

JUDGMENT OF THE COURT (Sixth Chamber)
8 February 1996 *

In Case C-212/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the High Court of Justice, Queen's Bench Division, for a preliminary ruling in the proceedings pending before that court between

FMC plc,

FMC (Meat) Ltd,

DT Duggins Ltd,

Marshall (Lamberhurst) Ltd,

Montelupo Ltd,

North Devon Meat Ltd

and

Intervention Board for Agricultural Produce,

Ministry of Agriculture, Fisheries and Food,

* Language of the case: English.

on the validity and interpretation of Article 4(1) of Commission Regulation (EEC) No 1633/84 of 8 June 1984 laying down detailed rules for applying the variable slaughter premium for sheep and repealing Regulation (EEC) No 2661/80 (OJ 1984 L 154, p. 27), as amended by Article 1 of Commission Regulation (EEC) No 1922/92 of 13 July 1992 amending Regulation (EEC) No 1633/84, cited above, and determining the conditions for the reimbursement of the clawback following the judgment of the Court of Justice in Joined Cases C-38/90 and C-151/90 (OJ 1992 L 195, p. 10), the validity and interpretation of Article 2 of Regulation No 1922/92, cited above, and the interpretation of paragraph 30 of the judgment of the Court of Justice in Joined Cases C-38/90 and C-151/90 *Lomas and Others* [1992] ECR I-1781,

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, G. F. Mancini, F. A. Schockweiler (Rapporteur), J. L. Murray and H. Ragnemalm, Judges,

Advocate General: G. Tesauro,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- the plaintiffs in the main proceedings, by C. Quigley, Barrister, instructed by H. Smith, Solicitor,
- the United Kingdom, by J. E. Collins, Assistant Treasury Solicitor, acting as Agent, and G. Barling QC and D. Anderson, Barrister,
- the Commission of the European Communities, by T. Van Rijn, Legal Adviser, and X. Lewis, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the plaintiffs in the main proceedings, represented by C. Quigley, the United Kingdom, represented by J. E. Collins and G. Barling, and the Commission, represented by T. Van Rijn and P. Watson, Barrister, at the hearing on 26 October 1995,

after hearing the Opinion of the Advocate General at the sitting on 7 December 1995,

gives the following

Judgment

- 1 By order of 1 July 1994, received at the Court on 27 July 1994, the High Court of Justice, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the validity and interpretation of Article 4(1) of Commission Regulation (EEC) No 1633/84 of 8 June 1984 laying down detailed rules for applying the variable slaughter premium for sheep and repealing Regulation (EEC) No 2661/80 (OJ 1984 L 154, p. 27), as amended by Article 1 of Commission Regulation (EEC) No 1922/92 of 13 July 1992 amending Regulation (EEC) No 1633/84, cited above, and determining the conditions for the reimbursement of the clawback following the judgment of the Court of Justice in Joined Cases C-38/90 and C-151/90 (OJ 1992 L 195, p. 10), the validity and interpretation of Article 2 of Regulation No 1922/92, cited above, and the interpretation of paragraph 30 of the judgment of the Court of Justice in Joined Cases C-38/90 and C-151/90 *Lomas and Others* [1992] ECR I-1781.
- 2 Those questions were raised in proceedings between FMC plc, FMC (Meat) Ltd, DT Duggins Ltd, Marshall (Lamberhurst) Ltd, Montelupo Ltd, and North Devon Meat Ltd ('FMC and Others'), companies established in the United Kingdom, on

the one hand, and the Intervention Board for Agricultural Produce (hereinafter 'the Board') and the Ministry of Agriculture, Fisheries and Food ('the Ministry'), on the other.

- 3 Council Regulation (EEC) No 1837/80 of 27 June 1980 (OJ 1980 L 183, p. 1), as amended by Council Regulation (EEC) No 871/84 of 31 March 1984 (OJ 1984 L 90, p. 35), established a common organization of the markets in sheepmeat and goatmeat, providing for various market support mechanisms.
- 4 However, that common organization was incomplete in that it established several regional markets in the sheepmeat sector, rather than a single market, and that one of the support measures, namely the variable slaughter premium for sheep, was reserved to British producers.
- 5 That premium could be paid where the market price was less than 85% of the basic price, the amount of the premium being fixed each week by the Commission. The animals in respect of which the premium had been granted were, within 21 days of first being placed on the market with a view to slaughter, either to be slaughtered in Great Britain or exported.
- 6 In order to prevent the application of the slaughter premium from disrupting trade, Article 9(3) of Regulation No 1837/80 provided for the Commission to take the necessary measures to ensure that an amount equivalent to the premium actually granted was charged on products in respect of which the premium had been granted when they left Great Britain. That amount, known as the clawback, was payable by the exporters.

