

ROQUETTE FRÈRES

JUDGMENT OF THE COURT

26 April 1994 *

In Case C-228/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht Düsseldorf (Germany) for a preliminary ruling in the proceedings pending before that court between

Roquette Frères SA

and

Hauptzollamt Geldern

on the validity of Regulation (EEC) No 2719/75 of 24 October 1975 fixing the monetary compensatory amounts and certain rates for their application (Official Journal 1975 L 276, p. 7),

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida, M. Díez de Velasco, D. A. O. Edward (Presidents of Chambers), C. N. Kakouris, R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias, F. Grévisse, M. Zuleeg, P. J. G. Kapteyn and J. L. Murray (Rapporteur), Judges,

* Language of the case: German.

Advocate General: M. Darmon,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

- Roquette Frères, by Heinrich Günther, Rechtsanwalt, Mannheim,
- the Commission of the European Communities, by Ulrich Wölker, a member of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Roquette Frères, represented by Hein Weil, Avocat, Paris, and Heinrich Günther, Rechtsanwalt, Mannheim, and the Commission at the hearing on 16 June 1993,

after hearing the Opinion of the Advocate General at the sitting on 27 October 1993,

gives the following

Judgment

- 1 By order of 29 January 1992, which was received at the Court on 20 May 1992, the Finanzgericht (Finance Court) Düsseldorf referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the validity of Regulation (EEC) No 2719/75 of the Commission of 24 October 1975 fixing the monetary compensatory amounts and certain rates for their application (Official Journal 1975 L 276, p. 7) and on the temporal effect of a declaration that that regulation was invalid.

- 2 Those questions were raised in proceedings between Roquette Frères and Hauptzollamt (Principal Customs Office) Geldern, on the charging by the latter of monetary compensatory amounts (hereinafter 'MCAs').
- 3 Pursuant to Council Regulation (EEC) No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation of the currencies of certain Member States (Official Journal, English Special Edition 1971 (I), p. 257), the Commission adopted the aforesaid Regulation No 2719/75.
- 4 Regulation No 2719/75 fixed *inter alia* the MCAs on maize and various products derived from maize, to be levied *inter alia* on imports of those products into Germany.
- 5 The MCAs applicable to products derived from maize were subsequently the subject of a series of regulations. Of those, Commission Regulations (EEC) No 652/76 of 24 March 1976 changing the monetary compensatory amounts following changes in exchange rates for the French franc (Official Journal 1976 L 79, p. 4), No 1910/76 of 30 July 1976 (Official Journal 1976 L 208, p. 1) and No 2466/76 of 8 October 1976 (Official Journal 1976 L 280, p. 1), both altering the MCAs, and No 938/77 of 29 April 1977 fixing the monetary compensatory amounts and certain rates for their application (Official Journal 1977 L 110, p. 6) were declared invalid by the Court on the grounds of infringement of the basic Regulation No 974/71, cited above, and of Article 43(3) of the Treaty, in so far as they had introduced a system for the calculation of the MCAs on products processed from maize whose price depended on that of maize which resulted in fixing the MCAs for the various products obtained by processing a given quantity of maize in a specified manufacturing process at a figure clearly higher than the MCA fixed for that given quantity of maize (see the judgments in Case 4/79 *Providence Agricole de la Champagne* [1980] ECR 2823, paragraph 41, Case 109/79 *Maïseries de Beauce* [1980] ECR 2883, paragraph 41, and Case 145/79 *Roquette Frères* [1980] ECR 2917, paragraph 48).
- 6 Regulation No 652/76 was also declared invalid in so far as it fixed the MCAs applicable to maize starch on a basis other than that of the intervention price of maize after deduction of the production refund on starch (see the *Roquette Frères* judgment, cited above, paragraph 48).

- 7 The fact that Regulation No 652/76 was invalid rendered invalid the provisions of the subsequent Commission regulations the purpose of which was to alter the MCAs applicable to the derived products in question (see the *Roquette Frères* judgment, cited above, paragraph 2 of the operative part).

- 8 Similarly, the Court held that Regulation (EEC) No 2140/79 fixing the monetary compensatory amounts and certain coefficients and rates necessary for their application (Official Journal 1979 L 247, p. 1), as amended by Regulation (EEC) No 1541/80 (Official Journal 1980 L 156, p. 1), had to be regarded as having been implicitly declared invalid by the aforesaid *Roquette Frères* judgment, in that it referred to Regulation No 652/76, which had been declared invalid, and altered the MCAs applicable to the products at issue in that case (judgment in Case 33/84 *Fragd v Amministrazione delle Finanze dello Stato* [1985] ECR 1605, paragraph 13).

- 9 The Commission had in the meantime drawn the consequences of the declarations of invalidity of 1980 by adopting Regulation (EEC) No 3013/80 of 21 November 1980 amending Regulation (EEC) No 2140/79 as regards certain monetary compensatory amounts and Regulation (EEC) No 2803/80 as regards certain export refunds in the cereals sector (Official Journal 1980 L 312, p. 12).

