

JUDGMENT OF THE COURT (Fourth Chamber)
12 November 1992 *

In Case C-127/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal Administratif de Paris (Administrative Court, Paris) for a preliminary ruling in the proceedings pending before that court between

Comptoir National Technique Agricole (CNTA)

and

Ministère de l'Agriculture,

on the interpretation of Regulation (EEC) No 2114/71 of the Council of 28 September 1971 on the subsidy for oil seeds (OJ, English Special Edition 1971 (III), p. 826) and of Regulation (EEC) No 1204/72 of the Commission of 7 June 1972 laying down detailed rules for the application of the subsidy system for oil seeds (OJ, English Special Edition 1972 (II), p. 493),

THE COURT (Fourth Chamber),

composed of: F. Grévisse, acting as President of the Chamber, M. Diez de Velasco and P. J. G. Kapteyn, Judges,

Advocate General: G. Tesauro,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Comptoir National Technique Agricole, by Messrs Loesch and Wolter, of the Luxembourg Bar, and J.-F. Pericaud and G. Benchetrit, of the Paris Bar,

* Language of the case: French.

— the Commission of the European Communities, represented by P. Hetsch, a member of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Comptoir National Technique Agricole, represented by J.-F. Pericaud, of the Paris Bar, and the Commission at the hearing on 14 May 1992,

after hearing the Opinion of the Advocate General at the sitting on 11 June 1992,

gives the following

Judgment

- 1 By judgment of 14 March 1991, which was received at the Court on 6 May 1991, the Tribunal Administratif de Paris referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Regulation (EEC) No 2114/71 of the Council of 28 September 1971 on the subsidy for oil seeds (OJ, English Special Edition 1971 (III), p. 826) and of Regulation (EEC) No 1204/72 of the Commission of 7 June 1972 laying down detailed rules for the application of the subsidy system for oil seeds (OJ, English Special Edition 1972 (II), p. 493).
- 2 The question arose in proceedings between Comptoir National Technique Agricole ('CNTA') and the French Ministry of Agriculture.
- 3 Article 27(1) of Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats (OJ, English Special Edition 1965-1966, p. 221) provides for the grant of a subsidy for oil seeds harvested and processed within the Community.

- 4 Regulation No 2114/71 lays down the principles according to which the subsidy is granted and the detailed rules for controlling entitlement to the subsidy.
- 5 Article 2 of that regulation provides that the Member States are to control the processing at the oil mill to ensure that the subsidy is received only for seeds which qualify for it. According to Article 4, a Community subsidy certificate intended to provide proof that the seeds harvested in the Community have been placed under control in an oil mill is to be issued by Member States to any applicant concerned. The second paragraph of Article 6 provides that the certificate is to be issued on the day on which the Member State concerned takes over control of the seeds at the oil mill. According to Article 10, entitlement to the subsidy is to be acquired when the seeds are processed for the production of oil.
- 6 The detailed rules for the application of the aid system were laid down by Regulation No 1204/72. According to Article 3(1) of that regulation, the control is to be exercised from the time the seeds enter the oil mill until they are processed. Article 5(1) of that regulation provides that the Community subsidy certificate is to consist of, in particular, one part, designated ID, certifying that the quantity of seeds harvested in the Community which is identified is subject to the control provided for in Article 2 of Regulation No 2114/71.
- 7 In 1980, CNTA crushed various lots of seeds in a mill in Bordeaux. An initial lot of 2 317 tonnes came into the mill and was crushed in October and the application for the ID part of the subsidy certificate was not sent to the Société interprofessionnelle des oléagineux (hereinafter referred to as 'SIDO'), the body responsible in France for the implementation of the oilseeds subsidy, until 31 October 1990. A second lot of 3 725 tonnes entered the mill and was crushed in November. The ID part of the certificate was applied for on 4 December 1980. According to CNTA, the reason that the applications were late was that there were problems of disorganization at the mill following a fire in January 1980.
- 8 Although it noted that the ID parts of the Community subsidy certificate had been applied for late, SIDO agreed to pay the subsidies in question subject to the

CNTA providing it with security guaranteeing that it would be repaid on demand by SIDO the sum which CNTA might possibly owe in the event that the European Guidance and Guarantee Fund (the EAGGF) ruled on the eligibility of the subsidies in respect of which the advances were made. The security was provided by the bank Etoile commerciale.

9 By Decision 85/456/EEC of 28 August 1985 (OJ 1985 L 267, p. 24), addressed to the French Republic, the Commission refused to charge the amount of the subsidies to the EAGGF. By letter of 27 January 1986, SIDO informed Etoile commerciale and put it on notice to pay the amount of the security given for CNTA. In turn, Etoile commerciale notified CNTA and remitted the amount to SIDO.

10 When CNTA brought an action for compensation in the Tribunal administratif de Paris for the loss which it had sustained on account of SIDO's recovery of the Community aid which SIDO had wrongly paid, that court suspended the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Do Regulation (EEC) No 2114/71 of the Council of 28 September 1971 and Regulation (EEC) No 1204/72 of the Commission of 7 June 1972 prohibit the grant of subsidy where the ID part of the certificate was sent to the competent authority subsequent to the crushing of the seeds giving rise to eligibility for the subsidy?'

11 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

12 In order to answer the national court's question, it is necessary first to consider the provisions relating to the scope of the ID part of the Community subsidy certificate and the detailed rules on its issue.

