

Case 265/87

Hermann Schröder HS Kraftfutter GmbH & Co. KG
v
Hauptzollamt Gronau

(reference for a preliminary ruling
from the Finanzgericht Düsseldorf)

(Co-responsibility levy in the cereals sector)

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Opinion of Mr Advocate General Tesauro delivered on 20 April 1989	2254
Judgment of the Court (Fifth Chamber), 11 July 1989	2263

Summary of the Judgment

- 1. Agriculture — Common organization of the markets — Cereals — Co-responsibility levy — Legal basis*
(EEC Treaty, Arts 39, 40 and 43; Council Regulation No 2727/75, Art. 4(4), as amended by Regulation No 1579/86)
- 2. European Communities' own resources — Article 201 of the Treaty — Scope — Charges levied in an agricultural sector to finance expenditure in that sector — Exclusion — Council Decision of 21 April 1970 — Scope*
(EEC Treaty, Art. 201; Council Decision of 21 April 1970, Art. 2, second paragraph)
- 3. Community law — Principles — Fundamental rights — Right to property — Freedom to pursue a trade or profession — Restrictions — Permissibility — Conditions — Co-responsibility levy in the cereals sector — Permissibility*

4. *Community law — Principles — Proportionality — Measures imposing financial charges — Proportionate nature — Criteria — Discretion of the Community legislature regarding the common agricultural policy — Review by the Court — Limits (EEC Treaty, Arts 40 and 43)*

 5. *Agriculture — Common organization of the markets — Cereals — Co-responsibility levy — Measure appropriate to the operation of the common organization — Breach of the principle of proportionality — No (EEC Treaty, Art. 39(1)(c); Council Regulation No 2727/75, Art. 4, as amended by Regulation No 1579/86)*

 6. *Agriculture — Common organization of the markets — Discrimination between producers or consumers — Co-responsibility levy in the cereals sector — Exemption for products used after processing in the producer's holding — Grant conditional on processing in the holding — Unlawful — Effects — Provisional maintenance of the rules in question on a non-discriminatory basis (EEC Treaty, Art. 40(3), second subparagraph, and Art. 177; Commission Regulation No 2040/86, Art. 1(2), second subparagraph, as amended by Regulation No 2572/86)*
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1. A measure such as the co-responsibility levy in the cereals sector, which seeks to contribute to stabilizing a market characterized by structural surpluses and whose role is therefore comparable to the role of the other intervention measures provided for in that sector, 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.

 2. Article 201 of the Treaty 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. That exclusion is not called in question by the second paragraph of Article 2 of the Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Community's own resources. The only purpose of that provision 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 and it cannot be interpreted as making that procedure compulsory for the adoption of a measure which is part of a common policy merely because the measure entails the collection of revenue.

 3. Both the right to property and the freedom to pursue a trade or profession form part of the general principles of Community law whose observance is ensured by the Court. However, those principles do not constitute unfettered prerogatives but must be viewed in the light of their social function. 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, as regards the aim pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights thus guaranteed.

In the light of those criteria, the co-responsibility levy in the cereals sector cannot be regarded as infringing cereals processors' fundamental rights.

4. By virtue of the principle of proportionality, 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. Any review by the courts of compliance with those conditions must, however, take account of the fact that, in matters concerning the common agricultural policy, the Community legislature has a discretionary power which corresponds to the political responsibilities imposed on it by Articles 40 and 43 of the Treaty. 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.

5. When the Community legislature introduced the co-responsibility levy in the cereals sector 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 cereal 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. The Community legislature has not thereby exceeded the limits of its discretionary power in the agricultural sector and has not infringed the principle of proportionality.
6. The second subparagraph of Article 1(2) of Regulation No 2040/86, as amended by Regulation No 2572/86, is invalid in so far as it exempted 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 did not exempt 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. Until the Community legislature adopts appropriate measures in

order to establish equal treatment for operators, the competent authorities must continue to apply the exemption in

question, but they must also extend that exemption to operators affected by the discrimination.

REPORT FOR THE HEARING
delivered in Case 265/87 *

I — Facts and written procedure

1. The co-responsibility levy in the cereals sector was introduced by Council Regulation No 1579/86 of 23 May 1986 amending Regulation No 2727/75 on the common organization of the market in cereals (Official Journal 1986, L 139, p. 29). The preamble to that regulation, which is based on Article 43 of the Treaty, states that 'the Community cereals market is characterized by structural surpluses resulting from the imbalance between ... supply ... and demand' and that it is therefore necessary 'to achieve, with the utmost urgency, an improved balance in market forces and to control growth' (first and second recitals).

'1. A co-responsibility levy shall be payable in respect of the cereals referred to in Article 1(a) and (b) produced in the Community and used for one of the operations referred to in paragraph 5 hereof. This arrangement shall apply to the 1986/87 to 1990/91 marketing years.

2. The amount, per unit, of the levy shall be fixed annually before the beginning of the marketing year, in accordance with the procedure laid down in Article 43(2) of the Treaty.

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5. The co-responsibility levy shall be collected on cereals that undergo one of the following operations:

first processing,

Article 4 of Regulation No 2727/75, as amended by Regulation No 1579/86, is worded as follows:

* Language of the case: German.