

CRISPOLTONI

JUDGMENT OF THE COURT (Fifth Chamber)

11 July 1991 *

In Case C-368/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretore Circondariale, Perugia (Italy), for a preliminary ruling in the proceedings pending before that court between

Antonio Crispoltoni

and

Fattoria autonoma tabacchi di Città di Castello

on the validity of Council Regulation (EEC) No 1114/88 of 25 April 1988 amending Regulation (EEC) No 727/70 on the common organization of the market in raw tobacco (Official Journal 1988 L 110, p. 35) and of Council Regulation (EEC) No 2268/88 of 19 July 1988 fixing, for the 1988 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, the production areas and the guaranteed maximum quantities and amending Regulation (EEC) No 1975/87 (Official Journal 1988 L 199, p. 20),

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber,
G. C. Rodríguez Iglesias, Sir Gordon Slynn, F. Grévisse and M. Zuleeg, Judges,

Advocate General: J. Mischo,
Registrar: D. Louterman, Principal Administrator,

after considering the written observations submitted on behalf of:

* Language of the case: Italian.

- Mr Crispoltoni, by Emilio Cappelli and Paolo De Caterini, of the Rome Bar, and Corrado Zaganelli, of the Perugia Bar,
- the Council of the European Communities, by Bernhard Schloh, an Adviser in its Legal Service, and Tito Gallas, a member of its Legal Service, acting as Agents,
- the Commission of the European Communities, by its Legal Advisers, Gianluigi Campogrande and Francisco Santaollala Gadea, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Crispoltoni, the Italian Government, represented by Oscar Fiumara, *Avvocato dello Stato*, the Council and the Commission, whose Agents, Gianluigi Campogrande and Francisco Santaollala Gadea, were assisted by Mr Ledoux, an official in DG VI, as an expert, at the hearing on 16 January 1991,

after hearing the Opinion of the Advocate General at the sitting on 19 March 1991,

gives the following

Judgment

- 1 By order of 20 November 1989, which was received at the Court on 6 December 1989, the Pretore Circondariale (District Magistrate), Perugia (Italy), referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the validity of Council Regulation (EEC) No 1114/88 of 25 April 1988 amending Regulation (EEC) No 727/70 on the common organization of the market in raw tobacco (Official Journal 1988 L 110, p. 35), and Council Regulation (EEC) No 2268/88 of 19 July 1988 fixing, for the 1988 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, the production areas and the guaranteed maximum quantities and amending Regulation (EEC) No 1975/87 (Official Journal 1988 L 199, p. 20).

- 2 That question was raised in the course of proceedings brought by Mr Crispoltoni, a tobacco planter from Lerchi, in the region of Umbria, Perugia, against the Fattoria autonoma tabacchi di Città di Castello (hereinafter referred to as the 'Fattoria'), a producers' association to which he belongs, which undertakes the first processing and market preparation of leaf tobacco.
- 3 In 1988 Mr Crispoltoni delivered to the Fattoria a certain quantity of leaf tobacco of the 'Bright' variety and received advance payment of the premium laid down in Article 3(2) of Regulation (EEC) No 727/70 of the Council of 21 April 1970 on the common organization of the market in raw tobacco (Official Journal, English Special Edition 1970 (I), p. 206).
- 4 As the Commission subsequently established in Regulation (EEC) No 2158/89 of 18 July 1989 determining, for tobacco from the 1988 harvest, the quantity actually produced and the prices and premiums payable under the system of maximum guaranteed quantities (Official Journal 1989 L 207, p. 15), the quantity of tobacco of the 'Bright' variety actually produced was 42 105 tonnes, corresponding to an overrun of 10.8% of the maximum guaranteed quantity for 1988, which had been fixed, pursuant to Annex V to Regulation No 2268/88, at 38 000 tonnes. The Azienda di Stato per gli Interventi sul Mercato Agricolo — Settore tabacco (the competent intervention agency, hereinafter referred to as the 'AIMA') demanded repayment by the Fattoria of 5% of the premium granted for the abovementioned variety, under Article 4(5), which was added to Regulation No 727/70 by Article 1 of Regulation No 1114/88.
- 5 It should be pointed out that Article 4(5) of Regulation No 727/70, as amended, provides that for each 1% by which the maximum guaranteed quantity is exceeded per variety or group of varieties, the intervention price and the premiums concerned are to suffer a reduction of 1%, but that, in respect of the 1988 harvest, that reduction is not to exceed 5% of the amount of those prices and premiums.
- 6 When the Fattoria passed on to its members the AIMA's demand for the partial repayment of the premiums paid, Mr Crispoltoni decided to bring proceedings against the Fattoria before the Pretore, Perugia, for a declaration that he is not

obliged to pay the amount claimed, namely LIT 3 320 000, on the ground that the Community regulations on the basis of which the repayment is demanded are invalid.

