

JUDGMENT OF THE COURT (Second Chamber)

16 March 2006^{*}

In Case C-94/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesverwaltungsgericht (Germany), made by decision of 9 December 2004, received at the Court on 22 February 2005, in the proceedings

Emsland-Stärke GmbH

v

Landwirtschaftskammer Hannover,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk, R. Schintgen, P. Küris and J. Klučka (Rapporteur), Judges,

^{*} Language of the case: German.

Advocate General: A. Tizzano,
Registrar: K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 15 December 2005,

after considering the observations submitted on behalf of:

- Emsland-Stärke GmbH, by L. Harings, Rechtsanwalt,
- the Commission of the European Communities, by J.C. Schieferer and F. Erlbacher, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the validity and 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, as amended by Commission Regulation (EC) No 1125/96 of 24 June 1996 (OJ 1996 L 150, p. 1) ('Regulation No 97/95').

- 2 The reference was made in the course of proceedings between Emsland-Stärke GmbH, which merged in 1997 with Kyritzer Stärke GmbH (together 'Emsland-Stärke'), and the Landwirtschaftskammer Hannover (Hanover Chamber of Agriculture), formerly the Bezirksregierung Weser-Ems (District Administrative Authority for Weser-Ems; 'the Bezirksregierung'), concerning financial penalties reducing the amount of a premium granted to a starch-producing undertaking where the latter obtained its potatoes not from a producer but from a trader obtaining potatoes, directly or indirectly, from producers.

Legal context

Regulation No 97/95

- 3 The fourth recital in the preamble to Regulation No 97/95 reads:

'... it is necessary to specify what matters should be covered by a cultivation contract between an undertaking producing potato starch and a producer so as to prevent the conclusion of contracts in excess of the undertaking's sub-quota; ... such undertakings should be prohibited from accepting delivery of potatoes not covered by a cultivation contract, as this would put at risk the effectiveness of the quota system and the requirement that the minimum price under Article 8(1) of Regulation (EEC) No 1766/92 be paid for all potatoes intended for starch production ...'.

4 The eighth recital in the preamble to Regulation No 97/95 reads:

‘... inspection measures should be introduced to ensure that only starch produced in accordance with the provisions of this Regulation gives rise ... to payment of the premium’.

5 The ninth recital in the preamble to that regulation reads:

‘... in order to protect producers of potatoes intended for the production of starch, it is essential for the minimum price set out in Article 8(1) of Regulation (EEC) No 1766/92 to be paid for all potatoes; ... it is therefore necessary to provide for sanctions where the minimum price has not been paid, or where undertakings have accepted potatoes not covered by a cultivation contract’.

6 The tenth recital in the preamble to Regulation No 97/95 reads:

‘... rules are necessary to ensure that potato starch produced in excess of an undertaking’s sub-quota is exported without export refund, as is required by Article 6(1) of Regulation (EC) No 1868/94; ... sanctions should be applied in the event of any breach’.

7 Article 1 of Regulation No 97/95 provides:

‘For the purposes of this Regulation, the following definitions shall apply:

...

(b) sub-quota: that part of the quota allocated by the Member State to a starch-producing undertaking;

...

(d) producer: any natural or legal person or group of such persons, which delivers to a starch-producing undertaking potatoes produced by itself or its members, in its own name and on its own behalf under a cultivation contract concluded by itself or in its own name;

(e) cultivation contract: any contract concluded between a producer or group of producers and the starch-producing undertaking;

...’

8 Article 4 of that regulation provides:

‘1. A cultivation contract shall be concluded for each marketing year. ...

2. Each starch-producing undertaking shall forward to the competent authority by 31 May preceding the marketing year in question a summary of the contracts, including for each contract, ... the name of the producer and the tonnage contracted, expressed in terms of starch equivalent.

3. The total in starch equivalent of the quantities listed in the cultivation contracts shall not exceed the sub-quota established for that undertaking.

...

