



## Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

13 June 2013\*

(Agriculture — European Agricultural Guidance and Guarantee Fund — ‘Period under scrutiny’ — Possibility of extending the period under scrutiny and adjusting the temporal parameters — Objective of effective supervision — Legal certainty)

In Joined Cases C-671/11 to C-676/11,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Conseil d’État (France), made by decision of 28 November 2011, received at the Court on 29 December 2011, in the proceedings

**Établissement national des produits de l’agriculture et de la mer (FranceAgriMer)**, successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l’horticulture (Viniflhor),

v

**Société anonyme d’intérêt collectif agricole Unanimes** (C-671/11 and C-672/11),

**Organisation de producteurs Les Cimes** (C-673/11),

**Société Agroprovence** (C-674/11),

**Regalp SA** (C-675/11),

**Coopérative des producteurs d’asperges de Montcalm (COPAM)** (C-676/11),

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, U. Löhmus, M. Safjan (Rapporteur) and A. Prechal, Judges,

Advocate General: N. Jääskinen,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 16 January 2013,

after considering the observations submitted on behalf of:

— the **Établissement national des produits de l’agriculture et de la mer (FranceAgriMer)**, by J.-C. Balat, avocat,

\* Language of the case: French.

- the Société anonyme d'intérêt collectif agricole Unanimes, by B. Néouze and O. Delattre, avocats,
- the Organisation de producteurs Les Cimes, la Société Agroprovence and Regalp SA, by G. Lesourd, avocat,
- the Coopérative des producteurs d'asperges de Montcalm (COPAM), by J.-P. Montenot and T. Apostoliuc, avocats,
- the French Government, by N. Rouam and G. de Bergues, acting as Agents,
- the Polish Government, by M. Szpunar and B. Majczyna, acting as Agents,
- the European Commission, by D. Bianchi and P. Rossi, acting as Agents,

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

### **Judgment**

- 1 These requests for a preliminary ruling concern the interpretation of Article 2(4) of Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC (OJ 1989 L 388, p. 18), as amended by Council Regulation (EC) No 3094/94 of 12 December 1994 (OJ 1994 L 328, p. 1) ('Regulation No 4045/89').
- 2 The requests have been made in six sets of proceedings between, on the one hand, the Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (Viniflor) and, on the other, respectively, the Société anonyme d'intérêt collectif agricole Unanimes, the Organisation de producteurs Les Cimes, Société Agroprovence, Regalp SA and the Coopérative des producteurs d'asperges de Montcalm (COPAM) (collectively, 'the operators concerned in the main proceedings'), regarding the lawfulness of the recovery of Community aid received from the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF).

### **Legal context**

- 3 Article 8(1) of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970(I), p. 218) provides:

'Member States in accordance with national provisions laid down by law, regulation or administrative action shall take the measures necessary to:

- satisfy themselves that transactions financed by the [EAGGF] are actually carried out and executed correctly,
- prevent and deal with irregularities,
- recover sums lost as a result of irregularities or negligence.

...'

4 The first to fourth recitals and the tenth recital in the preamble to Regulation No 4045/89 state:

‘... under Article 8 of Regulation ... No 729/70 ..., the Member States take the measures necessary to satisfy themselves that transactions financed by the [EAGGF] are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence;

... national provisions relating to scrutiny which are more extensive than those provided for in the Regulation are not affected by this Regulation;

... Member States must be encouraged to reinforce the scrutiny of commercial documents of undertakings receiving or making payments which they have carried out in accordance with Directive 77/435/EEC ...;

... the implementation by Member States of the rules arising from Directive 77/435/EEC has disclosed the need for certain provisions of that Directive to be amended on the basis of experience gained; ... in view of the nature of the provisions concerned the amendments should be included in a Regulation;

...

... while it is the responsibility of the Member States in the first instance to adopt their scrutiny programmes, it is necessary that these programmes be communicated to the Commission so that it can assume its supervisory and coordinating role and to ensure that the programmes are adopted on the basis of appropriate criteria; ... scrutiny can thus be concentrated on sectors or undertakings where the risk of fraud is high’.

5 Article 1(2) of Regulation No 4045/89 provides:

‘For the purposes of this Regulation “commercial documents” shall mean all books, registers, vouchers and supporting documents, accounts, production and quality records, and correspondence relating to the undertaking’s business activity, as well as commercial data, in whatever form they may take, including electronically stored data, in so far as these documents or data relate directly or indirectly to the transactions referred to in paragraph 1.’

