JUDGMENT OF THE COURT (Fifth Chamber)

4 October 2001 *

In Case C-403/99,

Italian Republic, represented by U. Leanza, acting as Agent, and D. Del Gaizo, Avvocato dello Stato, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by F. Ruggeri Laderchi, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for the annulment of Commission Regulation (EC) No 1639/1999 of 26 July 1999 fixing the maximum compensatory aid resulting from the rates for the conversion of the euro into national currency units and the exchange rates applicable on 1 July 1999 (OJ 1999 L 194, p. 33),

* Language of the case: Italian.

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, D.A.O. Edward, P. Jann (Rapporteur), S. von Bahr and C.W.A. Timmermans, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,

Registrar: H.A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 5 April 2001, in which the Italian Republic was represented by D. Del Gaizo and the Commission by L. Visaggio, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 8 May 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 20 October 1999 the Italian Republic brought an action under the first paragraph of Article 230 EC for the annulment of Commission Regulation (EC) No 1639/1999 of 26 July 1999 fixing the maximum compensatory aid resulting from the rates for the conversion

of the euro into national currency units and the exchange rates applicable on 1 July 1999 (OJ 1999 L 194, p. 33, hereinafter 'the contested regulation').

Legal background

2 The purpose of the Community agrimonetary system is to reduce the impact of monetary fluctuations on the value of the amounts paid to Community farmers in a specific currency but expressed, in the measures relating to the common agricultural policy, in another currency or in a unit of account.

3 Before the introduction, with effect from 1 January 1999, of the euro as the single currency in 11 Member States of the European Union, the Community agrimonetary system was essentially based on the following four regulations:

— Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy (OJ 1992 L 387, p. 1), most recently amended by Council Regulation (EC) No 150/95 of 23 January 1995 (OJ 1995 L 22, p. 1);

— Council Regulation (EC) No 1527/95 of 29 June 1995 regulating compensation for reductions in the agricultural conversion rates of certain national currencies (OJ 1995 L 148, p. 1);

— Council Regulation (EC) No 2990/95 of 18 December 1995 regulating compensation for appreciable reductions in the agricultural conversion rates before 1 July 1996 (OJ 1995 L 312, p. 7), as amended by Council Regulation (EC) No 1451/96 of 23 July 1996 (OJ 1996 L 187, p. 1);

— Council Regulation (EC) No 724/97 of 22 April 1997 determining measures and compensation relating to appreciable revaluations that affect farm incomes (OJ 1997 L 108, p. 9), as amended by Council Regulation (EC) No 942/98 of 20 April 1998 (OJ 1998 L 132, p. 1).

4 With regard, more particularly, to aid calculated on a flat-rate basis by reference, *inter alia*, to number of hectares or head of livestock, usually known as direct aid, Article 3 of Regulation No 1527/95 provided that the agricultural conversion rates applicable on 23 June 1995 were to remain unchanged until 1 January 1999. The subsequent regulations contained similar provisions freezing agricultural conversion rates until 1 January 1999.

5 With the introduction of the euro, the agrimonetary system ceased to be of relevance to the Member States which adopted that currency pursuant to the Treaty ('the participating Member States'). As regards the States which did not adopt the euro pursuant to the Treaty ('the non-participating Member States'), the Community legislature decided to abolish the specific agricultural conversion rates and to introduce a new agrimonetary system based on different principles.

6 To that end, Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro (OJ 1998 L 349, p. 1) provides, in Article 2(1) and (2):

'1. Prices and amounts fixed in legal instruments relating to the common agricultural policy shall be expressed in euro.

2. They shall be granted or collected in euro in the participating Member States. In the other Member States, they shall be converted into their national currency by means of an exchange rate, and, without prejudice to Article 8, granted or collected in national currency.'

7 Article 5 of that regulation provides, with regard to direct aid:

'1. In cases where the exchange rate applicable on the date of the operative event for:

— flat-rate aid calculated per hectare or per livestock unit,

or

— a compensatory premium per sheep or goat,

or

— amounts of a structural or environmental nature

is below that applicable previously, the Member State concerned may make compensatory payments to farmers in three successive tranches lasting twelve months each, starting on the date of the operative event.

Compensatory aid must be granted in the form of an addition to the aid, premiums and amounts referred to in the first subparagraph.

2. The maximum amount of the first tranche of compensatory aid shall be established, for the Member State concerned as a whole, in accordance with the procedure laid down in Article 9, in accordance with point 4 of the Annex. However, the Member State may waive the grant of the compensatory aid when this amount corresponds to a reduction of less than 0.5%.

