



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

4 May 2023 *

(Reference for a preliminary ruling – Agriculture – Regulation (EEC) No 2062/92 – Article 3(3) – Validity – Common organisation of the markets – Raw tobacco – Premiums granted to purchasers of leaf tobacco – Reduction of those premiums according to the quantity of tobacco of low class, category or quality purchased – Principles of non-retroactivity and of the protection of legitimate expectations)

In Case C-99/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Symvoulío tis Epikrateias (Council of State, Greece), made by decision of 30 December 2021, received at the Court on 14 February 2022, in the proceedings

Kapniki A. Michailidis AE

v

Organismos Pliromon kai Elenchou Koinotikon Enischiseon Prosanatolismou kai Engyiseon (OPEKEPE),

Ypourgos Agrotikis Anaptyxis kai Trofimon,

THE COURT (Tenth Chamber),

composed of D. Gratsias, President of the Chamber, M. Ilešič and Z. Csehi (Rapporteur), Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Kapniki A. Michailidis AE, by P. Yatagantzidis, dikigoros,
- the Greek Government, by E. Leftheriotou, M. Tassopoulou and A.-E. Vasilopoulou, acting as Agents,

* Language of the case: Greek.

- the Council of the European Union, by M. Balta, A. Nowak-Salles and A. Tamás, acting as Agents,
- the European Commission, by M. Konstantinidis and B. Rechená, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

- 1 This request for a preliminary ruling concerns the validity of Article 3(3) of Council Regulation (EEC) No 2062/92 of 30 June 1992 fixing, for the 1992 harvest, the norm and intervention prices and the premiums granted to purchasers of leaf tobacco, the derived intervention prices for baled tobacco, the reference qualities, and the production areas (OJ 1992 L 215, p. 22).
- 2 The request has been made in proceedings between Kapniki A. Michailidis AE, on the one hand, and the Organismos Pliromon kai Elenchou Koinotikon Enischiseon Prosanatolismou kai Engyiseon (OPEKEPE) (Payment and Control Body for Community Guidance and Guarantee Aid, Greece) and the Ypourgos Agrotikis Anaptyxis kai Trofimou (Minister for Agricultural and Food Development, Greece), on the other, concerning the annulment of a decision of the Ethnikos Organismos Kapnou (National Tobacco Office, Greece) adopted pursuant to Regulation No 2062/92 and requiring the repayment, by that company, of a premium on the ground that that premium had been unduly paid to it.

European Union law

Regulation (EU) No 727/70

- 3 The sixth recital of Regulation (EEC) No 727/70 of the Council of 21 April 1970 on the common organisation of the market in raw tobacco (OJ 1970 L 94, p. 1), as amended by Council Regulation (EEC) No 860/92 of 30 March 1992 (OJ 1992 L 91, p. 1) ('Regulation No 727/70'), was worded as follows:

'Whereas these objectives can be achieved by means of an intervention policy based on a system of norm and intervention prices, which includes the obligation to buy in at the intervention price and the granting of premiums to users who purchase leaf tobacco direct from Community producers; whereas this policy must be applied in such a way as to encourage improvements in quality and crop adjustments, in particular the conversion of cultivation to varieties which are in greater demand or are more competitive'

- 4 Article 2(3) of that regulation stated:

'Norm and intervention prices shall be fixed:

- (a) for leaf tobacco which has not undergone first processing and market preparation;
- (b) for each Community-produced variety grown in recognised production areas;

(c) and for a reference quality of each variety, the characteristics of which shall be specified and which is sufficiently representative of the quality of a normal crop.

However, different prices may be fixed for a given variety for specific production areas within the meaning of Article 4(5).'

5 Article 3(1) and (3) of that regulation provided:

'1. A premium shall be granted to natural or legal persons who purchase leaf tobacco direct from Community producers.

The premium shall be granted only to purchasers:

(i) who have concluded European cultivation contracts with producers ... before the date to be determined in accordance with paragraph 3;

...

3. Rules for applying this Article, including those relating to administrative supervision, shall be adopted in accordance with the procedure laid down in Article 17.

These rules shall lay down the clauses which must be included in contracts, including the clauses which specify the price payable to the producer and the amount of the premium to which the contract gives entitlement.'