6 Article 2 of the regulation states:

‘1. Member States shall carry out systematic scrutiny of the commercial documents of undertakings taking account of the nature of the transactions to be scrutinised. Member States shall ensure that the selection of undertakings for scrutiny gives the best possible assurance of the effectiveness of the measures for preventing and detecting irregularities under the system of financing by the Guarantee Section of the EAGGF. *Inter alia* the selection shall take account of the financial importance of the undertakings in that system and other risk factors.

...

4. The scrutiny period shall run from 1 July to 30 June of the following year.

Scrutiny shall cover a period of at least 12 months ending during the previous scrutiny period; it may be extended for periods, to be determined by the Member State, preceding or following the 12-month period.

...’

7 Under Article 4 of that regulation:

‘Undertakings shall keep the commercial documents referred to in Articles 1(2) and 3 for at least three years, starting from the end of the year in which they were drawn up.

The Member States may prescribe a longer period for the retention of these documents.’

### **The disputes in the main proceedings and the questions referred for a preliminary ruling**

- 8 During 2000 and 2001, the operators concerned in the main proceedings underwent on-site inspections pursuant to Regulation No 4045/89. On the basis of the findings made following those inspections, the Office national interprofessionnel des fruits, des légumes et de l’horticulture (Oniflhor), predecessor to Viniflhor, itself predecessor to FranceAgriMer, asked those operators to repay certain amounts received under schemes financed by the Guarantee Section of the EAGGF and subsequently issued enforcement orders in respect of those amounts.
- 9 The operators concerned in the main proceedings brought proceedings before the Tribunal administratif (Administrative Court) of Nîmes or of Marseilles (depending on the case), challenging those enforcement orders. Appeals were lodged before the Cour administrative d’appel de Marseille (Administrative Court of Appeal, Marseille) against the judgments handed down by those two courts.
- 10 The Cour administrative d’appel de Marseille held, in the six cases brought before it, that the term ‘period under scrutiny’ should be regarded as relating to a period ending at some point during the 12 months preceding the scrutiny period, and that, save provision to the contrary, a 12-month period was the maximum duration. In each of those court cases, however, the period under scrutiny ended before the commencement of the period preceding the scrutiny period.
- 11 Arguing that the Cour administrative d’appel de Marseille had thereby misconstrued Article 2(4) of Regulation No 4045/89 as regards the parameters of periods under scrutiny, FranceAgriMer lodged an appeal with the Conseil d’État (Council of State, Paris).
- 12 On the view that the response to FranceAgriMer’s ground of appeal raises a question relating to the interpretation of Article 2(4) of Regulation No 4045/89, the Conseil d’État decided to stay the proceedings and to refer the following questions – which are framed in identical terms in Cases C-671/11 to C-676/11 – to the Court of Justice for a preliminary ruling:

‘How is the option, provided for under Article 2(4) of ... Regulation No 4045/89 ... of extending the period under scrutiny “for periods ... preceding or following the 12-month period” which it defines, to be implemented by a Member State, in the light of the need to protect the Communities’ financial interests and of the principle of legal certainty and the need not to give the scrutiny authorities indefinite power?

In particular:

- Must the period under scrutiny, in all instances – if the scrutiny is not to be marred by an irregularity which the person scrutinised may rely on against the decision giving due effect to the findings of the scrutiny – end during the 12-month period which precedes the “scrutiny” period during which the scrutiny operations are carried out?
- In the event of a positive reply to the preceding question, how must the option, expressly provided for under ... [R]egulation [No 4045/89], of extending the period under scrutiny for periods “following the 12-month period” be understood?

— In the event of a negative reply to the first question, must the period under scrutiny nevertheless – if the scrutiny is not to be marred by an irregularity which the scrutinised person may rely on against the decision giving due effect to the findings of the scrutiny – include a 12-month period which ends during the scrutiny period preceding that during which the scrutiny is undertaken, or, on the contrary, may the scrutiny cover only a period which ends before the beginning of the preceding scrutiny period?

13 By order of the President of the Court of 3 February 2012, Cases C-671/11 to C-676/11 were joined for the purposes of the written and oral procedure and the judgment.

### **Consideration of the questions referred**

14 By its questions, which it is appropriate to examine together, the national court asks, in essence, whether the second subparagraph of Article 2(4) of Regulation No 4045/89 must be interpreted as meaning that, where a Member State takes up the extension option provided for under that provision, the period under scrutiny must nonetheless end at some point during the preceding scrutiny period or, at the very least, the scrutiny must cover that period also, failing which the scrutiny exercise will be flawed.