- 7 The detailed rules for calculating and charging the clawback were laid down by Regulation No 1633/84.
- 8 Article 4(1) of that regulation provided for an amount equal to the variable slaughter premium fixed for the week during which the products in question were exported to be charged on departure from the United Kingdom of products which had benefited from the premium. In accordance with Article 4(2), the United Kingdom was required to provide for the lodging of security, fixed at a level to cover the amount due pursuant to paragraph 1, and to be released as soon as that amount had been paid.
- 9 As from 1 January 1990, Regulation No 1837/80, as amended in 1984, was replaced by Council Regulation (EEC) No 3013/89 of 25 September 1989 (OJ 1989 L 289, p. 1), which provides for a unified common organization of the markets in sheep-meat and goatmeat, subject to a number of transitional provisions. In accordance with those provisions, Article 24 permits the United Kingdom to grant the variable slaughter premium until the end of the 1992 marketing year. Where the premium is paid, clawback of an amount equal to that of the premium actually granted must be charged when the animal leaves Great Britain.
- 10 Commission Regulation (EEC) No 3246/91 of 7 November 1991 (OJ 1991 L 307, p. 16) authorized the United Kingdom to discontinue granting the slaughter premium for sheep from the start of the 1992 marketing year.
- 11 In its judgment in *Lomas and Others*, cited above, the Court ruled that Article 4(1) of Regulation No 1633/84 was invalid inasmuch as, by providing for the charging, by way of clawback, of an amount which in most cases was not exactly equal to

that of the slaughter premium actually granted, the Commission exceeded the powers conferred on it by Article 9(3) of Regulation No 1837/80. The premium was paid at the rate fixed for the week during which the animal was placed on the market, whereas the clawback was equal to the amount of the premium fixed for the week during which the product was exported. The animal for which the premium had been paid could be exported up to 21 days after first being placed on the market. Article 4(2) of Regulation No 1633/84, concerning the lodging of security, was declared invalid for the same reasons.

- 12 In that judgment, the Court also ruled that the declaration that Article 4(1) and (2) of Regulation No 1633/84 was invalid could not be relied on with effect from a date prior to that of the judgment, except by traders or those entitled through them who initiated proceedings or made an equivalent complaint under the applicable national law before that date (paragraph 30 and point 2 of the operative part).
- 13 Following that judgment, the Commission adopted Regulation No 1922/92 amending Regulation No 1633/84 and determining the conditions for the reimbursement of the clawback.
- 14 Article 1 of that regulation amends the detailed rules for calculating and charging the clawback in the following manner.
- 15 Traders may choose between two options. Under the first option, the amount of the clawback is equal to the amount of the premium actually granted for the products in question; in order to be able to use that method of calculation, traders are obliged to provide, within a given period, proof satisfactory to the competent United Kingdom authorities of the amount of the premium actually granted for the products subject to clawback. Under the second option, the amount of the

clawback is equal to the average amount of the premium fixed for the week of departure of the products and the three previous weeks. If the trader has not indicated his choice within the prescribed period or if, where the first option has been chosen, he does not provide satisfactory proof, the security is forfeited in full.

- 16 Article 2 of Regulation No 1922/92 lays down the conditions for reimbursement of clawback unduly charged.
- 17 Once again two options are available. Under the first, the competent national authorities are to reimburse, within the time-limits and according to the procedure laid down in the relevant national law, the difference between the clawback paid and the amount of the premium actually granted for the same products to traders or their agents who had, before the date of the *Lomas and Others* judgment, initiated proceedings or made an equivalent complaint, under the applicable national law, against the method of calculation declared invalid by that judgment. In support of their claim, traders were required, before 30 November 1992, to supply proof satisfactory to the competent United Kingdom authorities of the amount of the premium actually received for the products subject to clawback. The second option allows traders to claim reimbursement of the difference between the clawback actually paid and the average amount of the premiums fixed for the week of departure of the products and the three previous weeks.
- 18 Article 3 provides that the regulation applies to all situations where, on the date of the judgment in *Lomas and Others*, the clawback had not yet been paid, or where proceedings had been initiated or an equivalent complaint made under the applicable national law, as referred to in Article 2.
- 19 FMC and Others are companies established in the United Kingdom which export sheep and sheepmeat from Great Britain.