5. An undertaking may not take delivery of potatoes not covered by a cultivation contract.’

9 Article 7(1) of that regulation provides:

‘The premium shall be granted to starch-producing undertakings in respect of starch produced ... up to the quantity of starch for which they hold a sub-quota.

...’

10 Article 11(1) of Regulation No 97/95 provides:

‘The following payments shall be subject to the requirements set out below:

...

(b) in the case of the premium referred to in Article 5 of Regulation (EC) No 1868/94, to the conditions that:

- the processing undertaking provides proof that it produced the starch in question during the marketing year concerned,
- the undertaking proves that it paid a price not less than that referred to in Article 8(1) of Regulation (EEC) No 1766/92 at the delivered-to-factory stage for the whole quantity of potatoes produced in the Community and used for the production of starch,
- that the undertaking provides proof that the starch in question was produced using potatoes covered by the cultivation contracts referred to in Article 4.’

11 The first subparagraph of Article 13(1) of Regulation No 97/95 reads as follows:

‘The Member States shall introduce inspection arrangements for on-the-spot verification of the operations conferring entitlement to the premium and ... compliance with the sub-quota laid down for each starch-producing undertaking. ...’

12 Article 13(3) and (4) provides:

'3. Should the competent body establish that the obligations specified in the second indent of Article 11(1)(b) have not been respected by the undertaking, that undertaking shall, in the absence of force majeure, lose entitlement to premiums, in whole or in part, as follows:

- if the obligations have not been observed in respect of a quantity of starch less than 20% of the total quantity of starch produced by the undertaking, the premium granted shall be reduced by five times the percentage in question,

- if the percentage in question is 20 or more, no premium shall be granted.

4. If contravention of the prohibition contained in Article 4(5) is established, the premium paid for the sub-quota shall be reduced as follows:

- if the check shows a quantity of starch equivalent accepted by the undertaking of less than 10% of its sub-quota, the total premiums to be paid to the undertaking for the marketing year in question shall be reduced by 10 times the percentage recorded,

- if the quantity not covered by production contracts is greater than the amount specified in the first indent, no premium shall be granted for the marketing year in question. Furthermore, no premium shall be paid to the undertaking for the following marketing year.’

Regulation No 2988/95

- ¹³ The fifth recital in the preamble to Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities’ financial interests (OJ 1995 L 312, p. 1) provides:

‘... irregular conduct, and the administrative measures and penalties relating thereto, are provided for in sectoral rules in accordance with this Regulation’.

- ¹⁴ Article 1(2) of that regulation provides:

“‘Irregularity’ shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.’

15 Article 2 of that regulation reads as follows:

‘1. Administrative checks, measures and penalties shall be introduced in so far as they are necessary to ensure the proper application of Community law. They shall be effective, proportionate and dissuasive so that they provide adequate protection for the Communities’ financial interests.

...

3. Community law shall determine the nature and scope of the administrative measures and penalties necessary for the correct application of the rules in question, having regard to the nature and seriousness of the irregularity, the advantage granted or received and the degree of responsibility.

...’

16 Article 5(1) of Regulation No 2988/95 provides:

‘Intentional irregularities or those caused by negligence may lead to the following administrative penalties:

...

- (c) total or partial removal of an advantage granted by Community rules, even if the operator wrongly benefited from only a part of that advantage;
- (d) exclusion from, or withdrawal of, the advantage for a period subsequent to that of the irregularity;

...'

The main proceedings and the questions referred for a preliminary ruling

- 17 Emsland-Stärke is a potato-starch manufacturer operating in Germany. For each of the marketing years 1995/96, 1996/97 and 1997/98 that company received sub-quotas of 371 846 000 kg for processing potatoes into starch. It is clear from the documents before the Court that those sub-quotas were not exceeded.
- 18 Emsland-Stärke obtained potatoes from Moormann GmbH ('Moormann') under cultivation and delivery contracts. After sending those contracts to the competent authorities, it obtained from the Landwirtschaftsverwaltung des Landes Brandenburg (Agriculture Authority for the *Land* of Brandenburg; 'the Landwirtschaftsverwaltung') for the year 1995/96, and from the Bezirksregierung for the years 1996/97 and 1997/98, premiums for potato-starch production totalling DEM 61 500.