15 It is true that, by reason of its wording alone, the second subparagraph of Article 2(4) of Regulation No 4045/89 – which, whilst making it possible for the scrutiny to be extended to cover periods upstream and downstream, does not specify that the scrutiny may, nonetheless, relate to periods which do not end during the preceding scrutiny period – leaves room for various interpretations.

16 However, in order to determine, in those circumstances, the appropriate interpretation, account should be taken not only of the wording, but also of the broad logic of that provision and the changes it has undergone, as well as the objectives pursued by Regulation No 4045/89 as a whole.

17 As regards, first, the objectives of Regulation No 4045/89, that regulation seeks, as is apparent from the first, third and fourth recitals, read together, to reinforce the effectiveness of the scrutiny for which Member States are responsible in order to prevent and eliminate irregularities which may exist in the context of the EAGGF.

18 To ensure that national scrutiny is actually carried out and executed correctly and, accordingly, that the need to protect the financial interests of the European Union is served, Regulation No 4045/89 makes that scrutiny itself subject to supervision and coordination on the part of the Commission, reflecting the reasoning of the tenth recital. Article 2 specifically of that regulation seeks to organise the uniform system for scrutiny under the supervision of the Commission. Article 2(4) ensures *inter alia* that scrutiny is to a certain extent systematic and to a certain extent regular.

19 Since Article 2 of Regulation No 4045/89 is intended to regulate the scrutiny carried out by Member States for the purposes of safeguarding the financial interests of the European Union, the duration of the periods under scrutiny and their temporal parameters must be assessed in the light of the objective of the effective scrutiny required under that provision.

20 In that regard, it should be held – as the Commission, in particular, has argued – that the effectiveness of that scrutiny is served by the option open to Member States of extending the period under scrutiny beyond the bounds of the preceding scrutiny period, in so far as this facilitates the detection of irregularities capable of harming the financial interests of the European Union.

21 As was correctly noted by the French and Polish Governments and the Commission in their written observations submitted to the Court, the fact that operational programmes are frequently part of multi-annual frameworks is a further argument for not making it compulsory for the period under



scrutiny to end at some point during the preceding scrutiny period. Otherwise, scrutiny of the implementation of contracts relating to a number of financial years will be staggered between different scrutiny periods, which would undermine its effectiveness.

- 22 In any event, the use of the option to extend the period under scrutiny upstream or downstream of that which ends during the preceding scrutiny period depends on the usefulness of such an extension for the effectiveness of the scrutiny. If the scrutiny authority has doubts as to the legality of the transactions under scrutiny, it is empowered by Regulation No 4045/89 itself to extend the period under scrutiny both upstream and downstream without having to rely on national legislation providing for such a possibility.
- 23 In relation, secondly, to the changes made to the second subparagraph of Article 2(4) of Regulation No 4045/89, it should be noted that, in the initial version of that regulation, that provision focused the scrutiny, in principle, on the calendar year preceding the scrutiny period, whilst allowing the period under scrutiny to be extended upstream and downstream of that calendar year. However, in providing that, as a rule, the period under scrutiny is henceforth to end at some point during the preceding scrutiny period, the European Union legislature seems, when it comes to delimitation of the period under scrutiny, to have relaxed the requirements to be met by Member States. That desire to relax requirements would be to no avail if the second subparagraph of Article 2(4) of Regulation No 4045/89 were to be interpreted to the effect that, even where use is made of the option to extend the period under scrutiny, that period must end at some point during the preceding scrutiny period.
- 24 In relation, thirdly, to the broad logic of the second subparagraph of Article 2(4) of Regulation No 4045/89, it must be stated that that provision states clearly and unambiguously that the scrutiny relating to a period of at least 12 months may be extended, the clear implication being that, where the option to extend is taken up, that scrutiny must necessarily relate to a period greater than 12 months.
- 25 It is also apparent that an interpretation of the second subparagraph of Article 2(4) of Regulation No 4045/89 to the effect that the period under scrutiny must, of necessity, end at some point during the preceding scrutiny period is irreconcilable with the terms in which that provision is framed, since every time that the period initially under scrutiny ended on 30 June – the end of the preceding scrutiny period – no extension would be possible.
- 26 In addition, the terms in which the second subparagraph of Article 2(4) of Regulation No 4045/89 is framed preclude an interpretation to the effect that a Member State may limit its scrutiny to a period which ends before the beginning of the preceding scrutiny period, because that approach neither meets the requirement that the period initially under scrutiny must end at some point during the preceding scrutiny period, nor constitutes an extension for the purposes of that provision. In that regard, it should be noted that the interpretation of a provision of European Union law cannot have the result of depriving the clear and precise wording of that provision of all effectiveness (see, most recently, Joined Cases C-147/11 and C-148/11 *Czop and Punakova* [2012] ECR, paragraph 32), which would be the consequence, however, of the above interpretation.
- 27 In order to answer the questions raised by the referring court, it is further necessary to state that, with regard to the operators scrutinised, the validity of the inspections carried out does not depend on the extent to which those inspections are consistent with the rules under the second subparagraph of Article 2(4) of Regulation No 4045/89.
- 28 Contrary to the assertions made by the operators concerned in the main proceedings, the second subparagraph of Article 2(4) of Regulation No 4045/89 merely lays down organisational rules in order to secure the effectiveness of the scrutiny and, as is apparent from paragraph 18 above, governs the relations between the Member States and the European Union for the purposes of safeguarding the European Union's financial interests. On the other hand, that provision does not apply to relations between scrutiny authorities and the operators scrutinised.