- 20 In the United Kingdom, the Board and the Ministry are responsible for implementing at national level the common organization of the markets in sheepmeat and goatmeat.
- 21 Between 1980 and 1992, FMC and Others paid the Board a total of UKL 67 356 379 by way of clawback for the quantities of sheepmeat exported from Great Britain. They claim to have done so in the belief that the obligation to pay the clawback pursuant to successive Council regulations was lawful.
- 22 On 6 March 1992, FMC and Others issued a writ in the High Court of Justice claiming repayment of UKL 67 356 379, corresponding to the clawback paid by them between 1980 and 1992, on the ground that they were under no statutory obligation to make those payments. In their view, the alleged unlawfulness arises first from the judgment in *Lomas and Others* declaring Article 4(1) and (2) of Regulation No 1633/84 invalid and, more generally, from the manner in which the Commission and the competent United Kingdom authorities consistently applied those unlawful arrangements. In the alternative, FMC and Others claimed before the High Court repayment of the (unquantified) difference between the sums actually paid and the clawback which would have been levied if there had been a legal obligation to pay pursuant to Article 9(3) of Regulation No 1837/80, as amended by Regulation No 871/84, and Article 24(5) of Regulation No 3013/89.
- 23 At the time when the judgment in *Lomas and Others* was delivered, a number of demands for payment of the clawback had not yet been settled by exporters, with the result that the Board subsequently issued directions to pay the clawback on the basis of Article 4(1) of Regulation No 1633/84, as amended by Article 1 of Regulation No 1922/92. Accordingly, the second, third, fourth and sixth plaintiffs before the High Court were required to pay UKL 116 626.11, 432 825.15, 43 288.57 and 239 823.42 respectively.

- 4 Since they considered Article 4(1) of Regulation No 1633/84, as amended by Regulation No 1922/92, to be invalid, those companies refused to pay the sums demanded and brought interlocutory proceedings in the United Kingdom to prevent the Board from calling on the security lodged until the clawback had been lawfully calculated in accordance with Article 24(5) of Regulation No 3013/89. Their interim application was refused, whereupon, on 15 April 1994, the companies paid over under protest a total of UKL 847 665.58. They now also seek recovery of that sum in proceedings before the High Court.
- 25 At the hearing before the Court on 26 October 1995, FMC and Others made it clear, however, that in their action before the national court they were claiming only repayment of the difference between the amount of the clawback actually paid and the sums that they would have had to pay in that respect if the relevant Community rules had been properly applied.
- 26 Considering that the dispute involved an assessment of the validity of the Community rules in question and raised issues concerning the interpretation of Community law, the High Court of Justice, Queen's Bench Division, decided to stay proceedings and referred the following questions to the Court of Justice for a preliminary ruling:
 - '1. Is Article 4(1) of Commission Regulation (EEC) No 1633/84 (as amended by Article 1 of Commission Regulation (EEC) No 1922/92) invalid as being, *inter alia*, *ultra vires* Article 24(5) of Council Regulation (EEC) No 3013/89 and/or in contravention of the principles of proportionality and legal certainty in so far as:
 - (a) operators electing to pay clawback on the basis of the first subparagraph of Article 4(1) are required, in accordance with the fourth subparagraph of Article 4(1), to provide proof satisfactory to the competent national authorities of the amount of premium actually granted for the products subject to the said clawback?

- (b) the only alternative for operators who are unable to provide such proof is to elect under the second subparagraph of Article 4(1) to be charged an amount of clawback which is fixed equal to the average amount of the premiums fixed for the week of departure of the products and the three previous weeks?
2. If the answer to Question 1(a) is No, what is the nature of the proof that may be required of the operators by the competent national authorities?
3. In relation to claims for repayment of clawback paid prior to 10 March 1992, is paragraph 30 of the judgment of the Court of Justice in Joined Cases C-38/90 and C-151/90 *R v Lomas [and Others]* to be understood as permitting traders who initiated proceedings or made an equivalent complaint under the applicable national law prior to that date to rely upon the invalidity of Articles 4(1) and 4(2) of Commission Regulation (EEC) No 1633/84:
- (a) only with regard to the charging of clawback in respect of periods subsequent to the date of initiation of proceedings or the making of an equivalent complaint; or
 - (b) with regard also to the charging of clawback in respect of periods prior to the initiation of proceedings or the making of an equivalent complaint, subject to any applicable limitation period; or
 - (c) with regard to the charging of clawback in respect of some other period and, if so, which?

