JUDGMENT OF THE COURT (Fifth Chamber)
17 September 1998 *

In Case C-372/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Caserta (Italy) for a preliminary ruling in the proceedings pending before that court between

Antonio Pontillo

and

Donatab Srl

on the validity of Council Regulation (EEC) No 1738/91 of 13 June 1991 fixing, for the 1991 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, the production areas and the guaranteed maximum quantities and amending Regulation (EEC) No 1331/90 (OJ 1991 L 163, p. 13),

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, M. Wathelet, J. C. Moitinho de Almeida (Rapporteur), D. A. O. Edward and J.-P. Puissochet, Judges,

* Language of the case: Italian.

Advocate General: J. Mischo,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Mr Pontillo, by Emilio Cappelli and Paolo De Caterini, of the Rome Bar, and by Giuseppe Pasquariello, of the Bar of Santa Maria Capua Vetere,

— the Italian Government, by Professor Umberto Leanza, Head of the Legal Service in the Ministry of Foreign Affairs, acting as Agent, and Oscar Fiumara, Avvocato dello Stato,

— the Greek Government, by Panagiotis Mylonopoulos, of the Special Community Legal Service of the Ministry of Foreign Affairs, and Ioannis Chalkias, of the State Legal Service, acting as Agents,

— the Council of the European Union, by John Carbery and Tito Gallas, Legal Advisers, acting as Agents,

— the Commission of the European Communities, by Paolo Ziotti and Ana Maria Alves Vieira, of its Legal Service, acting as Agents,

having regard to the report for the hearing,

after hearing the oral observations of Mr Pontillo, the Italian Government, the Greek Government, the Council and the Commission at the hearing on 12 February 1998,

after hearing the Opinion of the Advocate General at the sitting on 2 April 1998,

gives the following

Judgment

1 By order of 14 October 1996, received at the Court on 25 November 1996, the Pretura Circondariale de Caserta (Caserta Magistrates' Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the validity of Council Regulation (EEC) No 1738/91 of 13 June 1991 fixing, for the 1991 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, the production areas and the guaranteed maximum quantities and amending Regulation (EEC) No 1331/90 (OJ 1991 L 163, p. 13, hereinafter 'the contested regulation').

2 Those questions were raised in proceedings between Mr Pontillo, a tobacco producer, and the tobacco processing undertaking Donatab Srl, established in Caserta (hereinafter 'Donatab'), concerning the repercussions for Mr Pontillo of the reimbursement by Donatab, following a finding by the Commission that, for the 1991 harvest, the maximum guaranteed quantity (hereinafter 'MGQ') of leaf tobacco of the Burley I variety had been exceeded, of part of the premium referred to in Article 3 of Regulation (EEC) No 727/70 of the Council of 21 April 1970 on the common organisation of the market in raw tobacco (OJ, English Special Edition 1970 (I), p. 206).

The Community legislation

3 Regulation No 727/70 provided for a support system based on norm and intervention prices fixed each year by the Council for Community leaf tobacco for the harvest of the following calendar year. Under that system, producers were entitled either to sell their production to the intervention agencies, which were obliged to buy it at the intervention price, or to sell it on the market.

4 In order to foster purchases from producers at a price as close as possible to the norm price, Article 3(1) of that regulation provided that, under certain conditions, a premium would be paid to persons who purchased leaf tobacco direct from Community producers and subjected the product thus purchased to first processing and market preparation. Article 3(2) extended the benefit of the premium to producers who subject their own leaf tobacco to first processing and market preparation.

5 In order to curb any increase in the Community's tobacco production and at the same time to discourage the growing of varieties which were difficult to dispose of, Council Regulation (EEC) No 1114/88 of 25 April 1988 amending Regulation No 727/70 (OJ 1988 L 110, p. 35) added the following paragraph (5) to Article 4 of the latter regulation:

'5. Each year and in accordance with the procedure provided for in Article 43(2) of the Treaty, the Council shall fix a maximum guaranteed quantity, in particular in the light of market requirements and the socio-economic and agricultural conditions of the regions concerned, for each variety or group of varieties of Community-produced tobacco for which prices and premiums are fixed. The overall maximum quantity for the Community shall be fixed at 385 000 tonnes of leaf tobacco for each of the 1988, 1989 and 1990 harvests.

Without prejudice to Articles 12a and 13, for each 1% by which the maximum guaranteed quantity is exceeded per variety or group of varieties, the intervention prices and the premiums concerned shall suffer a reduction of 1%. A correction corresponding to the reduction of the premium shall be applied to the norm price of the harvest in question.

The reductions referred to in the second subparagraph shall not exceed 5% for the 1988 harvest and 15% for the 1989 and 1990 harvests.

...'

