

OPINION OF MR ADVOCATE-GENERAL REISCHL
DELIVERED ON 7 NOVEMBER 1973 ¹

*Mr President,
Members of the Court,*

The reference which I am about to consider concerns problems arising from the grant of a carry-over payment for quantities of cereals in stock at the end of a marketing year. The Court has already had occasion to consider such questions in the rulings given on Cases 32/72 and 52/72 (Rec. 1972, p. 1181; Rec. 1972, p. 1267). It is thus unnecessary for me to indulge in lengthy prefatory explanations of the relevant Community Regulations; the following remarks will suffice.

Pursuant to Article 9 of Regulation No 120/67 (OJ of 19. 6. 1967, p. 2269/67), on the common organization of the market in cereals (which provides for the grant of a carry-over payment for quantities, *inter alia*, of common wheat harvested within the Community and held in stock at the conclusion of the cereal marketing year), the Commission by Regulation No 1196/71 of 8 June 1971 (OJ L 125 of 9. 6. 1971) laid down the requirements for the grant of a carry-over payment for quantities of common wheat held in stock at the conclusion of the 1970/1971 marketing year. In the words of this provision, the carry-over payment instituted by Articles 1 and 2 of Regulation No 1119/71 (OJ L 118 of 31. 5. 1971) shall be granted ... 'to commercial and processing undertakings in respect of stocks of common wheat harvested within the Community and held by them on 31 July 1971'. (Article 1 (1), first indentation). Article 3 of the same Regulation continues: 'To obtain the grant of the carry-over payment from the relevant authority of the Member State in whose territory the stocks are situated the claimant must

have filed, with the said authority, by registered letter, telex or telegram, despatched on 7 August 1971 at the latest, a claim for payment giving details of quantities of cereals held by the claimant on 31 July 1972.'

Firma Eugen Münche, respondent in the main action, wished to avail itself of this provision. It did so by submitting a claim, bearing the date 7 August, a Saturday, which was not however despatched until the following Monday, 9 August 1971.

In view of this fact and the provisions of the above-mentioned Article 3 of Regulation No 1196/71, the Einfuhr- und Vorratsstelle für Getreide und Futtermittel, being the relevant German authority in this case, rejected the claim.

The claimant objected to this, on the basis of Article 3 (4) of Regulation No 1182/71 of the Council of 3 June 1971, determining the rules applicable to periods, dates and time limits, which states: 'where the last day of a period expressed otherwise than in hours is a public holiday, Sunday or Saturday, the period shall end with the expiry of the last hour of the following working day'. On 7 June 1972 the Frankfurt Verwaltungsgericht gave judgment for Firma Münch, plaintiff in the action, finding that the claim had been submitted within the time allowed, and that the Einfuhr- und Vorratsstelle was liable to pay the plaintiff a certain sum as a carry-over payment.

The Einfuhr- und Vorratsstelle holds this legal view to be incorrect, being of the opinion that in the case under consideration Article 3 (4), second paragraph, of Regulation No 1182/71 should apply. This paragraph reads: 'This provision (i.e. the provision that a period shall not expire on a Saturday)

1 — Translated from the German.

shall not apply to periods calculated retroactively from a given date or event'. Accordingly the Einfuhr- und Vorratsstelle appealed to the Hessischer Verwaltungsgerichtshof against the above decision of the Frankfurt Verwaltungsgericht.

In view of the problems of Community law presented by the case the court, by order of 11 May 1973, stayed proceedings and referred the following questions for a preliminary ruling:

- '1. Must the requirement in Article 3 — last indentation — of EEC Regulation No 1196/71 of the Commission dated 8 June 1971 (Official Journal of the European Communities L 125, 9. 6. 1971, p. 12) be interpreted as fixing a period within the meaning of Article 3 of Regulation (EEC, Euratom) No 1182/71 of the Council dated 3 June 1971 (Official Journal of the European Communities L 124, 8. 6. 1971, p. 1)?
2. If it does fix such a period, is the definition in Article 3 (4), first paragraph, of Regulation (EEC, Euratom) No 1182/71 applicable, or does Article 3 (4), second paragraph, of the last-mentioned Regulation apply?
3. If (1) is answered in the negative, must the requirement in Article 3 — last indentation — of EEC Regulation No 1196/71 be interpreted as fixing a date within the meaning of Article 5 of Regulation (EEC, Euratom) No 1182/71?

