

In Case 66/80

REFERENCE to the Court under [Article 267 TFEU] by the Tribunale Civile di Roma for a preliminary ruling in the action pending before that court between

SPA INTERNATIONAL CHEMICAL CORPORATION, Rome,

and

AMMINISTRAZIONE DELLE FINANZE DELLO STATO [Italian Finance Administration],

on the interpretation on the one hand of [Article 30 TFEU] with particular regard to the effects of the declaration of nullity of Council Regulation (EEC) No 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feedingstuffs (Official Journal L 67, p. 18), in particular in relation to the amounts paid but not legally due under that regulation and on the other hand on the interpretation of various Council and Commission regulations concerning the export refunds for compound feedingstuffs,

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, Lord Mackenzie Stuart and T. Koopmans (Presidents of Chambers), A. O'Keefe, G. Bosco, A. Touffait, O. Due and U. Everling, Judges,

Advocate General: G. Reischl

gives the following

JUDGMENT

Decision

- 1 By order of 21 January 1980 which was received at the Court on 3 March 1980 the Tribunale Civile di Roma referred to the Court for a preliminary ruling under [Article 267 TFEU] several questions as to the interpretation of [Article 267 TFEU] and as to the interpretation or the validity of various Council or Commission regulations, one concerning the compulsory purchase of skimmed-milk powder held by intervention agencies and the others export refunds on compound feedingstuffs.
- 2 Those questions have been raised in the context of a dispute between the Italian Finance Administration and the plaintiff in the main action, a manufacturer of compound feedingstuffs, which is claiming from that administration, first, the restitution of securities which it has provided or at any rate paid for on behalf of its suppliers and which the Administration has declared forfeit and, secondly, the payment of export refunds which were refused at the time of the exportation of certain compound feedingstuffs.
- 3 In order to reduce stocks of skimmed-milk powder by increasing the use of that product in animal feedingstuffs Council Regulation No 563/76 of 15 March 1976 (Official Journal L 67, p. 18) made the grant of certain [Union] aids in respect of the use of protein products and the release into free circulation in the [Union] of certain products used in the manufacture of compound feedingstuffs dependent on the obligation to purchase certain quantities of skimmed-milk powder held by the intervention agencies. To secure compliance with that obligation the grant of aids and release into free circulation were made subject either to proof of purchase of skimmed-milk powder or the prior provision of a security which was forfeited in the event of non-performance of the obligation to purchase.

- 4 The plaintiff in the main action first provided securities and in addition paid for those provided by certain of its suppliers. It thus obtained the aids provided for but as it has not complied with the obligation to purchase skimmed-milk powder those securities have not been released by the competent Italian administration. At a later date in order to avoid having to provide a security it imported, under the temporary importation procedure rather than under the procedure for release into free circulation, products from non-member countries which it uses in the manufacture of compound feedingstuffs. The upshot was that when those feedingstuffs came to be exported to non-member countries and the plaintiff applied for the payment of the export refunds provided for in Article 16 of Regulation No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal L 281, p. 1) those refunds were refused on the ground that the feedingstuffs contained products which had never been in free circulation in the [Union] and the condition for the grant of refunds is that those raw materials should originate in the [Union] or at least be in free circulation there.
- 5 By various judgments given on 5 July 1977 in Cases 114/76, 116/76 and Joined Cases 119 and 120/76 [1977] ECR 1211 the Court held when ruling on questions put to it by various national courts that Council Regulation No 563/76 was not valid because the price at which the milk powder had to be compulsorily purchased was set at a level so disproportionate in comparison to the conditions on the market that it constituted a discriminatory distribution of the burden of costs between the various agricultural sectors and because moreover such an obligation was not necessary in order to attain the objective in view, namely, the disposal of stocks of skimmed-milk powder.
- 6 The plaintiff in the main action, which was not a party to the actions which led to reference being made to the Court, accordingly took the view that the securities which it had provided or paid for could not be required or *a fortiori* declared forfeit since they served only to ensure the performance of an obligation which had been unlawfully imposed. It further believes that since it was for the sole purpose of avoiding the provision of those securities that it imported from non-member countries certain compound feedingstuffs which it manufactures under a temporary importation procedure rather than under a procedure whereby products are released into free circulation, it should be entitled to export refunds on those compound feedingstuffs as if they were in free circulation in the [Union]. Finally, on an alternative basis, it argues that it is entitled in any event to refunds on the cereal components, which are of [Union] origin, contained in the products

which it exported. It is claiming from the Italian administration the refund or payment of the amounts equivalent to the securities forfeited and the refunds which have been refused.

