

JUDGMENT OF THE COURT (Sixth Chamber)
25 November 1986 *

In Case 218/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the tribunal de grande instance [Regional Court], Saint-Brieuc, for a preliminary ruling in the proceedings pending before that court between

Association comité économique agricole régional fruits et légumes de Bretagne
[Regional agricultural committee for fruit and vegetables of Brittany]

and

A. Le Champion,

on the interpretation of Article 85 (1) of the EEC Treaty

THE COURT (Sixth Chamber)

composed of: C. Kakouris, President of the Chamber, T. F. O'Higgins,
T. Koopmans, K. Bahlmann and G. C. Rodríguez Iglesias, Judges,

Advocate General: G. F. Mancini

Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

the Association comité économique agricole régional fruits et légumes de Bretagne, the plaintiff in the main proceedings, represented by E. Copper-Royer, of the Paris Bar,

Mr Le Champion, the defendant in the main proceedings, represented in the written procedure by D. Couteau, of the Saint-Brieuc Bar, and in the oral procedure by D. Morin-Lardoux,

* Language of the case: French.

the Government of the French Republic, represented in the written procedure by Régis de Gouttes, acting as Agent, and in the oral procedure by B. Botte,

the Commission of the European Communities, represented by its Legal Advisers, Jean-Claude Séché and Giuliano Marengo, acting as Agents,

having regard to the Report for the Hearing and further to the hearing on 11 June 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 7 October 1986,

gives the following

JUDGMENT

1 By judgment of 2 July 1985, which was received at the Court on 17 July 1985, the tribunal de grande instance [Regional Court], Saint-Brieuc, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the provisions of the Treaty on free competition, in particular Article 85 (1).

2 That question was raised in the course of proceedings between the Association comité économique agricole régional fruits et légumes de Bretagne, (hereinafter referred to as 'Cerafel') and Albert Le Campion, a farmer at Pléhédél in Brittany, who is not a member of that association, concerning his refusal to comply with the obligations resulting from the extension of rules adopted by the association to farmers who are not members.

3 In France, Law No 62-933 of 8 August 1962, referred to as the 'Supplementary Law on Agricultural Policy' (Official Journal of the French Republic of 10 August 1962, p. 7962), provides that producers' groups recognized by the Minister for Agriculture may join together to form a 'comité économique agricole' [agricultural marketing committee] in a particular region and for specific products. Marketing committees able to show that they have satisfactory experience of the regulation of certain matters may ask the Minister for Agriculture to order that the rules

accepted by their members with regard to the organization of production, the promotion of sales and the marketing of products be made compulsory for all producers in the region in question. The extension of all or part of such rules is effected by ministerial order for renewable periods of three years. Such an order may authorize a marketing committee to require producers who are not members to contribute to the financing of its activities, by imposing levies calculated by reference to the value of products or the area under cultivation, or both.

- 4 Pursuant to that Law, two inter-ministerial orders of 27 July 1966 (Official Journal of the French Republic of 29 July 1966, p. 6538) extended certain rules laid down by Cerafel to all producers of cauliflowers, artichokes and new potatoes in the Brittany region. Those rules concern mainly the provision of an annual declaration of the area under cultivation, by product and by variety; compliance with rules on grading, size, weight and presentation; the obligation for producers to offer their entire crop for public sale at markets approved by Cerafel; the obligation to pay a levy fixed by Cerafel for each period in which withdrawals are made, in order to finance the market support fund; and contributions to a special fund for the promotion of sales of the products concerned, by publicity and advertising campaigns.

- 5 Mr Le Champion, a cauliflower producer, refused to comply with Cerafel's demands that he provide a declaration of the area cultivated by him and pay a levy calculated on the basis of the area declared. The main proceedings concern the payment of levies for 1981 and 1982. Mr Le Champion argued that the extension of the rules established by an agricultural marketing committee to all producers in the region was contrary to the regulations on the common organization of the markets and to the 'open market' principle provided for in Article 85 *et seq.* of the EEC Treaty.

