

JUDGMENT OF THE COURT (First Chamber)
21 November 1989 *

In Case C-244/88

Usine coopératives de déshydratation du Vexin and Others, represented by P. Dibout, of the Paris Bar, with an address for service in Luxembourg at the Chambers of J. Loesch, 8 rue Zithe,

applicants,

v

Commission of the European Communities, represented by its Legal Adviser, D. Sorasio, acting as agent, with an address for service in Luxembourg at the office of Georgios Kremis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Regulation No 1910/88 of 30 June 1988 suspending advance fixing of the aid for dried fodder (Official Journal 1988, L 168, p. 111),

THE COURT (First Chamber)

composed of: Sir Gordon Slynn, President of Chamber, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: G. Tesauro
Registrar: J.-G. Giraud

having regard to the Report for the Hearing and further to the hearing on 14 June 1989,

* Language of the case: French.

after hearing the Opinion of the Advocate General delivered at the sitting on 26 September 1989,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 1 September 1988, Usine coopératives de déshydratation du Vexin and eight other companies producing dried fodder brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of Commission Regulation No 1910/88 of 30 June 1988 suspending advance fixing of the aid for dried fodder (Official Journal 1988, L 168, p. 111).
- 2 On 28, 29 and 30 June 1988, the applicants had requested the French intervention agency, Société interprofessionnelle des oléagineux protéagineux et cultures textiles (hereinafter referred to as 'SIDO') to issue certificates to them with advance fixing of the aid for various quantities of dried fodder.
- 3 Pursuant to Article 9 of Commission Regulation No 1528/78 of 30 June 1978 laying down detailed rules for the application of the system of aid for dried fodder (Official Journal 1978, L 179, p. 10), as amended by Regulation No 3074/78 of 21 December 1978 (Official Journal 1978, L 367, p. 1), those certificates should have been issued on the third working day following that on which the applications were lodged, namely Friday, 1 July, Monday, 4 July, and Tuesday, 5 July 1988 respectively, provided that no special action had meanwhile been taken.
- 4 During that intervening period, the Commission adopted the contested regulation suspending the advance fixing of aid for the period from 1 to 7 July 1988. The Commission adopted that measure because it considered that the applications for advance fixing lodged on 28, 29 and 30 June 1988 related to abnormally high quantities. In the Commission's view, that situation was accounted for by the

producers' concern to continue to receive the aid in the amount applicable to June, since the rise in the world price of dried fodder made a considerable decrease in the amount of the aid for July foreseeable. The aid was in fact subsequently reduced.

- 5 Relying on the contested regulation, SIDO rejected the applications for certificates with advance fixing which had been lodged by the applicants.

- 6 They contested the decisions of SIDO before the tribunal administratif (Administrative Court), Paris. They also brought the present action before the Court of Justice for annulment of the regulation which had suspended the advance fixing.

- 7 The Commission raised an objection of inadmissibility under Article 91(1) of the Rules of Procedure and asked the Court to give a decision on that objection without considering the substance of the case.

- 8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the applicable regulations and the submissions and arguments of the party, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

- 9 The Commission contends that the application is inadmissible because the contested regulation was not of individual concern to the applicants within the meaning of the second paragraph of Article 173 of the Treaty. It was capable of producing legal effects with regard not only to undertakings whose applications were pending when the suspension took effect but also to all those which had lodged applications during the period for which advance fixing was suspended. The latter undertakings were not identifiable when the contested regulation was adopted. The contested regulation is therefore a measure of general application.

- 10 The applicants concede that the contested regulation also applied to applications for certificates with advance fixing lodged during the period from 1 to 7 July 1988. However, it was not in order to block those applications that the Commission adopted the contested regulation. Even if it is assumed that applications were lodged during the period of suspension, they would not have been in any way speculative since the amount of the aid had just been severely reduced at the beginning of July. The contested regulation was adopted, on the contrary, solely in order to preclude the issue of certificates for which applications were pending, as the Commission considered them to be speculative. The contested regulation was therefore intended to regulate the legal situation of a strictly defined circle of persons, namely the undertakings whose applications for advance fixing were pending when the suspension came into effect.
- 11 It must be recalled that the second paragraph of Article 173 of the Treaty makes the institution of proceedings for annulment by a natural or legal person against a regulation conditional upon the latter's constituting in fact a decision which is of direct and individual concern to that person.
- 12 It must be emphasized that a regulation suspending advance fixing affects both applications which are pending when the suspension takes effect and those which are lodged during the period of suspension (judgment of 25 March 1982 in Case 45/81 *Alexander Moksel Import-Export GmbH & Co. Handels KG v Commission* [1982] ECR 1129, paragraph 17; judgment of 27 October 1983 in Case 276/82 *Roomboterfabriek 'De beste boter' BV v Produktschap voor Zuivel* [1983] ECR 3331, paragraph 16). In the present case, it was not impossible that applications for certificates with advance fixing might be lodged during the period for which advance fixing was suspended. The fear that a further reduction of the aid might take place in August might have prompted producers to lodge applications for advance fixing at the beginning of July. Moreover, if the Commission's intention had been, as the applicants claim, to preclude the issue only of certificates for which applications were pending, it could have suspended advance fixing merely from the period from 1 to 5 July instead of suspending it from 1 to 7 July, as it did.
- 13 It must therefore be concluded that the contested regulation applies to objectively defined situations and produces legal effects with respect to classes of persons envisaged in abstract terms. It is thus of general application within the meaning of the second paragraph of Article 189 of the Treaty and cannot be of individual concern to the applicants within the meaning of the second paragraph of Article 173 of the Treaty.

14 It follows that the application must be dismissed as inadmissible.

Costs

15 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicants have failed in their submissions, they must be ordered jointly and severally to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Dismisses the application as inadmissible;

(2) Orders the applicants jointly and severally to pay the costs.

Slynn

Joliet

Rodríguez Iglesias

Delivered in open court in Luxembourg on 21 November 1989.

J.-G. Giraud

Registrar

Gordon Slynn

President of the First Chamber