6 Article 4(3) and (4) of that regulation provided:

'3. The amount of the premium shall be fixed:

...

(b) for each Community-produced variety coming from recognised production areas and for the corresponding reference quality.

The amount of the premium thus fixed shall be applicable to all tobacco of the variety in question. However, in so far as for a given variety there is a danger that the granting of a premium of the same amount to tobacco of different qualities of that variety might interfere with the proper working of the common organisation of the market and the qualitative adjustment of production to market requirements, the amount of the premium may, by way of exception, be fixed, in the case of qualities differing from that taken as the reference quality, at an amount above or below that normally applicable to all tobacco of the variety.

However, this amount may differ for a given variety for specific production areas within the meaning of paragraph 5.

4. Before 1 November each year the amount of the premium for each variety applicable to the crop of the following calendar year shall be fixed in accordance with the procedure provided for in Article 43(2) of the [EEC] Treaty.'

7 In order to limit any increase in tobacco production in the European Union and at the same time to discourage the production of varieties which are difficult to dispose of, Council Regulation (EEC) No 1114/88 of 25 April 1988 amending Regulation (EEC) No 727/70 on the common organisation of the market in raw tobacco (OJ 1988 L 110, p. 35) added a paragraph 5 to Article 4 of that regulation. That provision stated:

‘Each year and in accordance with the procedure provided for in Article 43(2) of the [EEC] Treaty, the Council shall fix a maximum guaranteed quantity, in particular in the light of market requirements and the socio-economic and agricultural conditions of the regions concerned for each variety or group of varieties of Community-produced tobacco for which prices and premiums are fixed. The overall maximum quantity for the Community shall be fixed at 385 000 tonnes of leaf tobacco for each of the 1988, 1989 and 1990 harvests.

...’

Regulation No 1726/70

8 The conditions and requirements relating to the cultivation contracts referred to in Article 3(1) of Regulation No 727/70 were laid down in Commission Regulation (EEC) No 1726/70 of 25 August 1970 on the procedure for granting the premium for leaf tobacco (OJ 1970 L 191, p. 1).

9 Article 2b(1), (3) and (4) of Regulation No 1726/70, as amended by Commission Regulation (EEC) No 1413/91 of 29 May 1991 (OJ 1991 L 135, p. 15) (‘Regulation No 1726/70’), provided:

‘1. The cultivation contract ... shall contain at least the clauses set out as points 1 to 12 in the Annex and shall be concluded between the following parties:

(a) a purchaser of leaf tobacco who will subject that tobacco to first processing and market preparation, hereinafter “the purchaser”, and

(b) a tobacco producer or associated producers, hereinafter “the vendor”.

...

3. The cultivation contract may be for one or more years. It must be concluded, except in cases of *force majeure*, before 1 June of the year in which it takes effect.

...

4. The contract must specify:

(a) the basic contract price;

(b) the factors serving to determine the final purchase price, including:

– the norm price set for the harvest in question,

– the level of the corresponding premium.

...’

10 The annex to Regulation No 1726/70 contained a standard European cultivation contract, points 1, 4, 5 and 8 of which were worded as follows:

‘1. The vendor undertakes to grow tobacco for the 19.. harvest(s); as follows:

...

Maximum yield: kg/ha,

and to dry it in accordance with the requirements for the variety in question.

...

4. The vendor undertakes to deliver to the purchaser all the tobacco harvested on the area covered by this contract not exceeding the maximum production given in paragraph 1.

5. The purchaser undertakes to buy all the tobacco, subject to the maximum production given in paragraph 1, harvested on the area covered by the contract that meets the minimum quality standards laid down in Article 6(2) of [Regulation (EEC) No 1727/70 of the Commission of 25 August 1970 on intervention procedure for raw tobacco (OJ 1970 L 191, p. 5)].

...

8. The contract price for the reference quality indicated in the Community rules shall be ... per kilogram. ...

Notwithstanding the provisions of the preceding subparagraph, if the prices or the premium for the tobacco variety indicated in paragraph 1 are adjusted by a Community Regulation, the purchaser and the vendor shall renegotiate the contract price. Where those prices or premiums are adjusted pursuant to Article 4(5) of Regulation [No 727/70], the contract price shall be adjusted in line with the change in the price and premiums.’

