

JUDGMENT OF THE COURT

23 JANUARY 1975

Mr Filippo Galli
(preliminary ruling requested by the Pretore di Roma)

In Case 31/74

Reference to the Court under [Article 267 TFEU] by the Pretura Unificata of Rome, VIIIth Criminal Chamber, for a preliminary ruling in the criminal proceedings pending before that court against

FILIPPO GALLI,

on the interpretation of [Article 3 TEU], [the third paragraph of Article 4(3) TEU], and [Article 34 TFEU], Article 39 (1) [TFEU] and [Article 40(2) TFEU] and the provisions of Regulations Nos 120/67/EEC of the Council of 13 June 1967 (OJ p. 2269) and 136/66/EEC of the Council of 22 September 1966 (OJ p. 3025),

THE COURT

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

Advocate-General: J.-P. Warner

Registrar: A. Van Houtte

gives the following

JUDGMENT

Law

- 1 By order of 26 April 1974 lodged at the Court Registry on 13 May, the Pretura of Rome raised, under [Article 267 TFEU], a number of questions on the interpretation of [Article 3 TEU], [the third paragraph of Article 4(3) TEU], and [Article 34 TFEU], Article 39 (1) [TFEU] and [Article 40(2) TFEU] and the provisions of Regulation No 120/67/EEC of the Council of 13 June 1967 (OJ p. 2269) on the common organization of the market in

cereals and Regulation No 136/66/EEC of the Council of 22 September 1966 (OJ p. 3025) on the establishment of a common organization of the market in oils and fats.

- 2 These questions have arisen in the context of criminal proceedings against a dealer charged with having contravened, through the sale of cereals and flours derived from oil seeds, the provisions of Italian Decree Law No 425 of 24 July 1973 (Gazzetta Ufficiale No 189 of 24. 7. 1973) controlling the prices of goods produced or distributed by large-scale undertakings.
- 3 This Decree Law required commercial undertakings producing or distributing goods sold according to weight, measure or number and having a turnover in the first six months of 1973 in excess of five thousand million lire to submit a price return which could be changed only sixty days after notification to the competent authorities and provided that the latter raised no objection during this same period of time.
- 4 According to the findings of the national court, the products which were sold in contravention of the said Decree Law are cereals to which Regulation No 120/67 applies and flours derived from oil seeds to which Regulation No 136/66 applies.

The replies to the questions raised must enable the national court to decide on the compatibility with the Treaty and with Regulations Nos 120/67 and 136/66 of the provisions of Decree Law No 425, in so far as the latter applies to the said products.

- 5 The first four questions ((a), (b), (c) and (d)) relating to the price system applicable in the areas covered by Regulations Nos 120/67 and 136/66 seek, essentially, to ascertain whether, and to what extent, a [Union] price system established within the context of a common organization of the market may exclude a national price control system.
- 6 The Court is also asked, with the same purpose in view, and with reference to [Article 3 TEU] and [the second and third paragraphs of Article 4(3) TEU], whether the principle of free movement of goods within the Common Market and the consequent ban on the isolation of national markets in such a way as to impede the realization of a single market are basic principles of the [Union] legal order giving rise to individual rights which national courts must protect if they are infringed by Member States (Question (e)).

7 A similar question is put to the Court in respect of [Article 34 TFEU] which prohibits quantitative restrictions on imports and all measures having equivalent effect (Question (f) (4)).

8 Regulation No 120/67 on cereals, adopted within the framework of the common agricultural policy, is intended to establish a common organization of the market within the meaning of Article 40 [TFEU].

This common organization of the market is intended, as is emphasized repeatedly in the preamble to Regulation No 120/67, to create for the [Union] a 'single market' in cereals subject to common administration.

9 In order to bring about this single market, the regulation established a system comprising a set of material rules and of powers, including a framework of organization calculated to meet all foreseeable situations.

10 In fact, a central place in this system is held by the 'price ... system' provided for by Article 1 of the regulation and applicable, by way of Article 2 (3), at the production and wholesale stage.

