

JUDGMENT OF THE COURT (Fifth Chamber)
11 July 1989*

In Case 265/87

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

Hermann Schröder HS Kraftfutter GmbH & Co. KG, Ochtrup (Federal Republic of Germany)

and

Hauptzollamt Gronau,

on the validity of Council Regulation (EEC) No 1579/86 of 23 May 1986 amending Regulation (EEC) No 2727/75 on the common organization of the market in cereals (Official Journal 1986, L 139, p. 29) and of Commission Regulation (EEC) No 2040/86 of 30 June 1986 laying down detailed rules for the application of the co-responsibility levy in the cereals sector (Official Journal 1986, L 173, p. 65),

THE COURT (Fifth Chamber)

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

Advocate General: G. Tesaurò
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

Schröder GmbH & Co. KG, by V. Schiller, of the Cologne Bar;

* Language of the case: German

the United Kingdom, by H. R. L. Purse, of the Treasury Solicitor's Department, in the written procedure, and by S. J. Hay and M. A. Blythe, Barrister, at the hearing;

the Council of the European Communities, by A. Brautigam, Principal Administrator of the Council's Legal Department, assisted by C. Mavrakos, also a member of the Council's Legal Department, acting as Agents;

the Commission of the European Communities, by its Legal Adviser, D. Booss, acting as Agent;

having regard to the Report for the Hearing and further to the hearing on 1 March 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 20 April 1989,

gives the following

Judgment

- 1 By order of 22 July 1987, which was received at the Court on 1 September 1987, the Finanzgericht Düsseldorf referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the validity of Council Regulation (EEC) No 1579/86 of 23 May 1986 amending Regulation (EEC) No 2727/75 on the common organization of the market in cereals (Official Journal 1986, L 139, p. 29) and of Commission Regulation (EEC) No 2040/86 of 30 June 1986 laying down detailed rules for the application of the co-responsibility levy in the cereals sector (Official Journal 1986, L 173, p. 65).
- 2 That question arose in proceedings between Hermann Schröder HS Kraftfutter GmbH and Co. KG ('Schröder'), an undertaking which trades in processed cereals, and the Hauptzollamt (Principal Customs Office) Gronau. Schröder declared, for January 1987, 3 836 651 tonnes of processed cereals for which it calculated a sum of DM 49 492.80 by way of co-responsibility levy in the cereals sector was due.

3 By its action before the Finanzgericht Düsseldorf, Schräder claims that the collection of the levy is unlawful because the Community rules in question are invalid. The levy is in the nature of a charge and ought therefore to have been introduced on the basis not only of Article 43 but also of Article 201 of the Treaty. Moreover, the collection of the levy breaches fundamental rights enshrined in Community law, in particular the right to property and the freedom to pursue an occupation or business. Schräder also alleges that the principle of proportionality has been infringed and claims that the levy produces distortions of competition as between cereals producers and as between manufacturers of animal feedstuffs, thereby infringing the prohibition of discrimination laid down by Article 40(3) of the Treaty.

4 It was in order to be able to assess those arguments that the Finanzgericht Düsseldorf decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Are Council Regulation (EEC) No 1579/86 of 23 May 1986 (Official Journal 1986, L 139, p. 29) amending Regulation (EEC) No 2727/75 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1) and Commission Regulation (EEC) No 2040/86 of 30 June 1986 laying down detailed rules for the application of the co-responsibility levy in the cereals sector (Official Journal 1986, L 173, p. 65) valid?'

5 Having regard to the documents before the Court, that question must be understood as referring to the validity of Council Regulation No 1579/86 of 23 May 1986, cited above, and of Commission Regulation No 2040/86 of 30 June 1986, cited above, as amended by Commission Regulation No 2572/86 of 12 August 1986 (Official Journal 1986, L 229, p. 25).