3. The amounts paid out under the second and third tranches shall each be reduced, *vis-à-vis* the level of the previous tranche, by at least a third of the amount paid out in the first tranche.

4. The amounts referred to in paragraph 3 shall be reduced or cancelled if necessary as a function of the effect on income of the development of the exchange rates recorded on the first day of the second and third tranches.

5. This article shall not apply to amounts to which a rate lower than the new rate was applicable during the twenty-four months immediately before the new rate took effect.'

8 Under Article 3(1) of Council Regulation (EC) No 2800/98 of 15 December 1998 on transitional measures to be applied under the common agricultural policy with a view to the introduction of the euro (OJ 1998 L 349, p. 8),

'Where the conversion rate for the euro into national currency units or the exchange rate for the euro into national currency applicable on the day of the operative event in 1999 to:

— flat-rate aid calculated per hectare or per livestock unit, or

— compensatory premiums per ewe or she-goat, or

— amounts of a structural or environmental nature

is lower than the rate applied previously, compensatory aid shall be granted.

The aid shall be calculated in accordance with Article 5 of Regulation (EC) No 2799/98.

Notwithstanding the second indent of Article 6(1) of the said regulation, the first year the Community contribution shall amount to 100% of the aid.'

9 Regulations Nos 2799/98 and 2800/98 were implemented by Commission Regulation (EC) No 2808/98 of 22 December 1998 laying down detailed rules for the application of the agrimonetary system for the euro in agriculture (OJ 1998 L 349, p. 36) and Commission Regulation (EC) No 2813/98 of 22 December 1998 laying down detailed rules for applying the transitional measures for the introduction of the euro to the common agricultural policy (OJ 1998 L 349, p. 48).

10 Articles 4 to 7 of Regulation No 2813/98 lay down the detailed rules for granting the compensatory aid referred to in Article 3 of Regulation No 2800/98.

11 Under Article 4(2) of Regulation No 2813/98, the maximum amounts of compensatory aid are to be determined in accordance with Article 5(2) of Regulation No 2799/98.

12 Article 5 of Regulation No 2813/98 provides:

'The maximum level of the aid shall be converted, in the case of the Member States participating in the euro, into national currency units using the conversion rates irrevocably fixed by the Council in accordance with the first sentence of Article 109l(4) of the Treaty and, in the case of Member States not participating in the euro, into the national currency using the exchange rate on the date of the operative event.'

13 Article 6 of that regulation is worded as follows:

'The maximum amount of the compensatory aid referred to in Article 4(2) resulting from a reduction in the agricultural conversion rate frozen until 1 January 1999 shall be increased by the inverse of the relation between the rate referred to in Article 5 and the agricultural conversion rate referred to above.'

14 In the contested regulation, the Commission fixed the maximum amounts of compensatory aid for direct aid for which the operative event occurred on 1 July 1999. On that occasion, the Commission did not apply the increase provided for in Article 6 of Regulation No 2813/98.

Substance

The first plea in law

Arguments of the parties

15 The Italian Government submits that the contested regulation infringes Article 6 of Regulation No 2813/98, which laid down a general rule applicable to all direct aid affected by the freezing of agricultural conversion rates, regardless of when the operative event giving entitlement to receipt of the aid occurred. That rule is clear and unequivocal, and therefore an interpretation based on an allegedly different intention on the part of the Community legislature cannot be held to prevail over the proper meaning of the terms employed.

16 The contested regulation also infringes the combined provisions of Article 5 of Regulation No 2799/98 and Article 3 of Regulation No 2800/98, since it prevents full compensation for the losses suffered as a result of a substantial revaluation of the national currency unit or of the national currency in which the aid is paid.

17 Moreover, the contested regulation is vitiated by an inadequate statement of reasons and a misuse of powers, constituting further grounds for its annulment.

18 In response to this first plea in law, the Commission states that Article 6 of Regulation No 2813/98 lays down an exceptional rule which applies only to direct aid for which the agricultural conversion rate was frozen and for which the operative event occurred on 1 January 1999.

19 In order to guarantee the amount of direct aid in national currency, Article 3 of Regulation No 1527/95 and the analogous provisions of the subsequent regulations provided for maintenance of the agricultural conversion rates until 1 January 1999 inclusive.