Regulation No 2062/92

11 The first, third and seventh recitals of Regulation No 2062/92 were worded as follows:

‘Whereas the [European] Commission has proposed a reform of the common organisations of the market in raw tobacco which will apply from the 1993 harvest; whereas, therefore, the provisions applicable to the previous harvest should be maintained for the 1992 harvest, subject to amendments indispensable for the transition to the new system; whereas, with this in mind, it will not be necessary to fix the maximum guaranteed quantity for each variety or group of varieties as provided for in the first subparagraph of Article 4(5) of [Regulation No 727/70] for the 1993 harvest;

...

Whereas the norm and intervention prices for leaf tobacco must be fixed in accordance with the criteria laid down in Article 2(2) of [Regulation No 727/70] in order, in particular, to encourage producers to convert to the cultivation of those varieties which are most in demand and most competitive as well as being the least harmful to health;

...

Whereas the premium is identical for all tobaccos of the variety in question, regardless of the quality of the tobacco delivered; whereas, however, this would encourage the production of low-quality tobacco; whereas, therefore, the premium for quantities of low-quality tobacco purchased by a processor in excess of a percentage corresponding to the normal quantity of low-quality tobacco relative to the total harvested quantity should be reduced’.

12 Article 3 of that regulation provided:

‘1. For the 1992 harvest, the norm and intervention prices and the amounts of the premium granted to purchasers of leaf tobacco, referred to in Articles 2 and 3 of [Regulation No 727/70], and the derived intervention prices for baled tobacco referred to in Article 6 of the said Regulation, shall be as set out in Annex IV to this Regulation.

...

3. Where the quantity of tobacco of low class, category or quality purchased by a processor exceeds, relative to his total purchases of the variety in question, the percentage indicated in Annex IV, the premium shall be reduced by 30% in respect of the quantity in excess of the percentage in question.’

13 Annex IV to that regulation provided, under the serial number 18, that, as regards Grade IV of the variety ‘Katerini and similar varieties’, the percentage referred to in Article 3(3) of that regulation was 20%.

The dispute in the main proceedings and the question referred for a preliminary ruling

14 Before 1 June 1992, the applicant in the main proceedings concluded contracts for the purchase of tobacco of the Katerini variety with tobacco producers for the 1992 harvest. The applicant then received, as an advance, the premium provided for in Article 3(1) of Regulation No 727/70.

15 By decision of 22 September 1995, the Ethnikos Organismos Kapnou (National Tobacco Board) requested the applicant in the main proceedings to repay, as an amount unduly paid and pursuant to Article 3(3) of Regulation No 2062/92, part of the premium of 51 564 843 Greek drachmas (GRD) (approximately EUR 151 327) which had been granted to it, on the ground that the advance which it had received by way of that premium was greater than that to which it was entitled. According to the Ethnikos Organismos Kapnou (National Tobacco Board), the quantity of tobacco in a low category purchased by the applicant in the main proceedings represented a percentage greater than 20% of its total purchases.

16 The applicant in the main proceedings brought an action for annulment against that decision before the Symvoulío tis Epikrateias (Council of State, Greece), the referring court, which referred the action back to the Dioikitiko Protodikeio Athinon (Administrative Court of First Instance, Athens, Greece), in order for the action to be ruled on as an action for full jurisdiction. Before the latter court, the applicant in the main proceedings claimed, inter alia, that Article 3(3) of Regulation No 2062/92 was invalid on account of the retroactive nature of that provision and a

breach of the principle of the protection of legitimate expectations. The Dioikitiko Protodikeio Athinon (Administrative Court of First Instance, Athens), by a judgment, dismissed that action as unfounded.