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the provisions of Community law at issue, the course of the proceedings and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The legal basis of the regulations

- 7 In its submissions to the Court, Schröder maintains, first of all, that Article 43 of the Treaty cannot be a valid basis for Council Regulation No 1579/86. It claims that the co-responsibility levy is in reality a financial charge and should therefore have been introduced in accordance with the procedure laid down by Article 201 of the Treaty. That interpretation is based both on the fact that the levy is payable by the cereals processors, who are not responsible for the surplus cereal production, and on the high amount of the levy. That interpretation is, in Schröder's opinion, also consistent with Council Decision No 70/243 of 21 April 1970 on the replacement of financial contributions from Member States by the Community's own resources (Official Journal, English Special Edition 1970 (I), p. 224), which, in the second paragraph of Article 2, refers to revenue accruing from other charges introduced within the framework of a common policy.
- 8 The United Kingdom, the Council and the Commission claim that those arguments are unfounded. In their view, the purpose of the co-responsibility levy is, in accordance with Article 39(1)(c) of the Treaty, to stabilize the cereals market by restricting cereal production by means of a reduction in the price obtained by the producer, which is equivalent to a reduction in the intervention price. It therefore constitutes an intervention measure and not a financial charge.
- 9 The latter interpretation must be accepted. The co-responsibility levy in the cereals sector seeks to contribute to stabilizing the market in cereals by restricting growth on that market which is characterized by structural surpluses. Its role is therefore comparable to the role of the other intervention measures provided for by the common organization of the market in cereals, as is clear from Article 4(4) of Regulation No 2727/75, as modified by Regulation No 1579/86, which provides that the levy 'shall be regarded as one of the intervention measures designed to stabilize agricultural markets...'. Such a measure comes within the scope of Articles 39 and 40 of the Treaty, and consequently Article 43 of the Treaty is an appropriate and adequate legal basis for it, regardless of the amount of the levy.
- 10 The fact that the co-responsibility levy has a financial aspect, inasmuch as it contributes to limiting the costs of operating the market mechanisms in the cereals sector, is not a reason to base the regulations at issue also on Article 201 of the

Treaty. As the Council and the Commission rightly point out, Article 201 concerns only revenue which is intended to finance the Community's general budget, to the exclusion of agricultural charges which apply in a specific agricultural sector and are allocated to the financing of costs in that sector alone.

- 11 That interpretation is not affected by the second paragraph of Article 2 of Council Decision No 70/243 of 21 April 1970, cited above, which provides that 'revenue accruing from other charges introduced within the framework of a common policy in accordance with the provisions of the Treaty establishing the European Economic Community shall constitute own resources to be entered in the budget of the Communities, subject to the procedure laid down in Article 201 of the Treaty establishing the European Economic Community . . . having been followed'. It is apparent from the very wording of that provision that its only purpose is to allow new own resources to be created within the framework of a common policy provided that the procedure laid down in Article 201 is followed. However, that provision cannot be interpreted, contrary to its wording, as making the procedure laid down in Article 201 compulsory for the adoption of a measure which is part of a common policy merely because the measure entails the collection of revenue.
- 12 Consequently, the argument that the regulations in question do not have an adequate legal basis cannot be accepted.

Infringement of fundamental rights

- 13 Schröder also claims that the scheme at issue violates fundamental rights protected by Community law, in particular the right to enjoy property and the right to pursue an occupation or business, in so far as it is the processors who are liable for payment of the levy and its administrative costs and not the producers, who alone are responsible for the surpluses.
- 14 The Court has consistently held, in particular in the judgment in Case 44/79 *Hauer v Land Rheinland-Pfalz* [1979] ECR 3727, that fundamental rights form an integral part of the general principles of law which the Court ensures are observed. In safeguarding those rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold

Community measures which are incompatible with fundamental rights recognized by the constitutions of those States. International treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can also supply guidelines which should be followed within the framework of Community law.