7 In order to settle this dispute the national court referred the following questions to the Court:

- "1. Under [Article 267 TFEU] is a declaration that a [Union] regulation is null and void effective *erga omnes* or is it binding only on the court *a quo*; more particularly, in that case may the principle contained in the judgment of 27 March 1963 in Joined Cases 28, 29 and 30/62 be extended to a declaration of nullity?
2. Again in the latter case, is Regulation No 563/76 of 15 March 1976 null and void for the same reasons as those set out in the judgments of 5 July 1977 in Cases 114, 116 and Joined Cases 119 and 120?
3. If the said regulation is null and void, must the principles on which the [Union] legal order is based be held to allow or not to allow upon certain terms and within certain time-limits the refund to an individual of a payment which was not due, and if so does the declaration of nullity give the individual himself the right to claim back under the national law of the various States the amount that he has previously paid on the basis of the rule which has been declared null and void and, if so, is this subject to specific terms or time-limits or to given conditions, especially having regard to the case in which the claim is for the reimbursement of sums paid by the plaintiff to his suppliers?
4. With reference to [Union] law, and in particular to the Commission's Regulations No 192/75 of 17 January 1975, No 2727/75 of 29 October 1975, No 2743/75 of 29 October 1975, No 677/76 of 26 March 1976, No 1871/76 of 30 July 1976, No 2141/76 of 31 August 1976 and No 2372/76 of 30 September 1976, must a refund be held to be payable on exports of compound feedingstuffs in respect of the cereal components alone and does it conflict with the general principles derived from the said provisions for the refund to be granted on exports of compound products and only in

respect of certain of their components where the other components were imported only temporarily?"

- 8 Those questions basically raise three issues. The first concerns the effect of the preliminary rulings given by the Court on 5 July 1977 on third parties, be they private individuals, institutions or national courts (Questions 1 and 2). The second concerns the consequences, in both the legal systems of the [Union] and of the Member States, of a judgment declaring a regulation void as regards what happens to charges previously imposed on commercial operators by the said regulation (Question 3). The third issue, put in the alternative and which is more specific in nature, concerns particular features of the rules on export refunds for certain agricultural products (Question 4).

Questions 1 and 2

- 9 [Article 267 TFEU] provides that the Court shall have jurisdiction to give preliminary rulings on the interpretation of the Treaty and on the validity and interpretation of acts of the institutions of the [Union], including regulations of both the Council and the Commission. The second and third paragraphs of that provision go on to state that national courts may or must, as the case may be, bring such matters before the Court where they need a decision on that issue in order to give their judgment.
- 10 The scope of judgments given under this head should be viewed in the light of the aims of [Article 267 TFEU] and the place it occupies in the entire system of judicial protection established by the Treaties.
- 11 The main purpose of the powers accorded to the Court by [Article 267 TFEU] is to ensure that [Union] law is applied uniformly by national courts. Uniform application of [Union] law is imperative not only when a national court is faced with a rule of [Union] law the meaning and scope of which need to be defined; it is just as imperative when the Court is confronted by a dispute as to the validity of an act of the institutions.

- 12 When the Court is moved under [Article 267 TFEU] to declare an act of one of the institutions to be void there are particularly imperative requirements concerning legal certainty in addition to those concerning the uniform application of [Union] law. It follows from the very nature of such a declaration that a national court may not apply the act declared to be void without once more creating serious uncertainty as to the [Union] law applicable.
- 13 It follows therefrom that although a judgment of the Court given under [Article 267 TFEU] declaring an act of an institution, in particular a Council or Commission regulation, to be void is directly addressed only to the national court which brought the matter before the Court, it is sufficient reason for any other national court to regard that act as void for the purposes of a judgment which it has to give.
- 14 That assertion does not however mean that national courts are deprived of the power given to them by [Article 267 TFEU] and it rests with those courts to decide whether there is a need to raise once again a question which has already been settled by the Court where the Court has previously declared an act of a [Union] institution to be void. There may be such a need in particular if questions arise as to the grounds, the scope and possibly the consequences of the invalidity established earlier.
- 15 If that is not the case national courts are entirely justified in determining the effect on the cases brought before them of a judgment declaring an act void given by the Court in an action between other parties.
- 16 It should further be observed, as the Court acknowledged in its judgments of 19 October 1977 in Joined Cases 117/76 and 16/77, *Ruckdeschel and Diamalt* and Joined Cases 124/76 and 20/77, *Moulin de Pont-d-Mousson and Providence Agricole* [1977] ECR 1753 and 1795, that as those responsible for drafting regulations declared to be void the Council or the Commission are bound to determine from the Court's judgment the effects of that judgment.
- 17 In the light of the foregoing considerations and in view of the fact that by its second question the national court has asked, as it was free to do, whether Regulation No 563/76 was void, the answer should be that that is in fact the case