- 17 The applicant in the main proceedings brought an appeal against that judgment before the Dioikitiko Efeteio Athinon (Administrative Court of Appeal, Athens), which dismissed it, by a judgment, on the ground, first, that Article 3(3) of Regulation No 2062/92 had no retroactive effect, since that provision related not to the date on which the cultivation contracts at issue were concluded, but to the quality of tobacco, and, second, that that regulation did not breach the principle of the protection of legitimate expectations.
- 18 The applicant in the main proceedings brought an appeal against that judgment before the Symvoulio tis Epikrateias (Council of State). That court is uncertain as to the validity of that provision, in so far as it may be contrary to the principles of non-retroactivity of rules of law and of the protection of legitimate expectations.
- 19 More specifically, that court considers that Article 3(3) of Regulation No 2062/92 had retroactive effect, since that regulation had been published on 30 July 1992, that is to say, after the expiry of the period laid down in Regulation No 1726/70 for the conclusion of cultivation contracts between producers and processors relating to the 1992 harvest. In that regard, that court considers that, although the reduction of the premium provided for in Article 3(3) of Regulation No 2062/92 was intended to improve the quality of grown tobacco varieties and, thus, their competitiveness, such an objective, which was consistent with the objectives of the common organisation of the market in tobacco, could not be achieved by the date of entry into force of Regulation No 2062/92, since, on that date, that period had expired and operators on the market in question had already decided on how production would be directed, without it being possible to achieve that objective at the time of the 1992 harvest. Consequently, that court asks about the validity of Article 3(3) of Regulation No 2062/92.
- 20 Furthermore, the referring court considers that, by providing for a reduction of the premium for low-quality tobacco, Regulation No 2062/92 is capable of breaching the principle of the protection of legitimate expectations, since, under Article 4(4) of Regulation No 727/70, the amount of the premium which was valid for the harvest of the year in question had to be fixed before 1 November of the previous year and, in any event, cultivation contracts had to be concluded before 1 June of each year.
- 21 In those circumstances, the Symvoulio tis Epikrateias (Council of State) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does Article 3(3) of [Regulation No 2062/92], which states that, where the quantity of tobacco of low class purchased by a processor exceeds, relative to his total purchases of the variety in question, the percentage indicated in Annex IV, the premium shall be reduced by 30% in respect of the quantity in excess of the percentage in question, [breach] the principle of the non-retroactivity of legal rules and the principle of the protection of legitimate expectations?’

Consideration of the question referred

- 22 By its question, the referring court asks, in essence, whether Article 3(3) of Regulation No 2062/92 is valid in the light of the principles of non-retroactivity of rules of law and of the protection of legitimate expectations.
- 23 At the outset, it must be recalled that, although, in general, the principle of legal certainty precludes an EU measure from taking effect from a point in time before that measure was published, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected and, in so far as it follows clearly from the terms, objectives or general scheme of the rules concerned, that such effect must be given to them (judgment of 30 April 2019, *Italy v Council (Fishing quota for Mediterranean swordfish)*, C-611/17, EU:C:2019:332, paragraph 106 and the case-law cited).
- 24 In those circumstances, it must first be determined whether Article 3(3) of Regulation No 2062/92, according to which, where the quantity of tobacco of low class, category or quality purchased by a processor exceeds, relative to his or her total purchases of the variety in question, the percentage indicated in Annex IV to that regulation, the premium is to be reduced by 30% in respect of the quantity in excess of the percentage in question, is to have retroactive effect. If so, it will then be necessary to ascertain, second, whether the retroactive application of that provision may be permitted, in accordance with the case-law referred to in the previous paragraph of the present judgment.
- 25 As regards, in the first place, the assessment of the retroactive effect of Article 3(3) of Regulation No 2062/92, it should be noted that that regulation was published on 30 July 1992. It is apparent from Article 2b(3) of Regulation No 1726/70 that, in order to be entitled, in respect of the 1992 harvest, to the premium provided for in Article 3(1) of Regulation No 727/70, natural or legal persons who purchase leaf tobacco from producers should, except in cases of *force majeure*, have concluded cultivation contracts with the latter by 1 June 1992.
- 26 In those circumstances, it must be concluded that Regulation No 2062/92, including Article 3(3) thereof, had retroactive effect, since it was adopted on a date on which the natural or legal persons who purchase leaf tobacco from the producers had already had to enter into binding contractual commitments vis-à-vis the latter regarding the purchase of their production (see, by analogy, judgment of 11 July 1991, *Crispoltoni*, C-368/89, EU:C:1991:307, paragraphs 14 to 16).
- 27 Moreover, that retroactive effect resulted from the fact that, under that provision, the annual fixing of the amount of the premium for the 1992 harvest took place in June 1992, whereas, under Article 4(4) of Regulation No 727/70, it should have occurred before 1 November 1991.
- 28 As regards, in the second place, the question whether the retroactive application of Article 3(3) of Regulation No 2062/92 may be justified by a public interest objective which would require it, it should be noted that the retroactive application of that regulation, including Article 3(3) thereof, necessarily results from the need to attain the fundamental objective pursued by the common organisation of the market in tobacco for 1992, namely to provide financial support to tobacco producers and processors.
- 29 In those circumstances, it is necessary, in the third place, to examine whether the principle of the protection of legitimate expectations was duly observed. In that regard, it should be borne in mind that, although that principle is one of the fundamental principles of the European Union,

