JUDGMENT OF THE COURT
13 DECEMBER 1972[1]

Walzenmühle Magstadt Karl-Heinz Kienle v Einfuhr- und Vorratsstelle für Getreide und Futtermittel[2] (Reference for a preliminary ruling by the Hessischer Verwaltungsgerichtshof)

Case 52/72

Summary

Agriculture — Common organization of the market — Common wheat, rye of bread-making quality and maize — Carry-over payments within the meaning of Article 9 of Regulation No 120 — Conditions of grant — Absolute limitation period for making an application (Regulation No 963/69 of the Commission, Article 3)

The time-limit laid down in the first indent of Article 3 of Regulation (EEC) No 963/69 of the Commission of 27 May 1969, under the terms of which the applicant must have declared by registered letter, telex message or telegram sent not later than 7 June 1969, his intention of obtaining the carry-over payment referred to in Article 9 of Regulation No 120/67/EEC of the Council, is an absolute limitation period.

In Case 52/72

Reference to the Court under Article 177 of the EEC Treaty by the Hessischer Verwaltungsgerichtshof, Kassel, for a preliminary ruling in the action pending before that court between

WALZENMÜHLE MAGSTADT KARL-HEINZ KIENLE, Magstadt (Stuttgart),

and

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND GUTTERMITTEL, Frankfurt am Main,

on the interpretation of the first indent of Article 3 of Regulation No 963 of the Commission of 27 May 1969 (OJ L 126 of 28.5.1969) on the conditions for granting carry-over payments for common wheat, rye of bread-making quality and maize in stock at the end of the 1968/1969 marketing year.

1 — Language of the Case: German.

THE COURT

composed of: R. Lecourt, President, R. Monaco (Rapporteur) and P. Pescatore, Presidents of Chambers, A. M. Donner, A. Trabucchi, J. Mertens de Wilmars and H. Kutscher, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and the procedure may be summarized as follows:

1. Article 9 of Regulation No 120 of the Council of 13 June 1967 (OJ, Special Edition, 1967, p. 33) provides for the granting of a carry-over payment, in particular for common wheat and rye harvested in the Community remaining in stock at the end of the marketing year. The conditions for the grant of that payment are laid down, *inter alia*, in Regulation No 963/69 of the Commission of 27 May 1969 (JO 1969, L 126), Articles 3 and 5 of which provide as follows:

'*Article 3*

In order to benefit from the carry-over payment which is granted by the competent authority of the Member State in whose territory the stocks are to be found, the applicant must:

— have declared to the aforementioned competent authority, by registered letter, telex message or telegram sent not later than 7 June 1969, his intention to apply where appropriate to be granted the carry-over payment and also the quantities of each of the cereals referred to in Article 1 held by him on 31 May 1969, with details of the agent and the warehouse where the stocks may be inspected;

— have submitted to the same competent authority, by registered letter, telex message or telegram sent not later than 5 August 1969, a request for compensation giving details of the aforementioned stocks of cereals held by him on 31 July 1969. Such a request must, at the least, contain the information and declarations referred to in Annex II hereto.

Article 5

1. The competent authority of each Member State shall carry out the necessary supervision of stocks and their movements within its territory.

2. The competent authorities of Member States shall adopt all supplementary

measures required to take accouit of special conditions in their territories and in particular the periods of time during which the stocks and their movements are under supervision.

3. Member States shall deliver to the Commission a written report on the application of this Regulation, not later than 31 January 1970.
...'

2. Walzenmühle Magstadt Karl-Heniz Kienle (hereinafter referred to as 'Walzenmühle Magstadt'), which carries on a milling business, stated by a letter (form), ante-dated 6 June 1969, to the Einfuhr- und Vorratsstelle für Getreide und Futtermittel, Frankfurt am Main (hereinafter referred to as 'the EVGF') its intention of claiming a carry-over payment for the 1968/1969 marketing year in respect of stocks of common wheat and of rye (first indent of Article 3 of Regulation No 963/69). In accordance with that declaration, received by the addressee on 9 June 1969, Walzenmühle Magstadt lodged on 5 August 1969 a 'request' within the meaning of the second indent of Article 3. By a decision of 22 October 1969, the EVGF rejected that request, on the ground that the declaration of intention had not been made within the time-limit laid down (7 June 1969) and that this time-limit was in the nature of an absolute limitation period. Walzenmühle Magstadt disputed that decision of rejection before the Verwaltungsgericht Frankfurt am Main, claiming that the time-limit in question is in the nature of an ordinary time-limit and not that of an absolute limitation period. It also stated that the owner of the undertaking who should have made the declaration returned on 9 June 1969 from a holiday journey abroad and that in any case the forms for the declaration of intention had only been sent to him on 8 June 1969.
On the Verwaltungsgericht rejecting the application as unfounded by a judgment of 16 June 1971, Walzenmühle Magstadt appealed to the Hessischer Verwaltungsgerichtshof at Kassel.
By an order of 28 June 1972, that court decided to stay the proceedings and, in accordance with Article 177 of the EEC Treaty, to refer the following questions to the Court of Justice:

