



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

19 September 2013*

(Request for a preliminary ruling — Assessment of validity — Common Agricultural Policy — Regulation (EC) No 1782/2003 — Additional payment for specific types of farming and quality production — Discretion granted to the Member States — Discrimination — Articles 32 EC and 34 EC)

In Case C-373/11,

REQUEST for a preliminary ruling under Article 267 TFEU, from the Simvoulio tis Epikratias (Greece), made by decision of 22 March 2011, received at the Court on 13 July 2011, in the proceedings

Panellinios Sindesmos Viomikhanion Metapiisis Kapnou

v

Ipourgos Ikonomias kai Ikonomikon,

Ipourgos Agrotikis Anaptixis kai Trofimou,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, A. Rosas, E. Juhász, D. Šváby (Rapporteur) and C. Vajda, Judges,

Advocate General: N. Jääskinen,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 21 November 2012,

after considering the observations submitted on behalf of:

- the Panellinios Sindesmos Viomikhanion Metapiisis Kapnou, by E. Petritsi and K. Adamantopoulos, dikigoroi,
- the Greek Government, by I. Chalkias and S. Papaïoannou, acting as Agents,
- the Council of the European Union, by M. Balta, E. Sitbon, M. Iosifidou and A. Westerhof Löfflerová, acting as Agents,
- the European Commission, by D. Triantafyllou and G. von Rintelen, acting as Agents,

* Language of the case: Greek.

after hearing the Opinion of the Advocate General at the sitting on 6 February 2013,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the validity of Article 69 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).
- 2 The request has been made in proceedings between the Panellinios Syndesmos Viomichanion Metapoiisis Kapnou (Greek Association of Tobacco Processing Industries, ‘Panellinios Sindesmos’), the applicant, and Ipourgos Ikonomias kai Ikonomikon (Minister for Economic Affairs and Finance) and Ipourgos Agrotikis Anaptixis kai Trofimon (Minister for Rural Development and Food) concerning additional payments in the tobacco sector.

Legal context

European Union law

- 3 Recitals 24 and 33 in the preamble to Regulation No 1782/2003 were worded as follows:

‘(24) Enhancing the competitiveness of Community agriculture and promoting food quality and environment standards necessarily entail a drop in institutional prices for agricultural products and an increase in the costs of production for agricultural holdings in the Community. To achieve those aims and promote more market-oriented and sustainable agriculture, it is necessary to complete the shift from production support to producer support by introducing a system of decoupled income support for each farm. ...

...

(33) In order to allow flexibility to respond to specific situations, Member States should have the option to define a certain balance between individual payment entitlements and regional or national averages and between existing payments and the single payment. ... Moreover, in order to take into account its agricultural specific conditions, it is appropriate to provide for the possibility for a Member State to ask for a transitional period to implement the single payment scheme while continuing to respect the budgetary ceilings fixed for the single payment scheme. In case of severe distortions of competition during the transitional period and in order to ensure the respect of the Community international obligations, it is appropriate that the Commission can take the necessary measures to cope with such situations.’
- 4 Article 64(1) and (2) of Regulation No 1782/2003 is in Section 2 of Chapter 5, entitled ‘Regional and optional implementation’, which in turn is in Title III, entitled ‘Single payment scheme’. That provision was worded as follows:

‘1. A Member State may decide, by 1 August 2004 at the latest, to apply, at national or regional level, the single payment scheme provided for in Chapters 1 to 4 under the conditions laid down in this Section.

2. According to the choice made by each Member State, the Commission shall fix, in accordance with the procedure referred to in Article 144(2), a ceiling for each of the direct payments referred to, respectively, in Articles 66, 67, 68 and 69.

This ceiling shall be equal to the component of each type of direct payment in the national ceilings referred to in Article 41, multiplied by the percentages of reduction applied by Member States in accordance with Articles 66, 67, 68 and 69.

The total amount of the fixed ceilings shall be deducted from the national ceilings referred to in Article 41 in accordance with the procedure referred to in Article 144(2).'

- 5 Article 69 of that regulation, entitled 'Optional implementation for specific types of farming and quality production', provided as follows:

'Member States may retain up to 10% of the component of national ceilings referred to in Article 41 corresponding to each sector referred to in Annex VI. In the case of the arable crops, beef and veal and sheep and goat sectors, this retention shall be taken into account for the purpose of application of the maximum percentages fixed, respectively, in Articles 66, 67 and 68.

In this case and within the limit of the ceiling fixed in accordance with Article 64(2), the Member State concerned shall make, on a yearly basis, an additional payment to farmers in the sector or sectors concerned by the retention.

