

Bundesverwaltungsgericht, Urteil vom 29. Januar 2004, - Az. 3 C 18.03 -

The plaintiff, a manufacturer of pastry products, submitted a tender for the grant of aid for butter based on Commission Regulation (EEC) No. 570/88 of 16 February 1988 (on the sale of butter at reduced prices and the granting of aid for butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs) and lodged a tendering security with the competent German authority (Bundesanstalt für landwirtschaftliche Marktordnung). The tender was successful; the butter was delivered and manufactured into shortbread. Afterwards, however, the competent authority refused to pay the granted aid and - not having obtained a processing deposit - declared the tendering security forfeit on the grounds that the manufacturer had failed to furnish proof of the processing in accordance with the community rules.

The administrative court dismissed the plaintiff's application for the requested aid but ordered the authority to release the security since there was no legal basis for the forfeiture.

The "Bundesanstalt" then appealed to the Federal Administrative Court submitting that in cases where no separate processing deposit was lodged the tendering security served as a safeguard not only for the maintenance of the tender but also for the processing of the butter. The Court, however, dismissed the appeal on the grounds that pursuant to Art. 22 Commission Regulation (EEC) No. 2220/85 of 22 July 1985 (laying down common detailed rules for the application of the system of securities for agricultural products) a security shall only be forfeited in full or the quantity for which a "primary requirement" has been breached. The sole primary requirement of the tendering procedure as laid down clearly in Art. 17 Commission Regulation (EEC) No. 570/88 was the maintenance of the tender after the closing date for submission. Since this requirement had been fulfilled by the manufacturer the authority was not entitled to declare the tendering security forfeit. If the authority had wanted to safeguard the processing into the final product as well it would have been obliged to obtain a separate processing security.

In accordance with the standards laid down by the European Court of Justice in the CILFIT decision (Case C-283/81) the Bundesverwaltungsgericht refrained from initiating a preliminary ruling procedure since the correct application of the relevant community law to the case in question was so obvious as to leave no scope for any reasonable doubt.

Summary provided by JuriFast

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