'With regard to the time-limit laid down in the first indent of Article 3 of Regulation No 963/69 of the Commission of 27 May 1969 (JO L 126 of 28.5.1969, p. 8 to p. 9), under the terms of which the applicant must have declared, by registered letter, telex message or telegram sent not later than 7 June 1969, his intention to apply where appropriate to be granted the carry-over payment, is this

(a) an absolute limitation period, that is to say, a period the non-observance of which always leads to the loss of the right to the carry-over payment, or only an ordinary time-limit, that is to say, a time-limit the non-observance of which may, in certain circumstances, not have the effect of the loss of the right to the carry-over payment?

(b) If the latter should be the case, does the Community law of the EEC contain rules or general principles which lay down in which circumstances failure to observe time-limits which are not absolute limitation periods but ordinary time-limits does not lead to the loss of the rights in question?'

3. The order making the reference was received at the Court Registry on 19 July 1972.
Walzenmühle Magstadt, represented by Karl-Heinz Kienle, and the Commission, represented by its Legal Adviser, Peter Kalbe, acting as Agent, submitted their written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice.
The Court, on hearing the report of the Judge Rapporteur and the views of the Advocate-General, decided to open the oral procedure without any preparatory inquiry.
The Commission presented oral argument at the hearing on 8 November 1972.
The Advocate-General delivered his opinion at the hearing on 28 November 1972.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court

The observations submitted under Article 20 of the Protocol on the Statute of the Court may be summarized as follows:

A — *Observations of Walzenmühle Magstadt*

Walzenmühle Magstadt observes that, as the time-limit of 5 August 1969 had been extended to 12 August 1969 'becuase of the hot weather', the EVGF would not have been able, after having expressly mentioned the time-limit of 7 June 1969 and that of 5 August 1969 as absolute limitation periods, to have made such an extention. In the case of absolute limitation periods laid down by Community law, no special right can in fact be granted in favour of the EVGF. Furthermore, although 'the hot weather' was taken into account, other reasons should also have been considered.
Recalling, in addition, that the EVGF had later asked for the reasons justifying the lateness of the declaration, Walzenmühle Magstadt finds it surprising that decisions concerning the grant or refusal of the carry-over payment had been taken even before information concerning the reasons claimed to be unjustified had been provided. Lastly, as to the possibility of certain delays, it points out that in principle it would not be possible for a milling engineer to plan his work on the assumption that there would probably be a good cereal harvest. Practice showed that in the region of the undertaking in question deliveries made by producers may vary from 140 to 340 tonnes because of bad weather.

Walzenmühle Magstadt submits that it would never be possible seriously to consider absolute limitation periods for making the declaration, and that the time-limit in the first indent of Article 3 of Regulation No 963/69 must be regarded as a non-compulsory time-limit.

B — *Observations of the Commission of the European Communities*

The *Commission of the EC* mentions first of all that the system of carry-over payments is closely bound to that of the intervention provided for by Regulation No 120/67 in respect of cereals. The price guarantee given by the common organization of the agricultural market in cereals is fully effective only if it takes into account the increasing costs borne by the producer as the marketing year proceeds and which are consequent upon storage and the financing of storage. It is for that reason that the target, intervention and threshold prices were subject, during that marketing year, to a certain number of monthly increases (Article 6 of Regulation No 120/67) which in May reached their highest level in respect of wheat and rye. For the months of June and July, the period when cereals from the new harvest arrive on the market, the intervention price, on the other hand is not increased, so that as from June these prices are, for wheat and rye, the normal unincreased prices of the new marketing year. There follows from these rules a motive for holders of cereals to produce for intervention during May the old stocks still remaining towards the end of the marketing year, although the market may still absorb them. It was precisely to discourage this tendency that the carry-over payments were introduced. In order to 'avoid a great surge of cereals for intervention at the time when the monthly increases in the intervention price come to an end', Regulation No 120/67 provided, in respect of cereals still stored at the end of the marketing year, that is to say on 31 July, in addition to the opportunity for intervention, compensation for costs at least equal to the difference between the target price in force in the last month of the marketing year and that in force in the first month of the new marketing year.
Having thus recalled the structure and the essential purpose of this system, the Commission adds that the necessary measures for its implementation had to be as simple as possible, for administrative reasons and to ensure uniform application in all the Member States.