My opinion of these questions is as follows:

1. With regard to the first question I would again recall that Article 3 of Regulation No 1196/71 lays down that a claim for a carry-over payment was to be made by letter etc., despatched on 7 August 1971 at the latest, containing details of quantities of cereals held by the claimant on 31 July 1971. Bearing in mind the fact that only after 31 July did

it become possible to determine the quantities concerned and that only from that date was it possible to submit claims, it is clear, from the above and from the fixing of a final date for the despatch of claims, that the provision contained in Article 3 — last indentation — lays down a limited, clearly specified interval of time, within the meaning of German law (cf. Palandt, 'Kommentar zum Bürgerlichen Gesetzbuch', 32nd Edition, Note 1 to paragraph 186), that is to say, a period. Furthermore, reference can be made to decided cases involving corresponding Regulations from previous years, in particular to the Judgments in Cases 32/72 and 52/72, which specifically refer to *periods* of limitation.

The above considerations, however, do not answer the question fully. The referring court wishes to know whether Article 3 of Regulation No 1196/71 involves a period within the meaning of Article 3 of Regulation No 1182/71 of the Council, determining the rules applicable to periods, dates and time limits.

Regulation No 1182/71 does not contain any particular, generally applicable definition of the concept 'period'. It is — for the purposes of this case — concerned only with a period measured in days and whose beginning and end are determined by detailed rules contained in Article 3 (1), second paragraph, and in Article 3 (2), (b). At the most Article 3 (4), second paragraph, is relevant to the establishment of a definition to the extent that it provides that the first paragraph does not apply to certain periods, which can only mean that such periods are not periods within the meaning of Article 3 (the point raised in the questions referred by the national court). As I have already mentioned, these are periods calculated retroactively from a given date or event. It is of course clear from the wording of this provision that it does not cover cases such as those governed by Article 3 of Regulation 1196/71, since there is no

mention of a computed period in that Regulation. Moreover the period did not have to be calculated retroactively from a given day; the initial date of the period was fixed, independently of its closing date, by the fact that stocks on hand on 31 July had to be notified in the claim. Thus, if Article 3 of Regulation No 1182/71 alone is taken into consideration, there appears to be nothing to prevent its application to the period contained in Article 3 of Regulation No 1196/71.

However, even if it is established that Article 3 of Regulation No 1196/71 is concerned with a period, the application of Regulation No 1182/71 may be excluded on other grounds. This is made clear by Article 1 of that Regulation, which states: 'Save as otherwise provided, this Regulation shall apply ...' The Commission remarked upon this in its written observations and in fact seemed to be of the opinion that Regulation No 1196/71 is an exceptional provision, to which the basic Regulation on periods cannot be applied.

It should be noted here that one could assume that the fixing of a calendar date as the closing date for despatch of claims in Regulation No 1196/71 excludes all recourse to the rule contained in Article 3 (4), first paragraph, of Regulation No 1182/71. However, this cannot be taken as a general principle, in the sense that such cases are basically not covered by Regulation No 1182/71.

Two important factors support this view.

The first concerns the Commission's draft of the Regulation determining the rules for periods, submitted to the Council in the form of a draft Regulation on 27 July 1969, and published in the Official Journal of 22 August 1969 (OJ C 108, 22. 8. 1969, p. 10). It states, at Article 2, that periods 'expressed in terms of a given calendar period or any other fixed period of time' are not periods within the meaning of the above Regulation. This proposal was not incorporated into the Council

Regulation which can only lead to the conclusion that it was the intention of the Community legislators to include also those periods mentioned in the draft within the ambit of Regulation No 1182/71. The second factor is that the Regulation determining the rules for periods itself shows, at Article 4 (1) and (3), that the Council was aware of the problem of the fixed closing date but that it excluded from the ambit of Article 3 (4) only those acts of the Council or the Commission whose expiry of validity, termination of effect or cessation of application fall on a given date. In effect this discounts the hypothesis that a period the last day of which is expressed as a calendar date is not in general covered by Regulation No 1182/71.