- 19 According to the order for reference, the Landwirtschaftsverwaltung was fully informed at the time the premiums for 1995/96 were granted that Moormann was not producing potatoes but was merely dealing in them. However, it was not until November 1997, that is to say after the premiums were granted for the marketing years 1996/97 and 1997/98, that the Bezirksregierung became aware, following a complaint and an inspection, that Moormann was not a potato producer but a trader obtaining potatoes from a number of producers or other traders.
- 20 The order for reference also states that, by decisions of 15 April, 2 June and 14 July 1998 and 15 March 1999, the Bezirksregierung imposed a penalty of DEM 614 487.47 (EUR 314 182.45) on Emsland-Stärke on the ground that, under Community law, the premiums could only be paid in respect of potatoes which a starch-producing undertaking had purchased under cultivation and delivery contracts entered into with producers.
- 21 Emsland-Stärke disputed the legality of those decisions.
- 22 By judgment of 17 May 2000, the Verwaltungsgericht Osnabrück (Administrative Court, Osnabrück) set aside those decisions in so far as they required a refund of the compensatory payments and, for the remainder, dismissed the action in so far as it challenged the lawfulness of the penalties imposed on Emsland-Stärke.
- 23 Both parties to the main proceedings lodged an appeal before the Niedersächsisches Obergerverwaltungsgericht (Lower Saxony Higher Administrative Court). By judgment of 12 December 2002, that court found that there had been no valid cultivation contract between those parties and therefore dismissed Emsland-Stärke's appeal.

24 Emsland-Stärke then appealed on a point of law against that judgment to the Bundesverwaltungsgericht (Federal Administrative Court).

25 Considering that the outcome of the dispute depended on the validity of Article 13(4) of Regulation No 97/95 and an interpretation of that provision, the Bundesverwaltungsgericht decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) (a) Does Article 13(4) in conjunction with Article 4(5) of Regulation ... No 97/95 ... apply where a contract described as a cultivation contract is concluded and is accepted by the competent authority under Article 4(2) and (3) of [that] regulation, but the contract is not concluded with a potato producer but with a dealer who obtains the potatoes directly or indirectly from potato producers?

(b) Does Article 13(4) of Regulation ... No 97/95 ... require the starch-producing undertaking to have exceeded its sub-quota by taking delivery of the potatoes?

(2) (a) Does the system of penalties provided for in Article 13(4) of Regulation ... No 97/95 ..., by contradistinction to Article 13(3) of that regulation, satisfy Community law standards of certainty?

(b) Is the penalty provided for in Article 13(4) of Regulation ... No 97/95 ..., in view of its amount, necessary to protect the financial interests of the Community within the meaning of Article 2(1) of Regulation ... No 2988/95

in cases such as this? Is it appropriate for protection of the financial interests of the Community in cases such as this?

- (3) Is an irregularity liable to a penalty under Article 13(4) of Regulation ... No 97/95 ... caused by negligence within the meaning of Article 5(1) of Regulation ... No 2988/95 even if the authority has approved the premium in full knowledge of the facts?’

First question

First part of the first question

- 26 By the first part of its first question, the national court is asking in essence whether the penalty provided for in Article 13(4) of Regulation No 97/95 applies where a contract described as a ‘cultivation contract’, and accepted as such by a competent national authority under Article 4(2) of that regulation, was not concluded with a potato producer but with a trader obtaining potatoes directly or indirectly from potato producers.
- 27 In that regard, it should be observed that under Article 1(d) and (e) of Regulation No 97/95, a cultivation contract is a contract concluded between a starch-producing undertaking and a producer; that is to say, any natural or legal person or group of such persons which delivers to a starch-producing undertaking potatoes produced by itself or its members, in its own name and on its own behalf.