4. Is Article 2 of Commission Regulation (EEC) No 1922/92 invalid on the grounds, *inter alia*, of contravening the principles of proportionality and legal certainty in so far as:
 - (a) operators electing to claim reimbursement on the basis of the first subparagraph of Article 2(1) are required, in accordance with Article 2(2), to provide a specification of the premium actually granted for the same products that are subject to the clawback and proof satisfactory to the competent national authorities thereof?
 - (b) the only alternative for operators who are unable to provide such specification and proof is to elect under the second subparagraph of Article 2(1) to be reimbursed the difference between the clawback actually paid and the average amount of the premiums fixed for the week of departure of the products and the three previous weeks?
5. If the answer to Question 4(a) is No, what is the nature of the proof that may be required of the operators by the competent national authorities?
6. In determining a claim by an operator for reimbursement of clawback in proceedings brought in a national court:
 - (a) what substantive rules of Community law (if any) apply in determining the amount which is to be reimbursed?

(b) is the national court entitled or obliged, as a matter of Community law, to take account of the following factors (and, if so, which), each of which may be capable as a matter of national law of diminishing or extinguishing the liability of the competent national authority:

(i) the principle that the plaintiff has the burden of proving as a matter of fact the existence and extent of the overpayment alleged;

(ii) the fact that the sums, except where they were paid under protest, were paid under a mistake of law;

(iii) the fact that repayment of the sums overpaid may constitute, wholly or partially, unjust enrichment of the operator;

(iv) the limitation periods contained in Articles 2(2) and 14 of Council Regulation (EEC) No 1430/79 (as amended) and in any applicable national legislation?

Questions 1 and 4

- ²⁷ By its first and fourth questions, which should be considered together, the national court essentially asks whether the new method of calculating the clawback, introduced by Article 1 of Regulation No 1922/92 amending Article 4(1) of Regulation No 1633/84, and the system for reimbursement of clawback unlawfully charged, provided for by Article 2 of Regulation No 1922/92, are valid.

- 28 According to settled case-law (see the judgments in Case 106/81 *Kind v EEC* [1982] ECR 2885, in Case 61/86 *United Kingdom v Commission* [1988] ECR 431, in Joined Cases C-181/88, C-182/88 and C-218/88 *Deschamps and Others* [1989] ECR I-4381 and, most recently, in *Lomas and Others*, cited above), the charging of clawback is valid in principle, since the Court declared only some of the detailed rules for its application to be unlawful.
- 29 In those judgments, the Court held that although any charging of a sum of money upon exportation to another Member State constitutes in principle, no matter how that charge is described, an obstacle to the free movement of products within the common market, the charging of such a sum may nevertheless be justified in an organization of the market which has not yet been completely unified where it is intended to offset inequalities arising from the fact that that organization has not yet been fully achieved, in order to enable products covered by the organization to circulate on equal terms without thereby artificially distorting competition between producers in different regions.
- 30 Consequently, as the Court stated in those cases, the incomplete state of the common organization of the market in sheepmeat and goatmeat, which is due in particular to the fact that one of the support measures, the variable slaughter premium, is reserved for producers of a specific region and is liable to improve their competitive position, may call for corrective measures to restore equality between producers in all regions so far as their competitive position is concerned; in particular, by charging clawback upon exportation outside the region concerned of products in respect of which the premium has been granted.
- 31 Since the purpose of charging clawback is to avoid disruption of intra-Community trade arising from the application of the variable slaughter premium, it must be charged in such a way that it neutralizes the effect of the premium on departure from the region concerned of the products which benefited from that support measure, without working to the advantage of producers in that region, as would be the case if the amount charged by way of clawback were lower than that of the

premium granted, or affecting their competitive position, as would be the case if the clawback were higher than the premium.

- 32 The legality of Articles 1 and 2 of Regulation No 1922/92 must be assessed in the light of the objective pursued by the clawback system.
- 33 With regard to both the charging of clawback still payable and the reimbursement of clawback unduly paid, the system established by that regulation, adopted pursuant to Article 176 of the EEC Treaty, enables traders to choose between two methods of calculation.
- 34 The first option, available to traders who are in a position to supply proof to the competent United Kingdom authorities of the amount of the premium actually granted for products subject to clawback, fixes the amount of the clawback at the same level as that of the slaughter premium.
- 35 It is, therefore, beyond doubt that that method of calculation is consistent with the objective pursued by the system of charging clawback.
- 36 As regards the proof that must be adduced in order to take advantage of the first method of calculating clawback, it does not seem to be manifestly inappropriate for the exporters to bear the burden of proof. Article 9(3) of Regulation No 1837/80 and Article 24(5) of Regulation No 3013/89 clearly laid down that the amount of the clawback was to be equal to that of the premium, so that a prudent trader, aware that he was liable to pay the clawback, had to take proper steps to obtain the necessary evidence attesting to the equivalence of the amounts in question. Furthermore, the exporter knows the identity of the trader from whom he