- 15 The Court has recognized in particular, notably in the judgment in Case 44/79, cited above, that both the right to property and the freedom to pursue a trade or profession form part of the general principles of Community law. However, those principles do not constitute an unfettered prerogative, but must be viewed in the light of the social function of the activities protected thereunder. Consequently, the right to property and the freedom to pursue a trade or profession may be restricted, particularly in the context of a common organization of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and that they do not constitute a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed. The question whether the co-responsibility levy scheme is compatible with the protection of fundamental rights must be considered in the light of those criteria.
- 16 Having regard to the allegations made by the plaintiff in the main proceedings, it must first of all be stated that under the combined provisions of Article 4(6) of Regulation No 2727/75, as amended by Regulation No 1579/86, and Article 5(1) of Regulation No 2040/86, the levy is passed on by the processors to the producers. It follows that the pecuniary burden of the levy is borne, in economic terms, by the producers alone; the processors bear only an administrative and accounting charge in connection with the payment and transfer of the levy.
- 17 In those circumstances, it must be stated that the co-responsibility levy system does not in any way infringe the processors' property rights.

18 With regard to the freedom to pursue an occupation, it must be pointed out that collecting the levy from cereals processors who, by virtue of their occupation, create the chargeable event of the levy, is consonant with the legitimate concern for both the efficient management and the simplified administration of the levy scheme. The obligation which processors have as a consequence to pay the levy and to pass it on to their suppliers thus corresponds to objectives of general interest the pursuance of which justifies the minor inconveniences which that obligation involves for the category of economic operators concerned. Such a requirement has, after all, only a marginal effect upon the taxable person's freedom to pursue an occupation and consequently cannot impinge upon the very substance of that right.

19 Consequently, the argument based on an infringement of the freedom to pursue an occupation or business cannot be accepted.

Infringement of the principle of proportionality

20 Schröder claims that the principle of proportionality was infringed, because the co-responsibility levy is neither appropriate nor necessary in order to meet the objective of stabilizing the market, referred to in Article 39(1)(c) of the Treaty. According to the plaintiff, because of the exemptions provided for in the second paragraph of Article 1(2) of Regulation No 2040/86, only about 50% of the cereals intended for use for animal feed is subject to the levy. Schröder claims, moreover, that the levy has a detrimental effect on sales of cereals since, owing to the increase in the price of processed cereals, it causes a fall in demand.

21 The Court has consistently held that the principle of proportionality is one of the general principles of Community law. By virtue of that principle, measures imposing financial charges on economic operators are lawful provided that the measures are appropriate and necessary for meeting the objectives legitimately pursued by the legislation in question. Of course, when there is a choice between several appropriate measures, the least onerous measure must be used and the charges imposed must not be disproportionate to the aims pursued.

- 22 However, with regard to judicial review of compliance with the abovementioned conditions, it must be stated that, in matters concerning the common agricultural policy, the Community legislator has a discretionary power which corresponds to the political responsibilities imposed by Articles 40 and 43. Consequently, the legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution intends to pursue (see in particular the judgment in Case 179/84 *Bozzetti v Invernizzi* [1985] ECR 2301).
- 23 In the present case, when the Community legislature introduced the levy in question and fixed the rules for its application, it selected from the various possibilities open to it the one which seemed most appropriate for reducing the structural surpluses on the cereals market by exerting direct but moderate pressure on the prices paid to cereals producers. Such a measure, which seeks to limit supply by reducing prices for producers, must in principle be regarded as appropriate to the objective of stabilizing agricultural markets, referred to in Article 39(1)(c) of the Treaty, even if, because of certain exemptions, the measure does not affect all the products in question.
- 24 It follows that the Community legislature has not exceeded the limits of its discretionary power in that sphere. The submission that the principle of proportionality has been infringed must therefore be rejected.

