

ORDER OF THE PRESIDENT OF THE COURT
OF 28 AUGUST 1978 ¹

Italian Republic
v Council of the European Communities

Case 166/78 R

In Case 166/78 R

ITALIAN REPUBLIC, represented by His Excellency Mr Adolfo Maresca, Ambassador, acting as Agent, assisted by the Avvocato dello Stato, Mr Arturo Marzano, with an address for service in Luxembourg at the Italian Embassy,

applicant,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by Mr Daniel Vignes, Director at the Legal Department of the Council of the European Communities, acting as Agent, with an address for service in Luxembourg at the offices of the European Investment Bank, 2 Place de Metz,

defendant,

APPLICATION for the suspension of the operation of certain provisions of Council Regulation (EEC) No 1125/78 of 22 May 1978 amending Regulation (EEC) No 2727/75 on the common organization of the market in cereals and Council Regulation (EEC) No 1127/78 of 22 May 1978 amending Regulation (EEC) No 2742/75 on production refunds in the cereals and rice sectors,

The Judge taking the place of the President of the Court in pursuance of the second paragraph of Article 85 of the Rules of Procedure makes the following

¹ — Language of the Case: Italian.

ORDER

- 1 By application lodged at the Court Registry on 31 July 1978, the Italian Republic brought, under Article 173 of the EEC Treaty, an action for the annulment of certain provisions of Council Regulation (EEC) No 1125/78 of 22 May 1978 amending Regulation (EEC) No 2727/75 on the common organization of the market in cereals and Council Regulation (EEC) No 1127/78 of 22 May 1978 amending Regulation (EEC) No 2742/75 on production refunds in the cereals and rice sectors (Official Journal 1978, L 142, pp. 21 and 24 respectively), in so far as those regulations introduced the payment of a production premium of 10 units of account per tonne of potato starch.
- 2 The application is based on a group of complaints alleging that the statements of the reasons upon which the regulations are based are insufficient, that the Council exceeded its powers, that the objectives of the common agricultural policy laid down in Article 39 of the Treaty have been infringed and, finally, that the rule prohibiting discrimination laid down in the second subparagraph of Article 40 (3) has been violated by reason of the discriminatory treatment introduced by the provisions of the above-mentioned regulations as regards, on the one hand, potato starch and, on the other, starch derived from maize and common wheat.
- 3 By application for the adoption of interim measures lodged on the same date under Article 185 of the EEC Treaty, Article 36 of the Protocol on the Statute of the Court of Justice of the EEC and Article 83 *et seq.* of the Rules of Procedure, the Italian Republic asked for the suspension, before 1 September 1978, the beginning of the 1978/79 marketing year, of the operation of the provisions laid down by regulation which form the subject-matter of the main application.
- 4 This request is based on the damage, alleged to be irreparable or at least difficult to redress, which the effects of the payment of the contested premium are causing the cereal starch industry which, in view of the competitive relationship between the products in question, is suffering a considerable reduction in its market and might even find it necessary to cease production.
- 5 In its observations submitted in reply to the application for the adoption of interim measures, the Council put forward a plea of inadmissibility with regard both to the main application and to the application for the adoption of interim measures lodged by the Italian Republic, on the ground of Italy's affirmative and unqualified vote when the Council adopted the regulations in question and also of the vote of the Italian representative on the Management Committee for Cereals when the implementing measures, brought into force in the meantime by Commission Regulation (EEC) No 1809/78 of 28 July 1978 laying down rules for the payment of a premium to

producers of potato starch (Official Journal 1978, L 205, p. 69), were considered.

- 6 Moreover, the Council considers that the Italian Republic has not shown the existence of the conditions to which the adoption of interim measures by the Court is subject, in other words the establishment of a *prima facie* case as regards the unlawfulness of the contested provisions laid down by regulation and the evidence of a risk of serious and irreparable damage, caused by the contested provisions, to manufacturers of cereal starch.
- 7 It does not seem essential to adopt, at this stage, a view-point on the preliminary objection raised by the Council, since an examination of the considerations put forward by the Italian Government in support of its request for suspension of operation and of the arguments in defence put forward by the Council enables a decision to be made concerning the request made by the Italian Republic without settling the preliminary issue.
- 8 It follows from the recitals of the preambles to Regulation No 1125/78 and Regulation No 1127/78 that the aim of the premium payable to manufacturers of potato starch is to maintain the balance between the different starch industries.
- 9 With this in mind and according to the Council's intentions, the function of the premium is to compensate, on the one hand, for the special constraints imposed on the potato starch industry (sixth recital of the preamble to Regulation No 1125/78) and on the other, for the increasing advantage enjoyed by the maize starch industry, particularly because of the by-products obtained from such manufacture (third recital of the preamble to Regulation No 1127/78).
- 10 It is not possible to perceive from the explanations given by the Italian Government with a view to obtaining the suspension of the operation of the contested provisions an immediate risk, as a result of the grant of that benefit to the manufacture of potato starch, of such a disturbance of the competitive relationship between the two industries that cereal starch would largely be eliminated from the market and manufacturers would face serious difficulties.
- 11 It seems in fact from the criteria supplied by the Council, based, in their turn, partly on documents produced by the Commission at the time when the measure at issue was drafted, that potato starch cannot, through payment of the premium form for cereal starch competition capable of causing the results to the detriment of the cereal starch industry foreseen by the Italian Government.
- 12 Such a prospect is unlikely on account of a group of concurrent factors indicated by the Council, that is, the moderate influence of the premium on

the formation of prices, taking into account the comparative structure of the production costs of the two products in question, their specific characteristics and the limits of the total volume of the production capacity of potato starch in the Community, at any rate as regards the marketing season about to commence.

- 13 More particularly, although it is true that cereal starch and potato starch are in certain respects in a competitive relationship, cereal starch, as is expressly pointed out in the recitals of the preamble to Regulation No 1127/78, nevertheless has a considerably wider range of uses than potato starch, with the result that to that extent it does not suffer the effects of the measure introduced by the Council.
- 14 It follows from these considerations that the Italian Government has not established the imminence of serious and irreparable damage to the cereal starch manufacturing industry as a result of the payment of the production premium for potato starch laid down in Regulation No 1125/78 and Regulation No 1127/78.
- 15 The application for the suspension of the operation of the provisions in question must therefore be dismissed.

On those grounds,

The Judge taking the place of the President of the Court in pursuance of the second paragraph of Article 85 of the Rules of Procedure,

as an interlocutory decision, hereby orders as follows:

1. The application is dismissed.
2. The costs are reserved.

Luxembourg, 28 August 1978.

H. J. Eversen
Deputy Registrar

P. Pescatore
Judge taking the place of the President