- 13 According to Article 4 of Regulation No 2114/71 and Article 5(1)(b) of Regulation No 1204/72, the ID part of that certificate certifies that the quantity of seeds harvested in the Community which is identified has been placed under the control laid down in Article 2 of Regulation No 2114/71. According to Article 3(1) of Regulation No 1204/72, that control is to be exercised from the time the seeds enter the oil mill until they are processed for oil production or until they leave the oil mill in the unaltered state.
- 14 Under the second paragraph of Article 6 of Regulation No 2114/71, the certificate is to be issued on the day on which the Member State concerned takes over control of the seeds at the oil mill in which they are processed. According to Article 12 of Regulation No 1204/72, the certificate is to be regarded as issued, with regard to the ID part, on the day on which the application is lodged.
- 15 In its observations submitted to the Court, CNTA argues in the first place that a distinction should be drawn between placing the seeds under control as laid down by Regulations Nos 2114/71 and 1204/72 and the mere implementing rules designed to determine the amount of the aid.
- 16 CNTA points out in that connection that separate accounts are kept at the oil mill for seeds harvested in the Community and imported seeds. When they enter the oil mill, seeds harvested in the Community are weighed and sampled in accordance with Article 11(1) of Regulation No 2114/71 under the responsibility of experts appointed by SIDO. That precise physical control at which both parties are represented enables the seeds giving rise to entitlement to the subsidy to be determined. The fact that the seeds have been placed under control in that way on the terms described above is attested to by the oil mill's entry dockets.
- 17 In contrast, it maintains that the ID part of the Community subsidy certificate, which is issued simply on application and without the slightest check by the paying authority — in this case, SIDO —, is designed simply to confirm that the quantity of seeds which has been identified has been subjected to the control laid

down by Article 2 of Regulation No 2114/71. Application for the ID part of the certificate is relevant only for determining the amount of the aid and the date on which it may be advanced.

- 18 That argument cannot be accepted. Whilst it is true that according to the first paragraph of Article 35 of Regulation No 1204/72 the amount of the subsidy is to be that valid on the day on which the application for the ID part of the certificate is lodged, it appears from Article 3 of Regulation No 2114/71 that that must be the same day as that on which the Member State concerned takes over control of the seeds.
- 19 It appears from the second paragraph of Article 6 of Regulation No 2114/71 and Article 12 of Regulation No 1204/72 that the seeds have to be placed under control and the application lodged in the course of the same day.
- 20 Compliance with the obligation for the application for the ID part of the certificate to be lodged on the same day as the seeds are placed under control is all the more necessary because it is essential in order to ensure the sound functioning of the subsidy system in question.
- 21 Indeed, in so far as the amount of the subsidy to be granted is that applicable on the day on which the application for the ID part is lodged, and is constantly subject to fluctuations, if the day fixed for lodging the application were not mandatory, namely the day on which the seeds in question are placed under control, some traders might be induced to await a more favourable time for lodging the application and thereby make an unjustified profit.
- 22 CNTA further argues that the disastrous effect that loss of entitlement to the subsidy would have on it is manifestly disproportionate to its failure to comply with provisions merely laying down detailed rules for the issue of the ID part of the Community aid certificate.

- 23 In this connection, it is appropriate to recall that the Court has consistently held that, in order to determine whether a provision of Community law is consonant with the principle of proportionality, it is necessary to establish, in the first place, whether the means it employs to achieve its aim correspond to the importance of the aim and, in the second place, whether they are necessary for its achievement (see, in particular, the judgment in Case 266/84 *Denkavit France v FORMA* [1986] ECR 149, paragraph 17).
- 24 As has been observed above, the obligation to lodge the application on the very day on which the seeds are placed under supervision is essential for the proper functioning of the subsidy system established.
- 25 In those circumstances, as the Court has already intimated, loss of entitlement to the subsidy, which flows from non-compliance with that obligation, is not disproportionate in relation to the objective which the Community has sought to attain (see the judgments in Case C-357/88 *Hopermann* [1990] ECR I-1669, paragraphs 15 and 16, and in Case C-358/88 *Hopermann* [1990] ECR I-1687, paragraphs 14 and 15).
- 26 The reply to be given to the national court's question should therefore be that the grant of the subsidy for oil seeds as laid down by Regulation No 2114/71 of the Council of 28 September 1971 is dependent, in accordance with the detailed implementing rules laid down by Regulation No 1204/72 of the Commission of 7 June 1972, on the application for the ID part of the Community aid certificate referred to in Article 5(1)(b) of the latter regulation being lodged on the same day as that on which the Member State concerned takes over control of the seeds in the oil mill, hence before the seeds are processed to produce oil.

Costs

- 27 The costs incurred by the Commission of the European Communities, which has 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 (Fourth Chamber),

in answer to the question referred to it by the Tribunal Administratif de Paris by order of 14 March 1991, hereby rules:

The grant of the subsidy for oil seeds as laid down by Regulation (EEC) No 2114/71 of the Council of 28 September 1971 on the subsidy for oil seeds is dependent, in accordance with the detailed implementing rules laid down by Regulation No 1204/72 (EEC) of the Commission of 7 June 1972 laying down detailed rules for the application of the subsidy system for oil seeds, on the application for the ID part of the Community aid certificate referred to in Article 5(1)(b) of the latter regulation being lodged on the same day as that on which the Member State concerned takes over control of the seeds in the oil mill, hence before the seeds are processed to produce oil.

Grévisse

Diez de Velasco

Kapteyn

Delivered in open court in Luxembourg on 12 November 1992.

J.-G. Giraud

C. N. Kakouris

Registrar

President of the Fourth Chamber