11 The purpose of this price system is to make possible complete freedom of trade within the [Union] and to regulate external trade accordingly, all in accordance with the objectives pursued by the common agricultural policy.

12 So as to ensure the freedom of internal trade the regulation comprises a set of rules intended to eliminate both the obstacles to free movement of goods and all distortions in intra-[Union] trade due to market intervention by Member States other than that authorized by the regulation itself.

13 This objective is emphasized by the fifteenth recital of the preamble, according to which 'the establishment of a single market in cereals involves the removal at the internal frontiers of the [Union] of all obstacles to the free movement of the goods in question' and by the sixteenth recital,

according to which 'the establishment of a single market based on a common price system would be jeopardized by the granting of certain aids'.

- 14 The appropriate provisions in this connexion are to be found in Articles 21 and 22 of the regulation itself.

The purpose of the above articles is to apply to the sector of the market at issue the provisions of Articles 2 [Article 3 TEU], (in particular subparagraphs (a), (d)) and (f)), [Article 28 TFEU] and [Article 34 TFEU] which seek to create a single market through the removal of all obstacles to the free movement of goods.

- 15 Such a system excludes any national system of regulation impeding directly or indirectly, actually or potentially, trade within the [Union].

Consequently, as concerns more particularly the price system, any national provisions, the effect of which is to distort the formation of prices as brought about within the framework of the [Union] provisions applicable, are incompatible with the regulation.

- 16 Apart from the substantive provisions relating to the functioning of the common organization of the market in the sector under consideration, Regulation No 120/67 comprises a framework of organization designed in such a way as to enable the [Union] and Member States to meet all manner of disturbances.

- 17 In this connexion, it must first be stressed that it is one of the objectives of Article 39(1) [TFEU] that supplies reach consumers at reasonable prices.

- 18 Articles 19 and 20 of the regulation have therefore made express provision for such cases by empowering the Council to take all necessary measures where the [Union] market is disturbed or threatened with disturbance by price rises on the world market which jeopardize the normal functioning of the price machinery established by the regulation.

- 19 Article 20 indicates precisely the procedures for common action by the Council, the Commission and the Member States in cases of serious disturbance.

- 20 In addition to the powers which the regulation reserves for the Council and the Commission, the Treaty itself entrusts the Commission with the general task of supervision and initiation of measures.
- 21 It is also necessary to draw attention in this connexion to the role played by permanent consultation, in the management of the sector at issue, by means of the 'Management Committee' established by Article 25 of the regulation. Besides the tasks with which it is specifically entrusted, the Management Committee may, in fact, in the words of Article 27 of the regulation, 'consider any other question referred to it by its Chairman either on his own initiative or at the request of the representative of a Member State'.
- 22 It is therefore apparent that the framework of organization of Regulation No 120/67 reserves for every Member State the power, in conjunction with the [Union] institutions, to take the necessary action, in the shortest possible time, where the normal operation of the price machinery established by the regulation is ineffective in the face of undesirable tendencies in the movement of prices in its territory.
- 23 A Member State cannot base the justification for its unilateral intervention in the movement of prices in the sector in question on the provisions of [Article 121 TFEU] relating to conjunctural policy.
- 24 [Article 121 TFEU], which refers to Member States' conjunctural policies, does not relate to those areas already subject to common rules such as the organization of agricultural markets.
- 25 It is necessary to examine next whether the preceding considerations are also applicable to the market in oils and fats dealt with in Regulation No 136/66.
- 26 This regulation also establishes a common organization of the market based on the unity of the market in the products concerned through the removal of obstacles to the free movement of goods and on common management.

Its special nature consists in the fact that, in respect of the most sensitive sectors of production, including in particular that of olive oil, it establishes a price system whereas, in respect of other products falling within the sphere of application of the regulation, it provides simply for customs protection in trade with third countries and for the possibility of protective measures to combat market disturbances.

