



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

15 October 2014*

(Reference for a preliminary ruling — Common agricultural policy — Support schemes — Establishment of support schemes in the new Member States — Regulation (EC) No 1782/2003 — Article 143ba — Regulation (EC) No 73/2009 — Article 126 — Separate sugar payment — Decoupling of that payment from production — Meaning of ‘the criteria adopted by the relevant Member States in 2006 and 2007’ — Representative period)

In Case C-561/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Obvodní soud pro Prahu 1 (Czech Republic), made by decision of 30 May 2013, received at the Court on 29 October 2013, in the proceedings

Hořtická a.s.,

Jaroslav Haškovec,

Zemědělské družstvo Senice na Hané

v

Česká republika – Ministerstvo zemědělství,

THE COURT (Ninth Chamber),

composed of K. Jürimäe (Rapporteur), President of the Chamber, M. Safjan and A. Prechal, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

- the Czech Government, by M. Smolek, J. Vláčil and J. Vitáková, acting as Agents,
- the European Commission, by P. Ondrůšek and P. Rossi, acting as Agents,

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

gives the following

* Language of the case: Czech.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 126(1) of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16).
- 2 The request has been made in proceedings between Hoštická a.s., Jaroslav Haškovec and Zemědělské družstvo Senice na Hané and Česká republika – Ministerstvo zemědělství (Czech Republic – Ministry of Agriculture) concerning their application for compensation for a loss suffered as a result of the methods for the grant of the separate sugar payment (“SSP”) provided for under Czech law.

Legal context

EU law

Regulation (EC) No 1782/2003

- 3 Pursuant to Article 1 of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1, and corrigendum OJ 2004 L 94, p. 70), as amended by Council Regulations (EC) Nos 319/2006 of 20 February 2006 (OJ 2006 L 58, p. 32), 2011/2006 of 19 December 2006 (OJ 2006 L 384, p. 1) and 2012/2006 of 19 December 2006 (OJ 2006 L 384, p. 8) (“Regulation No 1782/2003”), that regulation establishes:

‘...

- common rules on direct payments under income support schemes in the framework of the common agricultural policy ...;
- an income support for farmers (hereinafter referred to as the “single payment scheme”);
- a transitional simplified income support for farmers in the new Member States (hereinafter referred to as the “single area payment scheme”);

...’

- 4 Article 2(d) and (g) of that regulation contains the following definitions:

‘(d) “direct payment” means a payment granted directly to farmers under an income support scheme listed in Annex I;

...

(g) “new Member States” means Bulgaria, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovenia and Slovakia.’

5 Article 143ba of Regulation No 1782/2003 was inserted by Article 1(17) of Regulation No 319/2006 and amended by Article 1(2) of Regulation No 2011/2006 and by Article 1(17) of Regulation No 2012/2006. Article 143ba, which is entitled ‘Separate sugar payment’, provides:

‘1. By way of derogation from Article 143b, the new Member States applying the single area payment scheme may decide by 30 April 2006 to grant in respect of the years 2006 to 2010 a separate sugar payment to farmers eligible under the single area payment scheme. It shall be granted in respect of a representative period which could be different for each product of one or more of the marketing years 2004/2005, 2005/2006 and 2006/2007 to be determined by Member States before 30 April 2006, and on the basis of objective and non-discriminatory criteria such as:

- the quantities of sugar beet, cane or chicory covered by delivery contracts concluded in accordance with Article 19 of [Regulation No 1260/2001] or Article 6 of [Regulation No 318/2006] as appropriate,
- the quantities of sugar or inulin syrup produced in accordance with [Regulation No 1260/2001] or [Regulation No 318/2006] as appropriate,
- the average number of hectares under sugar beet, cane or chicory used for the production of sugar or inulin syrup and covered by delivery contracts concluded in accordance with Article 19 of [Regulation No 1260/2001] or Article 6 of [Regulation No 318/2006] as appropriate.

...’

6 The line of Annex I to Regulation No 1782/2003 concerning ‘Sugar beet, cane and chicory used for the production of sugar or inulin syrup’ is worded as follows:

Sugar beet, cane and chicory used for the production of sugar or inulin syrup	Title IV, Chapter 10e of this Regulation ... Title IVa, Article 143ba of this Regulation	Decoupled Payments
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Regulation No 319/2006

7 Recitals 1, 2, 4, 7 and 9 in the preamble to Regulation No 319/2006 state:

(1) [Regulation No 318/2006] provides for an important reform of the sugar common market organisation. The measures introduced by that Regulation include a significant reduction in the institutional support price for Community sugar in steps.