- 28 Therefore, even if a contract concluded between a starch-producing undertaking and a trader obtaining potatoes directly or indirectly from producers has been described as ‘a cultivation contract’, it cannot be classified as such for the purposes of that provision.
- 29 It follows from Article 4(5) and Article 13(4) of Regulation No 97/95, the objective of which is to provide protection for producers, that an undertaking which takes delivery of potatoes not covered by a cultivation contract is liable to a penalty under that Article 13(4).
- 30 It should be added that, contrary to what Emsland-Stärke claims in its observations, the fact that an authority wrongly considered the contract at issue to be a cultivation contract does not affect that assessment.
- 31 The principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of Community law; nor can the conduct of a national authority responsible for applying Community law, which acts in breach of that law, give rise to a legitimate expectation on the part of a trader of beneficial treatment contrary to Community law (Case 316/86 *Krücken* [1988] ECR 2213, paragraph 24, and Joined Cases C-31/91 to C-44/91 *Lageder and Others* [1993] ECR I-1761, paragraph 35).
- 32 Consequently, a starch-producing undertaking cannot base any legitimate expectation on the fact that a national authority has infringed Community law by considering a contract to be a cultivation contract, although it did not comply with the conditions laid down by the Community rules.

Second part of the first question

- 33 By the second part of its first question, the national court asks whether imposition of the penalty provided for in Article 13(4) of Regulation No 97/95 is conditional on the starch-producing undertaking exceeding its sub-quota.
- 34 In that regard, it should be stated first of all that it is not clear from the wording of that provision that imposition of that penalty is in principle conditional on the starch-producing undertaking exceeding its sub-quota.
- 35 Furthermore, although the purpose of the prohibition contained in Article 4(5) of that regulation, as stated in the fourth recital in the preamble to the regulation, is to protect the quota by enabling the competent national authorities to monitor the quantity of potatoes purchased by the starch-producing undertakings, that fact cannot prevent the imposition of the penalty provided for in Article 13(4) of that regulation where the sub-quota is not exceeded.
- 36 The same recital states that the purpose of that prohibition is also to ensure compliance with the requirement that a minimum price be paid for all potatoes intended for starch production.
- 37 The mere fact that a starch-producing undertaking obtains potatoes from a trader which obtains them directly or indirectly from producers is likely to jeopardise that objective and hence the objective of protecting such producers.

- 38 Even if the starch-producing undertaking proves that it paid such a trader the minimum price mentioned in the second indent of Article 11(1)(b) of Regulation No 97/95, there is nothing to guarantee that the whole of that price has been paid in turn to the producers. The requirement of a cultivation contract, concluded directly with the producers, appears, as the Commission has stated, to be the only way of avoiding part of the price actually paid by the starch-producing undertaking being retained by intermediaries.
- 39 Lastly, the ninth recital in the preamble to Regulation No 97/95 states that in order to protect producers of potatoes and ensure they are paid the minimum price it is necessary to provide for penalties not only where it is established that the minimum price has not been paid, but also where it is found that a starch-producing undertaking has accepted potatoes not covered by a cultivation contract.
- 40 Imposition of the penalty provided for in Article 13(4) of Regulation No 97/95 cannot therefore be conditional on the starch-producing undertaking exceeding its sub-quota.
- 41 It follows from all the above considerations that the answer to the first question must be that the penalty provided for in Article 13(4) of Regulation No 97/95 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.

