

JUDGMENT OF THE COURT (Fifth Chamber)

26 June 1990 *

In Case C-8/89

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura (Magistrate's Court), Copparo, Italy, for a preliminary ruling in the proceedings pending before that court between

Vincenzo Zardi

and

Consorzio agrario provinciale di Ferrara

on the validity of Article 4b of Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals, as amended by Council Regulation (EEC) No 1097/88 of 25 April 1988 (Official Journal 1988, L 110, p. 7) and Commission Regulation (EEC) No 1432/88 of 26 May 1988 laying down detailed rules for applying the co-responsibility levy in the cereals sector (Official Journal 1988, L 131, p. 37),

THE COURT (Fifth Chamber)

composed of: Sir Gordon Slynn, President of Chamber, M. Zuleeg, R. Joliet, J. C. Moitinho de Almeida and F. Grévisse, Judges,

Advocate General: G. Tesouro

Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

Mr Zardi, by Emilio Cappelli and Paolo De Caterini, of the Rome Bar,

the Italian Government, by Ivo Braguglia, avvocato dello Stato, acting as Agent,

* Language of the case: Italian.

the Council of the European Communities, by Arthur Brautigam and Guus Houttuin, Principal Administrator and Administrator respectively in the Council's Legal Department, acting as Agents,

the Commission of the European Communities, represented by its Legal Adviser Alberto Prozzillo, acting as Agent,

having regard to the Report for the Hearing,

after hearing oral argument presented by Mr Zardi by Emilio Cappelli, of the Rome Bar, for the Italian Government, by Ivo Braguglia, avvocato dello Stato, for the Council, by Arthur Brautigam, acting as Agent, assisted by Mrs Zilioli, Adviser, and for the Commission, by D. Booss and E. De March, acting as Agents, at the hearing on 10 January 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 7 March 1990,

gives the following

Judgment

- 1 By order of 14 December 1988, which was received at the Court Registry on 12 January 1989, the Pretura di Copparo referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the validity of Article 4b of Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals, as amended by Regulation (EEC) No 1097/88 of 25 April 1988 (Official Journal 1988, L 110, p. 7) and Commission Regulation (EEC) No 1432/88 of 26 May 1988 laying down detailed rules for applying the co-responsibility levy in the cereals sector (Official Journal 1988, L 131, p. 37).
- 2 The question was raised in proceedings brought by Vincenzo Zardi, a farmer of Copparo, Italy, against Consorzio agrario provinciale di Ferrara. The latter had withheld from the sale price of a consignment of 1 186.42 quintals of maize which it had purchased from Mr Zardi LIT 1 019 372 in respect of the additional co-responsibility levy in the cereals sector.

3 Mr Zardi's action before the Pretura di Copparo is for an order that the Consorzio agrario provinciale di Ferrara repay him the sum withheld on the ground that the rules for the collection of the levy are contrary to the fundamental principles of proportionality and equality of treatment.

4 In those circumstances, the Pretura di Copparo stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Are Article 4b of Regulation (EEC) No 2727/75 on the common organization of the market in cereals, introduced by Article 1 of Council Regulation (EEC) No 1097/88 of 25 April 1988, and Commission Regulation (EEC) No 1432/88 of 26 May 1988 valid on the basis of the principle of proportionality, in so far as they require cereal producers to pay the additional co-responsibility levy, in its entirety, when the product is placed on the market, before the happening of the event constituted by the exceeding of the maximum guaranteed quantity fixed by the Community institutions and regardless of whether that event may actually happen, wholly or in part?'

5 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the relevant Community provisions, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

6 Article 4b of Regulation No 2727/75 of the Council of 29 October 1975, as amended by Council Regulation No 1097/88 of 25 April 1988, provides essentially that when prices are fixed the Council is to determine, for a period of three marketing years, a maximum guaranteed quantity for all the cereals concerned. An additional co-responsibility levy equal to 3% of the intervention price applicable to common wheat is to be collected from producers for all quantities of cereals placed on the market during the marketing year in question. The additional levy is to be reimbursed to the producer in full if cereal production in the marketing year in question is equal to or less than the maximum guaranteed quantity; it is to be partially reimbursed if the maximum guaranteed quantity is exceeded by less than 3%. Conversely, no reimbursement is to be made if the maximum guaranteed quantity is exceeded by more than 3%.