20 Since Article 109l(4) of the EC Treaty (now Article 123(4) EC) provides that, at the beginning of the third stage of monetary union, the single currency was to replace the currencies of the participating Member States at a rate which was to be irrevocably fixed by the Council, the Commission was required to use that rate, as it did in Article 5 of Regulation No 2813/98. Accordingly, although provision was made for the grant of compensatory aid equal to the difference between the frozen agricultural conversion rate and the new rate, the amount of the compensatory aid calculated in euro necessarily had to be converted using the new rate. That conversion on the basis of the new rate resulted in the grant of an amount of aid, expressed in national currency units or in national currency, lower than that which would have been obtained if the frozen agricultural conversion rate had been applied.

21 That situation raised, in the Commission's view, a problem of legitimate expectations, since the Council had previously guaranteed that the conversion rates would be frozen until 1 January 1999. The choice of that date was particularly important since 1 January was the date of the operative event for numerous direct aids. It was in order to remedy that problem that Article 6 of Regulation No 2813/98 was adopted. On the other hand, contrary to the Italian Government's contention, operators could not have had any legitimate expectations concerning the rates which would be applied to direct aid for which the operative event fell after 1 January 1999. Rates had not in fact been frozen beyond that date and nobody could have foreseen what rates would be applicable on those dates.

22 That systematic interpretation is, in the Commission's view, supported by a literal interpretation of Article 6 of Regulation No 2813/98. In the case of direct aid for which the operative event occurred after 1 January 1999, it cannot be contended that the compensatory aid results from a reduction of the agricultural conversion

rate frozen until 1 January 1999. In that case, the compensatory aid derives from the rate applicable on the date of the operative event, that is to say from the development of a rate which was no longer frozen.

23 The Commission adds that it is clear that Regulation No 2813/98 applies only to direct aid for which the operative event occurred in 1999. If, as the Italian Government contends, Article 6 of that regulation was to be applicable to all direct aid for which the operative event was to fall during that year, it would have been otiose to point out that that provision related to aid 'resulting from a reduction in the agricultural conversion rate frozen until 1 January 1999'.

24 It follows, according to the Commission, that when the contested regulation was adopted it was inappropriate to apply Article 6 of Regulation No 2813/98. The Commission did not therefore infringe that provision.

Findings of the Court

25 The wording of Article 6 of Regulation No 2813/98 does raise difficulties of interpretation.

26 On the one hand, it is true, as the Italian Government emphasises, that that provision does not, in determining its scope, refer to the date of the operative event. That militates in favour of its application to all direct aid for which the operative event fell in 1999.

27 On the other hand, it is also true, as the Commission contends, that such general application would render otiose the clarification that the compensatory aid must result from a reduction of the agricultural conversion rate which was frozen until 1 January 1999.

28 In those circumstances, it must be borne in mind that, according to settled case-law, where a provision of Community law is open to several interpretations, preference must be given to that interpretation which ensures that the provision retains its effectiveness (see in particular Case C-434/97 *Commission* v *France* [2000] ECR I-1129, paragraph 21).

29 The Commission has stated convincingly that Article 6 of Regulation No 2813/98 is designed to protect economic operators' legitimate expectations that agricultural conversion rates would, as had been stipulated, be frozen until 1 January 1999. The Italian Government has not criticised that objective but contends that such legitimate expectations also existed in relation to direct aid for which the operative event occurred on a later date.

30 The latter argument cannot be accepted. The rules freezing agricultural conversion rates until 1 January 1999 gave operators no guarantee capable of giving rise to any legitimate expectations regarding the amount of direct aid in the future.

31 It follows that the interpretation advocated by the Commission, whereby Article 6 of Regulation No 2813/98 constitutes an exceptional rule applicable only to direct aid for which the operative event occurred on 1 January 1999, is the one which corresponds to the purpose of that provision.

32 That interpretation of Article 6 of Regulation No 2813/98 is not contrary to its wording and must therefore be adopted, provided that it is compatible with its legislative context.

33 Pursuant to Article 4 of Regulation No 2813/98, Article 6 of that regulation forms part of the detailed rules for granting the compensatory aid referred to in Article 3 of Regulation (EC) No 2800/98. The latter provision refers, for calculation of the amount of the aid, to Article 5 of Regulation No 2799/98.

34 Those articles of Regulations Nos 2799/98 and 2800/98, adopted by the Council, do not in principle empower the Commission to depart from the methods applicable to calculation of the amount of the aid.

