

Case C-99/22

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:

14 February 2022

Referring court:

Symvoulío tis Epikrateias (Council of State, Greece)

Date of the decision to refer:

30 December 2021

Appellant:

Kapniki A. Michailides SA

Respondents:

Organismos Pliromon kai Elegchou Koinotikon Enischyseon Prosanatolismou kai Eggyseon (OPEKEPE) (Greek Payment and Control Agency for Guidance and Guarantee Community Aid)

Ypourgos Agrotikis Anaptyxis kai Trofimou (Minister for Agricultural Development and Food)

Subject matter of the main proceedings

Application for annulment of an act of the Ethnikos Organismos Kapnou (National Tobacco Board) concerning reimbursement of a Community premium paid in error

Subject matter and legal basis of the request

Agriculture – Common organisation of the markets – Raw tobacco – Council Regulation (EEC) No 2062/92 – Validity – Interpretation – Principle of non-retroactivity of legal rules – Principle of protection of legitimate expectations – Article 267 TFEU

Question referred for a preliminary ruling

Does Article 3(3) of Council Regulation (EEC) No 2062/92 of 30 June 1992, which states that, where the quantity of tobacco of low class purchased by a processor exceeds, relative to his total purchases of the variety in question, the percentage indicated in Annex IV, the premium shall be reduced by 30% in respect of the quantity in excess of the percentage in question, infringe the principle of the non-retroactivity of legal rules and the principle of the protection of legitimate expectations?

Provisions of European Union law and case-law relied on

Council Regulation (EEC) No 727/70 of 21 April 1970 on the common organisation of the market in raw tobacco (OJ, English Special Edition 1970 (I), p. 206), last amended by Council Regulation (EEC) No 860/92 of 30 March 1992 (OJ 1992 L 91, p. 1), Articles 1 to 7a, 13 and 17

Commission Regulation (EEC) No 1726/70 of 25 August 1970 on the procedure for granting the premium for leaf tobacco (OJ, English Special Edition 1970 (II), p. 587), as amended by Commission Regulation (EEC) No 1413/1991 of 29 March 1991 (OJ 1991 L 135, p. 15), Articles 2, 2a, 2b and 7(2)

Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organisation of the market in raw tobacco (OJ 1992 L 215, p. 70), Articles 1, 3, 5, 6 and 8 to 10

Council Regulation (EEC) No 861/92 of 30 March 1992 fixing, for the 1992 harvest, the maximum guaranteed quantities in the raw tobacco sector (OJ 1992 L 91, p. 2), first and second recitals

Council Regulation (EEC) No 2062/92 of 30 June 1992 fixing, for the 1992 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, and the production areas (OJ 1992 L 215, p. 22), first, third, seventh and ninth recitals, Article 3, Annexes I and IV

Judgments of 11 July 1991, *Crispoltoni*, C-368/89, EU:C:1991:307; of 5 October 1994, *Crispoltoni and Others*, C-133/93, C-300/93 and C-362/93, EU:C:1994:364; of 26 March 1998, *Petridi*, C-324/96, EU:C:1998:138; of 17 September 1998, *Pontillo*, C-372/96, EU:C:1998:412; and of 6 July 2000, *ATB and Others*, C-402/98, EU:C:2000:366.

Succinct presentation of the facts and procedure in the main proceedings

- 1 By act of 22 September 1995 of the director of the Ethnikos Organismos Kapnou (National Tobacco Board, Greece) issued pursuant to Regulation No 2062/92, the

appellant was requested to reimburse a Community premium of GRD 51 564 843 (EUR 151 327 492) paid in error. The reason given was that the premium paid to it exceeded the premium to which it was entitled, as the Katerini variety of tobacco purchased by it from the 1992 harvest was of low class and exceeded the percentage laid down for that class in Annex IV to the regulation, i.e. it exceeded 20%.

- 2 The appellant lodged an application for annulment of that act with the Symvoulion tis Epikrateias (Council of State, Greece), which referred the application to the Dioikitiko Protodikeio Athinon (Administrative Court of First Instance, Athens, Greece) for adjudication. The Administrative Court of First Instance, Athens, dismissed the application as unfounded. The appellant then brought an appeal before the Dioikitiko Efeteio Athinon (Administrative Court of Appeal, Athens), which was dismissed by the judgment under appeal.
- 3 The Administrative Court of Appeal, Athens, found that Article 3(3) of Regulation No 2062/92 concerned the 1992 harvest and was intended to ensure the transition to the new scheme for the common organisation of the market in tobacco for the 1993 harvest, with the necessary amendments. It also found that the provision fixing premiums does not apply retroactively, as it concerns only the quality of the producer's tobacco, not the time at which the contracts for the 1992 harvest were concluded. It therefore rejected the appellant's argument that Regulation No 2062/92 applies retroactively and is therefore invalid, inasmuch as it covers legal relationships established prior to its publication on 30 July 1992, including tobacco purchasing contracts with producers for the 1992 harvest signed by the applicant in the spring period, that is, before 1 June 1992.
- 4 Furthermore, the Administrative Court of Appeal, Athens, found that nor does Article 3(3) of Regulation No 2062/92 infringe the principle of legitimate expectations. In particular, it found, in keeping with the settled case-law of the Court, that that principle is intended to protect all informed traders from unforeseeable changes in situations and legal relationships and that, in an area such as the common organisation of the markets, where constant adjustments are made to meet changes in the economic situation, traders cannot have a legitimate expectation that the existing legal situation will be maintained. Consequently, it rejected the appellant's claim that the sudden and subsequent change to the Community aid scheme frustrated its expectation, based on the legal framework in force when the cultivation contracts were concluded, that it would receive the full premium rather than 30% less.
- 5 The applicant appealed against the judgment of the Administrative Court of Appeal, Athens, before the referring court.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 6 The Court has consistently held that, although in general the principle of legal certainty precludes an EU 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 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 (judgment of 11 July 1991, *Crispoltoni*, C-368/89, EU:C:1991:307, paragraph 17).

