

**Case C-503/22**

**Request for a preliminary ruling**

**Date lodged:**

22 July 2022

**Referring court:**

Conseil d'État (France)

**Date of the decision to refer:**

22 July 2022

**Applicant:**

Association interprofessionnelle des fruits et légumes frais (Interfel)

**Defendant:**

Ministère de l'Agriculture et de la Souveraineté alimentaire

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**CONSEIL D'ETAT (Council of State, France)**

in its judicial capacity

[...]

ASSOCIATION  
INTERPROFESSIONNELLE DES  
FRUITS ET LEGUMES FRAIS

[...]

Having regard to the following procedure:

By an application registered on 5 March 2021 and a reply registered on 8 July 2022 at the Judicial Affairs Secretariat of the Council of State, the Association interprofessionnelle des fruits et légumes frais (Interfel) requested the Council of State:

1. to annul, on the ground that they were adopted *ultra vires*, the decision of 20 November 2020 by which the Minister for Agriculture and Food refused to extend the inter-trade agreement 'Apples – sizing by weight' for the marketing

years 2021 to 2023, concluded within Interfel, and the Minister's decision impliedly dismissing the administrative appeal brought against that decision;

2. to adopt an order requiring the Minister for Agriculture and Food, on the basis of Article L. 911-1 of the Code de justice administrative (Code of Administrative Justice), to publish a notice concerning the tacit decision to extend the inter-trade agreement, within one month of notification of the Council of State's decision;

[...]

It maintains that:

- the statement of reasons contained in the decision of 20 November 2020 is insufficient, contrary to the last paragraph of Article L. 632-4 of the Code rural et de la pêche maritime (Rural and Maritime Fishing Code);
- the decision of 20 November 2020 was adopted by an authority lacking competence;
- the refusal decision of 20 November 2020 is unlawful because it was taken after expiry of the period allowed for examination, laid down in Article L.632-4 of the Rural and Maritime Fishing Code;
- the refusal to extend infringes the principles of legal certainty and of the protection of legitimate expectations;
- the refusal to extend is vitiated by a misuse of powers in that the administration carried out a review of appropriateness, rather than a review of lawfulness;
- the refusal to extend the agreement is vitiated by a manifest error of assessment, since the justifications relating to the qualitative nature of the restrictions laid down in the agreement were not taken into account.

By a defence registered on 22 April 2022, the Minister for Agriculture and Food contended that the application should be dismissed. The Minister maintains that the pleas raised by the applicant are unfounded.

[...]

Having regard to:

- Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013;
- Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011;
- Commission Delegated Regulation (EU) 2019/428 of 12 July 2018;

[...]

Whereas:

- 1 It is apparent from the case file that, on 10 June 2020, the Association interprofessionnelle des fruits et légumes frais (Interfel), an agricultural inter-trade organisation recognised on the basis of Article L. 632-1 of the Rural and Maritime Fishing Code, concluded an inter-trade agreement ‘Apples – sizing by weight’ for the marketing years 2021 to 2023. By letter of 2 July 2020, received on 7 July 2020, Interfel requested the Minister for Agriculture and Food to extend that agreement. On 7 September 2020, at the end of the two-month period initially set for examining the request, the administration asked Interfel to provide clarification regarding two of the measures provided for in the agreement and extended by two months the period allowed for examining the request, as it was entitled to do under Article L. 632-4 of the Rural and Maritime Fishing Code. The Minister for Agriculture and Food refused to extend that agreement by a decision of 20 November 2020, which must be regarded as withdrawing the decision accepting the request for extension which, under Article L. 632-4, is deemed to have been given in the absence of any express decision taken on the request by the end of the examination period that had been extended to 7 November 2020. Interfel seeks the annulment, on the ground that they were adopted *ultra vires*, of the decision of 20 November 2020 and the implied decision dismissing the administrative appeal brought against that decision.
  
- 2 Article 164 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 provides as follows: ‘1. *In cases where a recognised producer organisation, a recognised association of producer organisations or a recognised interbranch organisation operating in a specific economic area or areas of a Member State is considered to be representative of the production of or trade in, or processing of, a given product, the Member State concerned may, at the request of that organisation, make binding for a limited period of time some of the agreements, decisions or concerted practices agreed within that organisation on other operators acting in the economic area or areas in question, whether individuals or groups, who do not belong to the organisation or association. [...] 4. The rules for which extension to other operators may be requested as provided for in paragraph 1 shall have one of the following aims: [...] (b) stricter production rules than those laid down in Union or national rules; [...] (d) marketing; [...] (k) the definition of minimum qualities and definition of minimum standards of packing and presentation; [...] Those rules shall not cause any damage to other operators in the Member State concerned or the Union and shall not have any of the effects listed in Article 210(4) or be otherwise incompatible with Union law or national rules in force. [...]*’

