

Case C-273/04

Republic of Poland

v

Council of the European Union

(Action for annulment — Council Decision 2004/281/EC — Common agricultural policy — Act concerning the conditions of accession to the European Union — Adaptation — Infringement of principle of non-discrimination)

Opinion of Advocate General Poiares Maduro delivered on 21 June 2007 . . . I - 8929

Judgment of the Court (Grand Chamber), 23 October 2007 I - 8963

Summary of the Judgment

1. *Accession of new Member States to the Communities — Act of Accession 2003 — Necessary adaptations of the provisions of the act relating to the Common Agricultural Policy — Meaning*

(Act of Accession 2003, Art. 23)

2. *Accession of new Member States to the Communities — Act of Accession 2003 — Necessary adaptations of the provisions of the act relating to the Common Agricultural Policy — Decision 2004/281*

(*Act of Accession 2003, Art. 23; Council Decision 2004/281, Art. 1(5)*)

1. The purpose of Article 23 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, was to enable the Council to adopt the measures necessary to ensure that the Act of Accession was brought into alignment with changes in legislation made by the institutions within the Common Agricultural Policy (CAP) between the signature of that Act and the actual accession of the new Member States. However, the power thus granted cannot be interpreted broadly; otherwise the Court would misconstrue the outcome of the negotiations of the conditions of accession of those States.

ensure consistency between the Act and new provisions adopted by the Community institutions between the signature of the Act of Accession and actual accession.

As regards the requirement that the adoption of any such measure of adaptation must be necessary, such a requirement stems directly from any modification of the Community rules in response to a new regulatory step on the part of the Community institutions which affects the CAP and leads to a conflict between the provisions of the Act of Accession and the new body of rules resulting from that modification.

(see paras 44, 45, 48, 49)

Thus, the concept of 'adaptation' must be restricted to measures which cannot in any way affect the scope of one of the provisions of the Act of Accession relating to the CAP nor substantially alter its content, but which solely represent adjustments designed to

2. By adopting Decision 2004/281 adapting the Act concerning the conditions of

accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, following the reform of the common agricultural policy, the Council did not exceed the competence conferred on it by Article 23 of the Act of Accession to make the adaptations to the provisions of the Act relating to the CAP which might prove necessary as a result of a modification of Community rules.

As regards direct payments in the new Member States, the principle of the general application of the phasing-in system to all direct aid was agreed in the accession negotiations and expressly provided for by the Act of Accession which inserted Article 1a in Regulation No 1259/1999. Moreover, Article 1(5) of the Decision 2004/281 is limited to providing for the phasing-in of direct payments in the new Member States according to the same schedule and percentages as those previously established in Article 1a of Regulation No 1259/1999 as amended by the Act of Accession. Therefore, Decision 2004/281 cannot be regarded as having introduced a substantive amendment either to the scope of the phasing-in system, or to the fundamental content of the obligations and rights flowing from it.

In the light of Regulation No 1259/1999 establishing common rules for direct support schemes under the common agricultural policy, the phasing-in system was intended to apply to all the direct payments granted under support schemes referred to in Article 1 of that regulation. The essential criterion determining the scope of Regulation No 1259/1999 is to be found in the conditions set out in Article 1 thereof, and not in the inclusion of a specific aid scheme in its Annex, since the Annex merely gives particular examples for the purposes of that provision.

Moreover, the agricultural situation in the new Member States was radically different from that in the old Member States, which justified a gradual application of Community rules, in particular those rules relating to direct support schemes, in order not to disrupt the necessary on-going restructuring in the agricultural sector of the new Member States. It follows that the latter States are not in a situation comparable to that of

the old Member States which have unrestricted access to the direct support schemes, and that prevents any valid comparison being made.

without extending its scope, it cannot be regarded as a subversion of the compromise reached in the accession negotiations and does not therefore infringe the principle of good faith.

Finally, given that Decision 2004/281 reproduces the principle and the method of applying the phasing-in system as they were stated in the Act of Accession,

(see paras 55, 66, 67, 76, 78-80,
87, 88, 92)