

REPORT FOR THE HEARING
in Case C-200/88 *

I — The relevant legislation

The Council, in Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products (Official Journal 1981 L 379, p. 1, hereinafter referred to as 'the basic regulation'), introduced a pricing system (Title III) and trade arrangements with non-member countries (Title IV), detailed rules for the application of which were laid down by the Commission in a number of implementing regulations.

All the provisions at issue in the present case require Member States to provide the Commission with certain information relating to prices so that it may implement the pricing system and trade arrangements with non-member countries introduced by the basic regulation.

(a) *The pricing system*

(i) Products listed in Annex I(A) and (D) to the basic regulation

Under Article 10(1) and (3) of the basic regulation, the Commission is required to fix a guide price for fishery products listed in Annex I(A) (such as frozen herring, fresh or chilled sardines and cod) and Annex I(D) (shrimps, fresh, chilled or boiled in water)

to that regulation. Under Article 10(2) of the basic regulation, that price is to be calculated on the basis of 'the average of prices recorded... on representative wholesale markets or in representative ports during the three fishing years immediately preceding the year for which the price is fixed...'

Article (11)(1) of that regulation requires Member States to notify the Commission of the prices recorded on representative wholesale markets or in representative ports. Article 1 of Commission Regulation (EEC) No 3598/83 of 20 December 1983 on the notification of prices and fixing the list of representative wholesale markets and ports for fishery products (Official Journal 1983 L 357, p. 17, hereinafter referred to as 'the wholesale prices regulation') stipulates that the information notified must refer to the average price on the market day and that it must be sent on a bi-monthly basis.

(ii) Products listed in Annex IV(B) to the basic regulation

Member States are required under Article 11(3) of the basic regulation to notify the Commission every quarter of wholesale prices during the preceding quarter for the products listed in Annex IV(B) which are frozen on board or frozen on land (such as cod and mackerel). Under Article 2 of the wholesale prices regulation, that information must be sent by telex not later than

* Language of the case: Greek.

the end of the sixth week following the quarter concerned.

(iii) Products listed in Annex II to the basic regulation

In accordance with Article 15(1) of the basic regulation, a guide price is to be fixed for fishery products listed in Annex II (such as sardines and frozen Norway lobsters). That price is calculated on the basis of the prices recorded on representative wholesale markets or in representative ports.

Member States are required under Article 15(2) to notify the Commission of those prices. Under Article 3 of the wholesale prices regulation, that information must refer to the average price established for two given weeks and must be sent on the first working day following the weeks in question.

(b) *The trade arrangements with non-member countries*

According to Article 21(1) and (6) of the basic regulation, the Commission is required to fix the reference prices for the fishery products listed in Annexes I, II, III, IV(B) and V when these are imported from non-member countries. Article 21(2) specifies how the price for each type of product is to be calculated while Article 21(4) indicates the measures which the Commission may adopt if the free-at-frontier price for the products in question turns out to be lower than the reference price.

Article 21(3) requires Member States to notify the Commission of the free-at-frontier prices in question. According to Article 2 of Commission Regulation (EEC) No 3191/82 of 29 November 1982, which lays down detailed rules for the application of the reference price system (Official Journal 1982 L 338, p. 13, hereinafter referred to as 'the reference prices regulation'), that information must be sent by telex without delay.

II — Course of the procedure

Following a complaint addressed to the Hellenic Republic to the effect that it had not supplied all the information in question within the prescribed periods, the Commission, by a letter of 7 October 1986, requested that State to submit its observations. The Commission took the view that the Greek Government's reply did not deal adequately with any of the issues raised, and it accordingly delivered to it a reasoned opinion on 9 February 1988.

The Greek Government replied, by letter of 23 March 1988, that it was unable to provide the required information on prices because of certain technical shortcomings in the organization of its services. It promised that it would reorganize the services in question.

The Commission brought the present action on 13 July 1988.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, it did decide to address two questions to the parties, one to the Greek Government and the other to the Commission. The replies to those questions were received within the stipulated period.