- 29 Accordingly, Article 2(4) of Regulation No 4045/89 cannot, in particular, be construed as conferring upon the operators concerned a right enabling them to oppose checks other or broader than those envisaged by that provision. Moreover, in so far as it might have the effect of preventing the recovery of aid which has been unlawfully collected or used, such a right would imperil the protection of the financial interests of the European Union.
- 30 In any event, the checks required under Regulation No 4045/89 concern operators who voluntarily signed up for the support scheme established by the Guarantee Section of the EAGGF and who, in order to receive aid, accepted the performance of inspections to verify that the European Union's resources had been used properly. Those operators cannot validly call into question the lawfulness of such scrutiny simply because it was not in conformity with the organisational rules concerning the relations between the Member States and the Commission.
- 31 The fact remains that legal certainty for the operators scrutinised vis-à-vis the public authorities who carry out those inspections and who decide, where appropriate, whether to bring proceedings is ensured by the rule laid down in Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1), under which proceedings are, as a rule, time-barred after four years have elapsed from the time of the infringement of a provision of European Union law as a result of an act or omission on the part of an economic operator, which has, or would have, the effect of adversely affecting the budget of the European Union. As the Court has already observed, in general, time-bars fulfil the function of ensuring legal certainty (see Case C-278/02 *Handlbauer*, [2004] ECR I-6171, paragraph 40 and the case-law cited).
- 32 The obligation for the recipient of aid granted under the support scheme established by the EAGGF to submit, during an inspection relating to specific periods, the requisite documents in order to establish the validity and the lawfulness of the subsidies which have been paid – where, legally, the period for which those documents are to be kept, set at a minimum of three years by Article 4 of Regulation No 4045/89, has not yet elapsed – cannot therefore be regarded as undermining legal certainty.
- 33 It follows from all of the foregoing that the second subparagraph of Article 2(4) of Regulation No 4045/89 must be interpreted as meaning that, where a Member State makes use of the option of extending the period under scrutiny, that period need not necessarily end during the preceding scrutiny period; rather, it may also end after that period has elapsed. That provision must nonetheless also be interpreted as not conferring upon operators a right which would enable them to oppose inspections other or broader than those envisaged under that provision. It follows that the fact that an inspection relates only to a period ending before the preceding scrutiny period begins cannot, of itself, make that inspection unlawful with regard to the operators scrutinised.

### **Costs**

- 34 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Fourth Chamber) hereby rules:

**The second subparagraph of Article 2(4) of Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC, as amended by Council Regulation (EC) No 3094/94 of 12 December 1994, must be interpreted as meaning that, where a Member State makes use of the option of extending the period under scrutiny, that period need not necessarily end during**

**the preceding scrutiny period; rather, it may also end after that period has elapsed. That provision must nonetheless also be interpreted as not conferring upon operators a right which would enable them to oppose inspections other or broader than those envisaged under that provision. It follows that the fact that an inspection relates only to a period ending before the preceding scrutiny period begins cannot, of itself, make that inspection unlawful with regard to the operators scrutinised.**

[Signatures]