Second question

First part of the second question

- 42 By the first part of its second question, the national court is asking the Court in essence to rule on the validity, with regard to the principle of legal certainty, of Article 13(4) in conjunction with Article 13(3) of Regulation No 97/95.
- 43 In that regard, it should be noted that the Court has consistently held that the principle of legal certainty is a fundamental principle of Community law which requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly (see, in particular, Case C-143/93 *van Es Douane Agenten* [1996] ECR I-431, paragraph 27, and Case C-110/03 *Belgium v Commission* [2005] ECR I-2801, paragraph 30). The principle of legal certainty must be observed all the more strictly in the case of a measure liable to have financial consequences (Case 326/85 *Netherlands v Commission* [1987] ECR 5091, paragraph 24).
- 44 Moreover, a penalty, even of a non-criminal nature, cannot be imposed unless it rests on a clear and unambiguous legal basis (see, in particular, Case 117/83 *Könecke* [1984] ECR 3291, paragraph 11, and Case C-210/00 *Käserei Champignon Hofmeister* [2002] ECR I-6453, paragraph 52).
- 45 In providing for the imposition of a penalty in all cases in which a starch-producing undertaking takes delivery of potatoes not covered by a cultivation contract, Article 13(4) of Regulation No 97/95, in conjunction with Article 1 and Article 4(5) of that regulation, constitutes a clear and unambiguous provision.

- 46 As regards the relationship between Article 13(3) and Article 13(4) of Regulation No 97/95, it should be noted, as the Commission rightly observes, that the penalties introduced by those provisions relate to two quite separate situations: the first being failure to comply with the requirements laid down in the second indent of Article 11 (1)(b) of that regulation, and the second failure to comply with Article 4(5) of that regulation.
- 47 Consideration of the first part of the second question has therefore disclosed no factor capable of affecting the validity of Article 13(4) of Regulation No 97/95 from the point of view of the principle of legal certainty.

Second part of the second question

- 48 By the second part of its second question, the national court is, in essence, asking the Court about the validity of Article 13(4) of Regulation No 97/95 from the point of view of the principle of proportionality referred to in Article 2(1) of Regulation No 2988/95, in so far as Article 13(4) permits the imposition of penalties on starch-producing undertakings which have taken delivery of potatoes not covered by a cultivation contract, although they have not exceeded their sub-quota.
- 49 In that regard, it is common ground that infringement of the prohibition on starch-producing undertakings obtaining potatoes from traders obtaining them directly or indirectly from producers constitutes an irregularity within the meaning of Article 1 (2) of Regulation No 2988/95. Total or partial removal of a premium in respect of the current or the following marketing year also constitutes an administrative penalty within the meaning of Article 2(1) and (3) and Article 5(1)(c) and (d) of that regulation.

- 50 In the area of checks and penalties for irregularities committed under Community law, the Community legislature has, by adopting Regulation No 2988/95, laid down a series of general principles and has required that, as a general rule, all sectoral regulations comply with those principles (Case C-295/02 *Gerken* [2004] ECR I-6369, paragraph 56).
- 51 Under Article 2(1) of that regulation, administrative penalties are to be introduced in so far as they are necessary to ensure the proper application of Community law. They must be effective, proportionate and dissuasive so that they provide adequate protection for the Communities' financial interests. Moreover, Article 2(3) provides that the administrative penalties necessary for the correct application of the rules in question must take into account the nature and seriousness of the irregularity, the advantage granted or received, and the degree of responsibility.
- 52 With regard, first, to the question whether the purpose of the penalty provided for in Article 13(4) of Regulation No 97/95 is to ensure compliance with Community law and protect the Communities' financial interests, it must be acknowledged that that is indeed the objective of that penalty, since it applies in situations where starch is not produced in accordance with the provisions of Regulation No 97/95. Payment of the premium to a starch-producing undertaking which infringes Article 4(5) of that regulation by obtaining potatoes from a trader which has obtained them directly or indirectly from producers represents an unwarranted expense which harms the general budget of the Communities.
- 53 With regard, second, to the question whether the sanction provided for in Article 13 (4) of Regulation No 97/95 is effective, proportionate and dissuasive, the Court has consistently held that, in order to establish whether a provision of Community law complies with the principle of proportionality, it must be ascertained whether the

means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it (see, in particular, Case C-426/93 *Germany v Council* [1995] ECR I-3723, paragraph 42, and Case C-26/00 *Netherlands v Commission* [2005] ECR I-6527, paragraph 126).