- 7 The Pretore decided to stay proceedings until the Court had given a preliminary ruling on the 'validity of Council Regulations No 1114/88 of 25 April 1988 and No 2268/88 of 19 July 1988'.
- 8 Reference is made to the Report for the Hearing for a fuller account of the facts, the relevant provisions and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The Court's jurisdiction

- 9 The Council emphasizes that the proceedings before the national court disclose certain particularities, especially in so far as it is the Fattoria, of which the plaintiff in the main proceedings is himself a member, that is being sued, and not the AIMA. That particularity is, according to the Council, such as to raise doubts as to the need for the Court of Justice to rule in order for the national court to be able to deliver its judgment in a genuine dispute.
- 10 However, such a particularity does not allow the Court's jurisdiction to be called in question. As the Court has consistently held (see, *inter alia*, judgment in Joined Cases C-297/88 and C-197/89 *Dzodzi v Belgium* [1990] ECR I-3763, paragraph 34), it is solely for the national courts before which the dispute has been brought, and which must bear the responsibility for the subsequent judicial decision, to determine in the light of the special features of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court.
- 11 A request from a national court may be rejected only if it is quite obvious that the interpretation of Community law or the examination of the validity of a rule of

Community law sought by that court bears no relation to the actual nature of the case or to the subject-matter of the main action (see, in particular, the Order in Case C-286/88 *Falciola v Comune di Pavia* [1990] ECR I-191). That is not so in the present case.

Substance

- 12 It is apparent from the facts of the main proceedings that the national court's question concerns the validity of Regulations No 1114/88 and No 2268/88 only in so far as they lay down a maximum guaranteed quantity for tobacco of the 'Bright' variety harvested in 1988.
- 13 In that respect, the national court has doubts as to the validity of both regulations on the ground that they could be contrary to the principles of the protection of legitimate expectations, the non-retroactivity of legal rules and legal certainty.
- 14 It follows from the order for reference that tobacco of the 'Bright' variety, which, according to Annex III to Regulation No 2268/88, is produced exclusively in Italy, is sown in special seed beds during February and the young plants are transplanted into the field before the end of April. It is the latter operation which involves the greatest expense, and it is at that time that the farmers must decide on the size of the areas to be cultivated.
- 15 Regulation No 1114/88 was published on 29 April 1988, that is after the farmers had made their decisions regarding production for the current year, and Regulation No 2268/88 was published on 26 July 1988, at a time when those decisions had been put into effect.
- 16 It must therefore be accepted that those regulations had retroactive effect in so far as they provided for reductions in the intervention prices and premiums if the maximum guaranteed quantity for tobacco of the 'Bright' variety harvested in 1988 was exceeded.

- 17 In that respect, the Court has consistently held (see, *inter alia*, judgments in Case 98/78 *Racke v Hauptzollamt Mainz* [1979] ECR 69, paragraph 20, and Case 99/78 *Decker v Hauptzollamt Landau* [1979] ECR 101, paragraph 8) that, although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected. That case-law also applies where the retroactivity is not expressly laid down by the measure itself but is the result of its content.
- 18 As the first recital in the preamble to Regulation No 1114/88 states, the purpose of setting a maximum guaranteed quantity is to curb any increase in the Community's tobacco production and at the same time to discourage the growing of varieties which are difficult to dispose of. That purpose could not be achieved, with respect to the 1988 harvest of tobacco of the 'Bright' variety, by the regulations published at the end of April and July of that year. By then the decisions regarding the extent of the area to be cultivated had been made, the planting out had already taken place and, according to the order for reference, the harvest had begun long before the publication of Regulation No 2268/88.
- 19 Furthermore, the Council realized that it was impossible to limit production by measures adopted in such circumstances. By Regulation (EEC) No 1251/89 of 3 May 1989 amending Regulation No 727/70 on the common organization of the market in raw tobacco (Official Journal 1989 L 129, p. 16), it provided that the maximum guaranteed quantities would be fixed each year for the following year's harvest, in order, according to the first recital of the preamble thereto, to allow planting to be planned.
- 20 In the absence of any other reason indicated in the preambles to Regulations No 1114/88 and No 2268/88, it must therefore be held that the first condition for the retroactivity of those regulations to be permitted, namely that the purpose to be achieved so demands, is not fulfilled and, consequently, those regulations are invalid in so far as they lay down a maximum guaranteed quantity for tobacco of the 'Bright' variety harvested in 1988.

- 21 Furthermore, the contested rules have infringed the legitimate expectations of the economic operators concerned. Although those operators must have considered that measures to limit any increase in tobacco production in the Community and to discourage the production of varieties which were difficult to dispose of were foreseeable, they were entitled to expect that they would be notified in good time of any measures having effects on their investments. However, that was not the case.
- 22 The answer to the national court's question must therefore be that Council Regulations No 1114/88 and No 2268/88 are invalid in so far as they lay down a maximum guaranteed quantity for tobacco of the 'Bright' variety harvested in 1988.

Costs

- 23 The costs incurred by the Council and the Commission of the European Communities, which have submitted observations to the Court, and by the Italian Government, which presented its views at the hearing, are not recoverable. 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.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Pretore Circondariale, Perugia, by order of 20 November 1989, hereby rules:

Council Regulation (EEC) No 1114/88 of 25 April 1988 amending Regulation (EEC) No 727/70 on the common organization of the market in raw tobacco and Council Regulation (EEC) No 2268/88 of 19 July 1988 fixing, for the 1988

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, the production areas and the guaranteed maximum quantities and amending Regulation (EEC) No 1975/87 are invalid in so far as they lay down a maximum guaranteed quantity for tobacco of the 'Bright' variety harvested in 1988.

Moitinho de Almeida

Rodríguez Iglesias

Slynn

Grévisse

Zuleeg

Delivered in open court in Luxembourg on 11 July 1991.

J.-G. Giraud

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber