

Case C-640/19

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

28 August 2019

Referring court:

Tribunale Amministrativo Regionale per il Lazio (Italy)

Date of the decision to refer:

21 May 2019

Applicants:

Azienda Agricola Ambrosi Nicola Giuseppe and Others

Defendants:

Agenzia per le Erogazioni in Agricoltura (AGEA)

Ministero delle Politiche Agricole e Forestali

Subject matter of the main proceedings

Action for annulment of the demands for payment issued by the AGEA in respect of a number of agricultural holdings and of all related measures connected with the procedure for compensation, the calculation of domestic production and the determination of additional levies for the dairy year 2008/2009.

Subject matter and legal basis of the reference for a preliminary ruling

Interpretation of EU law pursuant to Article 267 TFEU.

Questions referred

(1) In so far they are intended to protect the balance between supply and demand for dairy products on the EU market, are Articles 1, 2 and 3 of Regulation (EEC) No 856/84, Articles 1 and 2(1) of Regulation (EEC) No 3950/92, Articles 1(1) and

5 of Regulation (EC) No 1788/2003 and Articles 55, 64 and 65 of Regulation (EC) No 1234/2007, and the annexes thereto, to be interpreted as excluding from the calculation of ‘milk quotas’ production intended for the export of PDO cheeses to countries outside the European Union, in line with the objectives aimed at the protection of such products laid down by Article 13 of Regulation (EEC) No 2081/92, as confirmed by Regulation (EEC) No 510/2006 and Articles 4 and 13 of Regulation (EU) No 1151/2012, in accordance with the principles set out in Articles 32 (formerly 27), 39 (formerly 33), 40 (formerly 34) and 41 (formerly 35) TFEU?

(2) If the first question is answered in the affirmative, do those rules, thus interpreted, preclude the inclusion in individual reference quantities of quotas of milk intended for the production of PDO cheeses for export outside the European Union, this being the effect of Article 2 of Decreto-legge 28 marzo 2003, n. 49, convertito con modifiche in legge 30 maggio 2003, n. 119 (Decree Law No 49 of 28 March 2003, converted into law, with amendments, by Law No 119 of 30 May 2003), and Article 2 of legge 26 novembre 1992, n. 468 (Law No 468 of 26 November 1992), in so far as that provision is referred to in Article 2 of Decree Law No 49/2003?

In the alternative, in the event that that interpretation is not considered to be correct:

(3) Are Articles 1, 2 and 3 of Regulation (EEC) No 856/84, Articles 1 and 2(1) of Regulation (EEC) No 3950/92, Articles 1(1) and 5 of Regulation (EC) No 1788/2003 and Articles 55, 64 and 65 of Regulation (EC) No 1234/2007, and the annexes thereto (as well as the national Italian transposition provisions set out in Decree Law No 49 of 28 March 2003, converted into law, with amendments, by Law No 119 of 30 May 2003, and Article 2 of Law No 468 of 26 November 1992, in so far as that provision is referred to in Article 2 of Decree Law No 49/2003), which include rather than excluding in the calculation of the quantities allocated to each Member State milk used for the production of PDO cheeses exported to or intended for markets outside the European Union, in so far as such exports are concerned, at odds with the protection objectives set out in Regulation (EEC) No 2081/92, which protects PDO production, with particular reference to Article 13, as confirmed by Regulation (EEC) No 510/2006 and by Regulation (EU) No 1151/2012, and also with reference to the protection objectives set out in Article 4 of the latter regulation, and also at odds with Articles 32 (formerly 27), 39 (formerly 33), 40 (formerly 34) and 41 (formerly 35) TFEU, the principles of legal certainty, legitimate expectations, proportionality and non-discrimination and the principle of freedom to conduct business when exporting goods outside the European Union?

Main provisions of EU law cited

TFEU Articles 32 (ex 27), 39 (ex 33), 40 (ex 34) and 41 (ex 35).

Regulation No 856/84; recitals 1, 2 and 5 and Articles 1, 2 and 3.

Regulation No 1898/87; preamble.

Regulation No 2081/92; recitals 2, 3 and 6 and Article 13.

Regulation No 3950/92; recital 1 and Articles 1(1), 2(1) and 3.

Regulation No 536/93; Article 1(1).

Regulation No 1788/2003; recitals 3, 4 and 22 and Articles 1(1) and 5.

Regulation 510/2006; recital 6 and Article 13.

Regulation No 1234/2007; recitals 31, 36, 51 and 66, Articles 55, 64 and 66 et seq. and

Annexes.

Regulation No 1151/2012; Articles 4 and 13.

Provisions of national law cited

Decreto-legge 28 marzo 2003, n. 49, Riforma della normativa in tema di applicazione del prelievo supplementare nel settore del latte e dei prodotti lattiero-caseari, come modificato dalla legge di conversione 30 maggio 2003, n. 119 (Decree-Law No 49 of 28 March 2003 reforming the rules governing the application of the additional levy in the milk and dairy products sector, converted, with amendments, into law by Law No 119 of 30 May 2003), Article 2.

Legge 26 novembre 1992, n. 468, Misure urgenti nel settore lattiero-caseario: (Law No 468 of 26 November 1992 laying down urgent measures in the dairy sector), Article 2.

Outline of the facts and the main proceedings

- 1 Under the milk quota scheme, the Agenzia per le Erogazioni in Agricoltura (the Italian Agricultural Payments Agency) ('AGEA') demanded payment by a number of agricultural holdings of an additional levy in respect of overruns in the individual reference quantities (IRQ) for the dairy year 2008/2009. Those holdings contend that data relating to the proper identification of production in the dairy sector are unreliable and that the respective IRQ are also therefore unreliable. They therefore challenged AGEA's demands for payment and all related measures before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio).