- 3 Article 75 of Regulation (EU) No 1308/2013 of 17 December 2013 provides as follows: *'1. Marketing standards may apply to one or more of the following sectors and products: [...] (b) fruit and vegetables; [...] 3. Without prejudice to Article 26 of Regulation (EU) No 1169/2011 of the European Parliament and of the Council, the marketing standards referred to in paragraph 1 may cover one or more of the following, to be determined on a sectoral or product basis and based on the characteristics of each sector, the need to regulate the placing on the market and the conditions defined in paragraph 5 of this article: [...] (b) classification criteria such as grading into classes, weight, sizing, age and category; [...]'* Part 1, 'Marketing standard for apples', within Part B of Annex I to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, as amended by Commission Delegated Regulation (EU) 2019/428 of 12 July 2018 amending Implementing Regulation (EU) No 543/2011 as regards marketing standards in the fruit and vegetables sector, provides, in the provisions concerning sizing, that *'size is determined either by the maximum diameter of the equatorial section or by weight [...]'* and that, *'to ensure the uniformity in size, the range in size between produce in the same package shall not exceed: [...] for fruit sized by weight: for "Extra" Class and Classes I and II apples packed in rows and layers: [the following ranges, in grammes] 70-90 / 15 g / 91-135 / 20 g / 136-200 / 30 g / 201-300 / 40 g / > 300 / 50 g'* and *'for Class I fruit packed in sales packages or loose in the package: [the following ranges, in grammes]: '70-135 / 35 / 136-300 / 70 / > 300 / 100', and states that 'there is no sizing uniformity requirement for Class II fruit packed in sales packages or loose in the package'.*
- 4 It is apparent from the case file that the inter-trade agreement relating to the marketing rules for 'Apples – sizing by weight' for the marketing years 2021 to 2023 concluded by Interfel provides for sizing exclusively by weight, and thus excludes sizing by diameter as allowed by the provisions of Implementing Regulation (EU) No 543/2011 cited in paragraph 3 above. It also stipulates that Class I and II apples packed in rows and layers in a single package must all be within one of the fourteen size ranges which it specifies and that Class I apples packed loose in the same package must all be within one of the eight size ranges which it specifies. These size ranges are more detailed than those provided for by Implementing Regulation (EU) No 543/2011.
- 5 In support of its request for extension, Interfel argued that the concern of ensuring the quality of fruit sold to consumers justified those additional requirements. However, the provisions of Article 164(4) of Regulation (EU) No 1308/2013 of 17 December 2013 cited in paragraph 2 above expressly authorise the extension of agreements establishing more stringent standards than those laid in Union rules only in the case of 'production rules', mentioned in point (b) of Article 164(4) and, as regards packing and presentation, referred to in point (k), they mention only 'minimum standards'.

- 6 The response to the plea alleging that the Minister could not legally withdraw, by the contested decision, the extension of the agreement concluded by Interfel that was initially deemed to be have been agreed, since that extension was not vitiated by unlawfulness, depends on the answer to the following questions:
1. Is Article 164 of Regulation (EU) No 1308/2013 of 17 December 2013 to be interpreted as authorising the extension of inter-trade agreements which establish stricter rules than those laid down in Union rules not only in the case of ‘production rules’, mentioned in point (b) of Article 164(4), but also in all of the cases mentioned in points (a) and (c) to (n) thereof, in relation to which Article 164 provides that the extension of an inter-trade agreement may be requested and, in particular, as authorising, where EU rules lay down marketing and packaging rules for a given class of fruit or vegetables, the adoption of more stringent rules in an inter-trade agreement and their extension to all operators?
  2. If the answer to question 1 depends on whether it is ‘marketing rules’, mentioned in point (d) of Article 164(4), or ‘minimum standards of packing and presentation’, referred to in point (k) thereof, that are at issue, does the definition of size ranges intended to ensure the uniformity of products in the same package fall under marketing rules or under standards of packing and presentation?
- 7 The questions set out in paragraph 6 above are decisive to the resolution of the present dispute and raise serious difficulties of interpretation, since there is no case-law of the Court of Justice of the European Union offering guidance on the purpose and scope of the provisions in question. Accordingly, it is necessary to make a reference to the Court under Article 267 of the Treaty on the Functioning of the European Union and, until the Court gives its ruling, to stay the proceedings on the application brought by the Association interprofessionnelle des fruits et légumes.

*DECIDES AS FOLLOWS:*

Article 1: The proceedings on the application brought by the Association interprofessionnelle des fruits et légumes are stayed until the Court of Justice of the European Union has given its ruling on the following questions:

1. Is Article 164 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 to be interpreted as authorising the extension of inter-trade agreements which establish more stringent standards than those laid down in Union rules not only in the case of ‘production rules’, mentioned in point (b) of Article 164(4), but also in all of the cases mentioned in points (a) and (c) to (n) thereof, in relation to which Article 164 provides that the extension of an inter-trade agreement may be requested and, in particular, as authorising, where EU rules lay down marketing

and packaging rules for a given class of fruit or vegetables, the adoption of more stringent rules in an inter-trade agreement and their extension to all operators?

2. If the answer to question 1 depends on whether it is ‘marketing rules’, mentioned in point (d) of Article 164(4), or ‘minimum standards of packing and presentation’, referred to in point (k) thereof, that are at issue, does the definition of size ranges intended to ensure the uniformity of products in the same package fall under marketing rules or under standards of packing and presentation?

[...]

WORKING DOCUMENT