(2) As a consequence of reduced market support in the sugar sector, income support for farmers should be increased. The overall level of the payment should develop in parallel with the gradual reduction of market supports.

...

(4) In order to meet the objectives underlying the reform of the common agricultural policy, the support for sugar beet, cane and chicory used for the production of sugar or inulin syrup should be de-coupled and integrated into the single payment scheme.

...

(7) The level of individual income support should be calculated on the basis of the support the farmer has benefited from in the context of the common organisation of the market in the sugar sector for one or more marketing years to be determined by Member States.

...

(9) Sugar beet and chicory growers in the new Member States have benefited since accession from price support in the framework of [Regulation No 1260/2001]. Therefore, the sugar payment and the sugar and chicory components in the single payment scheme should not be subject to the application of the schedule of increments provided for in Article 143a of [Regulation No 1782/2003]. For the same reasons, Member States applying the single area payment scheme should, moreover, have the possibility to grant the support resulting from the sugar reform in the form of a separate direct payment outside that scheme.'

Regulation No 73/2009

8 Regulation No 1782/2003 has been repealed and replaced by Regulation No 73/2009.

9 Recital 2 in the preamble to Regulation No 73/2009 states:

'Experience drawn from the implementation of [Regulation No 1782/2003] in particular shows that certain elements of the support mechanism need to be adjusted. In particular, the decoupling of direct support should be extended and the functioning of the single payment scheme should be simplified ...'

10 Article 1 of that regulation establishes:

'...

(a) common rules on direct payments;

(b) an income support scheme for farmers (hereinafter referred to as the "single payment scheme");

(c) a transitional simplified income support scheme for farmers in the new Member States as defined in Article 2(g) (hereinafter referred to as the "single area payment scheme");

...'

11 Article 2(d) and (g) of that regulation is worded in identical terms to the same provision of Regulation No 1782/2003.

12 Article 126(1) of Regulation No 73/2009, entitled 'Separate sugar payment', provides:

'Where a new Member State has made use of the option provided for by Article 143ba of [Regulation No 1782/2003], it shall grant a separate sugar payment to farmers eligible under the single area payment scheme. This payment shall be granted on the basis of the criteria adopted by the relevant Member States in 2006 and 2007.'

13 The line of Annex I to that regulation concerning 'Sugar beet, cane and chicory used for the production of sugar or inulin syrup' is worded as follows:

Sugar beet, cane and chicory used for the production of sugar or inulin syrup	Article 126 of this Regulation	Decoupled Payments
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Czech law

14 Governmental Regulation No 45/2007, in the version in force at 1 January 2010, defines the conditions for the grant of the SSP.

15 Paragraph 2 of Governmental Regulation No 45/2007, entitled ‘Applicant for the sugar payment’, reads as follows:

‘(1) The sugar payment for the relevant calendar year may be applied for under this regulation by a natural or legal person who:

(a) cultivates agricultural land registered to the applicant in the Register of the use of agricultural land according to user relations ...,

(b) has concluded for the marketing year 2005/2006 a contract for the delivery of sugar beet A and sugar beet B with a sugar producer, which has its seat in the Czech Republic and which was in the 2005/2006 marketing year the holder of an individual production quota for sugar A and an individual production quota for sugar B ...,

(c) submits to the Fund an application for the grant of the single area payment for the calendar year in respect of which he is applying for the sugar payment,

...’

16 Paragraph 4 of that Governmental Regulation, entitled ‘Granting of the sugar payment’, states:

‘(1) The Fund shall grant the applicant the sugar payment for the relevant calendar year on the quantity of sugar beet agreed upon with the sugar producer in the contract for the 2005/2006 marketing year for the delivery of sugar beet A and sugar beet B, intended for the production of sugar A and sugar B, calculated on a sugar content of 16%.

(2) The rate of the sugar payment for the relevant calendar year for one tonne of sugar beet shall be based on the total amount of the sugar payment established for the relevant calendar year, in accordance with directly applicable European Community legislation, and the total quantity of sugar beet for the purpose of production of sugar A and sugar B agreed upon with the sugar producers in the contracts for the 2005/2006 marketing year for delivery of sugar beet A and sugar beet B, calculated on a sugar content of 16%.

...’

The facts of the dispute in the main proceedings and the questions referred for a preliminary ruling

17 The applicants in the main proceedings grow sugar beet for the purpose of its sale to sugar producers. They have received the SSP from the Ministerstvo zemědělství under Government Regulation No 45/2007, which lays down the conditions for the granting of that payment to growers of sugar beet.