for the reasons already stated in the judgments of 5 July 1977.

18 The first and second questions should therefore be answered as follows:

- (a) Although a judgment of the Court given under [Article 267 TFEU] declaring an act of an institution, in particular a Council or Commission regulation, to be void is directly addressed only to the national court which brought the matter before the Court, it is sufficient reason for any other national court to regard that act as void for the purposes of a judgment which it has to give;

that assertion does not however mean that national courts are deprived of the power given to them by [Article 267 TFEU] and it rests with those courts to decide whether there is a need to raise once again a question which has already been settled by the Court where the Court has previously declared an act of a [Union] institution to be void. There may be such a need especially if questions arise as to the grounds, the scope and possibly the consequences of the nullity established earlier.

- (b) Council Regulation No 563/76 of 15 March 1976 is void for the reasons already stated in the judgments of 5 July 1977 in Cases 114, 116 and Joined Cases 119 and 120/76.

Question 3

19 The third question basically seeks to determine whether rules of [Union] law govern legal actions brought by commercial operators before a national court in order to obtain repayment of [Union] charges due and paid pursuant to a Council or Commission regulation even though that national court is bound to refrain from applying that regulation as a result of a judgment of the Court declaring it to be void. Owing to the particular circumstances of the dispute in the main action that question also covers the case in which the sums being reclaimed were not paid by the plaintiff in the main action but by its suppliers to whom the plaintiff refunded those amounts.

- 20 Article 10 (2) of Regulation No 563/76 states that any security forfeited shall be used to offset the intervention expenditure for which no unit amount is fixed under Regulation No 804/68 of the Council on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176). It follows, that the corresponding amounts constitute the [Union]'[s] own resources within the meaning of the first subparagraph of Article 4 (1) of the Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the [Union]'[s] own resources (Official Journal, English Special Edition 1970 (I), p. 224).
- 21 By Article 6 of that decision the [Union] resources referred to in Articles 2, 3 and 4 are to be collected by the Member States in accordance with national provisions imposed by law, regulation or administrative action. Consequently disputes relating to the refund of amounts collected on behalf of the [Union] fall within the jurisdiction of national courts and should be settled by those courts by applying their own national law, both procedural and substantive, to the extent to which [Union] law has not provided otherwise.
- 22 Regulation No 563/76, as it applied before it was declared to be void, should therefore be examined in order 'to ascertain whether it contained provisions affecting the recovery of sums received by the [Union] authorities or by national authorities acting on their behalf pursuant to that regulation.
- 23 It should be observed in this regard that Article 5 of Regulation No 563/76 expressly provided that "in the case of contracts concluded before the date of entry into force of this regulation, the successive buyers of the products referred to in Articles 2 and 3, or of protein products processed therefrom, shall bear the burden of the costs arising under the arrangements laid down in this regulation". That provision implies a unilateral amendment if need be of commercial contracts previously entered into in order, as the fifth recital to the regulation indicates, equitably to share the burden of the compulsory purchase of skimmed-milk powder among all the operators. It follows that operators subject to the obligations to purchase skimmed-milk powder and for that reason exposed to the risk of losing their security should not suffer any loss owing to the charge imposed because in the case of contracts prior to the entry into force of the regulation the charge was automatically passed on to the successive buyers. That system implied that in the case of contracts made after the entry into force of the regulation the

same result was achieved by the operation of the market and freedom of contract. As the amount of the securities to be provided broadly corresponded with the burden arising from the obligation to purchase, the financial effect of their loss was, in the case of commercial operators electing to forego the security, itself equal to that to which the performance of the obligation to purchase would have led in their case.

