

Judgment of the Court (Second Chamber) of 16 March 2006 (reference for a preliminary ruling from the Bundesverwaltungsgericht) — Emsland-Stärke GmbH v Landwirtschaftskammer Hannover

(Case C-94/05) ⁽¹⁾

(Common agricultural policy — Regulation (EC) No 97/95 — Premiums paid to starch-producing undertakings — Conditions for granting premiums — Penalties — Proportionality — Regulation (EC, Euratom) No 2988/95 — Protection of the European Communities' financial interests)

(2006/C 131/44)

Language of the case: German

Referring court

Bundesverwaltungsgericht (Germany)

Parties to the main proceedings

Applicant: Emsland-Stärke GmbH

Defendant: Landwirtschaftskammer Hannover

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Article 13(4) of Commission Regulation (EC) No 97/95 of 17 January 1995 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards the minimum price and compensatory payment to be paid to potato producers and of Council Regulation (EC) No 1868/94 establishing a quota system in relation to the production of potato starch (OJ 1995 L 16, p. 3), as amended by Commission Regulation (EC) No 1125/96 of 24 June 1996 (OJ 1996 L 150, p. 1) — Conditions governing grant of the premium — Cultivation contract between the potato starch manufacturer on the one hand and, on the other, not the producer but a dealer who obtains the potatoes directly or indirectly from producers — Penalties

Operative part of the judgment

1. The penalty provided for in Article 13(4) of Commission Regulation (EC) No 97/95 of 17 January 1995 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards the minimum price and compensatory payment to be paid to potato producers and of Council Regulation (EC) No 1868/94 establishing a quota system in relation to the production of potato starch, as amended by Commission Regulation (EC) No 1125/96 of 24 June 1996, applies to a starch-producing undertaking which, although it has not necessarily exceeded the sub-quota allocated to it, obtains potatoes from a trader obtaining them directly or indirectly from potato producers, even where the purchase and delivery contract between that undertaking and the trader in question is described as a 'cultivation

contract' by the parties to the contract and has been accepted as such by a competent national authority under Article 4(2) of that regulation, but cannot be classified as a 'cultivation contract' for the purposes of Article 1(d) and (e) of that regulation.

2. Consideration of the first part of the second question has disclosed no factor capable of affecting the validity of Article 13(4) of Regulation No 97/95, as amended by Regulation No 1125/96, from the point of view of the principle of legal certainty.
3. Consideration of the second part of the second question has disclosed no factor capable of affecting the validity of Article 13(4) of Regulation No 97/95, as amended by Regulation No 1125/96, from the point of view of the principle of proportionality referred to in Article 2(1) and (3) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests.
4. The fact that the competent national authority was informed that the starch-producing undertaking had obtained potatoes from a trader obtaining them directly or indirectly from producers cannot affect the classification of an irregularity regarded as having been 'caused by negligence' within the meaning of Article 5(1) of Regulation No 2988/95, nor, therefore, affect the imposition on that undertaking of the penalty provided for in Article 13(4) of Regulation No 97/95, as amended by Regulation No 1125/96.

⁽¹⁾ OJ C 93, 16.04.2005.

Judgment of the Court (Sixth Chamber) of 9 March 2006 (reference for a preliminary ruling from the Conseil d'État (France)) — Ministre de l'Économie, des Finances et de l'Industrie v Gillan Beach Ltd

(Case C-114/05) ⁽¹⁾

(VAT — Place of taxable transactions — Fiscal connection — Services provided in connection with boat shows)

(2006/C 131/45)

Language of the case: French

Referring court

Conseil d'État (France)

Parties to the main proceedings

Applicant: Ministre de l'Économie, des Finances et de l'Industrie

Defendant: Gillan Beach Ltd