- 6 The national court considered that the proceedings thus raised a problem of interpretation of Community law; it therefore stayed the proceedings and asked the Court to rule on the following question:

'Is an agricultural marketing committee which has been established in order to harmonize the production, marketing and price of a product and to implement common rules for putting it on the market permitted, by way of exception to the rules on free competition laid down by Article 85 (1) of the Treaty establishing the European Economic Community, to extend to all producers in the country or region in question the rules accepted by its members?'

7 As it is phrased, the question refers to the extension of rules laid down by a producers' organization to all the producers of certain products in a specific region, whatever the products concerned and whether or not they are subject to a common organization of the market. However, the main proceedings concern the extension of rules regarding the production of cauliflowers, which are subject to the common organization of the market in fruit and vegetables governed by Council Regulation No 1035/72 of 18 May 1972 (Official Journal, English Special Edition 1972 (II), p. 437).

8 Consequently, the Court considers that, with a view to providing a helpful reply to the national court, the question put must be regarded as seeking to ascertain whether, in the sector of fruit and vegetables subject to the common organization of the market, the extension of rules laid down by a producers' organization to all the producers in a specific region is contrary to Community law.

9 The Commission has pointed out that examples exist in Community law of the extension of such rules to non-members and that in the area of fruit and vegetables such an extension was made possible in principle by Council Regulation No 3284/83 of 14 November 1983 amending Regulation No 1035/72 (Official Journal 1983, L 325, p. 1); the latter is the basic regulation in the fruit and vegetable sector. However, under Council Regulation No 1489/84 of 15 May 1984 (Official Journal 1984, L 143, p. 31) that extension system was not applicable until 1 April 1985. For certain products, including cauliflowers, the date of application was deferred until 1 October 1985 by Council Regulation No 1977/85 of 16 July 1985 (Official Journal 1985, L 186, p. 2).

- 10 Since the facts in issue took place prior to that date, the question raised must be examined on the basis of Regulation No 1035/72 as it stood before it was amended by Regulation No 3284/83.
- 11 It should be pointed out first of all that in its judgment of 13 December 1983 (Case 222/82 *Apple and Pear Development Council v Lewis* [1983] ECR 4083), the Court held that national legislation requiring producers of fruit and vegetables to become members of an organization established for the promotion of production and sales of those products cannot be regarded as incompatible with Regulation No 1035/72 unless the activities of that organization are themselves contrary to that regulation. That finding referred to the situation of a producer who was required to become a member of a producers' organization, but it is equally applicable in a situation such as this, where the authorities have extended to non-members the obligation to comply with rules laid down by a producers' organization and to contribute to the financing of its activities.
- 12 It must also be pointed out that Regulation No 1035/72 includes a number of provisions regarding producers' organizations and the activities which they may engage in with regard to intervention on the market. In so far as those provisions are intended to establish an exhaustive scheme of regulation, the Member States no longer have any power to add supplementary regulations, for example by extending to non-members rules which under Regulation No 1035/72 concern only the members of producers' organizations.
- 13 In order to reply to the question raised by the national court it is therefore necessary to ascertain whether and to what extent Regulation No 1035/72 precludes the extension of rules established by producers' organizations to producers who are not members, either because the extension of those rules affects a matter with which the common organization of the market has dealt exhaustively or because the rules so extended are contrary to the provisions of Community law or interfere with the proper functioning of the common organization of the market.

- 14 Regulation No 1035/72 established a Community scheme of quality standards which must be met by products to which the regulation applies. According to the preamble to the regulation, that scheme is intended, by the adoption of common quality standards, to keep products of unsatisfactory quality off the market and guide production to meet consumers' requirements.
- 15 As the Court held in its judgment of 13 December 1983, referred to above, that system of common quality standards is exhaustive in nature. There are Community procedures for adopting the standards in question, and when such norms have been adopted the products to which they apply may not be displayed or offered for sale, sold, delivered or marketed in any other manner unless they conform to the standards, subject to exceptions provided for in Regulation No 1035/72.
- 16 In the light of the exhaustive nature of the Community system of quality standards, rules on grading, size, weight and presentation laid down by producers' organizations for products to which Regulation No 1035/72 applies cannot be made compulsory for producers who are not members, since such an extension is not provided for by the relevant provisions of Community law.
- 17 The inter-ministerial orders referred to in the judgment of the national court also extended to non-member producers the obligation to offer their entire crop for public sale exclusively at markets approved by Cerafel and to contribute to the operation of the withdrawal price scheme.
- 18 The common organization of the market in this sector is characterized by two levels of intervention. First of all, under Article 15 of Regulation No 1035/72, producers' groups may fix for certain products a withdrawal price below which they will not offer for sale products supplied by their members. By withdrawing products producers' organizations are able to stabilize prices; in certain circum-