- 24 The existence during the entire period in which Council Regulation No 563/76 was applied of a scheme specially designed with a view to spreading the effects of a measure of economic policy destroys the basis of an action for the recovery of securities which have been provided and declared forfeit even if a similar action could be successfully brought under national law alone. In this regard it does not matter whether the operator has actually passed on the charge or whether he decided not to do so for reasons connected with the financial policy of his undertakings. Recovery is in itself ruled out *a fortiori* if the operator was not himself bound to pay the charge in question which he advanced voluntarily or refunded to his suppliers thus demonstrating that they do actually have the opportunity of passing on the charge.
- 25 That legal consequence is not to be dismissed by the consideration that since Regulation No 563/76 has been declared void it could not have any legal effect. It is a matter here of examining the economic effects linked to the application of the system established by the regulation so far as it effectively governed the conduct of the commercial operators concerned. The assertion that the scheme made provision for operators actually to be able to pass on the charge imposed on them to subsequent stages of the economic process leads to the conclusion that in a situation such as that which is at issue in the main proceedings an action for the recovery of the payment wrongly made has no legal foundation.
- 26 The answer to the third question should therefore be that the existence during the period in which Council Regulation No 563/76 was applied of a scheme specially designed with a view to spreading the economic effects of the obligations which it imposed destroys the basis of an action for the recovery of securities which have been provided and declared forfeit even if a similar action could be successfully brought under national law alone.

- 27 The answer to the fourth question should help to resolve the issue of whether the plaintiff in the main action is entitled to export refunds in respect of compound feedingstuffs which consisted in part of products from non-member countries referred to in Article 3 (1) of Regulation No 563/76 and which were imported and processed into compound feedingstuffs under a system of customs control, that is to say without having been released into free circulation in the [Union].
- 28 That course of action by the plaintiff in the main action was made possible by Article 10 (2) of Commission Regulation No 677/76 of 26 March 1976 laying down detailed rules for the application of the system for compulsory of skimmed-milk powder provided for in Regulation No 563/76 (Official Journal L 81, p. 23). That provision states that "the competent authorities of the Member States may authorize the import of the products referred to in Article 3 (1) of Regulation (EEC) No 563/76 (that is to say products which are allowed into free circulation only on the performance of the obligation to purchase a certain quantity of skimmed-milk powder) with a view to processing them under a system of customs control if these products are intended to be exported outside the customs territory of the [Union] wholly or in part in the form of compensatory products". That provision was intended to exempt manufacturers of feedingstuffs who imported certain components of feedingstuffs from non-member countries (those listed in Article 3 of Regulation No 563/76) from the obligation to present a "protein certificate", that is to say from the obligation to purchase skimmed-milk powder, on condition that the feedingstuffs of which those components formed a part were exported to non-member countries.
- 29 However, the first subparagraph of Article 8 (1) of Regulation No 192/75 of the Commission of 17 January 1975 laying down detailed rules for the application of export refunds in respect of agricultural products (Official Journal L 25, p. 1) provides that an export refund is to be granted only in respect of products which were in free circulation in the [Union] before they were exported.
- 30 The combined provisions of Article 10 (2) of Regulation No 677/76 and of Article 8 (1) of Regulation No 192/75 enabled manufacturers of feedingstuffs to choose between two possibilities. Either they obtained release into free circulation of the components which they imported by paying the security or by purchasing the specified quantity of skimmed-milk powder, which enabled them to receive export refunds if they then exported the feedingstuffs in question. Or they could import the same products under a system of customs control, in this case the inward processing arrangements, which enabled them to escape the obligation to purchase

skimmed-milk powder or to provide security but in that case Article 8 (1) of Regulation No 192/75 precluded their being granted export refunds.

- 31 The fourth question primarily seeks to determine whether in view of the fact that the plaintiff opted for the system of importation under customs control made possible by Article 10 (2) aforesaid simply in order to escape the obligation to purchase which had been declared to be unlawful, the conclusion must be that the plaintiff is still entitled to export refunds as if the requirement contained in Article 8 (1) had been fulfilled on its own.
- 32 That part of the fourth question calls for a negative answer. In fact neither the invalidity of Regulation No 563/76 nor even the possible invalidity of Regulation No 677/76 adopted to implement it can impair in any way whatever the binding force of Article 8 (1) of Regulation No 192/75 whereby a refund is to be granted only in respect of products which were in free circulation in the [Union] before they were exported.
- 33 The fourth question seeks to determine secondly whether, regardless of any considerations as to the consequences of the invalidity of Regulation No 563/76, the plaintiff in the main action was not entitled to export refunds on the basis of the third subparagraph of Article 8 (1) of Regulation No 192/75 which states that "when compound products qualifying for a refund fixed on the basis of one or more of their components are exported, that refund shall be paid only in so far as the component or components in respect of which the refund is claimed come within the terms of [Article 28(2) TFEU]" (that is to say they are in free circulation).
- 34 The plaintiff in the main action claims that owing to that provision it is entitled to an export refund at least in respect of those components of compound feedingstuffs which it exported, which were not imported from non-member countries, but which originated in the [Union], in this case in respect of the cereal components of those feedingstuffs.
- 35 That interpretation of the third subparagraph of Article 8 (1) must be rejected. That provision covers only cases in which compound products are exported which, as such, do not attract export refunds but which contain certain

