

ESTAGER

JUDGMENT OF THE COURT (Second Chamber)

18 January 2007\*

In Case C-359/05,

REFERENCE for a preliminary ruling under Article 234 EC by the Tribunal de grande instance de Brive-la-Gaillarde (France), made by decision of 9 September 2005, received at the Court on 26 September 2005, in the proceedings

**Estager SA**

v

**Receveur principal de la recette des douanes de Brive,**

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J. Klučka, R. Silva de Lapuerta (Rapporteur), J. Makarczyk and G. Arestis, Judges,

\* Language of the case: French.

Advocate General: M. Poiares Maduro,  
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 7 September 2006,

after considering the observations submitted on behalf of:

- Estager SA, by F. Genot-Delbecque and N. Petrignet, *avocates*,
- the French Government, by G. de Bergues and J.-C. Gracia, acting as Agents,
- the Commission of the European Communities, by J.-F. Pasquier and P. Aalto, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 October 2006

gives the following

### **Judgment**

- <sup>1</sup> The present reference for a preliminary ruling concerns the interpretation of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ 1997 L 162, p. 1) and Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ 1998 L 139, p. 1).

- 2 The reference has been made in the course of proceedings between Estager SA ('Estager') and the Receveur principal de la recette des douanes de Brive (Principal Collector of Customs Revenue of Brive) ('Receveur principal') concerning the increase, on transition to the euro, of a tax on the quantities of flour, meal and groats of common wheat supplied or used for human consumption ('the tax').

## **Legal framework**

### *Community legislation*

- 3 Article 1 of Regulation No 1103/97 provides as follows:

'For the purpose of this Regulation:

- "legal instruments" shall mean legislative and statutory provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, payment instruments other than banknotes and coins, and other instruments with legal effect,

...'

- 4 According to Article 3 of Regulation No 1103/97:

'The introduction of the euro shall not have the effect of altering any term of a legal instrument or of discharging or excusing performance under any legal instrument,

nor give a party the right unilaterally to alter or terminate such an instrument. This provision is subject to anything which parties may have agreed.’

5 Article 4 of Regulation No 1103/97 provides:

‘1. The conversion rates shall be adopted as one euro expressed in terms of each of the national currencies of the participating Member States. They shall be adopted with six significant figures.

2. The conversion rates shall not be rounded or truncated when making conversions.

3. The conversion rates shall be used for conversions either way between the euro unit and the national currency units. Inverse rates derived from the conversion rates shall not be used.

4. Monetary amounts to be converted from one national currency unit into another shall first be converted into a monetary amount expressed in the euro unit, which amount may be rounded to not less than three decimals and shall then be converted into the other national currency unit. No alternative method of calculation may be used unless it produces the same results.’

6 Article 5 of Regulation No 1103/97 is worded as follows:

‘Monetary amounts to be paid or accounted for when a rounding takes place after a conversion into the euro unit pursuant to Article 4 shall be rounded up or down to the nearest cent. Monetary amounts to be paid or accounted for which are converted into a national currency unit shall be rounded up or down to the nearest sub-unit or in the absence of a sub-unit to the nearest unit, or according to national law or practice to a multiple or fraction of the sub-unit or unit of the national currency unit. If the application of the conversion rate gives a result which is exactly half-way, the sum shall be rounded up.’

7 Article 7 of Regulation No 974/98 provides that the substitution of the euro for the currency of each participating Member State may not in itself have the effect of altering the denomination of legal instruments in existence on the date of substitution.

8 Article 14 of Regulation No 974/98 specifies:

‘Where in legal instruments existing at the end of the transitional period reference is made to the national currency units, those references shall be read as references to the euro unit according to the respective conversion rates. The rounding rules laid down in Regulation ... No 1103/97 shall apply.’

9 Pursuant to Article 1 of Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro (OJ 1998 L 359, p. 1), the irrevocably fixed conversion rate between the euro and the French franc is EUR 1 = FRF 6.55957.

*National legislation*

- 10 The tax was introduced by Article 1618 *septies* of the French Code général des impôts (General Tax Code). Before the introduction of the euro, the amount of that tax was fixed at FRF 100 per tonne of flour, meal or groats of common wheat.
- 11 Article 1(1) of Law No 2000-517 of 15 June 2000 enabling the Government to adjust by order the value in euros of certain amounts expressed in francs in legislative texts (JORF of 16 June 2000, p. 9063) provides that the Government is authorised to take, by order, the measures necessary for the adjustment to the transition to the euro of certain amounts expressed in French francs in legislative texts.
- 12 Enacted pursuant to that law, Order No 2000-916 of 19 September 2000 adjusting the value in euros of certain amounts expressed in francs in legislative texts (JORF of 22 September 2000, p. 14877) fixed the amount of the tax at EUR 16 with effect from 1 January 2002.
- 13 Article 1 of that order provides:

‘In accordance with Article 14 of Regulation [No 974/98], the amounts expressed in francs appearing in legislative texts ... shall be replaced, on 1 January 2002, by amounts in euros, in accordance with the official rate and the Community rules on rounding.’