18 The applicants in the main proceedings have brought an action before the referring court seeking damages for harm caused as a result of the application of the rules for the grant of the SSP, as laid down in that Governmental Regulation, on the ground that those rules infringe the relevant provisions of EU law, namely Article 126 of Regulation No 73/2009.

- 19 In particular, they dispute the amount of the payment which they have received as an SSP, on the ground that it is calculated on the basis on an incorrect representative period, that is to say, the marketing year 2005/2006. In their view, by virtue of Article 126 of Regulation No 73/2009, the SSP should be allocated on the basis of the current reference period, which is the marketing year preceding the grant of that payment.
- 20 The applicants in the main proceedings take the view that although Article 126 of Regulation No 73/2009 states that the SSP is to be granted on the basis of the criteria adopted in 2006 and 2007, the EU legislature refers only to the criteria which have been determined by a Member State under Article 143ba of Regulation No 1782/2003 in order to calculate the payment, that is to say, the area of land used, the quantity of production or some combination of both. Article 126 of Regulation No 73/2009 in no way states that it is appropriate also to use the same representative period for the grant of aid in respect of each marketing year. The applicants submit that Regulation No 73/2009 also systematically distinguishes between the ‘criteria’ and the ‘representative period’, as is apparent, for example, from Articles 128 and 129 thereof. They take the view that their interpretation is correct because of the need to avoid discrimination between the producers.
- 21 The defendant in the main proceedings argues that the SSP is a payment decoupled from the production. Thus, contrary to the claim of the applicants in the main proceedings, the SSP should not be calculated according to current production of sugar beet and granted only to those farmers who still produce sugar beet. The distinction between coupled and decoupled payments is made clear in Regulation No 73/2009. The aim of the reforms of the sugar market initiated in 2006 is to maintain the existing volume of production of sugar beet and not to stimulate its increase. Accordingly, the use of current production data is not necessary. In addition, Article 126 of Regulation No 73/2009 seeks to introduce a payment decoupled from production. Thus, having regard not only to the terms but also to the aim of that provision, the concept of ‘criteria adopted in 2006 and 2007 by the relevant Member States’ encompasses all the methods of allocation and grant of the SSP set out in Article 143ba(1) of Regulation No 1782/2003, that is to say, both the concept of ‘representative period’ and that of ‘objective and non-discriminatory criteria’.
- 22 In those circumstances, the Obvodní soud pro Prahu decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘1. Is Article 126 of [Regulation No 73/2009] to be interpreted such that the separate sugar payment is a decoupled payment?
 2. Is Article 126(1) of [Regulation No 73/2009] to be interpreted such that “the criteria adopted by the relevant Member States in 2006 and 2007” include the representative period chosen by the Member State at that time on the basis of Article 143ba(1) of [Regulation No 1782/2003]?’

Consideration of the questions referred

- 23 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 126(1) of Regulation No 73/2009 must be interpreted as meaning that the concept of ‘the criteria adopted by the relevant Member States in 2006 and 2007’ also includes the marketing year which the Member States must choose before 30 April 2006 as the representative period for the grant of the SSP, under Article 143ba(1) of Regulation No 1782/2003.
- 24 As a preliminary point, it must be borne in mind that Regulation No 1782/2003 establishes, *inter alia*, pursuant to Article 1 thereof, common rules on the subject of direct payments under financial support schemes relating to the CAP, income aid to farmers (single payment scheme) and simplified and transitory income aid for farmers of the new Member States which acceded to the European Union in 2004 and 2007, listed in Article 2(g) of that regulation (‘the new Member States’), (single area payment

scheme). In accordance with Articles 143a and 143b of that regulation, direct payments or, if appropriate, the single area payment scheme are to be progressively introduced in the new Member States (see, to that effect, judgment in *Bábolna*, C-115/10, EU:C:2011:376, paragraphs 33 and 34, and order in *Brunovskis*, C-650/11, EU:C:2013:7, paragraph 15).