constituents which do. That is made plain by the very wording of the provision in question which expressly refers to refunds fixed on the basis of one or more of the components of the compound product.

36 That provision does not therefore cover the case of a compound product which, as such, that is to say as a whole, attracts an export refund. In that case it is the first subparagraph of Article 8 (1) which governs the conditions for the grant of the refund; consequently all components of a product must have originated in the [Union] or have been released into free circulation there.

37 Compound animal feedingstuffs come under subheading 23.07 B of the Common Customs Tariff. Although the export refund is calculated on the basis of the cereal product content, as far as those cereal products are concerned it is fixed in respect of the product as a whole in such a way that it is the requirement in the first subparagraph of Article 8 (1) that the product must meet in order to attract an export refund.

38 The answer to the fourth question should therefore be:

- (a) The fact that Regulation No 563/76 has been declared void does not justify either an individual or a general derogation from the rule stated in the first subparagraph of Article 8 (1) of Regulation No 192/75;
- (b) The third subparagraph of Article 8 (1) of Regulation No 192/75 covers only the case of a compound product which, as such, is not capable of attracting export refunds but contains certain components which are so capable. It does not cover the case of a compound product which as such attracts a refund and to which the condition stipulated in the first subparagraph of Article 8 (1) applies.

Costs

39 The costs incurred by the Italian Government, the Council of the European [Union] and the Commission of the European [Union], which have submitted observations to the Court, are not recoverable; as the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions submitted to it by the Tribunale Civile di Roma by order of 21 January 1980, hereby rules:

- 1. Although a judgment of the Court given under [Article 267 TFEU] declaring an act of an institution, in particular a Council or Commission regulation, to be void is directly addressed only to the national court which brought the matter before the Court, it is sufficient reason for any other national court to regard that act as void for the purposes of a judgment which it has to give. That assertion does not however mean that national courts are deprived of the power given to them by [Article 267 TFEU] and it rests with those courts to decide whether there is a need to raise once again a question which has already been settled by the Court where the Court has previously declared an act of a [Union] institution to be void. There may be such a need especially if questions arise as to the grounds, the scope and possibly the consequences of the nullity established earlier.**
- 2. Council Regulation No 563/76 of 15 March 1976 (Official Journal L 67, p. 18) is void for the reasons already stated in the judgments of 5 July 1977 in Cases 114, 116 and Joined Cases 119 and 120/76.**
- 3. The existence during the period in which Council Regulation No 563/76 was applied of a scheme specially designed with a view to spreading the economic effects of the obligations which it imposed destroys the basis**

of an action for the recovery of securities which have been provided and declared forfeit even if a similar action could be successfully brought under national law alone. In this regard it does not matter whether the operator has actually passed on the charge or whether he has decided not to do so for reasons connected with the financial policy of his undertaking. Recovery is in itself ruled out *a fortiori* if the operator was not himself bound to pay the charge in question which he advanced voluntarily or refunded to his suppliers.

4. The fact that Regulation No 563/76 has been declared void does not justify either an individual or a general derogation from the rule stated in the first subparagraph of Article 8 (1) of Regulation No 192/75.
5. The third subparagraph of Article 8 (1) of Regulation No 192/75 covers only the case of a compound product which, as such, is not capable of attracting export refunds but contains certain components which are so capable. It does not cover the case of a compound product which as such attracts a refund and to which the condition stipulated in the first subparagraph of Article 8 (1) applies.

Mertens de Wilmars
Bosco

Pescatore
Touffait

Mackenzie Stuart
Due

Koopmans O'Keeffe
Everling

Delivered in open court in Luxembourg on 13 May 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President