III — Conclusions of the parties

The *Commission* claims that the Court should:

- (i) declare that by not providing within the prescribed periods certain information in the fisheries sector, the Hellenic Republic has failed to fulfil its obligations under Articles 11(1) and (3) and 21(3) of Regulation (EEC) No 3796/81, Article 2 of Regulation (EEC) No 3191/82 and Articles 1 to 3 of Regulation (EEC) No 3598/83;
- (ii) order the Hellenic Republic to pay the costs of the proceedings.

The *Hellenic Republic* contends that the Court should dismiss the application made by the Commission and order it to pay the costs of the proceedings.

IV — Submissions and arguments of the parties

In the view of the *Commission*, the Hellenic Republic has failed to meet its obligations to supply fishery information by not forwarding the information concerning prices required under the Community legislation in question or, in any event, by not forwarding it within the stipulated periods or in the prescribed manner. The Greek Government, moreover, does not deny its failure in the matter. Although it had promised that it would take steps to remedy the technical shortcomings in the collection, processing and despatch of that information, nothing had subsequently been done.

With regard to the infringement of Article 11(3) of the basic regulation, which provides for the notification of wholesale prices of the products listed in Annex IV(B), the Commission points out that this infringement relates solely to products frozen on board and not to those frozen on land, since no wholesale trade exists in the case of the latter.

The *Greek Government* requests the Commission to consider the advisability of bringing the present action before the Court.

With regard first to the information required under Article 11(1) of the basic regulation, the Greek Government states that in future it will be able to provide this information in full, owing to changes in the marketing rules applicable to the products in question (that is to say, those listed in Annex I).

As regards the information provided for under Article 15(2) of the basic regulation, the Greek Government acknowledges that it failed to respect the time-limits. This failure, it claims, was due to the long delays on the part of producers in providing it with the necessary data. However, it believes that it will be able to resolve this problem before the end of 1990.

Finally, with regard to the information required under Article 21(3) of the basic regulation, the Greek Government explains that the delay in forwarding the data was due to the faulty operation of the processing computer. However, this problem was expected to be resolved during 1989.

V — Replies to the questions posed by the Court

The Greek Government stated in its rejoinder that it would be able to provide all information relating to free-at-frontier prices during 1989. The Court asked the Greek Government whether it had provided that information in the mean time.

The Greek Government replied: 'All information relating to "free-at-frontier" prices has been sent in full by telex since 1 May 1989 to the competent Commission department, in accordance with Article 21 of Regulation No 3796/81 and Article 2 of Regulation No 3191/82.

Specifically, the information in question was sent by the Directorate for Deep Sea Fisheries in the following telexes: Nos 221026 of 24 May 1989, 221635 of 21 June 1989, 221967 of 10 July 1989, 222571 of 5 September 1989, 224420 of 15 November 1989, 250042 of 4 January 1990, 250353 of 22 January 1990, 211093 of 20 February 1990, 251492 of 14 March 1990 and 251979 of 20 April 1990.'

The Greek Government attached to its reply the copies enumerated above. However, it pointed out that Nos 221635 of 21 June 1989, 250042 of 4 January 1990, 221967 of 10 July 1989 and 221026 of 24 May 1989 were sent by post because they were illegible.

In addition, the Commission was requested to reply to the following question: 'For what purpose or purposes does Article 11(3) of Council Regulation No 3796/81 provide

that Member States are to notify the Commission every quarter of wholesale prices for the products listed in Annex IV(B) frozen on board and frozen on land?'

The Commission replied as follows: 'Article 11(3) of Regulation No 3796/81 (as amended by the Act of Accession of the Kingdom of Spain and the Republic of Portugal, Official Journal L 302 of 15.11.1985) was introduced in the context of the 1981 review of the common organization of the market in fishery products.

The purpose of that provision is to assist the Community in fixing the reference price for non-member countries (Article 21 of the regulation). The prices of the products listed in Annexes I(A), (D) and (E), II and III (to which Article 21 also applies) have to be communicated by the Member States in accordance with Articles 11(1), 15(2) and 17(4).

Although Article 21 also applies to products listed in Annex V, those products do not originate in the Community and there is accordingly no question of requiring Member States to notify the market prices for these products when they originate in the Community (the obligation to communicate certain prices laid down in the final subparagraph of Article 21(3) relates only to products originating in non-member countries).'

R. Joliet
Judge-Rapporteur