OPINION OF MR ADVOCATE GENERAL TESAURO

delivered on 7 March 1990 *

Mr President,
Members of the Court,

1. In the present preliminary-ruling proceedings the national court has asked the Court of Justice to give a ruling as to the validity of the arrangements for the collection of the additional co-responsibility levy in the cereals sector provided for by Article 4b of Regulation (EEC) No 2727/75 of the Council, as amended by Council Regulation (EEC) No 1097/88 of 25 April 1988, [1] and by Commission Regulation (EEC) No 1432/88 of 26 May 1988. [2]

I refer the Court to the Report for the Hearing for further details but would nevertheless mention that by virtue of the regulations just indicated the levy must be paid when the cereals are marketed; then, at the end of the marketing year, it is determined whether or not total cereals production exceeded (and if so, by how much) the prescribed ceiling (the 'maximum guaranteed quantity'). If production has remained within that limit, the levy is reimbursed in full; if it has slightly exceeded it, a partial reimbursement is possible.

The dispute in the present proceedings derives from the fact that payment of the whole levy is required (subject to possible reimbursement) as soon as the cereals are marketed and not at the later stage upon determination that the maximum guaranteed quantity has been exceeded. That method of collection is, it is claimed, illegal for two reasons: in the first place because a financial contribution is exacted before the obligation to which it relates has arisen (the obligation, it is contended, crystallizes only when it is found that the maximum guaranteed quantity has been exceeded); secondly, that method of advance collection of the levy infringes the principle of proportionality in so far as other options could be envisaged (in particular a system of bank guarantees) which, whilst still ensuring due payment of the levy, would be less onerous for producers.

2. With regard to the first point, it should be noted that the parties have advanced differing views as to the precise *operative event* that triggers the obligation to pay the levy. For their part, the Council and the Commission contend that that event is the placing of the cereals on the market; conversely, the plaintiff in the main proceedings and the Italian Government claim that the obligation to pay the levy arises and crystallizes only when it is ascertained that the maximum guaranteed quantity has been exceeded. From these premisses the parties arrive at differing conclusions as to the lawfulness of the collection method at issue. The institutions, contending that the obligation arises when the cereals are placed on the market, consider it wholly justified that fulfilment of

* Original language: Italian.

1 — OJ 1988, L 110, p. 7,

2 — OJ 1988, L 131, p. 37.

it should be required forthwith; the opposing view, on the other hand, is that to require payment when it is not known whether — or to what extent — payment is due is clearly unlawful, particularly in view of the principles on which rules governing compulsory financial contributions are ordinarily based.

3. However, it seems to me that the latter view is based — at least, the written observations give that impression — on a classification of the levy as a fiscal contribution, a classification which appears unjustified. On more than one occasion the Court has rejected such a view: it has stated that co-responsibility levies, although financial in one respect in so far as they help to lighten the burden of the EAGGF budget, are none the less agricultural-policy measures, being instruments whose essential purpose is to stabilize markets in which there is a structural surplus. Precisely for that reason it seems to me to be inappropriate to assess the legality of the levy or, as in the present case, of the procedure by which it is collected by reference to criteria — and, moreover, purely abstract criteria — taken from the field of tax law; on the contrary, I consider that the measure should be appraised having regard to the rules and principles which govern the exercise of the Community institutions' legislative powers in implementing the agricultural policy.

4. That having been said, I must observe that in any case the institutions' view that the event giving rise to the obligation to pay the levy is the placing of the products on the market seems to me to be better founded, having regard to the wording and the logic of the relevant provisions as a whole. In the first place, Article 2(1) of Regulation No 1432/88 expressly describes placing on the market as the 'operative event' for the levy. Furthermore, it seems to me that the applicable regulations draw a clear distinction between the obligation to pay the levy, which arises immediately, when the cereals are placed on the market, and the subsequent, contingent right to reimbursement, the existence and extent of which depend on a finding that the maximum guaranteed quantity was not exceeded. Such a finding, therefore, is seen to be the pre-condition for a refund (total or partial) of the sums paid rather than for the establishment of the obligation to pay the levy.