The additional payment shall be granted for specific types of farming which are important for the protection or enhancement of the environment or for improving the quality and marketing of agricultural products under conditions to be defined by the Commission in accordance with the procedure referred to in Article 144(2).'

- 6 Article 48 of Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Regulation No 1782/2003 (OJ 2004 L 141, p. 1), stated as follows:

'1. The additional payment provided for [in] Article 69 of Regulation (EC) No 1782/2003 shall be granted, without prejudice to Article 37(3) of Regulation (EC) No 1257/1999 and its implementing rules, under the conditions provided for in paragraphs 2 to 6 of this Article.

2. The payment shall be made only to farmers within the meaning of Article 2(a) of Regulation (EC) No 1782/2003, irrespective [of] whether they have applied or not to the single payment scheme or they hold payment entitlements.

3 "In the sector or sectors concerned by the retention" shall mean that the payment may be claimed, in principle, by all the farmers producing, at the time for lodging an application for the additional payment and under the conditions provided for by this Article, the products covered by the sector or sectors referred to in Annex VI to Regulation (EC) No 1782/2003.

4. In case the payment covers types of farming or quality and marketing measures for which no specific production is identified or the production is not directly covered by a sector, payment may be provided for under the condition that the retention is done in all the sectors referred to in Annex VI to Regulation (EC) No 1782/2003 and only the farmers belonging to any of the sectors referred to in that Annex shall participate to the scheme.

5. In case of application of Article 69 of Regulation (EC) No 1782/2003 at regional level, the retention shall be calculated on the basis of the component of the payments of the sectors concerned in the region concerned.

Member States shall define the region at the appropriate territorial level in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

6. Member States concerned shall communicate the details of the payment they intend to grant and, in particular, the eligibility conditions and the sectors concerned by 1 August of the year preceding the first year of application of the single payment scheme at the latest.

...'

- 7 Regulation No 1782/2003 was repealed by 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). Similarly, Regulation No 795/2004 was repealed by Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Regulation No 73/2009 (OJ 2009 L 316, p. 1).

Greek law

- 8 Regulations No 1782/2003 and No 795/2004 were transposed into national law by two joint decisions of the Ipourgios Ikonomias kai Ikonomikon and the Ipourgios Agrotikis Anaptixis kai Trofimou, namely Joint Decision No 292464 of 9 August 2005 (FEK (Official Gazette) B' 1122) laying down in general the additional administrative implementing measures and measures for calculating the number and value of entitlements of single payment beneficiaries, and Joint Decision No 49143 of 8 August 2006 (FEK B' 1333) specifically laying down measures, namely the method of payment, the amounts to be paid and the supporting documentation for payment, for the purpose of the additional payment for quality in the tobacco sector.
- 9 Article 16 of and Annex I to Joint Decision No 292464 of 9 August 2005 set the retention rate for the additional payment for quality for tobacco at 2%.

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

- 10 On 13 November 2006, the Panellinios Syndesmos brought an action for annulment of Joint Decision No 49143 of 8 August 2006 before the Simvoulio tis Epikratias (Council of State, Greece). In those proceedings, the Panellinios Sindesmos also disputed the legality of Joint Decision No 292464 of 9 August 2005.
- 11 According to the Panellinios Sindesmos, both those decisions are unlawful in so far as they are measures that implement Regulation No 1782/2003, Article 69 of which is contrary to European Union law.
- 12 The referring court is of the opinion that the margin of discretion afforded by Regulation No 1782/2003 to national authorities for its implementation contributes to a differentiation corresponding to the needs of each region and that the fact that it is possible for the Member States to set different retention rates does not constitute discrimination.
- 13 However, the referring court is unsure whether that differentiated implementation, inter alia because of the application of different retention rates and, consequently, different additional payments, leads to distortion of competition between producers of the same product in different Member States and to negative consequences for the income of producers in different regions.

- 14 In those circumstances, the Simvoulio tis Epikratias decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 69 of Regulation No 1782/2003, under which the Member States are permitted to set different retention percentages, up to the limit of 10% of the component of national ceilings referred to in Article 41, for the making of an additional payment to producers, while observing the criteria set out in the third paragraph of Article 69, compatible, in permitting this differentiation as regards the retention percentage, with Articles 2 EC, 32 EC and 34 EC and with the objectives of ensuring a stable income for producers and maintaining rural areas?’