- 25 Under Article 143ba(1) of that regulation, the new Member States which have opted to apply the single area payment scheme, were able to decide 'by 30 April 2006', to grant an SSP to the farmers eligible under that scheme.
- 26 It follows that Regulation No 1782/2003 gives those Member States a certain measure of discretion in granting the SSP as part of the reform of the common agricultural policy. However, when exercising their discretion, those Member States must satisfy two conditions. Firstly, new Member States must apply objective and non-discriminatory criteria when granting an SSP (see, to that effect, judgment in *Uzonyi*, C-133/09, EU:C:2010:563, paragraph 29). Secondly, before 30 April 2006, the new Member States must also choose the representative period or periods to be taken into account for the grant of that payment, from the marketing years listed in Article 143ba(1) of that regulation, namely marketing years 2004/2005, 2005/2006 and 2006/2007.
- 27 By virtue of Article 126(1) of Regulation No 73/2009, those new Member States which have opted to grant the SSP pursuant to Article 143ba(1) of Regulation No 1782/2003 are to continue to grant that payment.
- 28 In that regard, it must be held that, unlike the latter provision, Article 126 of Regulation No 73/2009 merely states that the SSP is to be granted on the basis of 'the criteria adopted ... in 2006 and 2007' by those Member States, without the wording of that article expressly referring to the representative period to be taken into account.
- 29 It is settled case-law that, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment in *Maatschap Schonewille-Prins*, C-45/05, EU:C:2007:296, paragraph 30 and the case-law cited).
- 30 With regard, first of all to the objective pursued by Regulation No 1782/2003, the Court has previously held that it sought to facilitate the progressive transition from production aid to producer aid by, inter alia, the introduction of a decoupled income support scheme for each farm (see, to that effect, judgment in *Panellinos Sindesmos Viomikanion Metapiisis Kapnou*, C-373/11, EU:C:2013:567, paragraph 17). It is clear from recital 2 in the preamble to Regulation No 73/2009 that it pursues the same objective.
- 31 Next, it is appropriate to add that, as is set out in recital 1 in the preamble to Regulation No 319/2006, the EU legislature undertook, in 2006, an important reform of the sugar common market organisation. In particular, that reform introduced a significant reduction in the institutional support price for Community sugar.
- 32 With regard to the SSP, which was introduced by Regulation No 319/2006, its purpose, as is clear from recitals 2 and 9 in the preamble thereto, is to compensate for reductions in income, brought about by the reform of the sugar common market organisation, sugar beet and chicory growers in the new Member States who have benefited since accession from price support in the framework of that common market organisation. In those circumstances, Articles 143ba of Regulation No 1782/2003 and 126 of Regulation No 73/2009 must be regarded as having the objective of supporting farmers who benefited from the sugar market support measures before the reform in 2006.

- 33 Furthermore, it is clear from recital 7 in the preamble to Regulation No 319/2006 that the level of individual income support must be calculated on the basis of the support the farmer has benefited from in the context of the common organisation of the market in the sugar sector for one or more marketing years to be determined by Member States themselves.
- 34 To that end, Article 143ba(1) of Regulation No 1782/2003 expressly refers to marketing years 2004/2005, 2005/2006 and 2006/2007 and the periods among which the Member States could choose to determine the reference period for the grant of the SSP. In addition, as the European Commission rightly points out in its observations, that representative period must be definitively determined by the Member State concerned before 30 April 2006.
- 35 In that regard, clearly those marketing years represent a period during which farmers benefited from the institutional support price for Community sugar.
- 36 Finally, as regards the context of which Article 126 of Regulation No 73/2009 forms part, it must be held that it is clear from Annex I to Regulations No 1782/2003 and No 73/2009 that the SSP is a form of income support to farmers in the new Member States which is granted as ‘decoupled payments’. In the light of the objective referred to in paragraph 30 of the present judgment, such payments must be understood as meaning payments whose amount is not dependent on the farmer’s actual production. That is the case precisely where the amount of the SSP is calculated on the basis of a specific historical period or on the basis of the area given to the cultivation of sugar beet used for the production of sugar during such a period.
- 37 In those circumstances, Article 126(1) of Regulation No 73/2009 cannot be interpreted as referring, for the grant of the SSP, to a representative period which is not one of the marketing years listed in Article 143ba(1) of Regulation No 1782/2003 and which had to be definitively determined before 30 April 2006 by the Member State concerned pursuant to that provision.
- 38 Having regard to all the foregoing, the answer to the questions referred is that Article 126(1) of Regulation No 73/2009 must be interpreted as meaning that the concept of ‘the criteria adopted by the relevant Member States in 2006 and 2007’ includes the marketing year which the Member States must choose before 30 April 2006 as the representative period for the grant of the SSP, under Article 143ba(1) of Regulation No 1782/2003.

Costs

- 39 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 (Ninth Chamber) hereby rules:

Article 126(1) of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 must be interpreted as meaning that the concept of ‘the criteria adopted by the relevant Member States in 2006 and 2007’ includes the marketing year which the Member States must choose before 30 April 2006 as the representative period for the grant of the separate sugar payment, under Article 143ba(1) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC)

No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, as amended by Council Regulations (EC) No 319/2006 of 20 February 2006, No 2011/2006 of 19 December 2006 and No 2012/2006 of 19 December 2006.

[Signatures]