5. In any event it seems to me that in the final analysis those differences of view, which concern matters purely of legal formality, are not such as to affect the outcome of the present dispute. Even if the thesis propounded by the plaintiff in the main proceedings were to be upheld, and if therefore the obligation were to be regarded as coming into being only when the ceiling was found to have been exceeded, it would not automatically follow that the method of collecting the levy was unlawful. Indeed, it is not unusual, even under national tax laws, for advance collection to be prescribed in certain circumstances even though the obligation to which the sums payable relate has not yet arisen. This occurs for example in all cases where an amount is withheld or is collected on an interim basis in respect of income which has not yet been generated or ascertained.

A provision imposing advance collection, that is to say before the actual circumstances in respect of which the tax is charged have arisen, is not to be regarded as inherently unlawful. However, it will be necessary to

establish whether that approach is objectively justified and whether, in particular, its result is to impose burdens on the payer which, being disproportionate to the aim pursued, are unreasonable.

It therefore seems to me, in fact, that the first ground relied on for the allegation of invalidity in these proceedings is essentially subsumed into the second, namely the contention that the procedure for collection of the levy breaches the principle of proportionality.

6. In that connection, it will be recalled that the Court has several times stressed that the Community legislature has a wide discretion in choosing the measures to be adopted for implementation of the agricultural policy. It has also emphasized that as a result of that discretion the Court's review can be carried out only within the limits of a strict appraisal of legality. It follows that a measure may be held to be invalid only if it is manifestly not proportionate to the aim pursued. [3]

I do not consider that that discretion relates only to the type of measure to be adopted; on the contrary, I think that it extends — indeed, *a fortiori* it must extend — to the choice of the arrangements for applying the measure in question.

Thus, in the present case, it cannot be concluded that the institutions were entitled only to prescribe that, for the purpose of containing supply, it was appropriate to give priority to the instrument of the co-responsibility levy rather than other options, such as reduction of intervention prices or the imposition of production quotas. Once one of those instruments has been chosen, it must be inferred that the institutions are also free to choose how to apply it and, in the case of a levy, to decide whether it is better to require it to be paid when the goods are placed on the market or later, or to take some other course.

Therefore, it will only be possible for the Court to consider whether the procedure chosen for collection of the levy in this case is wholly inappropriate to the objective sought to be attained.

7. It has been contended that immediate payment of the levy is unnecessary to ensure its due collection: other means, such as a system based on sureties or guarantees, would be suitable and would involve lesser sacrifices for farmers.

However, it seems to me that that argument is defective because it ignores the fact that the instrument at issue here is not designed to achieve a fiscal objective (the raising of funds) but pursues a specific economic-policy objective.

As has been pointed out, the levy is an instrument intended to control supply on a market in which there is a structural surplus: by triggering a reduction in the intervention price it acts as a disincentive to production.

3 — See judgment of 11 July 1989 in Case 265/87 *Schräder* [1989] ECR 2237, paragraph 21 *et seq.* and the decisions referred to in my Opinion in that case.

It is obvious that that function can be more effectively discharged if the signal given to producers is sufficiently immediate and forceful. That is why it was decided to require payment as soon as the cereals are placed on the market, in other words as soon as the price is paid to the farmer. Conversely, a system of sureties or guarantees, which does not have the same direct effects on prices, would, precisely because it entails lesser burdens, have less impact on the results and therefore would be less appropriate to the objective to be achieved, namely containment of the supply of cereals.

To put it another way, whilst the suggested system of guarantees would be sufficient to achieve the objective of ensuring due payment of the levy, it would not be conducive, to the same extent, to the objective — which is the specific objective of the measure at issue — of bringing direct pressure to bear on prices in order to discourage production.

8. Consequently, it must be concluded that immediate collection of the levy is entirely consonant with the intended function of the measure and does not therefore infringe the principle of proportionality.

9. In view of the foregoing considerations, I consider that the following answer should be given to the national court:

'Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Article 4b of Regulation (EEC) No 2727/75 of the Council (as amended by Council Regulation (EEC) No 1097/88) or of Commission Regulation (EEC) No 1432/88.'