The essential arguments of the parties to the main proceedings

- 2 The applicants maintain, first of all, that Italy has never produced or been able to produce (on the basis of information provided by institutional sources, of the declared cattle population and of the production capacity of the heads of cattle) quantities of milk greater than the quota allocated to it. They make the following submissions:
 - (a) the indiscriminate setting of a milk production quota is at odds with the principles governing freedom to conduct business;
 - (b) the setting of a milk production quota restricts the development of undertakings and the production of PDOs for which both the manufacturing process and the raw materials must be concentrated in a particular area of origin;
 - (c) in particular, the link that must exist between production and territory for PDO purposes means that certain food products will not be regarded as forming part of an expanded market, in so far as they are not in competition with similar generic products;
 - (d) in particular, milk intended for PDO products for export outside the EU should be excluded from the guaranteed total quantity (GTQ) as it has no effect on the internal market and the consequence of the quota in question is a corresponding restriction on PDO products for export outside the EU, at odds with the purposes of protection and promotion laid down in Regulation No 2081/92;
 - (e) the PDO production ceiling is as much as 60% of national output, which may be exceeded by Italy during the reference period by no more than 4%.
- 3 In the light of the above, the applicants seek annulment of the contested measures on the basis of the failure to exclude from the calculation of the GTQ the quantities of milk used for the production of such products and, in the alternative, raise the question whether the relevant provisions of Regulation Nos 3590/92 and 536/93 are compatible with the Treaties, arguing that they are contrary to Article 39 (ex 33) TFEU, and allege breach of the Community principles of legal certainty, legitimate expectations, proportionality and non-discrimination.
- 4 The defendants contend that the administrative levy measure adopted is the direct result of a computerised system which operates without any discretionary powers being applied and processes data provided by the producers in question which are never contested.

Succinct presentation of the reasons for the request for a preliminary ruling

- 5 The referring court observes that: (1) Regulation No 856/84 was clear in referring to the situation of the ‘market in milk products in the Community’ and that subsequent regulations which reproduced the essence of that regulation also

clearly presuppose that the market is (only) Europe-wide; (2) the preamble to Regulation No 1898/87 does not make any express reference to the manufacture and marketing of such products for export outside the EU but only to export within the territory of the Member States; (3) the case-law of the Court of Justice (Joined Cases C-481/00 et seq.) also appears to refer only to production intended for consumption within the EU.

- 6 The referring court concludes that the functional-legal requirements for including milk quantities for the production of PDO cheeses for export outside the EU in national reference quantities are not fulfilled. It none the less asks the Court of Justice to confirm that interpretation and, if it does so, seeks to ascertain whether the provisions of EU law thus interpreted preclude the national transposing legislation (and the consequent administrative implementing measures) in so far as they include such milk rather than excluding it.
- 7 In the alternative, if, however, the legal definitions in respect of milk quotas were to be considered too generic for all milk not to be included therein, irrespective of its intended use, the referring court raises the question whether the inclusion of the disputed quantities in the quota allocated to each Member State is unlawful, on the basis: (1) that it is at odds with the purpose of PDOs, namely that of protection, the rules governing those being special rules; (2) of breach the principles relating to freedom to conduct business when exporting goods outside the EU; (3) that the protection measure is excessive in the light of the aim of protecting the internal market pursued by that measure and is, therefore, unreasonable and disproportionate; and (4) breach of the principles of legal certainty and legitimate expectations referred to in recital 51 of Regulation No 1234/71 and of the objectives set out in Regulation No 1898/87.
- 8 The following should also be borne in mind: (1) no legal basis is to be found in any of the relevant provisions for the line of case-law to the effect that the imposition of quotas even for PDO dairy products is part of a specific strategy on the part of the European Union which seeks to compensate for a limited level of production by higher product prices. (2) Such conceivably higher prices will not be sufficient to compensate for the damage arising, where milk for PDO products is also subject to quotas, as a result of the parallel supply of similar products, of lesser quality, from other geographical areas which are intended in particular to satisfy overseas demand outside the EU for PDO products, which will remain unfilled precisely because the latter products are indirectly subject to quotas (damage that will be greater, for both producers and consumers, the more the product competing with the PDO product may be freely distributed because it comes from areas outside the EU where it is not subject to quotas). (3) Milk used for PDO products for export outside the EU cannot have any effect on the supply/demand relationship of dairy products in EU countries and the inclusion of such milk in the quantities allocated to each Member State would affect, for all such countries, the calculation of the quantities of the product on internal EU markets, and as a consequence national and individual reference quantities would be unreliable. (4) There is no justification for treating in the same way the

different situations of EU producers by applying restrictions intended to maintain a balance on the internal EU market even to those producers who export outside the European Union and also have higher costs and more onerous methods of production than ordinary producers.

- 9 The above considerations suggest that it is wholly conceivable that any decision to include such products is an indirect effect not intended by the EU legislature. The Court of Justice must determine whether such inclusion is lawful, given the various arguments against an interpretation of Regulation Nos 856/84, 3950/92, 1788/2003 and 1234/2007 as including such products, in the light of the wording of measures for the protection of PDO products, which are of equal standing, the objectives of promotion, the limits imposed on the organisation of markets in Articles 32 (ex 27), 39 (ex 33), 40 (ex 34) and 41 (ex 35) TFEU and the fundamental principles of the European Union.