

Case C-504/22

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

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 partially 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 Articles II and III of the inter-trade agreement 'Kiwifruit Hayward –

harvesting date and marketing date – maturity’ for the marketing years 2020 to 2022, 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 Articles L. 911-1 and L 911-2 of the Code de justice administrative (Code of Administrative Justice), to re-examine its request for the extension of Articles II and III of the inter-trade agreement ‘Kiwifruit Hayward – harvesting date and marketing date – maturity’ for the marketing years 2020 to 2022, within two months of the date 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 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, in that the justification for the qualitative nature of the restrictions laid down in the agreement was not taken into account;
- the refusal to extend incorrectly classified the minimum harvesting and marketing dates as measures regulating supply.

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 ‘Kiwifruit Hayward – harvesting date and marketing date – maturity’ for the marketing years [2020 to 2022]. Interfel requested the Minister for Agriculture and Food to extend that agreement. By decision of [20 November] 2020, the Minister for Agriculture and Food refused to extend the provisions of that agreement pursuant to which kiwifruit *Actinidia deliciosa* ‘Hayward’ cultivar, produced in France, may not be harvested before 10 October or sold before 6 November in France. Interfel seeks the annulment, on the ground that they were adopted *ultra vires*, of that decision and the implied decision by which the Minister dismissed the administrative appeal brought against the refusal 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 3 ‘Marketing standard for kiwifruit’ 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, under ‘Minimum maturity requirements’, only that ‘the kiwifruit must be sufficiently developed and display satisfactory ripeness. In order to satisfy this requirement, the fruit at packing must have attained a degree of ripeness of at least 6.2° Brix (20) or an average dry matter content of 15%, which should lead to 9.5° Brix (20) when entering the distribution chain.’

- 4 It is apparent from the case file that the inter-trade agreement relating to the marketing rules for ‘Kiwifruit Hayward – harvesting date and marketing date – maturity’ for the marketing years [2020 to 2022] concluded by Interfel provides that kiwifruit *Actinidia deliciosa* ‘Hayward’ cultivar, produced in France, may not be harvested before 10 October or sold before 6 November in France. Those requirements therefore go further than the provisions cited above found in Part 3 within Part B of Annex I to Commission Implementing Regulation (EU) No 543/2011, which specify no requirements relating to the date of harvesting or the date of marketing, but only the minimum maturity requirements mentioned above.
- 5 In support of its request for extension, Interfel argued that the concern of ensuring the quality of fruit sold to consumers justified that additional restriction. The Minister maintains that the rules in question are measures regulating supply, the extension of which is not authorised. 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).
- 6 The response to the plea alleging that the Minister could not legally refuse to extend the agreement at issue, since Interfel had demonstrated the beneficial effect on quality of the requirements concerning the harvesting date and the marketing date for which the extension is sought, depends on the answer to the following question:
 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?

2. Are rules fixing harvesting dates and marketing dates rules that can be laid down by inter-trade agreement and extended on the basis of Article 164 of Regulation (EU) No 1308/2013 of 17 December 2013 and, if so, are rules fixing harvesting dates and marketing dates ‘production rules’, as referred to in point (b) of Article 164(4) or, as Annex XVIa to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products[, as amended,] previously stipulated, ‘marketing rules’, as now referred to in point (d) of Article 164(4)?
- 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 17 December 2013 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?
2. Are rules fixing harvesting dates and marketing dates rules that can be laid down by inter-trade agreement and extended on the basis of Article 164 of Regulation (EU) No 1308/2013 of 17 December 2013 and, if so, are rules fixing harvesting dates and marketing dates ‘production rules’, as referred to in point (b) of Article 164(4) or, as Annex XVIa to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products[, as amended,] previously stipulated, ‘marketing rules’, as now referred to in point (d) of Article 164(4)?

[...]