Consideration of the question referred

- 15 By its question, the referring court asks, in essence, whether Article 69 of Regulation No 1782/2003 is valid in the light of Articles 32 EC and 34 EC and of the objectives of ensuring a stable income for producers and maintaining rural areas, in so far as its implementation places producers whose Member State sets a low retention rate at a disadvantage as compared with producers in other Member States in which that rate has been set at a higher level and leads to discrimination and distortion of competition between producers of the same product located in different Member States.
- 16 It should be noted, as a preliminary point, that the fact that Regulations No 1782/2003 and No 795/2004 were repealed has no effect on the matters at issue in the main proceedings because Article 69 of Regulation No 1782/2003 was applicable up to June 2010.
- 17 Regulation No 1782/2003, as set out at recital 24 thereof, sought to facilitate the transition from production aid to producer aid by the gradual reduction of direct payments and the introduction of an income support scheme decoupled from production, namely the scheme for single payments determined on the basis of previous entitlements within a reference period, in order to make farmers in the European Union more competitive.
- 18 It should be added that the introduction of the single payment scheme is part of the new Common Agricultural Policy (‘the CAP’), one of the main aims of which was, as the Advocate General noted at point 3 of his Opinion, to rationalise and simplify the relevant European Union rules, while achieving a greater decentralisation of policy implementation, with a larger margin of discretion being left to Member States and their regions.
- 19 Within the context of the partial implementation of the single payment scheme Article 64 of Regulation No 1782/2003 provided Member States with the possibility of deciding, ‘by 1 August 2004 at the latest’, to apply, at national or regional level, the single payment scheme under specific conditions.
- 20 It is in that context that Article 69 of that regulation gives Member States the option of retaining up to 10% of the component of national ceilings for each product sector in order to make an additional payment for specific types of farming which are important for the protection or enhancement of the environment or for improving the quality and marketing of agricultural products.

Breach of Article 34 EC

- 21 It is necessary to determine whether Article 69 of Regulation No 1782/2003 is contrary to Article 34 EC on the ground that it leads to discrimination between producers and distortion of competition between producers of the same product located in different Member States.

- 22 In that regard, it should be noted that the Court has consistently held that Article 34(2) EC, which prohibits all discrimination under the CAP, is merely a specific expression of the general principle of equal treatment, which requires that comparable situations should not be treated differently and different situations not treated alike unless such treatment is objectively justified (Case C-33/08 *Agrana Zucker* [2009] ECR I-5035, paragraph 46).
- 23 In the first place, it is clear that Article 69 of Regulation No 1782/2003 does not itself set different conditions according to Member States or producers, but merely grants all Member States, under the same terms and conditions, a certain discretion for the purpose of making additional payments under the CAP reform.
- 24 It is appropriate to recall, in the second place, that, in accordance with the principle of subsidiarity, referred to in the second paragraph of Article 5 EC, the European Union, in areas which do not fall within its exclusive competence, is to take action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States but can, by reason of the scale or effects of the proposed action, be better achieved by the European Union (see, to that effect, Case C-58/08 *Vodafone and Others* [2010] ECR I-4999, paragraph 72).
- 25 Next, it is settled case-law that the Member States may adopt provisions in a situation governed by European Union law where that law expressly confers on them decision-making powers (see, to that effect, Case C-251/91 *Teulie* [1992] ECR I-5599, paragraph 13, and Case C-356/95 *Witt* [1997] ECR I-6589, paragraph 39).
- 26 Lastly, it must be stated that, under the CAP, which, in accordance with Article 4(2)(d) TFEU, is a competence shared between the European Union and the Member States, the Member States have legislative powers which allow them, as is apparent from Article 2(2) TFEU, to exercise their competence to the extent that the European Union has not exercised its competence.
- 27 This has been the case particularly since the CAP reform, which entails, as the referring court notes, further decentralisation of competences in order to take greater account of the particular circumstances of each Member State or region and of the market situation of the various products and producers concerned, in accordance with Article 33(2)(a) EC.
- 28 It follows that the Council of the European Union was entitled to grant the Member States some discretion in fixing the retention rate so that, as stated at recital 33 of Regulation No 1782/2003, Member States have the option of establishing a certain balance between individual payment entitlements and regional or national averages and between existing payments and the single payment and therefore have sufficient flexibility to respond to specific situations.
- 29 In the third place, it should be noted that the authorisation granted to the Member States, first, is strictly limited in scope and subject to a series of conditions of both a procedural and substantive nature and, second, is a temporary measure to facilitate the transition to the single payment scheme.
- 30 The differentiation permitted by Article 69 of Regulation No 1782/2003 is limited, since, within the framework of the gradual reduction of direct payments, Member States may retain at most 10% of the component of national ceilings in order to make an additional payment.
- 31 Moreover, Article 69 of Regulation No 1782/2003 provides that the additional payment may be granted only for specific types of farming which are important for the protection or enhancement of the environment or for improving the quality and marketing of agricultural products, that payment being subject to compliance with conditions to be defined by the Commission in accordance with the third paragraph of Article 69 of that regulation. Closer examination of each product sector also led the European Union legislature to lay down, at Articles 66 to 68 of Regulation No 1782/2003, specific rules on the basis of the characteristics of each sector.