bought the products on which he is required to pay the clawback, so that he is best placed to adduce the requisite proof. Moreover, where it is impossible for the exporter to adduce such proof, Regulation No 1922/92 has provided for a different method of calculating the clawback.

- 17 That second option, which is intended, as is apparent from the fifth recital in the preamble to Regulation No 1922/92, to avoid the practical difficulties which traders might encounter in adducing the proof required under the first calculation method, fixes the clawback at an amount equal to the average of the slaughter premiums fixed for the week of export of the products concerned and the three previous weeks.
- 38 That system differs fundamentally from the method of calculation declared invalid in the judgment in *Lomas and Others*, according to which the clawback was equal to the amount of the premium fixed solely for the week of export of the products concerned.
- 39 Since the slaughter premium was paid at the rate fixed for the week during which the animal was first placed on the market, and the animal had to be exported within 21 days of that date, the old system gave rise to a situation in which the amount of the clawback was as a rule different from that of the premium where, as is generally the case, the animal was not placed on the market for the first time and exported in the same week. That being so, sudden fluctuations in the rate of the premium from one week to another were liable to lead to a substantial discrepancy between the premium paid and the clawback payable in respect of one and the same product.
- 40 On the other hand, the new system available under the second option is based on the average value of the premium rates in force over a period of four weeks which must perforce include both the time when the product was first placed on the market and the time when it was exported. Accordingly, that system enables the

fluctuations in clawback to be reduced significantly compared with those occurring under the old system of calculation, and the use of an average calculated over four weeks ensures that the amount of the clawback is as close as possible to that of the premium.

- 41 Moreover, in the case of traders such as the plaintiffs in the main proceedings, which are companies engaged in the export of sheep and sheepmeat, the problem of the extent to which the amounts of the clawback correspond to those of the premium cannot be viewed in terms of isolated transactions. Since in the case of such transactions the two amounts may vary slightly, those variations may result in the clawback being greater than the premium or, conversely, of the premium being greater than the clawback, so that, taken over a longer period, the consequence of applying the average fixed for four weeks is that each trader reimburses on average, for all his exports, a sum by way of clawback corresponding to the amount of the premium.
- 42 In those circumstances, the method of calculating clawback provided for under the second option also accords with the purpose of the clawback, which is to neutralize the effect of the premium on export of the products in respect of which it was granted.
- 43 Against that, it cannot be argued that the new system is incompatible with Regulations No 1837/80 and No 3013/89, which require an amount equivalent to that of the premium actually paid to be levied on departure from Great Britain of the products for which the variable slaughter premium had been granted. The word 'equivalent' cannot be understood as referring to an amount which is exactly the same for each transaction, especially in a situation such as that arising under the second option where the amount of a premium paid in the past can no longer be determined exactly; instead, that word must be understood, in accordance with the

purpose of the legislation in question, as meaning that the result of levying the clawback should in fact be to neutralize the impact of the premium. As is clear from the foregoing considerations, that condition is satisfied by the new method of calculation laid down in Articles 1 and 2 of Regulation No 1922/92.

- 44 Furthermore, when the plaintiffs in the main proceedings were questioned on that point at the hearing, they were unable to suggest an alternative system which, while consistent with the purpose of the clawback, would make it possible to fix it at a level more closely corresponding to that of the premium.
- 45 In the light of the foregoing considerations, the answer to be given to the national court must be that consideration of Questions 1 and 4 has disclosed no factor of such a kind as to affect the validity either of Article 4(1) of Regulation No 1633/84, as amended by Article 1 of Regulation No 1922/92, or of Article 2 of the latter regulation.

Questions 2 and 5

- 46 The second and fifth questions, which should be dealt with together, seek in essence to ascertain what proof the competent national authorities may require traders to adduce under the first option laid down in Article 4(1) of Regulation No 1633/84, as amended by Article 1 of Regulation No 1922/92, and in Article 2 of that regulation, for the purposes of calculating the clawback or the reimbursement of clawback unlawfully charged.
- 47 In that connection, it is apparent from Article 1 of Regulation No 1922/92 that, in order to take advantage of the method of calculation provided for under the first option for clawback yet to be paid, traders are required to provide 'proof satisfactory to the competent United Kingdom authorities, of the amount of premium

actually granted' for the products subject to clawback. According to the same article, 'the period for providing proof may be extended by those authorities by a further 60 days'.

