister, instructed by P. Till, Solicitor,

— the United Kingdom Government, by R. Magrill, of the Treasury Solicitor's Department, acting as Agent, and P. Watson, Barrister,

— the Commission of the European Communities, by X. Lewis, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr and Mrs Fisher, of the United Kingdom Government and of the Commission at the hearing on 16 December 1999,

after hearing the Opinion of the Advocate General at the sitting on 10 February 2000,

gives the following

Judgment

1 By order of 13 March 1998, received at the Court on 16 October 1998, the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court), referred for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) three questions concerning the interpretation of Articles 3(1) and 9 of Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1) and of Article 9 of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36).

2 Those questions have been raised in judicial-review proceedings before the High Court of Justice, seeking an order for certiorari to quash a decision by the Ministry of Agriculture, Fisheries and Food (hereinafter 'MAFF') confirming

penalties imposed on Mr and Mrs Fisher, trading as 'TR & P Fisher' (hereinafter 'Fisher'), a declaration that that decision was unlawful and invalid, and payment of damages.

The legal framework

The Community provisions

3 Council Regulation (EEC) No 1765/92 of 30 June 1992 (OJ 1992 L 181, p. 12) establishes a support system for producers of certain arable crops as defined in Annex I thereto. Under that system, compensatory payments are to be made for each specified category of crop when grown on eligible land and provided that certain conditions are met ('arable area payments'). Each applicant under the main arable area payment scheme must undertake to set aside a minimum part of the land which is included in the application; for the relevant year, that was set at 10%. Land eligible to be set aside must have been either sown the previous year or allocated to a set-aside scheme.

4 Regulation No 3508/92 establishes the integrated administration and control system ('IACS'). That system seeks to prevent fraud by imposing effective penalties in the event of irregularities or fraudulent conduct. It also seeks to limit the administrative formalities imposed on farmers and on the authorities responsible for the administration of the different aid schemes by having only

one system to administer all the aid schemes and by requiring each Member State to set up a computerised database for recording the data contained in aid applications.

5 The provisions of Regulation No 3508/92 relevant to the main proceedings are as follows:

'Article 2

The integrated system shall comprise the following elements:

(a) a computerised database;

(b) an alphanumeric identification system for agricultural parcels;

(c) an alphanumeric system for the identification and registration of animals;

(d) aid applications;

(e) an integrated control system.

Article 3

1. The computerised database shall record, for each agricultural holding, the data obtained from the aid applications. This database shall in particular allow direct and immediate consultation, through the competent authority of the Member State, of the data relating at least to the previous three consecutive calendar and/or marketing years.

...

Article 4

The alphanumeric identification system for agricultural parcels shall be established on the basis of land registry maps and documents, other cartographic references or of aerial photographs or satellite pictures or other equivalent supporting references or on the basis of more than one of these elements.

...

Article 9

The Member States shall take the measures necessary to ensure protection of the data collected.'

6 Article 9(2) of Regulation No 3887/92 provides:

'If the area actually determined is found to be less than that declared in an "area" aid application, the area actually determined on inspection shall be used for calculation of the aid. However, except in cases of *force majeure*, the area actually determined on inspection shall be reduced:

— by twice the difference found if this is more than 2% or two hectares but not more than 10% of the determined area;

— by 30% if the difference found is more than 10% but not more than 20% of the determined area.

If the difference is more than 20% of the determined area no area-linked aid shall be granted.

However, in the case of a false declaration made intentionally or as a result of serious negligence:

— the farmer in question shall be excluded from the aid scheme concerned for the calendar year in question, and

— in the case of a false declaration intentionally made, from any aid scheme referred to in Article 1(1) of Regulation (EEC) No 3508/92 for the following calendar year, in respect of an area equal to that for which his aid application was rejected.

These reductions shall not be applied if the farmer can show that his determination of the area was accurately based on information recognised by the competent authority.

...'

The national provisions

7 According to the order for reference, applications for arable area payments in the United Kingdom must be made on an IACS form, which consists of two parts: a Base Form and a Field Data Printout. The Field Data Printout lists each of the applicant's fields separately; for each field, the farmer must state what crop is growing in it or whether it has been set aside. Each year MAFF sends to all applicants for arable area payments who continue to farm the same land a computerised printout containing all the data provided by them in their application from the previous year. The farmer, therefore, need only make the necessary changes when completing his IACS application.

8 Every Base Form used by MAFF requires the applicant to declare that the information contained therein is accurate and that 'it may be passed by the relevant Agricultural Department(s) in confidence to duly authorised agents for the purposes of verifying its accuracy, evaluating the Scheme(s) covered by this

application, or to assist in the wider areas of work within the relevant Agricultural Departments'.