The discriminatory nature of the levy scheme

- 25 Schröder claims that, as a result of the exemptions provided for under the second subparagraph of Article 1(2) of Regulation No 2040/86, as amended by Regulation No 2572/86, the levy scheme discriminates between various categories of processors and producers of cereals and consequently infringes the second subparagraph of Article 40(3) of the Treaty and the general principle of equality.
- 26 It is sufficient to point out in that regard that the same submission was considered by the Court in the judgment in Case 300/86 *Van Landschoot v Mera NV* [1988] ECR 3443. In that judgment, the Court held that the second subparagraph of Article 1 (2) of Regulation No 2040/86, as amended by Regulation No 2572/86, was invalid in so far as it caused partial discrimination as between cereals

processors and as between cereals producers by exempting from the co-responsibility levy first-stage processing of cereals carried out on the producer's farm using machinery belonging to that farm, provided that the processed product was used on the same farm, but without exempting first-stage processing carried out outside the producer's farm or using machinery not forming part of the farm's installations, even if the processed product was used on that farm. However, the Court stated that it was for the Community legislature to act upon that judgment by adopting such measures as might be appropriate in order to establish equal treatment for operators and that in the meantime the competent authorities must continue to apply the exemption laid down in the measure which had been declared void, but that they must also extend the exemption to operators affected by the discrimination.

27 It follows from all the above considerations that the following reply should be given to the question referred:

- (a) The second subparagraph of Article 1(2) of Commission Regulation (EEC) No 2040/86 of 30 June 1986, as amended by Commission Regulation No 2572/86 of 12 August 1986, is invalid in so far as it exempts from the co-responsibility levy first-stage processing of cereals carried out on the producer's own agricultural holding by means of the equipment of that holding, provided that the products of the processing are used on that holding, but does not provide for such exemption for first-stage processing carried out off the producer's agricultural holding or by means of equipment which does not form part of the agricultural installations of the holding, where the products of the processing are used on that holding;
- (b) it is for the Community legislature to adopt such measures as may be appropriate to establish equal treatment for those concerned as regards the contested exemption rules;
- (c) in the meantime, the competent authorities must continue to apply the exemption laid down in the provision at issue, but must extend the benefit of the exemption to those affected by the discrimination which has been found to exist;

- (d) for the remainder, consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Council Regulation No 1579/86 of 23 May 1986 or of Commission Regulation No 2040/86 of 30 June 1986, as amended by Commission Regulation No 2572/86 of 12 August 1986.

Costs

- 28 The costs incurred by the United Kingdom, the Council of the European Communities and 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 proceedings 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 question submitted to it by the Finanzgericht Düsseldorf, by order of 22 July 1987, hereby rules:

- (1) The second subparagraph of Article 1(2) of Commission Regulation No 2040/86 of 30 June 1986, as amended by Commission Regulation No 2572/86 of 12 August 1986, is invalid in so far as it exempts from the co-responsibility levy first-stage processing of cereals carried out on the producer's own agricultural holding by means of the equipment of that holding, provided that the products of the processing are used on that holding, but does not provide for such exemption for first-stage processing carried out off the producer's agricultural holding or by means of equipment which does not form part of the agricultural installations of the holding, where the products of the processing are used on that holding.
- (2) It is for the Community legislature to adopt such measures as may be appropriate in order to establish equal treatment for those concerned as regards the contested exemption rules.

- (3) In the meantime, the competent authorities must continue to apply the exemption laid down in the provision at issue, but must extend the benefit of the exemption to those affected by the discrimination which has been found to exist.
- (4) For the remainder, consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Council Regulation No 1579/86 of 23 May 1986, or of Commission Regulation No 2040/86 of 30 June 1986, as amended by Commission Regulation No 2572/86 of 12 August 1986.

Joliet

Slynn

Moitinho de Almeida

Rodríguez Iglesias

Zuleeg

Delivered in open court in Luxembourg on 11 July 1989.

J.-G. Giraud
Registrar

R. Joliet
President of the Fifth Chamber