- 48 Similarly, as regards the reimbursement of clawback unduly paid, Article 2 of Regulation No 1922/92 provides that traders who, prior to the judgment in *Lomas and Others*, had initiated proceedings or made an equivalent complaint under the applicable national law in relation to the method of calculation of the amount of the clawback declared invalid by that judgment and who intend to use the method of calculating clawback laid down under the first option are required, before 30 November 1992, to give the competent United Kingdom authorities a specification of the date at which their claim commences, the amount of the clawback paid from that date until 10 March 1992 (the date on which the judgment in *Lomas and Others* was delivered), and the amount of 'the premium actually granted' for the same products subject to clawback, and they are required to produce 'proof satisfactory to the competent United Kingdom authorities as far as the above elements are concerned'.
- 49 It follows that, subject to certain rules concerning time-limits, Regulation No 1922/92 merely provides that traders must supply proof to the satisfaction of the competent United Kingdom authorities of the amount of the premium actually granted for the products concerned.
- 50 Moreover, Regulation No 1922/92 leaves to those national authorities the task of deciding whether the proof supplied by traders is satisfactory.
- 51 In the absence of any Community legislation on the matter, the United Kingdom authorities must base their decision on national law, subject to the limits imposed by Community law.

52 It is important to note in that regard that, in accordance with the duty of cooperation in good faith imposed on the Member States by Article 5 of the EC Treaty, the national authorities may not undermine either the effect or the effectiveness of Community law. The Court has consistently held that detailed procedural rules laid down by the applicable national law cannot therefore be less favourable than those governing similar domestic procedures nor render virtually impossible or excessively difficult the implementation of Community legislation and thereby affect the exercise of rights conferred by the Community legal system (see, most recently, the judgment in Case C-312/93 *Peterbroeck v Belgian State* [1995] ECR I-4599).

53 In those circumstances, the answer to Questions 2 and 5 must be that the requirement of proof laid down in Article 4(1) of Regulation No 1633/84, as amended by Article 1 of Regulation No 1922/92, and in Article 2 of the latter regulation, is to be interpreted as meaning that traders are required to supply proof to the satisfaction of the competent United Kingdom authorities, in accordance with national law and within the period prescribed by Regulation No 1922/92, of the amount of the premium actually granted for products subject to clawback, provided that the applicable national rules do not affect the scope or effectiveness of Community law.

Question 3

54 By its third question, the national court seeks in substance to ascertain whether paragraph 30 of the judgment in *Lomas and Others* means that an exporter fulfilling the conditions set out therein may claim reimbursement only of clawback unduly charged after the date on which he brought legal proceedings or also of clawback unduly charged before that date.

55 In principle, a judgment of the Court in proceedings for a preliminary ruling declaring a Community act to be invalid takes effect, like a judgment annulling an act, from the date on which the act entered into force, with all the consequences

which that entails, in particular, for charges levied pursuant to the measure declared invalid.

- 56 The Court may, however, limit in the judgment itself the temporal effects of a preliminary ruling declaring a Community regulation invalid, where that is justified by overriding considerations of legal certainty. That power is inferred from an interpretation of Articles 173, 174 and 177 of the Treaty, taken together, the reference for a preliminary ruling on the validity of an act and the action for annulment being the two mechanisms provided by the Treaty for reviewing the legality of legislation.
- 57 It is for the Court, where it exercises the power to limit the effect on past events of a declaration in preliminary ruling proceedings that a Community regulation is invalid, to decide whether an exception to that temporal limitation of the effect of its judgment is to be made in favour of the party to the main proceedings which brought an action before the national court against the national measure implementing the regulation, or whether, conversely, a declaration of invalidity applicable only to the future is an adequate remedy even for that party.
- 58 When it undertakes that assessment, the Court is concerned in particular to ensure that the persons concerned are not deprived of the right to effective judicial protection in the event of a breach of Community law by the institutions and that the practical effect of Article 177 is not jeopardized (see the judgment in Case C-228/92 *Roquette Frères v Hauptzollamt Geldern* [1994] ECR I-1445, paragraph 27).
- 59 In *Lomas and Others*, the Court held that if the invalidity of Article 4(1) and (2) of Regulation No 1633/84 could be relied on in support of claims concerning the charging of the clawback in respect of periods prior to the date of the preliminary ruling on invalidity, it would give rise to significant financial consequences and serious organizational difficulties, and that overriding considerations of legal

certainty precluded legal situations which had produced all their effects in the past from being called in question. However, the Court considered it necessary to derogate from that principle in favour of traders or those entitled through them who had asserted their rights in due time.