- 10 It appears from the case file that Roquette imported into Germany maize-derived products (starch, dextrine and soluble starch) originating in France. On the basis of the total goods imported in January 1976, the German customs authorities ordered Roquette to pay the MCAs fixed by Regulation No 2719/75, cited above.

- 11 In 1977 Roquette brought judicial proceedings against the tax notice imposing the MCAs, arguing that Regulation No 2719/75 was unlawful.

12 The national court considered that Regulation No 2719/75 was indeed unlawful for the same reasons as those stated in the judgments given in the *Providence Agricole de la Champagne*, *Maiseries de Beauce* and *Roquette Frères* cases, cited above; it stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

‘(A) Is Regulation (EEC) No 2719/75 of the Commission of 24 October 1975 fixing the monetary compensatory amounts and certain rates for their application invalid in so far as

(I) it fixes the monetary compensatory amounts for all the derived products manufactured within a particular production chain from a given quantity of maize as the basic product in such a way that the sum of the individual charges leads to a total monetary compensatory amount which is clearly more than the monetary compensatory amount for the quantity of maize used;

(II) the monetary compensatory amounts for maize starch and its derived products are fixed on a basis other than that of the intervention price for maize reduced by the production refund on starch?

(B) If so:

Is the importer in the present case, which by its appeals and the present proceedings for annulment has done everything legally necessary and possible on its part to prevent the contested notice from becoming final, entitled, if Regulation (EEC) No 2719/75 of 24 October 1975 is invalid, to rely on that invalidity in the present proceedings?’

Validity of Regulation No 2719/75

- 13 The Court notes to begin with, in agreement with the Commission, that the MCAs charged on the imports into Germany of starch, soluble starch and dextrine clearly exceed the MCA on the corresponding quantity of maize used, and that Regulation No 2719/75 determines the MCAs on maize starch and its derived products on a basis other than that of the intervention price for maize reduced by the production refund on starch.
- 14 It follows that Regulation No 2719/75 is indeed invalid for the same reasons as those stated in the *Providence Agricole de la Champagne, Maïseries de Beauce* and *Roquette Frères* judgments, cited above.
- 15 As the Commission argued during the procedure, the fact that Regulation No 2719/75 is invalid means that the provisions of Commission Regulations (EEC) No 2829/75 of 31 October 1975 (Official Journal 1975 L 284, p. 1), No 512/76 of 5 March 1976 (Official Journal 1976 L 60, p. 1), No 572/76 of 15 March 1976 (Official Journal 1976 L 68, p. 5) and No 618/76 of 18 March 1976 (Official Journal 1976 L 75, p. 1), each altering the monetary compensatory amounts on the derived products in question, and of Commission Regulation (EEC) No 271/76 of 6 February 1976 changing the monetary compensatory amounts following changes in exchange rates for the Italian lira (Official Journal 1976 L 34, p. 1) are invalid, since they are vitiated by the same manifest error in calculating the monetary compensatory amounts for the derived products in question (see the *Fragd* judgment, cited above, paragraph 13).
- 16 In the light of the foregoing, the answer to the first question must be that in so far as it fixes the MCAs for all the derived products processed from maize within a particular production chain in such a way that the sum of the individual charges leads to a total MCA which is clearly more than the MCA for the quantity of maize used, and in so far as it fixes the MCAs for maize starch and its derived products on a basis other than that of the intervention price for maize reduced by

the production refund on starch, Regulation No 2719/75 is invalid, as are the regulations amending or replacing it and vitiated by the same manifest error in calculating the MCAs for the derived products in question.

The temporal effect of a declaration of invalidity in a preliminary ruling

17 A judgment of the Court in proceedings for a preliminary ruling declaring a Community act invalid in principle has retroactive effect, like a judgment annulling an act.

18 The national authorities must consequently ensure the repayment of sums unduly charged on the basis of Community regulations which are subsequently declared invalid by the Court (see the judgment in Case 130/79 *Express Dairy Foods v Intervention Board for Agricultural Produce* [1980] ECR 1887, paragraph 14).

19 It is, however, open to the Court to limit the temporal effect of a preliminary ruling declaring a Community act invalid. That is justified by the interpretation of Article 174 of the Treaty, having regard to the necessary consistency between the procedure for a preliminary ruling on the validity of an act and the action for annulment, which are the two mechanisms provided by the Treaty for reviewing the legality of acts.

20 The possibility of limiting the temporal effect of the invalidity of a Community regulation, whether under Article 173 or Article 177, is a power conferred on the Court by the Treaty in the interest of the uniform application of Community law throughout the Community (see the judgment in Case 112/83 *Produits de Maïs* [1985] ECR 719, paragraph 17).