economic operators are not justified in having a legitimate expectation that an existing situation, which is capable of being altered by the EU institutions in the exercise of their discretionary power, will be maintained, particularly in an area such as that of the common organisation of the markets, the objective of which involves constant adjustment to reflect changes in economic circumstances (see, to that effect, judgments of 5 October 1994, *Crispoltoni and Others*, C-133/93, C-300/93 and C-362/93, EU:C:1994:364, paragraph 57; of 17 September 1998, *Pontillo*, C-372/96, EU:C:1998:412, paragraph 22; and of 26 June 2012, *Poland v Commission*, C-335/09 P, EU:C:2012:385, paragraph 180 and the case-law cited).

- 30 It follows that economic operators cannot claim a vested right to the maintenance of an advantage which they derive from the establishment of the common organisation of the markets and which they enjoyed at a given time (judgments of 5 October 1994, *Crispoltoni and Others*, C-133/93, C-300/93 and C-362/93, EU:C:1994:364, paragraph 58, and of 17 September 1998, *Pontillo*, C-372/96, EU:C:1998:412, paragraph 23 and the case-law cited).
- 31 That is all the more so where, as is the case in the main proceedings, the applicable EU rules, in the present case Regulation No 727/70, required the Council to determine each year, having regard in particular to market developments and to the harmfulness of the different varieties of tobacco, the prices and premiums for those varieties, and expressly provided for the possibility of a reduction of those prices and premiums (see, to that effect, judgment of 17 September 1998, *Pontillo*, C-372/96, EU:C:1998:412, paragraph 24).
- 32 Since the publication of Regulation No 1114/88, all of the operators concerned were aware of the uncertainty arising from the fact that the annual fixing of prices and premiums had not yet taken place. In particular, so long as the EU legislature had not fixed the prices and premiums relating to the 1992 tobacco harvest, those operators could not legitimately have expected the level of prices and premiums in question to be maintained.
- 33 Furthermore, it should be noted that, under Article 4(3) of Regulation No 727/70, the amount of the premium could, exceptionally, be fixed for qualities different from that adopted as a reference quality, at an amount higher or lower than that normally applicable to all tobacco of the variety in question. Moreover, as is apparent from Article 3(3) of Regulation No 2062/92, read in the light of the first, third and seventh recitals thereof, the objective of that regulation was to discourage the production of tobacco varieties of low class, category or quality which were difficult to dispose of in order to limit tobacco production within the European Union in general.
- 34 Moreover, it must be borne in mind that it is apparent from Article 2b(1) of Regulation No 1726/70, read in conjunction with point 8 of the annex to that regulation, that the cultivation contracts concluded between purchasers and producers contained a clause providing for a renegotiation of the contract price in the event of amendment, in particular, of the premium paid to purchasers.
- 35 Accordingly, it must be stated that the legitimate expectations of the operators concerned were not breached by Article 3(3) of Regulation No 2062/92.
- 36 In the light of the foregoing considerations, it must be concluded that consideration of the question referred has disclosed no factor of such a kind as to affect the validity of Article 3(3) of Regulation No 2062/92 in the light of the principles of non-retroactivity of rules of law and of the protection of legitimate expectations.

Costs

- 37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

Consideration of the question referred has disclosed no factor of such a kind as to affect the validity of Article 3(3) of Council Regulation (EEC) No 2062/92 of 30 June 1992 fixing, for the 1992 harvest, the norm and intervention prices and the premiums granted to purchasers of leaf tobacco, the derived intervention prices for baled tobacco, the reference qualities, and the production areas, in the light of the principles of non-retroactivity of rules of law and of the protection of legitimate expectations.

[Signatures]