



Reports of Cases

Case C-24/11 P

Kingdom of Spain

v

European Commission

(Appeal — EAGGF — ‘Guarantee’ section — Expenditure excluded from Community financing — Expenditure incurred by the Kingdom of Spain — Aid for the production of olive oil)

Summary of the Judgment

1. *Agriculture — EAGGF — Clearance of accounts — Preparation of decisions — Written Commission communication to the Member States of the results of its checks — Content — Conditions — Non-compliance — Effect*

(Council Regulations No 729/70, Art. 5(2)(c), fifth point, and No 1258/1999, Art. 7(4), fifth subpara.; Commission Regulation No 1663/95, Art. 8(1))

2. *Agriculture — EAGGF — Clearance of accounts — Limitation of the refusal of financing — Period of 24 months — Point from which time starts to run — Communication by the Commission of the results of the checks*

(Council Regulations No 729/70, Art. 5(2)(c), fifth point, No 2261/84, Art. 12, and No 1258/1999, Art. 7(4), fifth subpara.; Commission Regulation No 2366/98, Art. 16)

1. Article 8(1) of Regulation No 1663/95 laying down detailed rules for the application of Regulation No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section provides that if, as a result of an enquiry, the Commission considers that expenditure has not been effected according to Community rules, it is to notify the Member State concerned of the results of its checks and indicate the corrective measures to be taken to ensure future compliance. That provision requires the irregularity that the Member State concerned is alleged to have committed to be indicated in the written communication provided for in the first subparagraph of that provision sufficiently precisely, so that the Member State may be fully informed of it. Failure to observe that condition laid down in Article 8(1) of that regulation deprives of its substance the procedural guarantee accorded to Member States by the fifth point of Article 5(2)(c) of Regulation No 729/70 on the financing of the common agricultural policy and the fifth subparagraph of Article 7(4) of Regulation No 1258/1999 on the financing of the common agricultural policy, which limits the period in respect of which expenditure can be refused financing by the EAGGF.

Article 8(1) of Regulation No 1663/95 must thus be read in conjunction with the fifth point of Article 5(2)(c) of Regulation No 729/70 and the fifth subparagraph of Article 7(4) of Regulation No 1258/1999, pursuant to which the Commission may not exclude expenditure effected more than 24 months before the Commission’s written communication of the results of those checks to the Member State concerned. It follows that the written communication required under the first subparagraph of Article 8(1) of Regulation No 1663/95 serves as a warning that expenditure effected

during the period of 24 months preceding notification of that communication may be excluded from financing by the EAGGF and, accordingly, that that communication constitutes the reference point from which the period of 24 months thus prescribed is to be calculated.

Consequently, in order to perform its function as a warning, in particular in the light of the fifth point of Article 5(2)(c) of Regulation No 729/70 and the fifth subparagraph of Article 7(4) of Regulation No 1258/1999, the communication referred to in Article 8(1) of Regulation No 1663/95 must first sufficiently precisely identify all irregularities which the Member State concerned is alleged to have committed which, ultimately, formed the basis for the financial correction applied. Such a communication alone can ensure that full information is provided concerning the Commission's reservations pursuant to that provision and can constitute the reference point for calculation of the period of 24 months laid down in the fifth point of Article 5(2)(c) of Regulation No 729/70 and the fifth subparagraph of Article 7(4) of Regulation No 1258/1999.

(see paras 26, 28-31, 33, 34)

2. In the context of the procedure for clearance of the accounts of the EAGGF, the date which must be regarded as decisive as regards assessment whether expenditure was effected within the period of 24 months referred to in the fifth point of Article 5(2)(c) of Regulation No 729/70 on the financing of the common agricultural policy and the fifth subparagraph of Article 7(4) of Regulation No 1258/1999 on the financing of the common agricultural policy must be that on which the final amount of the compensatory aid is fixed and the balance paid by the Member State concerned.

In that regard, it follows from Article 12 of Regulation No 2261/84 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organisations in conjunction with Article 16 of Regulation No 2366/98 laying down detailed rules for the application of the system of production aid for olive oil for the 1998/99, 1999/2000 and 2000/01 marketing years that olive oil producers receive an advance on the amount of aid applied for at the start of each marketing year. However, those producers do not have to provide a guarantee in respect of a possible obligation to make reimbursement if the final amount of the aid should be lower than that of the advance paid. Nevertheless, by virtue of those provisions, the Member State concerned pays the balance to the producers only after carrying out all the checks prescribed for that purpose and subject to the results of those checks. The final amount of the aid due is therefore not known before that balance is paid.

It follows, in the context of the aid scheme for olive oil production, that it is that payment that determines the date on which the expenditure is effected within the meaning of the fifth point of Article 5(2)(c) of Regulation No 729/70 and the fifth subparagraph of Article 7(4) of Regulation No 1258/1999. It is on that date that the obligation of the Member State concerned and the corresponding debt of the producer are definitively established. In that regard, the fact that payment of the advance on the amount of the aid is not subject to the provision of a guarantee in no way affects the provisional nature of that payment.

(see paras 45-47)