- 7 Commission Regulation No 1432/88 of 26 May 1988 lays down detailed rules for applying the co-responsibility levy, in particular in relation to the operative event, the collection and the reimbursement of the levy.

- 8 It is apparent from the grounds of the order from the national court and the oral argument presented before the Court of Justice that there are two limbs to the question submitted. In the first place, the national court asks whether the Community provisions may lawfully impose on the operators concerned a pecuniary charge of the full amount of the additional co-responsibility levy even before the applicability and amount of the levy are definitively ascertained. In the second place, the national court asks whether the abovementioned provisions, imposing as they do a pecuniary charge as soon as the cereals are placed on the market, infringe the principle of proportionality.

- 9 It must be emphasized, with respect to the first limb of the question, that the additional co-responsibility levy cannot be classified as a fiscal charge. On the contrary, it is an agricultural-policy measure intended to stem and prevent growth in the cereals market, which is characterized by structural surpluses, by bringing direct pressure to bear on the prices paid to cereals producers. It is therefore inappropriate to appraise the legality of the levy by reference to criteria taken from tax law. Moreover, even in national tax regimes, the advance collection of pecuniary charges is permissible. In the present case, the requirement that the levy is to be provisionally collected when the cereals are placed on the market, subject to partial or total reimbursement thereof in the event of its being ascertained at the end of the relevant marketing year that the maximum guaranteed quantity has not been exceeded or has been exceeded by less than a specified percentage, is justified by the economic objective pursued by the Community regulation.

- 10 It should be borne in mind, with respect to the second limb of the question, that the principle of proportionality mentioned by the national court has been consistently held by the Court to be one of the general principles of Community law. By virtue of that principle, the legality of measures imposing financial burdens on economic operators is conditional upon those measures being appropriate to and necessary for the attainment of objectives legitimately pursued by the rules in question, provided however that, where there is a choice between several appro-

priate measures, the least onerous measure must be used and care must be taken to ensure that the charges imposed are not disproportionate to the aims pursued (see judgment in Case 265/87 *Schröder* [1989] ECR 2237).

As regards review by the Court of the abovementioned conditions it must nevertheless be pointed out that the Community legislature enjoys a wide discretion in relation to the common agricultural policy, reflecting the political responsibilities conferred on it by Articles 40 and 43 of the Treaty.

In the present case the plaintiff in the main proceedings and the Italian Government maintain that it was unnecessary to require payment as soon as the cereals were placed on the market. Other possibilities, such as guarantees or sureties would in their view have ensured payment, but without requiring payment until it had been ascertained that the maximum guaranteed quantity had been exceeded.

It must again be pointed out that the collection of an additional co-responsibility levy when the cereals are placed on the market is likely, by reducing the price paid to producers, to persuade producers not to increase production during the marketing years in question if they wish, at the end of each marketing year, to secure reimbursement of the levy. There is no evidence before the Court to indicate that the Community legislature committed any manifest error of assessment in rejecting options other than that of the levy which, by reason of their lesser impact on the prices paid to the producers, would not have had the same dissuasive effect. That conclusion is corroborated by the fact, to which the Commission drew attention, that a system of guarantees or sureties would have entailed administrative difficulties and substantial fixed administrative costs.

It must therefore be stated in reply to the question submitted by the national court that 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 of 29 October 1975 on the common organization of the market in cereals, as amended by Council Regulation (EEC) No 1097/88 of 25 April 1988 or of Commission Regulation (EEC) No 1432/88 of 26 May 1988 laying down detailed rules for applying the co-responsibility levy in the cereals sector.

Costs

- 15 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As 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 reply to the question submitted to it by the Pretura di Copparo, by order of 14 December 1988, hereby rules:

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 of 29 October 1975 on the common organization of the market in cereals, as amended by Council Regulation (EEC) No 1097/88 of 25 April 1988 or of Commission Regulation (EEC) No 1432/88 of 26 May 1988 laying down detailed rules for applying the co-responsibility levy in the cereals sector.

Slynn

Zuleeg

Joliet

Moitinho de Almeida

Grévisse

Delivered in open court in Luxembourg on 26 June 1990.

J.-G. Giraud

Registrar

Gordon Slynn

President of the Fifth Chamber