54 As regards judicial review of compliance with those conditions, it must be stated that in matters concerning the common agricultural policy the Community legislature has a discretionary power which corresponds to the political responsibilities given to it by Articles 34 EC and 37 EC. Consequently, the lawfulness 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 is seeking to pursue (see, in particular, Case 265/87 *Schröder* [1989] ECR 2237, paragraph 22, and Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 14).

55 First, it appears that under Article 13(4) of Regulation No 97/95 the total amount of premiums to be paid to a starch-producing undertaking is reduced by 10 times the percentage recorded, for the marketing year in question, if that undertaking has accepted a quantity of potatoes not covered by cultivation contracts of less than 10% of its sub-quota. No premium at all is to be paid, for the current marketing year or for the following marketing year, if the infringement relates to more than 10% of the sub-quota granted to that undertaking. In so doing, that provision may be considered to be introducing an effective and dissuasive penalty suitable for the purpose of achieving the desired objectives.

56 It should also be observed that the penalty established by that provision is not absolute but reflects the extent and seriousness of the irregularity committed, as provided for in Article 2(3) of Regulation No 2988/95 (see, to that effect, Case C-354/95 *National Farmers' Union and Others* [1997] ECR I-4559, paragraph 53).

- 57 Lastly, in view of the importance of the objective of protecting producers pursued by Article 13(4) of Regulation No 97/95, and given the wide measure of discretion enjoyed by the Community institutions in that area, it cannot be regarded as unjustified or disproportionate to impose a dissuasive and effective penalty such as the one contained in that provision in the event of an intentionally or unintentionally incorrect statement by a starch-producing undertaking applying for a premium with regard to the description 'producer' (see, to that effect, *National Farmers' Union and Others*, paragraph 53).
- 58 The penalty provided for by Article 13(4) of Regulation No 97/95 may therefore be regarded as being suitable for the purpose of achieving the desired objectives and not going beyond what is necessary to achieve them.
- 59 Consideration of the second part of the second question has therefore disclosed no factor capable of affecting the validity of Article 13(4) of Regulation No 97/95 from the point of view of the principle of proportionality referred to in Article 2(1) and (3) of Regulation No 2988/95.

Third question

- 60 By its third question, the national court is asking in essence whether the fact that the competent national authority was informed of the fact that the starch-producing undertaking had obtained potatoes from a trader obtaining them directly or indirectly from producers can 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, and, therefore, affect the imposition on that undertaking of the penalty provided for in Article 13(4) of Regulation No 97/95.

- 61 In that regard, it should be observed that the starch-producing undertaking concerned may not invoke the principle of protection of legitimate expectations where a national authority has, deliberately or in error, infringed Community law by regarding a contract notified by that same undertaking as a cultivation contract although it did not meet the requirements laid down by Community legislation in order to be recognised as such.
- 62 Moreover, the fact that the competent authority was informed of the fact that the starch-producing undertaking had obtained potatoes from a trader obtaining them directly or indirectly from producers does not in itself mean that the irregularity in question cannot be described as an irregularity ‘caused by negligence’, or indeed ‘intentional’, within the meaning of Article 5(1) of Regulation No 2988/95.
- 63 Article 13(4) of Regulation No 97/95 does not contain any derogation from application of the penalty which it introduces, unlike provisions such as Article 9(2) of 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). That provision, which is referred to in Case C-304/00 *Strawson and Gagg & Sons* [2002] ECR I-10737, paragraph 62, and to which Emsland-Stärke refers in its observations, states that the penalty it provides for must not be imposed if the farmer shows that his action was accurately based on incorrect information recognised by the competent authority.
- 64 It follows from the above considerations that the answer to the third question must be that 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.

Costs

- ⁶⁵ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

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.**

[Signatures]