- 7 The Court has further consistently held that the principle of the protection of legitimate expectations, which is one of the fundamental principles of the EU, is intended to protect informed traders against unforeseeable changes in situations and legal relationships. However, in the area of the common organisation of the markets, where the competent institutions have broad discretionary powers in matters of common agricultural policy and where constant adjustments are made to meet changes in the economic situation, traders cannot have a legitimate expectation that an existing situation will be maintained. The scope of the principle of the protection of legitimate expectations cannot be extended to the point at which it generally prevents the application of a new rule to the future effects of situations created under the earlier rules. In particular, as traders cannot claim a vested right to a particular advantage, a possible reduction in their income cannot be contrary to the principle of the protection of legitimate expectations (see judgments of 5 October 1994, *Crispoltoni and Others*, C-133/93, C-300/93 and C-362/93, EU:C:1994:364; of 26 March 1998, *Petridi*, C-324/96, EU:C:1998:138; of 17 September 1998, *Pontillo*, C-372/96, EU:C:1998:412; and of 6 July 2000, *ATB and Others*, C-402/98, EU:C:2000:366).
- 8 Regulation No 727/70 is intended, inter alia, to encourage improvements in the quality of the tobacco produced and the conversion of cultivation to varieties which are more competitive and, in light of the direction in which it seeks to steer production, a norm is fixed annually for the harvest of the following calendar year and for the reference quality of each variety. The prices and the reference quality and production areas are fixed before 1 August each year for the harvest of the following calendar year. The regulation also provides for natural or legal persons who purchase leaf tobacco directly from Community growers to be granted a premium, provided they have concluded European cultivation contracts with the growers. The amount of the premium applicable to the harvest of the following calendar year is fixed annually, before 1 November, for each variety from the recognised production areas and for the corresponding reference quality. The amount of the premium thus fixed applies to all tobacco of the variety concerned; however, in order not to hinder the proper functioning of the common organisation of the market and the qualitative adjustment of production to market requirements, it may, by way of exception, be fixed for qualities other than the reference quality at a higher or lower amount than that which normally applies to all tobacco of the variety.
- 9 Regulation No 727/70 was repealed by Regulation No 2075/92, which entered into effect from the 1993 harvest. It aims to adjust the scheme based primarily on a quality policy and provides that quality and other requirements must be met in order to qualify for the premium. The following were adopted with a view to

reforming the legislation in the raw tobacco sector, especially for the 1992 harvest, which was not covered by the provisions of the new Regulation No 2075/92: (a) Regulation No 861/92 laying down the maximum guaranteed quantities; and (b) Regulation No 2062/92 laying down the norm, intervention price, premium, reference quality and production areas for each individual variety.

- 10 It is clear from the scheme of Regulation No 727/1970 on the organisation of the common market in raw tobacco that the 'reference quality' determined annually, which is defined so as to allow as objective an assessment as possible of the quality of the tobacco, was one of the basic criteria used to duly determine, inter alia, the amount of the premium by way of regulation. However, it is not clear from the scheme established by those arrangements that the premium was to be granted to beneficiaries only if they purchased tobacco of a specific quality in keeping with the 'reference quality' determined annually. In other words, it is not clear that the premium depended on the beneficiary's purchasing tobacco, under the cultivation contract, with the characteristics of the 'reference quality' of a variety determined by the regulations.
- 11 Article 3(3) of Regulation No 2062/92 provides, first, that the premium is reduced by 30% where tobacco of low class, category or quality is purchased by a processor who is the beneficiary of a premium and the quantity of low quality tobacco exceeds a particular percentage relative to his or her total purchases of the variety in question. That percentage was fixed, in the relevant annex, at 20% for the Katerini variety at issue.
- 12 Given that Regulation No 2062/92 on the 1992 harvest, which was not covered by the new Regulation No 2075/92, was adopted on 30 June 1992 and published in the *Official Journal of the European Union* on 30 July 1992, that is to say, at a time when cultivation contracts should already have been concluded in accordance with Regulation No 1726/70, the above provision of Article 3(3) of Regulation No 2062/92 has retroactive effect.
- 13 Furthermore, the referring court is of the opinion that, although the reduction to the premium enacted was intended to improve the quality of tobacco varieties cultivated and hence their competitiveness, that objective, which was in keeping with the objectives of the common organisation of the market in tobacco, could not, however, be achieved at the time when Regulation No 2062/92 entered into force. As the deadline for growers and processors to conclude cultivation contracts had expired at that time and the operators had already made their decision regarding which varieties would be produced, it was not possible to attain the objective of preventing the cultivation of tobacco varieties which did not meet the qualitative criteria for the 1992 harvest.
- 14 Consequently, and because of that, the referring court has doubts as to the validity of Article 3(3) of Council Regulation No 2062/92 (see judgment of 11 July 1991, *Crispoltoni*, C-368/89, EU:C:1991:307).

- 15 The referring court further considers that the principle of the protection of the legitimate expectations of traders has also been infringed in this case as, under the rule in force under Regulation No 727/70, the amount of the premium applicable for the harvest of the following calendar year is fixed each year before 1 November, whereas cultivation contracts must be concluded by no later than the end of June.

WORKING DOCUMENT