

JUDGMENT OF THE COURT (Fifth Chamber)

26 April 1988 *

In Case 316/86

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

Hauptzollamt (Principal Customs Office) **Hamburg-Jonas**

and

Firma P. Krücken, Mannheim,

on the interpretation of Article 16 of Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals and Article 2 of Commission Regulation (EEC) No 243/78 of 1 February 1978 providing for the advance fixing of monetary compensatory amounts,

THE COURT (Fifth Chamber)

composed of: G. Bosco, President of Chamber, U. Everling, Y. Galmot, R. Joliet and F. A. Schockweiler, Judges,

Advocate General: G. F. Mancini
Registrar: B. Pastor, Administrator

after considering the observations submitted on behalf of

Firma P. Krücken, the plaintiff and respondent in the main proceedings, by Axel Bauer;

* Language of the Case: German.

Hauptzollamt Hamburg-Jonas, the defendant and appellant in the main proceedings, by Eckhardt Bollmann in the written procedure;

the Commission of the European Communities, by Peter Karpenstein;

having regard to the Report for the Hearing and further to the hearing on 6 October 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 11 February 1988,

gives the following

Judgment

- 1 By order of 29 October 1986, which was received at the Court Registry on 17 December 1986, the Bundesfinanzhof (Federal Finance Court) referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 16 of Regulation 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) and Article 2 of Commission Regulation No 243/78 of 1 February 1978 providing for the advance fixing of monetary compensatory amounts (Official Journal 1978, L 37, p. 5).
- 2 The questions were raised in proceedings between the Hauptzollamt (Principal customs Office) Hamburg-Jonas and Firma P. Krücken (hereinafter referred to as 'Krücken') concerning the grant of an export refund and the monetary compensatory amount for a consignment of 1 250 tonnes of barley originating in France which Krücken had exported from the Federal Republic of Germany to Switzerland.
- 3 According to the order for reference, the export certificate which Krücken submitted to the German customs authorities at the time of export had been issued in France. Noted on it was advance fixing both of the rate of the export refund and of the monetary compensatory amount, and an endorsement to the effect that it was valid only in France.

- 4 In view of the fact that Article 16 (3) of Regulation (EEC) No 193/75 of the Commission of 17 January 1975 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products (Official Journal 1975, L 25, p. 10) provided that export certificates issued in a Member State were valid in all the Member States, the German customs official agreed to complete the export formalities.
- 5 However, relying on Article 2 (3) of Regulation No 243/78, which limits the validity of export certificates in which the monetary compensatory amount has been fixed in advance to the Member State designated by the person who applied for them, the competent customs authority, the Hauptzollamt Hamburg-Jonas, granted the monetary compensatory amount and the export refund only at the rate in force at the time of exportation.
- 6 The Finanzgericht Hamburg gave judgment in favour of Krücken in an action which the latter brought against that decision whereupon the Hauptzollamt appealed on point of law to the Bundesfinanzhof, which decided, pursuant to Article 177 of the EEC Treaty, to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:
1. Does it follow from Community law (Article 2 (3) of Commission Regulation (EEC) No 243/78, Article 16 (4) of Regulation (EEC) No 2727/75 of the Council) that the advance fixing of an export refund contained in a licence submitted at the time of export is not applicable for the purposes of determining the export refund applicable to goods exported from a Member State if the licence (which also contains an advance fixing of the monetary compensatory amount) stipulates that it is valid for another Member State?
 2. If so, is it possible in certain circumstances to apply the principle of the protection of legitimate expectations in such a case, with the result that the advance fixing of the export refund should none the less be applied?

- 7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

- 8 In its first question, the Bundesfinanzhof asks whether Article 2 (3) of Regulation No 243/78 and Article 16 (4) of Regulation No 2727/75 must be interpreted as meaning that the advance fixing of the export refund, noted on an export certificate which also has noted on it the advance fixing of the monetary compensatory amount and indicates the Member State in which it is valid, may be applied when the export is effected from a Member State other than that indicated on the certificate.
- 9 It must be borne in mind that pursuant to the third subparagraph of Article 12 (1) of Regulation No 2727/75 of the Council, export certificates are valid throughout the Community. Article 16 (2) provides that the export refund is to be the same throughout the Community and Article 16 (4) provides that the refund is to be applied, in response to a request made when the certificate is applied for, to an export to be effected during the period of validity of the certificate. For its part, Article 16 (3) of Regulation No 193/75 of the Commission provides that certificates and extracts properly issued and entries and endorsements stamped by the authorities of a Member State are to have the same legal effects in each of the other Member States as attach to documents issued and entries and endorsements stamped by the authorities of such Member States.
- 10 Regulation (EEC) No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (Official Journal, English Special Edition 1971 (1), p. 257) authorizes the Member States to grant monetary compensatory amounts for exports of agricultural products to Member States and non-member countries. Article 6 thereof expressly provides that the Commission, when laying down detailed rules for the application of the regulation, may make derogations from the regulations on the common agricultural policy.