<sup>14</sup> The Report to the French President concerning Order No 2000-916 (JORF of 22 September 2000, p. 14876) states the following:

‘In accordance with EC Regulations No 1103/97 ... and No 974/98 ... , the references to national currency units which appear in legislative texts must be read from 1 January 2002 as references to the euro, by applying the official conversion rate of [FRF] 6.55957 = EUR 1, with rounding to the second decimal place.

The result obtained by applying these rules will, in certain cases, be difficult to read and remember, with the consequent risk that the texts in which the currency references at issue appear may be more difficult to apply.

In order to preserve the clarity of legislation and thus facilitate its proper application, it is therefore necessary to fix the monetary amounts provided for in certain texts at values expressed in euros without decimals or at more meaningful values.

...

This order, enacted pursuant to the authorisation [granted by Law No 2000-517], is based on the following principles.

Firstly, since the adjustment of texts must be justified by the concern to preserve their clarity, only monetary amounts which, in that regard, cannot readily accommodate values including two figures after the decimal point are amended.

The pure and simple application of the Community rules on conversion and rounding must remain the rule and the adjustments the exception. Accordingly, amounts already expressed in centimes are not generally amended.

...

All of these adjustments shall come into force on 1 January 2002, the date of the definitive and full replacement of the franc by the euro.

...'

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

- 15 As it took the view that the application of Regulations No 1103/97, No 974/98 and No 2866/98 should have led to the amount of the tax being fixed at EUR 15.24 and not at EUR 16, Estager, by letter of 12 March 2002, applied to the Receveur principal for repayment of a portion of the tax which it had paid since 1 January 2002.
- 16 By a decision of 26 March 2002, the Receveur principal rejected that application for repayment.

17 On 24 May 2002, Estager therefore brought proceedings against the Receveur principal before the referring court in order to obtain repayment of the amounts which, in its opinion, it had overpaid.

18 It was in that context that the Tribunal de grande instance of Brive-la-Gaillarde decided to stay proceedings pending a preliminary ruling from the Court of Justice on the following question:

‘Are the provisions of Order No 2000-916 ... that concern the conversion of the ... tax applied to the production of flour, meal and groats of common wheat from FRF 100 to EUR 16 in conformity with the Community regulations in relation to the introduction of the euro?’

### **The question referred for a preliminary ruling**

19 By its question, the referring court asks essentially whether Regulations No 1103/97 and No 974/98 preclude national legislation which, on effecting the conversion into euros of an amount of tax such as that at issue in the main proceedings, raised it to an amount higher than that which would have resulted from application of the rules of conversion provided for in those regulations.

20 In order to answer that question, it is appropriate to bear in mind both the wording and the objectives of the provisions of those regulations.

21 In that respect, it should be noted that, at paragraphs 30 to 34 of its judgment in Case C-19/03 *Verbraucher-Zentrale Hamburg* [2004] ECR I-8183, the Court has already had occasion to examine the objectives of Regulation No 1103/97.

- 22 It is clear from that examination that the regulation was intended to ensure that the transition to the euro took place without affecting obligations already entered into by citizens and firms. To that end, the fourth recital in its preamble states that ‘... legal certainty at an early stage will allow preparations by citizens and firms to proceed under good conditions’. The seventh recital states that ‘... it is a generally accepted principle of law that the continuity of contracts and other legal instruments is not affected by the introduction of a new currency’. The seventh recital also specifies that the objective of the provisions of Regulation No 1103/97 on that continuity of contracts ‘is to provide legal certainty and transparency to economic agents, in particular for consumers ...’. The first sentence of Article 3 of the regulation provides that ‘[t]he introduction of the euro shall not have the effect of altering any term of a legal instrument or of discharging or excusing performance under any legal instrument, nor give a party the right unilaterally to alter or terminate such an instrument’ (*Verbraucher-Zentrale Hamburg*, paragraph 31).
- 23 Moreover, it should be noted that, in the words of Article 7 of Regulation No 974/98, ‘[t]he substitution of the euro for the currency of each participating Member State shall not in itself have the effect of altering the denomination of legal instruments in existence on the date of substitution’.
- 24 The setting of rules relating to conversion operations also shares the objective that the transition to the euro should be neutral. The attempt to ensure that those operations are as neutral as possible, for both citizens and firms, presupposes, as the 12th recital in the preamble to Regulation No 1103/97 indicates, that ‘a high degree of accuracy in conversion operations’ is guaranteed. Article 4(1) of Regulation No 1103/97 thus provides that conversion rates are to ‘be adopted with six significant figures’. Article 4(2) provides that ‘[t]he conversion rates shall not be

rounded or truncated when making conversions', while Article 4(3) states that '[i]nverse rates derived from the conversion rates shall not be used', the latter provision seeking, according to the 10th recital in the preamble to the regulation, to avoid 'significant inaccuracies, notably if large amounts are involved' (*Verbraucher-Zentrale Hamburg*, paragraph 32).