- 32 In the fourth place, it is apparent from Article 69 of Regulation No 1782/2003 that the total amount of payments to farmers in a specific sector remains essentially the same in each Member State, irrespective of whether the national authorities decide to introduce additional payments and, if so, the retention level that they set for that purpose.
- 33 In addition, the setting of different retention rates does not automatically lead to different levels of additional payments, since additional payments are granted only to those farmers who comply with the specific requirements and criteria imposed.
- 34 In the fifth place, it should be noted that the fact that the adoption of a measure within the framework of the common organisation of the market may affect producers in different ways because of their individual production or local conditions does not constitute discrimination prohibited by the EC Treaty if the measure is determined on the basis of objective criteria which are adapted to meet the needs of the general common organisation of the market (Case 179/84 *Bozzetti* [1985] ECR 2301, paragraph 34, and Case C-34/08 *Azienda Agricola Disarò Antonio and Others* [2009] ECR I-4023, paragraph 69).
- 35 Similarly, according to settled case-law, the prohibition on discrimination is not concerned with any disparities in treatment which may result, between the Member States, from divergences existing between the legislation of the various Member States, so long as that legislation affects equally all persons subject to it (Case C-428/07 *Horvath* [2009] ECR I-6355, paragraph 55 and the case-law cited).
- 36 While it is true that that principle was developed in the context of the interpretation of provisions of European Union law with a view to assessing the compatibility of national legislation by reference to the principle of non-discrimination, the situation cannot be any different as regards the assessment of the validity of the provision of European Union law granting the Member States a margin of discretion by virtue of which they adopt such different legislation.
- 37 In the sixth place, the maintenance of effective competition in the markets for agricultural products is one of the objectives of the CAP.
- 38 It should be noted in that regard, first, that, as stated at paragraphs 32 and 33 above, the setting of different retention rates does not necessarily lead to different levels of payment.
- 39 Even if the setting of retention rates at different levels by the Member States could lead to distortion of competition between producers of the same product in different Member States (a point not made in the order for reference), it should be noted that, according to settled case-law, even in regard to the competition rules of the Treaty, Article 36 EC gives precedence to the objectives of the CAP over the objectives of competition policy (Case C-137/00 *Milk Marque and National Farmers' Union* [2003] ECR I-7975, paragraph 81).
- 40 In any event, in matters concerning the CAP, the European Union legislature has a broad discretion, which corresponds to the political responsibilities given to it by Articles 34 EC and 37 EC, and the Court has, on several occasions, held that the lawfulness of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate, having regard to the objective which the competent institution is seeking to pursue (Case C-343/07 *Bavaria and Bavaria Italia* [2009] ECR I-5491, paragraph 81).
- 41 Consequently, judicial review must be limited to verifying that the measure in question is not vitiated by any manifest error or misuse of powers and that the authority concerned has not manifestly exceeded the limits of its discretion (Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 80; C-304/01 *Spain v Commission* [2004] ECR I-7655, paragraph 23; and Case C-535/03 *Unitymark and North Sea Fishermen's Organisation* [2006] ECR I-2689, paragraph 55).

- 42 In that respect, it is apparent from, inter alia, recitals 33 and 34 of Regulation No 1782/2003 that the grant of an additional payment for which Article 69 thereof makes provision must be implemented according to structural and natural disparities between the various agricultural regions. That factor is expressly referred to in Article 33(2) EC as one of the factors that must be taken into account in working out the CAP.
- 43 Moreover, since any distortion of competition which may result from the application of Article 69 of Regulation No 1782/2003 is, at the very most, limited, there are no grounds for considering that the European Union legislature did not strike a fair balance between the various factors or objectives to be taken into account and thus manifestly exceed the limits of its discretion.
- 44 Consequently, the examination of Article 69 of Regulation No 1782/2003 in the light of Article 34 EC has disclosed nothing capable of affecting its validity.