9 Because of that requirement on the United Kingdom Base Form, a farmer receives, in the first year of farming a particular parcel of land, a blank Field Data Printout and is expected to obtain the information which would have been included on the Printout from sources other than MAFF. In the event that a farmer is able to satisfy MAFF that there are exceptional circumstances and that he has exhausted all conventional means of obtaining the information which is normally contained on the Field Data Printout, MAFF may disclose some of the information on that Printout to the farmer.

The dispute in the main proceedings

10 Fisher works three farms: Glebe Farm, Castle Hill Farm and Carlam Hill Farm. Castle Hill Farm and Carlam Hill Farm are owned by Flint Co. Ltd ('Flint') and, until 1995, were let to a Mr Nicholson. In 1994, bankruptcy proceedings were commenced against Mr Nicholson and he was given notice to quit by Flint.

11 In the summer of 1995, Flint's agents asked Mr Fisher to inspect the crops on Castle Hill Farm and Carlam Hill Farm in order to see what was harvestable. The inspection was carried out by Mr Fisher, who was accompanied by a crop consultant. In late October 1995, Flint obtained possession of the farms in question, whereupon its agent, Fisher, started to work them.

12 The national court points out that neither Mr Nicholson nor anyone acting on his behalf was willing to provide Fisher with information concerning the previous

farming history of the two farms. Accordingly, at the beginning of November 1995, Fisher asked MAFF for that information on the ground that Fisher had been unable to obtain it elsewhere, a fact which MAFF has not disputed. Particulars were requested as to which fields were eligible for set-aside compensatory payments and the Field Data Printouts from previous years.

13 Relying on the Data Protection Act 1984, MAFF, by letter of 7 November 1995, declined to provide the information requested, stating at the same time that 'if under exceptional circumstances you are unable to obtain the necessary information from the sources suggested we will be able to consider releasing basic information relating to the land'.

14 By letter of 21 November 1995, MAFF accepted that Fisher had exhausted all the conventional means of obtaining the information requested and supplied it with basic details of the land on the two farms and information as to which land had been set aside in previous years. However, no information was given as to the cropping history, that is to say, the crops which had been grown in the various fields in the preceding years according to the Field Data Printouts.

15 By the time that information reached Fisher, it had already sown some of the land, with the remainder to be sown the following spring. At the hearing before the Court, however, it was pointed out and accepted by all the parties that all of the fields sown in the autumn of 1995 were eligible for set-aside.

16 On 3 May 1996, Fisher submitted its IACS form to MAFF. On 26 November 1996, it was informed that, during the processing of its application, it had been discovered that two parcels of land on Castle Hill Farm and Carlam Hill Farm

were not eligible for set-aside payments by reason of their previous cropping history, and that, accordingly, such payments had to be disallowed.

17 Penalties were also imposed on Fisher under Article 9 of Regulation No 3887/92.

18 Fisher appealed against the decision imposing those penalties. Its appeal was rejected and it therefore initiated proceedings for judicial review before the High Court, seeking an order for certiorari to quash MAFF's decision confirming the penalties, a declaration that that decision was unlawful and invalid, and damages.

19 Fisher argued before the national court that the error made in setting aside non-eligible land resulted from MAFF's refusal to provide it with details of the previous cropping history of the land in question. It claimed that MAFF had acted unlawfully in two respects. First, had the necessary information requested in November 1995 been provided, Fisher would have known which fields were eligible for set-aside and would therefore not have set aside ineligible land the following spring when carrying out its spring sowing. Second, MAFF acted unlawfully inasmuch as, in penalising Fisher for errors made in its IACS application, it relied on information which it had previously refused to supply to Fisher, despite having been requested to do so. MAFF should not, therefore, have used against Fisher information which it had refused to disclose to it.

20 Before the national court, MAFF argued in response to the first submission that it could not have provided the requested information on the previous cropping history without infringing its obligations vis-à-vis Mr Nicholson and a receiver, who had provided that information in confidence in accordance with the above-mentioned declaration on the Base Form. With respect to the second submission,

MAFF stated that it was entitled, indeed bound, to use the information in its submissions as to the cropping history in order to verify whether the land set aside was eligible.

21 MAFF further argued, and the national court accepted, that Fisher could have ensured that the land set aside was land eligible to be set aside had it used the information which it obtained from its own inspection in the summer of 1995 and the information given to it by MAFF in November 1995. The national court found, however, that this was not an answer to Fisher's submissions and held it to be a fact that, if the additional information sought by Fisher had been supplied to it before the sowing in the spring of 1996, Fisher would have chosen to set aside only eligible land. In the view of the national court, the fact that Fisher did not do so is therefore directly attributable to its not having been given the additional information sought.