27 Although the incompatibility of national measures intended to influence the formation of prices may be particularly apparent in the case of market organizations comprising a [Union] price formation system, it is nonetheless true that the very existence of a common organization of the market in the sense of [Article 40(1)(c) TFEU] has the effect of precluding Member States from adopting in the sector in question unilateral measures capable of impeding intra-[Union] trade.

28 Article 36 of the regulation, moreover, reserves expressly to the Council the powers necessary to adopt, in respect of the common organization, any provision amending or derogating from the regulation and intended to take account of 'special conditions' which may affect both types of product.

29/30 It must be concluded that in sectors covered by a common organization of the market—even more so when this organization is based on a common price system—Member States can no longer interfere through national provisions taken unilaterally in the machinery of price formation as established under the common organization. It is apparent, therefore, that a national system which by freezing prices and subjecting their alteration to administrative authorization, has the effect of modifying the formation of prices as provided for in the context of the common organization of the market, is incompatible both with the regulations in question and with the general provision of [the third paragraph of Article 4(3) TEU] according to which Member States must abstain from 'any measure which could jeopardize' the attainment of the objectives of the Treaty.

31 Since the power to take the measures necessary to combat a rise in prices on the markets in question is reserved to the [Union] institutions, any unilateral measures taken by Member States in this sector cannot be imposed on private persons who are subject to the [Union] regulations.

32 The only way compatible with [Union] law of enabling Member States to attain, in a sector covered by a common organization of the market, the objectives sought by national legislation and intended to combat a rise in prices, is for those States to take, at the [Union] level, the necessary action for the purpose of prompting the competent [Union] authority to institute or authorize measures which are consistent with the requirements of the single market set up by Regulations Nos 120/67 and 136/66.

33/34 In the market sectors under consideration, these regulations ensure, with direct effect in favour of private parties, the free movement of goods, in particular by eliminating quantitative restrictions and all measures having equivalent effect. It must however be stated that the price system established by Regulations Nos 120/67 and 136/66 is applicable solely at the production and wholesale stage, with the result that these provisions leave Member States free - without prejudice to other provisions of the Treaty - to take the appropriate measures relating to price formation at the retail and consumption stages, on condition that they do not jeopardize the aims or functioning of the common organization of the market in question.

35 The final question asks whether under [Article 40(2) TFEU], taken together with Article 5 and Regulations Nos 120/67 and 136/66 it is permissible for Member States to adopt, in the field of price control, provisions the effect of which is to discriminate between producers or consumers within the [Union].

36 [Article 40(2) TFEU] lays down rules which must be observed within the framework of the common organization of the markets.

Without prejudice to the possibility of applying, by analogy, this provision to national organizations which may continue to exist in certain sectors in conformity with the Treaty, this question, relating to the appraisal of national provisions adopted in areas subject exclusively to [Union] legislation, is in this case without any purpose.

Costs

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

On those grounds,

THE COURT

in answer to the questions referred to it by the Pretura of Rome by order of 26 April 1974,

hereby rules:

- 1. In sectors covered by a common organization of the market, and especially when this organization is based on a common price system, Member States can no longer take action, through national provisions taken unilaterally, affecting the machinery of price formation as established under the common organization;**
- 2. A national system which, by freezing prices and subjecting their alteration to administrative authorization, has the effect of modifying price formation as provided for within the framework of the common organizations of the market referred to, is incompatible with Regulation No 120/67 on the common organization of the market in cereals and with Regulation No 136/66 on the establishment of a common organization of the market in oils and fats;**
- 3. Regulations Nos 120/67 and 136/66 ensure, in the market sectors concerned, and with direct effect in favour of private persons, the free movement of goods, in particular by eliminating quantitative restrictions and all measures having equivalent effect.**

Lecourt
Stuart Donner

Mertens de Wilmars
Monaco
Kutscher

Mackenzie
Pescatore

Delivered in open court in Luxembourg on 23 January 1975.

A. Van Houtte
Lecourt

Registrar

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R.

Presid

Robert Schütze European Union Law Lisbonised Cases