- 60 Accordingly, the Court held that the invalidity of Article 4(1) and (2) of Regulation No 1633/84 could not be relied on with effect prior to the date of that judgment, except by traders or those entitled through them who had initiated proceedings or made an equivalent complaint under the applicable national law before that date (paragraph 30).
- 61 On the other hand, the Court did not set any further limits on the initiation by the traders concerned of proceedings before the national court for the reimbursement of clawback unduly paid before delivery of the judgment in the preliminary ruling proceedings declaring Community legislation invalid, and in particular it did not set limits to the period of payment of the clawback in respect of which individuals may rely upon the Court's ruling on invalidity.
- 62 In those circumstances, if the traders concerned are not to be deprived of the right to effective judicial protection in the event of a breach of Community law by the institutions, they must be able to rely on the invalidity of Article 4(1) and (2) of Regulation No 1633/84 in respect of periods not only subsequent to, but also prior to, the bringing of an action or the making of an equivalent complaint, in principle as from the date on which the provisions declared invalid by the Court entered into force.
- 63 In the absence of Community rules on the matter, claims for reimbursement of clawback unduly charged must be made in accordance with the detailed procedural rules laid down by national law, always provided, as the Court has consistently

held, that such rules are not less favourable than those governing similar domestic claims and are not so framed as to render virtually impossible or excessively difficult the exercise of rights conferred by the Community legal system (see, for example, the judgments in Case C-338/91 *Steenhorst-Neerings v Bestuur van de Berijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen* [1993] ECR I-5475, paragraph 15, in Case C-410/92 *Johnson v Chief Adjudication Officer* [1994] ECR I-5483, paragraph 21, and in *Peterbroeck*, cited above, paragraph 12.)

- 64 In particular, Community law does not preclude the application of a period of limitation or prescription laid down by a rule of national law which restricts the period prior to the bringing of the claim in the national court in respect of which reimbursement of undue payments may be obtained, where that rule is not discriminatory and does not prejudice the actual right conferred on individuals by a preliminary ruling on invalidity (see *Johnson*, cited above).
- 65 On that point, the Court has already held in *Johnson* that application of a national rule which does not preclude the bringing of legal proceedings, but merely limits to one year the period prior to submission of the claim in respect of which benefits may be obtained, does not adversely affect the actual right conferred on individuals to rely on Community law.
- 66 Accordingly, the answer to Question 3 must be that, as regards claims for repayment of clawback unduly paid prior to 10 March 1992, paragraph 30 of the judgment in *Lomas and Others* is to be interpreted as meaning that traders or those entitled through them who prior to that date initiated proceedings or made an equivalent complaint under the applicable national law may rely on the invalidity of Article 4(1) and (2) of Regulation No 1633/84 as from the date of its entry into force, subject to the application, within the limits set by Community law, of any national rules limiting the period prior to the submission of a claim in respect of which repayment of a sum unduly paid may be obtained.

Question 6

- 7 The sixth question seeks essentially to ascertain whether or not there exist substantive or procedural rules of Community law which national courts must take into account when ruling on an application for repayment of clawback unduly charged and, if there are no such rules, whether Community law precludes the application of rules of national law under which: the burden of proving the existence and extent of the alleged overpayment rests on the plaintiff; reimbursement of undue payments made to a public authority is possible only if they were made under protest; recovery of sums overpaid must not lead to unjust enrichment of the plaintiff; and action for repayment is time-barred after a given period has elapsed.
- 8 With regard to the reimbursement of clawback unduly charged, Article 2(1) and (2) of Regulation No 1922/92 contains provisions concerning the traders who are entitled to bring an action for recovery of undue payments, the amount to be reimbursed and the information to be given within a certain period to the competent national authorities. Those provisions are binding on the national courts.
- 59 Furthermore, Article 2(1) of Regulation No 1922/92 expressly refers to the time-limits and procedural rules laid down under the applicable national law. Similarly, it is apparent from Article 2(2) that, subject to the rule that the burden of proof rests on the plaintiff, the detailed rules of evidence are governed by national law.
- 70 Accordingly, in the light of the unambiguous wording of Article 2 of Regulation No 1922/92, the view taken by the Commission and the United Kingdom that the three-year limitation period laid down by Articles 2(2) and 14 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import

or export duties (OJ 1979 L 175, p. 1) applies by analogy to actions for recovery of clawback unduly charged must be rejected.