- 11 As the fourth recital in the preamble thereto indicates, that regulation was adopted with a view to avoiding disruption of the intervention system laid down by the Community rules and abnormal movements of prices jeopardizing a normal trend of business in agriculture and it confers express powers on the Commission to adopt all measures necessary to ensure correct application of the system of monetary compensatory amounts, derogating, to the extent needed, from the regulations on the common agricultural policy.

- 12 It was in the exercise of those powers that the Commission prescribed, in Article 2 (1) and (3) of Regulation No 243/78, that the monetary compensatory amount may be fixed in advance, at the request of the person concerned, only if the export refund is also fixed in advance for the certificate concerned and that the certificate is to be valid in only one Member State, to be designated by the applicant on submission of the application for advance fixing of the amount.

- 13 The connection established by the Commission between the advance fixing of the monetary compensatory amount and the export refund and the territorial limitation of the validity of the export certificate are justified, as is apparent from the third and fifth recitals in the preamble to Regulation No 243/78, by the need to prevent speculation which might be encouraged by divergent movements of monetary compensatory amounts as between Member States. As the Commission has pointed out, there would be a risk of speculation if, in the case of advance fixing both of the refund and of the monetary compensatory amount, a trader were able to waive the latter, by exporting from a Member State other than that mentioned in the certificate. The advance fixing of the export refund and that of the monetary compensatory amount are linked because the refund fixed in advance in ecu is converted into national currency at the green rate and by application of the monetary coefficient which is itself based on the monetary compensatory amount fixed in advance.

- 14 The mechanism for ensuring the proper operation of the certificate system, comprising the lodging, or proof of the lodging, of a single security to guarantee completion of the whole export operation in accordance with the prescribed conditions, gives a clear indication of the unity of the certificate recording advance fixing both of the monetary compensatory amount and of the refund.

- 15 The certificate records all the relevant details for a given export operation, namely the type, quantity and weight of the product, the holder of the certificate, the period of validity, where appropriate the rate of refund, the compensatory amount and the State of exportation, and must therefore be considered, despite the difference in the terms used in certain of the language versions to describe the measure authorizing exportation and the measure whereby the refund and the monetary compensatory amount are fixed in advance, to be a single administrative document.
- 16 The advance fixing of monetary compensatory amounts and of export refunds was introduced to promote legal certainty in transactions which economic operators must be able to carry out on terms known to them and to give the latter a guarantee of equivalence between the world price on the one hand, and, on the other, not only the Community price but also the national price. The purpose of a comprehensive guarantee of that kind is to protect economic operators from unfavourable developments which were unforeseeable at the time when the contract was concluded, without, however, allowing them, save in exceptional circumstances, to secure a profit from a favourable trend. Whilst economic operators obtain considerable advantages in that way from the system of advance fixing, it is just, in view of the fact that it is necessary for the Commission to prevent any abuse, that they should bear any disadvantages inherent in it (see judgment of 26 June 1980 in Case 808/79 *Pardini* [1980] ECR 2103).
- 17 It is thus apparent from the whole system of export certificates and advance fixing for agricultural products that the export certificate properly so called, the advance fixing of the export refund and that of the monetary compensatory amount cannot be separated from each other but, from the legal standpoint, form a single unit. All the entries on the single administrative document issued to the economic operator by the national issuing authority thus form an integral part of it and are binding on the economic operator; the latter may not therefore, to suit his own convenience, waive one and avail himself only of the others.
- 18 It must therefore be stated in reply to the first question that Article 2 (3) of Regulation (EEC) No 243/78 and Article 16 (4) of Regulation (EEC) No 2727/75 must be interpreted as meaning that the advance fixing of the export refund noted on an export certificate in which the monetary compensatory amount is also fixed in advance cannot be applied where the goods are exported from a Member State other than that specified in the certificate.

