

Case T-134/01

Hans Fuchs Versandschlachtere KG

v

Commission of the European Communities

(Regulation (EC) No 111/1999 — Regulation (EC) No 1135/1999 — Food-aid to Russia — Invitation to tender for mobilisation — Invitation to tender for transport — Contractual relationship — Arbitration clause — Claim for performance of a contract — Admissibility — Provision of certificates for each means of transport — Default interest)

Judgment of the Court of First Instance (Second Chamber), 9 October 2002 II - 3912

Summary of the Judgment

1. *Procedure — Reference to the Court of First Instance on the basis of an arbitration clause — Condition — Existence of a contract — Tied relationship between the successful tenderer for the supply of food aid and the Commission — Contractual nature*

(Council Regulation No 2802/98; Commission Regulation No 111/1999, Art. 16)

2. *Procedure — Reference to the Court of First Instance on the basis of an arbitration clause — Ancillary claim for payment of default interest — Admissible*
3. *Agriculture — Common agricultural policy — Food aid — Implementation — Tendering procedure for the mobilisation of pigmeat — Obligation of the successful tenderer for the supply of the products to send certificates for each means of transport envisaged by the successful tenderer for the supply of the transport — Not part of contract*
(Commission Regulation No 1135/1999, Art. 6, third para.)

1. The absence of an express contractual categorisation of the acceptance by the Commission of a tenderer's bid to supply food aid in the context of Regulation No 111/1999 laying down general rules for the application of Regulation No 2802/98, does not in itself preclude the possibility that the relationship between the Commission and the successful tenderer may be regarded as contractual in nature. The successful tenderer's bid and its acceptance by the Commission created a legal relationship between the two parties which gave rise to reciprocal rights and obligations between them and satisfies the criteria of a bilateral contract. The existence of such a contractual relationship is confirmed by the existence of the clause, contained in Article 16 of Regulation No 111/1999, according to which the Court of Justice of the European Communities is to be competent to resolve any dispute resulting from the implementation or the non-implementation or from the interpretation of the rules governing supply operations carried out in accordance with that regulation.
2. It is generally accepted in the laws of the Member States that a delay in payment involves a loss for which the creditor must be compensated. Similarly, Article 78 of the United Nations Convention on Contracts for the International Sale of Goods provides that if a party does not pay the price or any other sum which is due, the other party is entitled to interest on that sum. Community law recognises an obligation to pay such compensation as a general principle of law. If an ancillary claim is for payment of default interest as flat-rate and abstract compensation, it is not necessary for it to be supported by specific reasons and is, as such, admissible.

(see paras 56-57)

(see paras 52-54)

3. In the context of an action for performance of a contract between the successful tenderer for the supply of food aid

and the Commission, the mere reference, without previous indication, in the third paragraph of Article 6 of Regulation No 1135/1999 of 28 May 1999 opening a second invitation to tender for the mobilisation of pigmeat on the Community market with a view to its subsequent delivery to Russia, to the models to be sent by the Commission to operators at their request, is not sufficient to impose an additional obligation for the successful tenderer for the supply of the products to send certificates for each means of transport envisaged by the successful tenderer for

the supply of the transport. The latter could not reasonably expect that those models involve an extension of its obligations, the more so since the models, to which Article 6 of Regulation No 1135/1999 refers, were not available in its language. Thus, such an obligation did not become part of the contractual consensus between the parties.

(see para. 74)