- 71 Furthermore, it is settled case-law that, in the absence of Community legislation governing a matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for recovery of sums unduly paid, on the understanding however that such rules may not be less favourable than those governing similar domestic actions and may in no circumstances be so framed as to render virtually impossible or excessively difficult the exercise of rights conferred by Community law (see, most recently, *Peterbroeck*, cited above, paragraph 12).
- 72 In this respect, a rule of national law, by virtue of which a sum paid to a public authority under a mistake of law may be recovered only if it was paid under protest, manifestly fails to satisfy those conditions, in that it is liable to prejudice effective protection of the rights conferred on the traders in question by Community law.
- 73 Moreover, as noted above, Article 2(1) of Regulation No 1922/92 expressly specifies the persons entitled to claim reimbursement without making the claim conditional on their conduct at time of payment.
- 74 On the other hand, the Court has consistently held that Community law does not prevent a national legal system from refusing to allow recovery of sums unduly

charged where that would involve the unjust enrichment of those entitled (see, in particular, Case 68/79 *Just v Ministry for Fiscal Affairs* [1980] ECR 501).

- 5 As regards any periods of limitation or prescription which may be laid down by the applicable national law, paragraphs 63 to 65 of this judgment apply.
- 6 Finally, with regard to the rules governing proof of undue payment, the principles referred to in paragraphs 51 and 52 of this judgment in relation to proof of the amount of the premium apply by analogy.
- 7 In view of the foregoing considerations, the answer to Question 6 must be that, with regard to matters not governed by Article 2 of Regulation No 1922/92, national courts called upon to give judgment on a claim for reimbursement of clawback unduly charged must apply their national law, provided the detailed rules laid down therein are not less favourable than those governing similar domestic actions and are not so framed as to render virtually impossible or excessively difficult the exercise of rights conferred by the Community legal system.

Costs

- 78 The costs incurred by the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the High Court of Justice, Queen's Bench Division, by order of 1 July 1994, hereby rules:

1. Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity either of Article 4(1) of Commission Regulation (EEC) No 1633/84 of 8 June 1984 laying down detailed rules for applying the variable slaughter premium for sheep and repealing Regulation (EEC) No 2661/80, as amended by Article 1 of Commission Regulation (EEC) No 1922/92 of 13 July 1992 amending Regulation No 1633/84, cited above, and determining the conditions for the reimbursement of the clawback following the judgment of the Court of Justice in Joined Cases C-38/90 and C-151/90, or of Article 2 of Regulation No 1922/92.
2. The requirement of proof laid down in Article 4(1) of Regulation No 1633/84, cited above, as amended by Article 1 of Regulation No 1922/92, cited above, and in Article 2 of the latter regulation, is to be interpreted as meaning that traders are required to supply proof to the satisfaction of the competent United Kingdom authorities, in accordance with national law and within the period prescribed by Regulation No 1922/92, of the amount of the premium actually granted for products subject to clawback, provided that the applicable national rules do not affect the scope or effectiveness of Community law.
3. As regards claims for repayment of clawback unduly paid prior to 10 March 1992, paragraph 30 of the judgment in *Lomas and Others* (Joined Cases C-38/90 and C-151/90) is to be interpreted as meaning that traders or those

entitled through them who prior to that date initiated proceedings or made an equivalent complaint under the applicable national law may rely on the invalidity of Article 4(1) and (2) of Regulation No 1633/84, cited above, as from the date of its entry into force, subject to the application, within the limits set by Community law, of any national rules limiting the period prior to the submission of a claim in respect of which repayment of a sum unduly paid may be obtained.

4. With regard to matters not governed by Article 2 of Regulation No 1922/92, cited above, national courts called upon to give judgment on a claim for reimbursement of clawback unduly charged must apply their national law, provided the detailed rules laid down therein are not less favourable than those governing similar domestic actions and are not so framed as to render virtually impossible or excessively difficult the exercise of rights conferred by the Community legal system.

Kakouris

Mancini

Schockweiler

Murray

Ragnemalm

Delivered in open court in Luxembourg on 8 February 1996.

R. Grass

C. N. Kakouris

Registrar

President of the Sixth Chamber