The declaration of intention provided for in the first indent of Article 3 of Regulation No 963/69 should have allowed for the indispensable ascertainment of stocks existing on 31 May 1969, since for obvious reasons it was only in respect of these stocks that the system of carry-over payments was established. The fixing of a compulsory time-limit for the lodging of that declaration was in this case shown to be necessary for both practical and legal considerations.

In the first place, it was indispensable, in order to avoid the risk that there might be improper declarations of either cereals from the new harvest or the same quantity of cereals several times, that the declaration of intention should be lodged as soon as possible after 31 May 1969. In the second place, from the legal point of view there could be no question in the present case other than the fixing of an absolute limitation period, that is to say, of a prior concrete condition upon which the right to obtain a payment depends. An ordinary procedural time-limit would not in fact have caused those concerned to take the rapid action which is indispensable in this field, and would, moreover, require reliance upon the discretion of national authorities as regards the definition of the period acceptable in each case for lodging the declaration. The discretion thus left to national authorities would no doubt have created a danger to the possibility of ensuring a uniform application of the system of carry-over payments in all the Member States. In order to avoid this danger it would have been necessary, therefore, at the level of Community law to lay down special rules to which the national authorities would have had to conform, for authorizing exceptions or delays. But such rules would have complicated the procedure without, however, preventing a time-limit from being fixed all the same in every case, that is to say, a new absolute limitation period, differing from that laid down by Regulation No 963/69 only by its greater duration.

To accept that the time-limits fixed by Article 3 of Regulation No 963/69 have the nature of non-compulsory time-limits would amount, therefore, not only to complicating procedures which can be carried out only in so far as they are prompt, but also to impeding the fundamental principle of the common market, which requires that the system of payments be applied uniformly in all the Member States.

Taking all these considerations of a practical and legal nature into account, the Commission considered in consequence that it was more effective and judicious to fix a compulsory time-limit in advance for the lodging of the declaration of intention referred to in the first indent of Article 3 of Regulation No 963/69, by which the person concerned must at the same timegive notice of the stocks capable of qualilying for the payment in dispute.

The desire of the legislature to confer on such a time-limit the nature of an absolute limitation period appears, moreover, in a clear and precise manner from the very wording of the abovementioned provision, in which the right to the payment in subject to the actual condition that the stocks are declared at the proper time. There is no provision in Community law for any exceptional rule allowing the declaration of intention to be lodged out of time in certain cases. Article 5(2) of Regulation No 963/69 certainly accepts that the Member States may adopt all supplementary measures required to take account of special conditions in their territories but that provision refers basically to Article 5(1) which entrusts the necessary supervision to the competent authorities. Moreover, it is for this reason that Article 5(2) specifies a little further on that the competence to make rules thus left to the Member States applies to the 'periods of time during which the stocks and their movements are under supervision'.

Furthermore, it is not possible in order to support the opposite argument, to rely on higher principles of every State governed by the rule of law, claiming that they require acceptance of an interpretation 'in accordance with the Treaty' in the sense suggested by Walzenmühle Magstadt. It follows from the case-law of the Court that it is not in fact from the constitutional law of the Member States but solely from Community law itself that the funda-

mental principles limiting the legislative power of the Community may be drawn. After adding that the system established by Regulation No 963/69 involved no infringement of the fundamental principles of Community law and especially of the principle of proportionality of measures, the Commission states that in Community law the illegal situation is not in the least modified by the possibility that the forms delivered by the Commission might be put belatedly at the disposal of those concerned. The validity of the declarations of intention was not expressly subject to the condition that such declarations hould be submitted by means of forms. The forms were simply consents in respect of Article 5(2) of Regulation No 963/69 and the fact that they were received belatedly by the person concerned cannot affect the compulsory time-limit laid down by Community law. The Commission submits that 'the time-limit for the declaration laid down in the first indent of Article 3 of Regulation No 963/69 is an absolute limitation period, the failure to observe which, prevents the creation of any right to carry-over payments'.