The second question

- 19 In its second question the national court asks essentially whether the national authority responsible for applying the system of export refunds within the common organization of the agricultural markets is bound to observe the principle of the protection of legitimate expectations and whether that principle imposes upon it, in a case such as this one, the obligation to grant the export refund in the amount fixed in advance.
- 20 That question is submitted having regard to the factual circumstances of the main proceedings, in so far as the customs official concerned agreed to the export of the goods on the basis of the export certificate despite the limitation of its territorial validity.
- 21 Krücken claims that as a result it could legitimately expect the customs authorities to accept the export certificate as valid in all respects and to agree to pay the export refund at the amount shown thereon.
- 22 It should be borne in mind that the principle of the protection of legitimate expectations forms part of Community law (see judgment of 3 May 1978 in Case 112/77 *Töpfer* [1978] ECR 1019) and that all national authorities responsible for applying Community law are bound to observe the general principles of Community law (see judgment of 27 September 1979 in Case 230/78 *Eridania* [1979] ECR 2749). Consequently, the national authority responsible for applying the system of export refunds within the common organization of the agricultural markets is required to observe the principle of the protection of the legitimate expectations of economic operators.
- 23 However, the Court has held that a wrongful act on the part of the Commission or its officials, and likewise a practice of a Member State which does not conform with Community rules, is not capable of giving rise to legitimate expectations on the part of an economic operator who benefits from the situation thereby created (see judgments of 16 November 1983 in Case 188/82 *Thyssen* [1983] ECR 3721 and of 15 December 1982 in Case 5/82 *Maizena* [1982] ECR 4601).

- 24 It follows that the principle of the protection of legitimate expectations cannot be relied upon against a precise provision of Community law and that the conduct of a national authority responsible for applying Community law, which acts in breach of that law, cannot give rise to legitimate expectations on the part of an economic operator that he will benefit from treatment which is contrary to Community law.
- 25 In the case of an export certificate recording the advance fixing of the export refund and of the monetary compensatory amount and expressly indicating that it is valid in only one Member State, the completion of the export formalities by the customs authorities of another Member State cannot give rise to legitimate expectations on the part of the exporter that the export refund will be granted in the amount fixed in advance, in breach of Article 2 (3) of Regulation No 243/78.
- 26 It must therefore be stated in reply to the second question that the national authority responsible for applying the system of export refunds within the framework of the common organization of the agricultural markets is required to observe the principle of the protection of legitimate expectations. However, in the case of an export certificate recording the advance fixing of the export refund and of the monetary compensatory amount and expressly stating that it is valid in only one Member State, the completion of the export formalities by the customs authorities of another Member State cannot give rise to legitimate expectations on the part of the exporter that he will be granted the export refund in the amount fixed in advance, in breach of Article 2 (3) of Regulation (EEC) No 243/78.

Costs

- 27 The costs incurred by the Commission of the European Communities which has submitted observations to the Court are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings 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,

THE COURT (Fifth Chamber)

in answer to the questions submitted to it by the Bundesfinanzhof by order of 29 October 1986, hereby rules:

- (1) Article 2 (3) of Regulation (EEC) No 243/78 and Article 16 (4) of Regulation (EEC) No 2727/75 must be interpreted as meaning that the advance fixing of the export refund noted on an export certificate in which the monetary compensatory amount is also fixed in advance cannot be applied where the goods are exported from a Member State other than that specified in the certificate.
- (2) The national authority responsible for applying the system of export refunds within the framework of the common organization of the agricultural markets is required to observe the principle of the protection of legitimate expectations. However, in the case of an export certificate recording the advance fixing of the export refund and of the monetary compensatory amount and expressly stating that it is valid in only one Member State, the completion of the export formalities by the customs authorities of another Member State cannot give rise to legitimate expectations on the part of the exporter that he will be granted the export refund in the amount fixed in advance, in breach of Article 2 (3) of Regulation (EEC) No 243/78.

Bosco

Everling

Galmot

Joliet

Schockweiler

Delivered in open court in Luxembourg on 26 April 1988.

J.-G. Giraud

G. Bosco

Registrar

President of the Fifth Chamber