The questions submitted for preliminary ruling

22 In those circumstances, the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court), decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) (i) Do Articles 3(1) and 9 of Regulation (EEC) No 3508/92, coupled with the general principles of Community law, permit information held on a computerised database set up under Article 2, relating to data supplied by

or on behalf of a former claimant for payments under AAPs [arable area payments], to be disclosed to third parties?

(ii) If the answer to Question 1(i) is "yes", is the disclosure which the competent authority is lawfully required to provide limited, as regards the persons to whom disclosure can be made:

(a) to persons authorised by the former claimant on the UK Base Form; and/or

(b) to persons who require the information in connection with their application for agricultural aid in respect of the same land as the former claimant even where the former claimant refuses to disclose the information;

and as regards the information to be disclosed:

(c) to that information which does not constitute commercially confidential information; and/or

(d) to that information which it is necessary to disclose to ensure that the person requesting the information can, by taking reasonable steps, avoid incurring penalties in connection with his own application for agricultural aid?

(2) If the answer to Question 1(i) is "yes", and the competent authorities have unlawfully failed to disclose information requested in circumstances where, had the person received the information, he would have set aside only eligible land, is the imposition of penalties under Article 9 of Regulation (EEC) No 3887/92 for this reason alone rendered unlawful?

(3) Whether or not the failure by the competent authorities to disclose the information referred to in Question 1(i) above was lawful or unlawful, are they entitled to use against a person information which, despite requests for same, they had refused to supply to that person?'

Question 1

23 In Question 1, the national court is asking, essentially, whether Articles 3(1) and 9 of Regulation No 3508/92, coupled with the general principles of Community law, allow the competent authority to disclose data relating to the arable fields sown during previous years, and supplied by or on behalf of a former claimant for arable area payments, to a new farmer who has need of those data in order to be able to apply for such payments in respect of the same fields.

24 The first point to note is that it follows from Article 3(1) of Regulation No 3508/92 that, by providing expressly for consultation, through the competent authority, of the database holding the information derived from aid applications, Regulation No 3508/92 does not rule out the possibility that that database may be consulted by persons other than the competent authority itself.

25 Next, Article 9 of Regulation No 3508/92 requires Member States to take the measures necessary to ensure protection of the data collected, but does not give any particulars in this regard.

26 Consequently, while it is for the Member States, in the absence of precise indications in that regard, to determine the scope of and detailed arrangements for such protection, the fact none the less remains that the national measures must not go beyond what is necessary to ensure the proper application of Regulation No 3508/92 and must not adversely affect the scope or effectiveness of that regulation.

27 In this regard, it is clear from the second and third recitals in the preamble to Regulation No 3508/92 that it is designed to make administrative and control mechanisms more effective. As the Advocate General has noted in point 42 of his Opinion, an efficient procedure presupposes that the information to be provided by an applicant for aid under Article 6 of the regulation is complete and accurate from the outset and that consequently the applicant is in a position to obtain the information necessary to ensure that the applications which he must submit to the competent authority are valid.

28 It must be observed, furthermore, that an applicant for aid has, in the context of the application of Regulation No 3508/92, an essential and legitimate interest in being able to procure the information necessary to make a proper application for the grant of compensatory payments and to avoid the imposition of penalties.

29 The measures taken by Member States for the protection of data collected cannot therefore leave that interest out of account.

30 Contrary to the argument submitted by the United Kingdom Government, that requirement is not satisfied by a general rule under which the data collected can

be disclosed to a third party only with the agreement of the person who provided the information in question and only if, and to the extent to which, a mandatory interest so requires, in so far as that rule excludes account being taken of the legitimate interest which an applicant for aid may have in accessing certain of those data.

31 In order to answer the question whether certain information contained in the database may be disclosed, the competent authority must balance, on the one hand, the interest of the person who provided the information and, on the other, the interest of the person who has need of that information in order to meet a legitimate objective.

32 However, the respective interests of the persons concerned in regard to data of a personal nature must be assessed in a manner which ensures protection of fundamental freedoms and rights.

33 In that connection, the provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281 p. 31) ('the Directive') provide criteria that are suitable for application by the competent authority in making that assessment.

34 Even though the Directive had not yet entered into force at the material time in the case in the main proceedings, it is clear from the 10th and 11th recitals in its preamble that it adopts, at Community level, the general principles which already formed part of the law of the Member States in the area in question.