- 25 The principle of the continuity of legal instruments and the objective that the transition to the euro should be neutral apply to the 'terms' or to the 'wording' of the 'legal instruments' within the meaning of Regulations No 1103/97 and No 974/98.
- 26 There cannot be any doubt that the amount of a tax such as that at issue in the main proceedings constitutes a 'term of a legal instrument' within the meaning of Article 3 of Regulation No 1103/97.
- 27 It is therefore necessary to consider whether Regulations No 1103/97 and No 974/98 preclude national legislation which, on the transition to the euro, effected simultaneously the conversion into euros and an increase in the amount of that tax.
- 28 In the main proceedings, it is not in dispute that, in adopting Order No 2000-916, the French legislature intended to apply the Community legislation on the introduction of the euro in order to fix the amount of the tax.
- 29 According to the Report to the French President concerning Order No 2000-916 and the clear wording of Article 1(1) of that order, the latter seeks, pursuant to Regulations No 1103/97 and No 974/98 and the official conversion rate, to replace from 1 January 2002 the amounts expressed in French francs appearing in legislative texts by amounts in euros.

- 30 It follows also from that report and from Article 2 of Order No 2000-916 that, in order to preserve the clarity of legislation and to facilitate its proper application, a number of provisions of that order have the object of adjusting certain amounts in euros resulting from the application of the Community rules on conversion mentioned in Article 1 of that order.
- 31 However, in their written observations, the French Government and the Commission of the European Communities do not dispute that there was indeed an increase in the amount of the tax, since they agree in acknowledging, like Estager, that, first, the strict application of the rate of conversion irrevocably fixed between the euro and the French franc by Article 1 of Regulation No 2866/98 and, second, the rules on rounding laid down in Article 5 of Regulation No 1103/97 would have led to the amount of the tax being fixed at EUR 15.24 instead of EUR 16.
- 32 In that respect, whilst, as the French Government notes, Regulations No 1103/97 and No 2866/98 have in no way undermined the fiscal competence of Member States and their ability to increase the amount of their taxes, it is no less true that the conversion into euros of the amount of a tax must, in circumstances such as those in the dispute in the main proceedings, be effected in a manner which respects the provisions laid down by Regulation No 1103/97, the principle of continuity of legal instruments and the objective of neutrality in the transition to the euro.
- 33 This relates, in particular, to the requirements of legal certainty and transparency which allow for protection of the confidence of economic agents in the introduction of the euro. As stated in the seventh recital in the preamble to Regulation No 1103/97, the aim of the provisions of the regulation concerning the continuity of contracts and other legal instruments is, in fact, to provide legal certainty and transparency for economic agents.

- 34 It follows that, when it proceeds to a simultaneous conversion into euros and an increase in the amount of a tax, as is the case in the main proceedings, a Member State must ensure that legal certainty and transparency for economic agents are guaranteed.
- 35 Respect for those requirements requires, in particular, that those agents are able to distinguish clearly in the legislative texts at issue the decision of the authorities of the Member State to increase the amount of the tax from the process of conversion of that amount into euros.
- 36 It is for the referring court to determine whether that is so in the case in the main proceedings.
- 37 In the light of all of the foregoing considerations, the answer to the question referred is that Regulations No 1103/97 and No 974/98 must be interpreted as precluding national legislation which, on effecting the conversion into euros of an amount of tax such as that at issue in the main proceedings, raised it to an amount higher than that which would have resulted from application of the rules of conversion provided for in those regulations, unless such an increase meets the requirements of legal certainty and transparency guaranteed by those regulations, which presupposes that the legislative texts at issue make it possible to distinguish clearly the decision of the authorities of a Member State to increase that amount from the operation of conversion of that amount into euros. It is for the referring court to determine whether that is so in the proceedings before it.

## Costs

- 38 Since those 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 those incurred by the parties to the main proceedings, are not recoverable.

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

**Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro and Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro must be interpreted as precluding national legislation which, on effecting the conversion into euros of an amount of a tax on flour, meal and groats of common wheat supplied or used for human consumption, such as that at issue in the main proceedings, raised it to an amount higher than that which would have resulted from application of the rules of conversion provided for in those regulations, unless such an increase meets the requirements of legal certainty and transparency guaranteed by those regulations, which presupposes that the legislative texts at issue make it possible to distinguish clearly the decision of the authorities of a Member State to increase that amount from the operation of conversion of that amount into euros. It is for the referring court to determine whether that is so in the proceedings before it.**

[Signatures]