Grounds of judgment

1 By a decision of 28 June 1972 received by the Court on 19 July 1972, the Hessischer Verwaltungsgerichtshof referred to the Court, pursuant to Article 177 of the EEC Treaty, a question concerning the interpretation of the first indent of Article 3 of Regulation No 963/69 of the Commission of 27 May 1969 (JO 1969, L 126) on the conditions for granting carry-over payments for common wheat, rye of bread-making quality and maize in stock at the end of the 1968/1969 marketing year.

That provision stipulated in particular that in order to benefit from the carry-over payment mentioned in Article 9 of Regulation No 120/67 of the Council of 13 June 1967 (OJ, Special Edition, 1967, p. 33) the person concerned must have declared to the competent national authority, by registered letter, telex message or telegram sent not later than 7 June 1969, his intention to apply where appropriate to be granted the carry-over payment and also the quantities of each of the cereals referred to in Article 1 held by him on 31 May 1969, with details of the agent and the warehouse where the stocks may be inspected. The question is whether this is a matter of an absolute limitation period, non-compliance with which always results in the loss of the right to the carry-over payment.

2 By making the lodging of the declaration of intention by a time-limit laid down in advance one of the conditions for granting the payment, the wording of the first indent of Article 3 contributes towards conferring on it the nature of an absolute time-limit. Such nature is confirmed by the function of the period within the framework of the intervention machinery established by Regulation No 120/67 of the Council on the common organization of the market in cereals. In order to ensure throughout the marketing year the maintenance of the price guarantee to producers Article 6 of this regulation provides that the intervention prices shall be the subject of monthly increases phased over all or part of the marketing year. In order to avoid a large rush of cereals for intervention when the monthly increases

in intervention prices come to an end, even though a large part of the cereals in store could be sold directly on the market before the beginning of the new marketing year, Article 9 of Regulation No 120/67 makes provision for the opportunity of granting a carry-over payment for cereals harvested in the Community, which are still in stock.

3 Since, however, for certain cereals the new harvest begins before 31 July, the end of the marketing year for cereals, measures had to be taken to prevent the payment under Article 9 from being abused by means of claims in respect of cereals from the new harvest in store at that time. It is precisely for this purpose that Regulation No 963/69 of the Commission lays down that, in order to benefit from the payment in question, the applicant must have made the declaration referred to in the first indent of Article 3 before 7 June 1969 so as to allow the competent national authorities to check the existence of stocks of cereals existing on 31 May 1969, in order to be granted the benefit of the carry-over payment. These objectives require the fixing of a mandatory time-limit for lodging the declaration referred to in the first indent of Article 3. The fact that this declaration gives rise to the grant of a carry-over payment only if it is followed by the request for payment referred to in the second indent of the same article does not detract from the mandatory nature of the time-limit fixed for lodging the declaration. Each of the time-limits referred to in Article 3 has its own function which justifies its strict nature. Furthermore, the necessity of ensuring equality in the conditions for granting carry-over payments requires the application of uniform time-limits.

4 In these circumstances, neither proof that the declaration is in itself justified, nor the fact that the delay did not arise from the fault of the applicant suffices to justify the acceptance of declarations lodged after the time-limit laid down in this regard by the first indent of Article 3 of Regulation No 963/69.

5 The reply to the first question must therefore by that the time-limit laid down by the first indent of Article 3 of Regulation No 963/69 of the Commission of 27 May 1969, under the terms of which the applicant must have declared, by registered letter, telex message or telegram sent not later than 7 June 1969, his intention to apply where appropriate to be granted the carry-over payment, is an absolute limitation period. In view of that reply, the other questions submitted to the Court lose their purpose.

Costs

The costs incurred by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. As these 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,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 120/67 of the Council of 13 June (OJ, Special Edition, 1967, p. 33);
Having regard to Regulation No 963/69 of the Commission of 27 May 1969 (JO 1969, L 126);
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Community,

THE COURT

in answer to the questions submitted to it by the Hessischer Verwaltungsgerichtshof in accordance with the decision given by that court on 28 June 1972, hereby rules:

The time-limit laid down in the first indent of Article 3 of Regulation No 963/69 of the Commission of 27 May 1969, under the terms of which the applicant must have declared, by registered letter, telex message or telegram sent not later than 7 June 1969, his intention to apply where appropriate to be granted the carry-over payment referred to in Article 9 of Regulation No 120/67 of the Council is an absolute limitation period.

Lecourt Monaco Pescatore

Donner Trabucchi Mertens de Wilmars Kutscher

Delivered in open court in Luxembourg on 13 December 1972.

A. Van Houtte
Registrar

R. Monaco
President