- 21 In the judgment in the *Providence Agricole de la Champagne* case (paragraph 46), the judgment in the *Maïseries de Beauce* case (paragraph 46) and the judgment in the *Roquette Frères* case (paragraph 53) cited above, the Court thus considered, having regard to the requirements of legal certainty, that the fact that the fixing of the MCAs had been found invalid did not enable the charging or payment of MCAs by the national authorities on the basis of the regulations declared invalid to be challenged as regards the period prior to the date of the declarations of invalidity.
- 22 The same reasons of legal certainty to which the Court had regard in the above judgments in principle exclude the possibility of challenging the charging or payment of MCAs by the national authorities on the basis of a regulation declared invalid by the present judgment, in respect of periods prior to the judgment.
- 23 The second question, which was asked by the Finanzgericht Düsseldorf in the light of the said three judgments of 15 October 1980, aims to clarify the consequences of a limitation of the temporal effect of the present judgment, as far as the plaintiff in the main proceedings is concerned.
- 24 In asking that question, the national court wishes to know whether an importer who, like the plaintiff in the main proceedings, has brought an administrative complaint followed by judicial proceedings, challenging a notice to pay MCAs on the ground that the Community regulation on the basis of which the notice was adopted was invalid, is entitled to rely for the purposes of those proceedings on the invalidity of a regulation declared by the Court of Justice in the same proceedings.
- 25 It is for the Court, where it makes use of the possibility of limiting the effect on past events of a declaration in preliminary ruling proceedings that a Community regulation is invalid, to decide whether an exception to that temporal limitation of the effect of its judgment may be made in favour of the party to the main proceedings which brought the action before the national court against the national measure implementing the regulation, or whether, conversely, a declaration of invalidity applicable only to the future is an adequate remedy even for that party (see the *Produits de Maïs* judgment, cited above, paragraph 18).

- 26 In the case of a party who, like the plaintiff in the main proceedings, has brought an action before the national court challenging a notice to pay MCAs adopted on the basis of an invalid Community regulation, such a limitation of the effect on past events of a declaration of invalidity in a preliminary ruling would have the consequence that the national court would dismiss the action brought against the notice in question, even though the regulation on the basis of which that notice was adopted had been declared invalid by the Court in the same proceedings.
- 27 An economic agent such as the plaintiff in the main proceedings would thereby be deprived of its right to effective judicial protection in the event of a breach of Community law by the institutions, and the practical effect of Article 177 of the Treaty would thereby be jeopardized.
- 28 Consequently, a trader such as the plaintiff in the main proceedings who before the date of the present judgment has brought an action before a national court challenging a notice to pay MCAs adopted on the basis of the Community regulation declared invalid by the present judgment is entitled to rely on that invalidity in the main proceedings.
- 29 Traders who before the said date have submitted an administrative complaint, seeking reimbursement of the MCAs paid by them on the basis of such a regulation, are also so entitled.
- 30 Accordingly, the answer to be given to the second question put by the national court must be that a trader who before the date of the present judgment has brought an action in a national court challenging a notice to pay MCAs adopted on the basis of a Community regulation declared invalid by the present judgment is entitled to rely on that invalidity in the national proceedings. Traders who before the date of the present judgment have submitted an administrative complaint seeking reimbursement of the MCAs paid by them on the basis of such a regulation are also so entitled.

Costs

- 31 The costs incurred by the Commission of the European Communities, 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,

in answer to the questions referred to it by the Finanzgericht Düsseldorf by order of 29 January 1992, hereby rules:

- 1) **In so far as it fixes the monetary compensatory amounts for all the derived products processed from maize within a particular production chain at a level such that their sum is clearly higher than the monetary compensatory amount for the quantity of maize used, and in so far as it fixes the monetary compensatory amounts for maize starch and its derived products on a basis other than that of the intervention price for maize reduced by the production refund on starch, Regulation (EEC) No 2719/75 of the Commission of 24 October 1975 fixing the monetary compensatory amounts and certain rates for their application is invalid, as are the regulations amending or replacing it which are vitiated by the same manifest error in calculating the monetary compensatory amounts for the derived products in question;**
- 2) **A trader who before the date of this judgment has brought proceedings in a national court challenging a notice to pay monetary compensatory amounts**

adopted on the basis of a Community regulation declared invalid by this judgment is entitled to rely on that invalidity in the national proceedings;

- 3) Traders who before the said date have submitted an administrative complaint seeking reimbursement of monetary compensatory amounts paid on the basis of such a regulation are also so entitled.

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| Due | Mancini | Moitinho de Almeida |
| | Díez de Velasco | Edward |
| Kakouris | Joliet | Schockweiler |
| | Rodríguez Iglesias | Grévisse |
| Zuleeg | Kapteyn | Murray |

Delivered in open court in Luxembourg on 26 April 1994.

R. Grass
Registrar

O. Due
President