



Reports of Cases

Case C-103/14

Bronius Jakutis and Kretingalės kooperatinė ŽŪB

v

Nacionalinė mokėjimo agentūra prie Žemės ūkio ministerijos and Lianduvos valstybė

(Request for a preliminary ruling from the Vilniaus apygardos administracinis teismas)

(Reference for a preliminary ruling — Agriculture — Regulation (EC) No 73/2009 — Articles 7(1), 10(1), 121 and 132(2) — Acts implementing that regulation — Validity, in the light the TFEU Treaty, the 2003 Act of Accession and the principles of non-discrimination, legal certainty, the protection of legitimate expectations and sound administration — Modulation of direct payments granted to farmers — Reduction of the amounts — Level of direct payments applicable in the Member States of the European Community as constituted on 30 April 2004 and in the Member States that joined it on 1 May 2004 — No publication and no statement of reasons)

Summary — Judgment of the Court (Fourth Chamber), 12 November 2015

1. *EU law — Interpretation — Methods — Literal, systematic and teleological interpretation*

(Council Regulation No 73/2009, Arts 10, 121 and 132(2))

2. *Agriculture — Common agricultural policy — Direct support schemes — Common rules — Modulation of direct payments granted to farmers in Member States which joined the European Union in 2004 — Reduction of complementary national direct payments — Levels of direct payments applicable in the old and new Member States — Detailed rules of application*

(2003 Act of Accession; Council Regulation No 73/2009, Arts 7(1), 10(1) and 121)

3. *Agriculture — Common agricultural policy — Direct support schemes — Common rules — Modulation of direct payments granted to farmers in Member States which joined the European Union in 2004 — Reduction of complementary national direct payments — Commission's obligation to respect the alignment between the modulation of direct payments and that of complementary national direct payments — Scope*

(2003 Act of Accession, Annex II, Chapter 6, A, point 27(b); Council Regulations No 1259/1999, Art. 1c, and No 73/2009, Recital 17 and Arts 7(1) and (2), 10(2) and 132(2) and 5 to 8)

4. *EU law — Interpretation — Texts in several languages — Uniform interpretation — Differences between the various language versions — Taking into account the purpose and general scheme of the rules*

(Council Regulation No 1259/1999, Art. 1c, (2))

1. See the text of the decision.

(see paras 52, 93)

2. Articles 7(1), 10(1) and 121 of Regulation No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, must be interpreted as meaning that the concept of ‘level of direct payments applicable in the Member States other than new Member States’ must be interpreted as meaning that that level was, in 2012, equal to 90% of the level of all direct payments and that the concept of ‘level of direct payments in the new Member States’ must be interpreted as meaning that that level was, in 2012, equal to that in the Member States of the European Community as constituted on 30 April 2004. The reference to the level of direct payments applicable in the Member States other than the new Member States, referred to in Articles 10 and 121 of Regulation No 73/2009, was introduced into EU law by 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 in order to regulate the gradual introduction of direct payments into the new Member States. In that regard since the connection between the respective levels of direct payments in the two groups of Member States stems from that Act of Accession and, consequently, from provisions of primary law, it must be assumed in the interpretation of Regulation No 73/2009 in so far as it reflects the provisions set out in Annex II of that Act of Accession.

In those circumstances, it is not possible to accept an argument which contests the equivalence, within the meaning of Article 10 of Regulation No 73/2009, of the levels of direct payments applicable, respectively, in the Member States other than the new Member States and in the new Member States, due to the fact that the inapplicability of modulation to direct payments under EUR 5 000 has the result that the amount of direct payments made in respect of 2012, in Member States other than the new Member States, despite the 10% modulation, is in fact more than the level of 90% of all direct payments, the level formally reached in the new Member States. As the level of direct payments applicable before modulation is 100% irrespective of the amounts actually paid in the various Member States, the overall modulation of 10%, provided for in Article 7(1) of Regulation No 73/2009, must be regarded as a reduction within the meaning of Article 10(1) of that regulation, which must be taken into account for the purposes of finding that the applicable levels of direct payments are equivalent. However, to take account of the nominal effects of those calculations, apart from raising the question of the number of farmers receiving less than EUR 5 000, respectively, in the Member States other than the new Member States and in the new Member States, would highlight the issue of the considerable difference between the amounts of direct payments per hectare paid respectively, rendering it impossible to make an absolute comparison between the level of payments made in those two groups of Member States. The choice of the abstract criterion of applicable level of direct payments is of such a nature as to prevent such considerations.

(see paras 53, 59-63, operative part 1)

3. With regard to the complementary national direct payments that may be granted in the new Member States which joined the European Union in 2004 in the context of the single area payment scheme, the authorisation by the Commission, to which the granting of such payments is subject, under Article 132(6) of Regulation No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, depends on a concrete and detailed examination of the payments in question, the stages of which were already set out in Article 1c of Regulation No 1259/1999 establishing common rules for direct support schemes under the common agricultural policy, which had been inserted into that regulation by point 27(b) of Chapter 6A of Annex II to the Act concerning the conditions of accession of those new Member States to the European Union.

Although both Article 1c and Article 132(2) of Regulation No 73/2009 refer, in principle, to all new Member States, it follows from paragraph 4 of each of those articles that a new Member State that applies the single area payment scheme may grant complementary national direct aid under the conditions referred to in paragraphs 5 to 8 of each of those articles. In accordance with the legitimate ground of applying, as from 2012, the rules for modulation in the new Member States, including, as suggested in recital 17 in the preamble to Regulation No 73/2009, with regard to complementary national direct payments, the mechanism for reducing the cumulative amount of direct payments from the European Union and from complementary national direct payments should be aligned with that for modulation of direct payments from the European Union only. Thus, as regards that cumulative amount, the reductions must be taken into account only where modulation for direct payments from the European Union is applicable. To the extent that, under Article 10(2) of Regulation No 73/2009, modulation is not applicable to payments of less than EUR 300 000, reductions should not burden complementary national direct payments either.

In that regard, since Article 7(1) of Regulation No 73/2009 does not apply in the Member States which joined the European Union in 2004, only Article 7(2) of that regulation is applicable and, therefore, only a reduction of 4 percentage points for amounts exceeding EUR 300 000 is applicable. Consequently, a Commission decision which did not respect the alignment between the modulation of direct payments and that of the complementary national direct payments must be declared invalid in so far as it imposed the application of modulation in respect of 2012 with regard to farmers for whom the total amount from national direct payments and from the European Union is between EUR 5 000 and EUR 300 000.

(see paras 81-87, operative part 2)

4. See the text of the decision.

(see para. 103)