

The PIC Convention establishes the principle that import and export of a chemical covered by it can only take place with the prior informed consent of the importing Party. The PIC Convention establishes a procedure as a means to formally obtain and disseminate the decisions of importing Parties and to ensure compliance with these decisions by the exporting Parties, called the 'PIC procedure'.

The Commission considers that the PIC Regulation falls within the scope of the Community's common commercial policy. The Regulation should therefore, as proposed by the Commission, have been adopted as a Council Regulation based on Article 133 EC and not as a European Parliament and Council Regulation based on Article 175(1) EC, which concerns measures adopted in the field of the Community's environmental policy. The Commission maintains that the choice by the European Parliament and the Council of the legal basis for the adoption of the PIC Regulation is erroneous and the act in question is therefore illegal and should be annulled.

(<sup>1</sup>) OJ L 63, 6.3.2003, p. 1.

**Action brought on 28 April 2003 by the Federal Republic of Germany against the Commission of the European Communities**

**(Case C-183/03)**

(2003/C 146/56)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 28 April 2003 by the Federal Republic of Germany, represented by Wolf-Dieter Plessing, Ministerialrat, Moritz Lumma, Regierungsdirektor, and Annette Tiemann, Regierungsrätin z. A., Federal Ministry of Finance, Graurheindorfer Straße 108, D-53117 Bonn.

The applicant claims that the Court should:

- annul Commission Decision 2003/102/EC of 14 February 2003 — C(2003) 500 final — excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as an amount of EUR 26 446 500,00 is excluded from Community financing and imputed to the Federal Republic of Germany and

- order the defendant to pay the costs.

*Pleas in law and main arguments*

The action is directed against the contested decision in so far as it excludes from Community financing expenditure of EUR 26 446 505,00 incurred by the Federal Republic of Germany in respect of the arable crops sector in Brandenburg for crop years 1999 and 2000 and imputes it to the Federal Republic of Germany. That amount represents a flat-rate correction of 5 % of the expenditure notified for the *Land* of Brandenburg for crop years 1999 and 2000 in the arable crops sector.

In the opinion of the Federal Republic of Germany, the decision was adopted in breach of procedural rules and general principles of Community law. The Commission's inspection findings and conclusions, which formed the basis of the decision, were incorrect in a number of material factual respects and, moreover, were based on a misinterpretation of law. A flat-rate imputation of 5 % is therefore completely illegal. That follows from the following seven pleas in law:

- Procedural errors. The complaints subsequently made by the Commission:
  - 'no reliable or current data on the parcels in the Allgemeines Liegenschaftsbuch (General Register of Real Property) (ALB)' (Under Paragraph 12 of the Gesetz über die Landesvermessung und das Liegenschaftskataster in Brandenburg (Law on Topographic Survey and the Land Register in Brandenburg — VermLiegG), the ALB constitutes, together with the real property map and real property data, the cadastre of the *Land* of Brandenburg. It is held on computer),
  - 'double applications not detectable',
  - 'there is hardly any or no connection between the parcels entered in the land register and those in agricultural use' and
  - 'it was not always possible to check and measure the specified agricultural parcels on the basis of, for example, maps or aerial photographs, since the holdings do not enclose with their applications any maps or sketches of the specified agricultural parcels',

were not communicated to the German authorities in due time. Breach of the procedure for the clearance of the accounts (Article 7(4) of Regulation (EC) No 1258/1999 (<sup>1</sup>) and Article 8(1) of Regulation (EC) No 1663/95 (<sup>2</sup>) and breaches of the principles of the right to a fair hearing and proper administration are therefore alleged.

- Reliability of the land identification system. In its second plea in law, the Federal Government defends itself against the doubts expressed by the Commission concerning the reliability of the identification system.

- Reliability of the on-the-spot checks, in particular adequate measurement of agricultural land. In its third plea in law, Germany rebuts the Commission's complaint that Brandenburg did not adequately measure land in the course of on-the-spot checks, which constitutes a breach of Article 6(5) of Regulation (EEC) No 3887/92<sup>(3)</sup>. That complaint is based, it submits, on factually and legally incorrect premisses.
- Adequate expansion of the sample coverage of on-the-spot checks. In its fourth plea in law, Germany deals with the complaint that Brandenburg did not adequately expand the required sample coverage of the on-the-spot checks within the holdings visited.
- The representative yields for non-food crops on set-aside land were assessed at a sufficiently high level. In its fifth plea in law, Germany demonstrates that the Commission's complaint — that the representative yields of renewable raw materials were assessed at too low a level — is unjustified.
- Lack of precision concerning the financial years to which expenditure is imputed. In its sixth plea in law, the level of expenditure imputed by the decision is contested. The Commission's decision is in part imprecise and is invalid in so far as its operative part and the statements in the Annex concerning an amount of EUR 12 927 107 are inconsistent. In the 1999 and 2000 financial years, the *Land* of Brandenburg incurred expenditure for crop years 1999 and 2000 of EUR 270 387 968. Applying the flat rate of 5 % imposed by the Commission, which is being contested, that results in an imputed amount of EUR 13 519 398. However, an amount of EUR 262 446 505 was imputed. Consequently an amount of EUR 12 927 107 was wrongly imputed.
- Incorrect risk assessment. Finally, in its seventh plea in law, it is argued that the declared flat-rate imputation of risk of 5 % is defective simply because no systematic administrative or checking errors were the subject of complaint in Brandenburg in the relevant period. Moreover, the calculation of the alleged loss to the EAGGF was made using inappropriate methods and arrived at in breach of Article 10 EC.

(1) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

(2) Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L 158, p. 6).

(3) Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36).

**Reference for a preliminary ruling by the Tribunale di Tolmezzo by order of that Court of 16 April 2003 in the case of Azienda Agricola Schnabl Rosa against A.G.E.A. and COSPALAT F.V.G.**

(Case C-185/03)

(2003/C 146/57)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Tolmezzo (Tolmezzo District Court) of 16 April 2003, received at the Court Registry on 5 May 2003, for a preliminary ruling in the case of Azienda Agricola Schnabl Rosa against A.G.E.A. and COSPALAT F.V.G. on the following question:

Must Article 1 of Regulation (EEC) No 856/84<sup>(1)</sup> of 31 March 1984 and Articles 1 to 4 of Regulation No 3950/92<sup>(2)</sup> of 28 December 1992 be interpreted as meaning that the additional levy on milk and milk products is in the nature of an administrative penalty with the result that producers are liable to pay it only where quantities allocated have been exceeded by them intentionally or as a result of negligence?

(1) OJ L 90 of 1.4.1984, p. 10.

(2) OJ L 405 of 31.12.1992, p. 1.

**Removal from the register of Case C-302/01<sup>(1)</sup>**

(2003/C 146/58)

By order of 6 February 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-302/01: Commission of the European Communities v Hellenic Republic.

(1) OJ C 259 of 15.9.2001.

**Removal from the register of Case C-86/02<sup>(1)</sup>**

(2003/C 146/59)

By order of 7 March 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-86/02: Commission of the European Communities v Federal Republic of Germany.

(1) OJ C 131 of 1.6.2002.