Breach of Article 32 EC

- 45 The referring court refers to the argument of the applicant in the main proceedings that Article 69 of Regulation No 1782/2003 conflicts with Article 32 EC in so far as, by allowing the Member States to freely set, without criteria or preconditions, the percentage for the retention from the national ceiling that they will have available to support a product which, like raw tobacco, is subject to the common policy of agricultural policy, that provision eliminates the common nature of agricultural policy.
- 46 It is clear that the discretion granted to the Member States to set a retention rate to be applied to the national ceiling for aid that is appropriate for the sector concerned in order to make an additional payment does not have the purpose or effect of eliminating the common character of agricultural policy, but is simply a power conferred on national authorities to put in place certain rules which the European Union legislature deemed appropriate in connection with the introduction of the single payment system.
- 47 The purpose of the additional payment, which is temporary and limited to 10% of the component of national ceilings, is, first, to encourage farmers to comply with the requirements to improve the quality of their products and to protect the environment, by way of recompense for their adapting to the new CAP requirements, and, second, to mitigate the effects which the transition from the direct payments scheme to the single payment scheme entails in any event for some product sectors.
- 48 The option given to the Member States to set retention rates at the most appropriate level, taking account of their particular national or regional characteristics and of the market situation of the various products and producers concerned, is justified in the light of Article 33(2) EC, which requires, for the purposes of working out the CAP and the special methods for its application, account to be taken of the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions and the need to effect the appropriate adjustments by degrees.
- 49 Furthermore, as is apparent from paragraphs 29 to 31 above, the power granted by the European Union legislature to national authorities is subject to a series of conditions, of both a procedural and substantive nature, laid down both directly in Article 69 of Regulation No 1782/2003 and in a regulation to be adopted by the Commission, in accordance with the procedure set out in Article 144(2) of the regulation.
- 50 In this respect, it should be noted that the Commission set out those conditions in detail in Regulation No 795/2004, Article 48 of which provides important safeguards by requiring that Member States take decisions in accordance with objective criteria and act ‘in such a way as to ensure equal treatment

between farmers and to avoid market and competition distortion'. In addition, that provision empowers the Commission to closely monitor how the authorities of the Member States make additional payments, by imposing on those authorities a number of reporting obligations.

- 51 Similarly, Article 64(3) of Regulation No 1782/2003 requires the Commission, within a specific time-frame, to 'submit a report to the Council, accompanied, if necessary, by appropriate proposals, on the possible consequences, in terms of market and structural developments, of the implementation by Member States', of inter alia, the option provided for in Article 69 of the regulation.
- 52 It follows from the foregoing that examination of Article 69 of Regulation No 1782/2003 in the light of Article 32 EC has disclosed nothing capable of affecting its validity.

Violation of the objectives of ensuring a stable income for producers and maintaining rural areas

- 53 The referring court asks whether Article 69 of Regulation No 1782/2003 is contrary to the 'objectives of ensuring a stable income for producers' and of 'maintaining rural areas', in so far as the effect of its application may be that farmers are not ensured a stable income and are driven to stop growing tobacco.
- 54 As regards the guarantee of a stable income, it should be noted that, as observed by the Council, such an objective is not among the objectives of the CAP set out at Article 33 EC, which mentions the objective of ensuring 'a fair standard of living for the agricultural community' and that of "stabilis[ing] markets'.
- 55 In addition, as the Advocate General noted at point 60 of his Opinion, the Treaties do not require that a fair standard of living must be ensured through the unwavering cultivation of one and the same product.
- 56 Furthermore, as stated at paragraph 32 above, Article 69 of Regulation No 1782/2003 does not alter the total amount of aid which may be paid to farmers in a product sector, such as tobacco, but simply allows, to a limited extent, the aid to be divided between direct payments and, where relevant, additional payments.
- 57 Similarly, the objective of stabilising markets, mentioned in Article 33(1)(c) EC, does not mean that production must always be stable, since one of the objectives of the CAP reform is, on the contrary, to promote a more competitive and market-oriented agricultural industry.
- 58 As regards compatibility with the stated objective of maintaining rural areas, it should be pointed out that recitals 3 and 21 of Regulation No 1782/2003 specifically refers to the need to avoid the abandonment of agricultural land and to maintain rural areas. The referring court has not referred to any factor capable of establishing that the measure provided for in Article 69 of the regulation would undermine those objectives. On the contrary, the discretion granted to the Member States in connection with the retention rate allows them to make entitlement to the additional payment conditional on compliance with the conditions intended to achieve those objectives.
- 59 It follows from all of the foregoing that examination of the question referred for a preliminary ruling has disclosed nothing capable of affecting the validity of Article 69 of Regulation No 1782/2003.

Costs

- ⁶⁰ 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 (Fifth Chamber) hereby rules:

The examination of the question referred for a preliminary ruling has disclosed nothing capable of affecting the validity of Article 69 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.

[Signatures]