stances, financial compensation may be granted to cover the costs of withdrawal. Secondly, Article 19 of that regulation establishes intervention measures for certain products, including cauliflowers, applicable to all producers. Intervention under that article may, however, take place only where the Commission has found that the market in question is in a state of serious crisis; once such a finding has been made the Member States must, through the intervention agencies, buy in products which satisfy Community quality standards and have not yet been withdrawn from the market by producers' groups under Article 15, at prices determined under Community rules.

- 19 It may be concluded from that summary that Regulation No 1035/72 establishes an exhaustive body of rules governing the matter, and makes a very clear distinction between the intervention mechanisms which may be initiated by producers' groups and those which are applicable to all producers. Consequently, a Member State has no power to extend to all producers the intervention rules laid down by producers' organizations.
- 20 Furthermore, examination of Regulation No 1035/72 shows that the main objective of the common organization of the market in the fruit and vegetable sector is the standardization of production by the application of common quality standards, and that although it provides for certain limited intervention mechanisms, it is based on the principle of an open market, that is to say a market to which every producer has free access and whose operation is regulated only by the measures provided for by the common organization. Consequently, a requirement that a producer should offer his entire crop for public sale exclusively at markets approved by a producers' organization such as Cerafel cannot be extended to producers who are not members of that organization.
- 21 It should be added that, as Cerafel has correctly observed, the extension of rules providing for an annual declaration of areas cultivated, also referred to by the national court, concerns the gathering of information that may serve as the basis for research to promote improved quality and sales of fruit and vegetables. Such a rule is not contrary to the common organization of the market, which contains no

relevant provision; its application to non-member producers may result in benefits for all producers in the region.

22 With regard to the requirement that non-members should contribute to the financing of funds established by a producers' organization, the Court has already held that such a requirement is unlawful in so far as it serves to finance activities which are themselves held to be contrary to Community law. It is for the national court, therefore, to determine what part of the financial contribution required from non-members serves to finance such activities.

23 It follows from the foregoing that the answer to the question referred by the tribunal de grande instance, Saint-Brieuc, must be that on a true construction, Regulation No 1035/72 leaves Member States no power to extend rules laid down by a producers' organization to all the producers in a specified region where those rules concern the grading, size, weight and presentation of products or require producers to offer all their products for public sale exclusively at markets approved by the producers' organization and to make contributions to the operation of the withdrawal scheme established by that organization.

24 In the light of that reply, it is no longer necessary to consider whether or not the extension of certain rules to producers who are not members of the organization in question is compatible with Article 85 of the Treaty.

Costs

25 The costs incurred by the Government of the French Republic and by the Commission of the European Communities, which have 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 as to costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber)

in answer to the questions referred to it by the tribunal de grande instance, Saint-Brieuc, by a judgment of 2 July 1985, hereby rules:

On a true construction, Regulation No 1035/72 leaves Member States no power to extend rules laid down by a producers' organization to all the producers in a specified region where those rules concern the grading, size, weight and presentation of products or require producers to offer all their products for public sale exclusively at markets approved by the producers' organization and to make contributions to the operation of the withdrawal scheme established by that organization.

Kakouris

O'Higgins

Koopmans

Bahlmann

Rodríguez Iglesias

Delivered in open court in Luxembourg on 25 November 1986.

P. Heim

Registrar

C. Kakouris

President of the Sixth Chamber