Therefore we should perhaps consider whether there results from the substance and objectives of Regulation No 1196/71 a requirement that the closing date of the period, as stated in Article 3, has to be observed at all costs, and whether Article 3 (4) of Regulation No 1182/71 is for this reason inapplicable. It should be noted in this connexion that this solution is supported by considerations derived from previous Judgments of the Court, according to which the rapid submission of claims is necessary because the checks required in order to preclude abuse of the system must be made without delay. On the other hand it should be borne in mind that previously the corresponding periods (fixed by Regulations Nos 602/68 (OJ L 114/68), 963/69 (OJ L 126/69), 1151/70 (OJ L 134/70)) were consistently shorter (the closing date of each being 5 August), which could lead one to conclude from the extension made by Regulation No 1196/71 that one or more days more or less are of no great consequence. Moreover — and this is still more important — account should be taken of the fact that when on 8 June 1971, only a few days after the publication on 3 June 1971 by the Commission of Regulation No 1182/71 determining the rules applicable to

periods, a Regulation containing a time limit was published, it must be assumed that the Commission, had it envisaged a derogation from the basic Regulation on periods, would have made this abundantly clear. It is my opinion that in the interest of legal clarity, to which the Regulation determining the rules applicable to periods should contribute, this argument cannot be denied. The concept of an implicit exclusion of Regulation No 1182/71 must be approached with extreme caution — as the Commission itself admitted during the course of the oral proceedings. Since in this case, as has been demonstrated, it is not entirely clear that the state of the parties' interests under Regulation No 1196/71 demands strict compliance with the closing date of 7 August 1971, it must be concluded that Regulation No 1182/71 did not implicitly derogate from Regulation No 1196/71.

Thus the first question put by the referring court can only be answered to the effect that the provision contained at Article 3 — last indentation — of Regulation No 1196/71 lays down a period within the meaning of Article 3 of Regulation No 1182/71.

2. In view of the above, the second question, the text of which I will not repeat here, can be answered very briefly.

I have no doubt that Article 3 (4), second paragraph, of Regulation No 1182/71 was not conceived to cover the case of Article 3 of Regulation No 1196. The field of civil law for instance offers the example of cases where a legal relationship is laid down for a given period, and that period is to be implicitly prolonged if a dissolution is not requested within a given time before the end originally envisaged for the legal relationship. I have already shown that such a situation is clearly not created by Article 3 of Regulation No 1196/71. On

the other hand, nor can the rule contained in Article 3 (4), second paragraph, of Regulation No 1182/71 be applied by analogy in cases where a period is fixed so as to end on a calendar date. This is demonstrated by the Commission's draft Regulation on the rules for periods, in which such a case was provided for, and the fact that this part of the draft was not adopted in Regulation No 1182/71.

The answer to the second question can only be that Article 3 (4), first paragraph, of Regulation No 1182/71 applies to the period laid down at Article 3 of Regulation No 1196/71, and that it therefore appears that a period cannot end on a Saturday.

3. The third question can be answered equally briefly, since it was put to the Court only to cover the eventuality of the first question being answered in the negative and thus, if my opinion as to that question is adopted, need not be considered at all.

In fact one can only speak of a date within the meaning of Article 5 of Regulation No 1182/71 where an action 'may or must be effected at a specified moment'. In this connection, Article 5 (2) makes it clear that in such a case the action may or must be effected 'between the beginning of the first hour and the expiry of the last hour of the day falling on that date'. Bearing this in mind, it is evident that the above-mentioned provision cannot cover Article 3 of Regulation No 1196/71, precisely because the latter speaks of the despatch of claims on 7 August *at the latest*, not *on* 7 August.

Accordingly, contrary to the view of the Commission, I am of the opinion that the provision at Article 3 of Regulation No 1196/71 contains a period, not a date or a time limit, and that therefore Article 5 of Regulation No 1182/71 does not apply.

4. Accordingly the questions referred by the Hessischer Verwaltungsgerichtshof should be answered as follows:

- (a) The requirement in Article 3 — last indentation — of Regulation No 1196/71 of 8 June 1971 is to be interpreted as fixing a period within the meaning of Article 3 of Regulation No 1182/71 of 3 June 1971.
- (b) According to the wording of Regulation No 1182/71, Article 3 (4), first paragraph, applies to this period, not Article 3 (4), second paragraph.