35 However, the general principle of protection of legitimate expectations was as binding on the Council when it adopted Regulations Nos 2799/98 and 2800/98 as it was on the Commission when it implemented them.

36 Accordingly, first, the principle of the protection of legitimate expectations required the Commission to grant, in respect of direct aid for which the operative event occurred on 1 January 1999, the increase provided for in Article 6 of Regulation No 2813/98. Second, the Commission could not, without infringing Regulations Nos 2799/98 and 2800/98, grant that increase in respect of direct aid for which the operative event occurred on a later date.

37 According to a general principle of interpretation, a provision must be interpreted, as far as possible, in such a way as not to detract from its validity.

38 It follows that, contrary to the Italian Government's contention, Article 6 of Regulation No 2813/98 cannot be interpreted as constituting a general rule that is applicable to all direct aid for which the operative event occurred in 1999 and therefore applicable also to the situation governed by the contested regulation.

39 Furthermore, the Italian Government has produced no evidence to show that the contested regulation was contrary to Article 5 of Regulation No 2799/98 and Article 3 of Regulation No 2800/98.

40 Moreover, since no error has been established regarding calculation of the maximum amount of the compensatory aid fixed by it, the contested regulation cannot, *a fortiori*, be regarded as vitiated by misuse of powers.

41 Nor is the contested regulation vitiated by a defective statement of reasons. The question whether the obligation to provide a statement of reasons has been satisfied must be assessed with reference not only to the wording of the contested measure but also to its context and the whole body of legal rules governing the matter in question (see Case C-122/94 *Commission* v *Council* [1996] ECR I-881, paragraph 29).

42 In this case, being merely a measure for the implementation of Regulations Nos 2799/98, 2800/98 and 2813/98 and of Regulation No 2808/98, as amended by Commission Regulation (EC) No 1410/1999 of 29 June 1999 (OJ 1999 L 164, p. 53), the contested regulation contains an adequate statement of reasons as regards calculation of the maximum amount of the compensatory aid in that it refers to the various provisions of those regulations which laid down the detailed rules for that calculation.

43 It follows that the first plea in law must be rejected.

The second plea in law

Arguments of the parties

44 By its second plea in law, the Italian Government alleges that the Commission infringed the principle of non-discrimination embodied in Article 34 EC. In contrast to the choice made by it when adopting the contested regulation, the Commission applied Article 6 of Regulation No 2813/98 when adopting Regulation (EC) No 755/1999 of 12 April 1999 fixing the maximum compensatory aid resulting from the rates for the conversion of the euro into national currency units and the exchange rates applicable on 1 and 3 January 1999 (OJ 1999 L 98, p. 8). It considers that different treatment of direct aid for which the operative event occurred on 1 January 1999 to be unjustifiable.

45 The fact that Article 6 of Regulation No 2813/98 was likewise not applied to direct aid for which the operative event occurred on 3 January 1999 is irrelevant. The Italian Republic did not contest Regulation No 755/1999 because the aid for which the operative event arose on 3 January 1999 did not affect Italian operators.

46 The Commission contends that the procedure followed by it when adopting Regulation No 755/1999 is perfectly consistent with the systematic interpretation proposed by it. The Commission applied the increase provided for in Article 6 of Regulation No 2813/98 only to direct aid for which the operative event occurred on 1 January 1999, to the exclusion of aid for which the operative event occurred on 3 January 1999. Given the special nature of the circumstances surrounding aid

for which the operative event occurred on 1 January 1999, it was not contrary to the principle of non-discrimination to treat such aid differently. Moreover, the second plea is coextensive with the first and should not be examined separately.

Findings of the Court

47 The Italian Government's second plea is, in essence, that the treatment which the Commission applied, in Regulation No 755/1999, to direct aid for which the operative event occurred on 1 January 1999 differed from that which it applied in the contested regulation to aid for which the operative event occurred on 1 July 1999.

48 It has been established in the analysis of the first plea that such different treatment was necessary for reasons relating to protection of operators' legitimate expectations.

49 It follows that the contested regulation does not infringe the principle of non-discrimination embodied in Article 34 EC.

50 Consequently, the second plea must also be rejected.

51 In view of the foregoing, the action must be dismissed in its entirety.

Costs

52 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has asked for costs and the Italian Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the Italian Republic to pay the costs.**

La Pergola Edward Jann

von Bahr Timmermans

Delivered in open court in Luxembourg on 4 October 2001.

R. Grass

Registrar

A. La Pergola

President of the Fifth Chamber