35 With regard, in particular, to the disclosure of data, Article 7(f) of the Directive authorises such disclosure if it is necessary for the purposes of the legitimate

interests pursued by a third party to whom personal data are disclosed, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection.

36 So far as concerns the application of such criteria to the case in the main proceedings, there is nothing in the documents before the Court to justify the conclusion that Fisher was pursuing any interest other than the essential and legitimate one of being able to procure the data which it needed in order to discharge its obligations under Regulation No 3508/92 and which it could not otherwise obtain.

37 Nor does it appear from the documents before the Court that disclosure to Fisher of the data requested was liable to affect adversely any interest whatever of the owner of those data or his fundamental rights and freedoms.

38 It is, however, for the national court, which alone is familiar with all of the relevant facts of the dispute in the main proceedings, to assess the interests of the persons concerned in order to be able to determine whether the data requested could be disclosed to Fisher.

39 The answer to Question 1 must therefore be that Articles 3(1) and 9 of Regulation No 3508/92, coupled with the general principles of Community law, allow the competent authority, after balancing the respective interests of the persons concerned, to disclose data relating to crops sown during the preceding years, and which have been supplied by or on behalf of a former claimant for payment under the arable area payment scheme, to a new farmer who has need of those data in order to be able to apply for such payments in respect of the same fields and who is unable otherwise to obtain them.

Questions 2 and 3

40 By Questions 2 and 3, which it is appropriate to consider together, the national court is asking, essentially, whether, in the event of a refusal to disclose the requested information, the competent authority is entitled, or even required, to impose penalties on the applicant pursuant to Article 9 of Regulation No 3887/92, and whether, in so doing, it may rely on information which it did not supply to that person when he made his request.

41 According to the United Kingdom Government, the competent authority was required to impose the penalties set out in Article 9 of Regulation No 3887/92 in the event of false declarations, since Fisher could not rely on the single exception provided for in the fourth subparagraph of Article 9(2) of that regulation, that is to say, the case in which 'the farmer can show that his determination of the area was accurately based on information recognised by the competent authority'.

42 It must first be observed in this regard that, in the case in the main proceedings, the national court has found that the imposition of the penalties was unquestionably attributable to the refusal to disclose the information requested from the competent authority.

43 Next, it is important to note that penalties cannot be imposed where the declaration is false as a result of inaccurate information emanating from the competent authority. It follows that the exception set out at the end of Article 9(2) of Regulation No 3887/92 is justified by the fact that the false

declaration by the applicant concerning determination of the area is attributable to the competent authority.

44 The same is true where the declaration is false as a result of the lack of information from the competent authority. It is common ground that, where that authority has simply refused to disclose to a new farmer the collected data which that farmer required and which he could not otherwise obtain, the erroneous nature of the declaration will be attributable to the competent authority.

45 In those circumstances, the competent authority cannot impose penalties on the new farmer if it was aware that that person did not, because of the authority's own refusal to disclose at the time of the application, have the information necessary to ensure that his application for aid would be valid.

46 Article 9(2) of Regulation No 3887/92 must therefore be construed as not allowing penalties to be imposed where the inaccuracy of the declaration is attributable to the refusal by the competent authority to disclose collected data to a new farmer who has need of those data in order to ensure that his application for aid will be valid and who cannot otherwise obtain those data.

47 The answer to Questions 2 and 3 must therefore be that, in the event of refusal to disclose the information requested, the competent authority cannot, on the basis of the information which it did not provide to the applicant at the time of the application, impose penalties on him under Article 9 of Regulation No 3887/92.

Costs

48 The costs incurred by the Untied Kingdom Government and by the Commission, which have 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 (Fourth Chamber),

in answer to the questions referred to it by the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court), by order of 13 March 1998, hereby rules:

1. **Articles 3(1) and 9 of Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes, coupled with the general principles of**

Community law, allow the competent authority, after balancing the respective interests of the persons concerned, to disclose data relating to crops sown during the preceding years, and which have been supplied by or on behalf of a former claimant for payment under the arable area payment scheme, to a new farmer who has need of those data in order to be able to apply for such payments in respect of the same fields and who is unable otherwise to obtain them.

2. In the event of refusal to disclose the information requested, the competent authority cannot, on the basis of the information which it did not provide to the applicant at the time of the application, impose penalties on him under Article 9 of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes.

Edward Kapteyn Ragnemalm

Delivered in open court in Luxembourg on 14 September 2000.

R. Grass

Registrar

D.A.O. Edward

President of the Fourth Chamber