

Judgment of the Court of Justice, Toepfer, joined cases 106 and 107/63 (1 July 1965)

Caption: Excerpt from the Toepfer judgment relating to the admissibility of action for annulment. The Court answers affirmatively to the question of whether a private person may be individually concerned by a decision of the Commission addressed to a Member State.

Source: Reports of Cases before the Court. 1965. [s.l.].

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Judgment of the Court of 1 July 19651

Alfred Toepfer and Getreide-Import Gesellschaft v Commission of the European Economic Community²

Joined cases 106 and 107-63

Summary

1. Measures adopted by an institution - Applications by individuals against a decision addressed to another person - Decision of direct concern to them - Concept (EEC Treaty, Article 173)

2. Measures adopted by an institution - Applications by individuals against a decision addressed to another person - Decision of individual concern to them - Concept (EEC Treaty, Article 173)

3. Agriculture - Common organization of markets - Cereals - Protective measures taken by Member States - Powers of the Commission - Character - Exercise by way of decisions directly concerning the interested parties (EEC Treaty, Article 173, Regulation No 19 of the Council of the EEC of 4 April 1962, Article 22 (2), Official Journal of the European Communities of 20 April 1962, p. 942/62)

1. A decision which comes into force immediately is of direct concern to an interested party within the meaning of the second paragraph of Article 173 of the EEC Treaty.

2. Cf. para. 1 of summary in Case 40/64.

3. Since they come into force immediately decisions of the Commission amending or abolishing protective measures taken by Member States for the protection of the market in cereals are directly applicable and concern interested parties subject to them as directly as the measures which they replace. Decisions retaining protective measures have the same effect because they do not constitute a mere approval of these measures but render them valid.

In Joined Cases
106/63

ALFRED TOEPFER, a limited partnership, whose registered office is at Hamburg, represented by Mr Auguste Schultz, its agent,

and 107/63

GETREIDE-IMPORT GESELLSCHAFT, a limited company whose registered office is at Duisburg, represented by its managers Wilhelm Specht and Wilhelm Breder, assisted by Walter Hempel of the Hamburg Bar (for both cases) and K. Redeker of the Bonn Bar (for Case 107/63 only), both with an address for service in Luxembourg at the Chambers of Georges Reuter, Advocate, 7 avenue de l' Arsenal,

applicants,

v

COMMISSION OF THE ECONOMIC COMMUNITY, assisted by Claus-Dieter Ehlermann, member of the Legal Department of the European Executives, with an address for service in Luxembourg at the offices of Mr Henri Manzanarès, secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application for annulment of the decision of the Commission of 3 October 1963 authorizing the Federal Republic of Germany to retain in force the protective measures concerning the importation of maize, millet

and sorghum (63/553/EEC);

THE COURT

composed of: Ch. L. Hammes, President, A. M. Donner (Rapporteur) and R. Lecourt, Presidents of Chambers, L. Delvaux, A. Trabucchi, W. Strauß and R. Monaco, Judges,

Advocate-General: K. Roemer

Registrar: A. Van Houtte

gives de following

JUDGEMENT

[...]

Grounds of judgment

Admissibility of the applications

As the contested decision was not addressed to the applicants the defendant argues that it was not of direct and individual concern to them within the meaning of Article 173 of the Treaty; it only concerns the applicants through the effect of the protective measure in question, and thus indirectly.

The defendant further argues that, since the protective measure was drawn up in general terms applicable to all importers in a position to ask for an import licence during the period between 1 and 4 October 1963, neither this measure nor the decision which upheld it is of individual concern to the applicants.

The expression ‘of direct ... concern’

According to the terms of Article 22 of Regulation No 19, when a Member State has given notice of the protective measures provided for in paragraph (1) of the said Article, the Commission shall decide within four working days of the notification whether the measures are to be retained, amended or abolished.

The last sentence of the second paragraph of Article 22 provides that the Commission’s decision shall come into force immediately.

Therefore a decision of the Commission amending or abolishing protective measures is directly applicable and concerns interested parties subject to it as directly as the measures which it replaces.

It would be illogical to say that a decision to retain protective measures had a different effect, as the latter type of decision does not merely give approval to such measures, but renders them valid.

Therefore decisions made under the third and fourth subparagraphs of Article 22 (2) are of direct concern to the interested parties.

The expression ‘of ... individual concern’

It is clear from the fact that on 1 October 1963 the Commission took a decision fixing new free-at-frontier prices for maize imported into the Federal Republic as from 2 October, that the danger which the protective measures retained by the Commission were to guard against no longer existed as from this latter date.

Therefore the only persons concerned by the said measures were importers who had applied for an import licence during the course of the day of 1 October 1963. The number and identity of these importers had

already become fixed and ascertainable before 4 October, when the contested decision was made. The Commission was in a position to know that its decision affected the interests and the position of the said importers alone.

The factual situation thus created differentiates the said importers, including the applicants, from all other persons and distinguishes them individually just as in the case of the person addressed.

Therefore the objection of inadmissibility which has been raised is unfounded and the applications are admissible.

[...]

THE COURT

hereby:

1. Annuls the decision of the Commission of the European Economic Community of 3 October 1963, authorizing the Federal Republic of Germany to retain protective measures concerning the importation of maize, millet and sorghum.

2. Orders the defendant to bear the costs.

Hammes
Donner
Lecourt
Delvaux
Trabucchi
Strauß
Monaco

Delivered in open court in Luxembourg on 1 July 1965.

A. Van Houtte
Registrar

Ch. L. Hammes
President

1 - Language of the Case: German.
2 - CMLR.