6 The first and fourth subparagraphs of Article 4(5), as they stood following the adoption of Council Regulation (EEC) No 1251/89 of 3 May 1989 (OJ 1989 L 129, p. 16), were amended by Council Regulation (EEC) No 1329/90 of 14 May 1990 (OJ 1990 L 132, p. 25) so as to read as follows:

'5. The Council, acting as indicated in Article 43(2) of the Treaty, shall lay down every year, for each tobacco variety or group of varieties produced in the Community for which prices and premiums are fixed, a maximum guaranteed quantity for the following year's harvest, taking into account the market situation and the socio-economic and agricultural situation in the areas concerned. The Council shall set the maximum guaranteed quantities for the 1990 harvest at the same time as for the 1989 harvest. The overall maximum guaranteed quantity for the Community is hereby set at 385 000 tonnes of leaf tobacco for each of the 1988 to 1993 harvests.

...

The reductions referred to in the third subparagraph shall not exceed 5% for the 1988 harvest and 15% for the 1989 to 1993 harvests.'

7 The prices and the premium for the 1991 harvest of Burley I tobacco were fixed by the contested regulation, which was adopted on 13 June 1991 and published on 26 June 1991. The intervention price, which had been ECU 2 421/kg for the 1990 harvest, was altered to ECU 2 102/kg and the processing premium, which had been ECU 2 103/kg for the 1990 harvest, was reduced to ECU 1 748/kg.

8 According to Annex I to Commission Regulation (EEC) No 2178/92 of 30 July 1992 determining, for tobacco from the 1991 harvest, the quantity actually produced and the prices and premiums payable under the system of maximum guaranteed quantities (OJ 1992 L 217, p. 75), the quantity of tobacco of the Burley I variety actually produced in the 1991 harvest exceeded the MGQ for that variety by 19.45%. As is clear from Annex II to the same regulation, pursuant to Article 4(5) of Regulation No 727/70, as amended, the intervention price and the amount of the premium, as previously set in the contested regulation, were then reduced by 15%, to ECU 1 787/kg and ECU 1 486/kg respectively.

The main proceedings

9 Mr Pontillo manages an agricultural undertaking in the Province of Caserta. He sold his 1991 crop of Burley I tobacco to Donatab, which applied for and obtained from the competent intervention agency, the Azienda di Stato per gli Interventi nel Mercato Agricolo — Settore Tabacco (hereinafter 'the AIMA'), advance payment of the premium referred to in Article 3 of Regulation No 727/70, against lodgment of a security.

10 Following the overrun of the MGQ set for the 1991 harvest of Burley I tobacco, established in Regulation No 2178/92, Donatab was required to repay certain amounts as a result of the reduction of the rate of premium. It then asked Mr Pontillo to repay it a sum corresponding to the percentage by which the premium was reduced.

11 Taking the view that the reduction of the premium was illegal on the ground that the regulations fixing the prices, premiums and MGQs for 1991 were invalid, Mr Pontillo brought proceedings against Donatab before the Pretura Circondariale di Caserta for a declaration that the burden of the reduction at issue should not be passed on to him in his dealings with that company.

12 By decision of 22 July 1993, the Pretura Circondariale di Caserta thereupon sought a preliminary ruling from the Court of Justice as to the validity of the contested regulation, in so far as it set the MGQ for the 1991 harvest of Burley I tobacco retroactively.

13 In its judgment of 5 October 1994 in Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863 (hereinafter '*Crispoltoni II*'), the Court held that consideration of the question referred had disclosed no factor of such a kind as to affect the validity of the contested regulation: that regulation had not altered the MGQ for the 1991 Burley I tobacco harvest because it had already been set by Annex V to Council Regulation (EEC) No 1331/90 of 14 May 1990 fixing, for the 1990 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, the production areas and the guaranteed maximum quantities for the 1991 harvest and amending Regulation (EEC) No 1252/89 (OJ 1990 L 132, p. 28) and thus before the relevant producers had had to take their decisions concerning the 1991 harvest.

14 The national court observes that the ruling now sought again concerns the validity of the contested regulation as regards the 1991 Burley I tobacco harvest but that,

on this occasion, it relates not to the fixing of the MGQ but to the reduction of the intervention price and of the processing premium for that variety of tobacco.

15 According to the national court, the contested regulation, which was published in the *Official Journal of the European Communities* of 26 June 1991, infringed the principle of the protection of legitimate expectations because it affected retroactively the production of tobacco in respect of which irreversible choices had already been made. The reduction, by that regulation, of the intervention price and of the processing premium for the 1991 Burley I tobacco harvest was not foreseeable either when the producers were about to embark on their programmes for the 1991 harvest, that is to say November 1990, or when the tobacco plants had to be planted out in the fields, namely February 1991.

16 The Pretura Circondariale di Caserta considers that the possibility of the reduction in question is not one of the normal commercial risks which any diligent and well-informed producer ought generally to be in a position to foresee; the available information concerning the Burley tobacco market, on which the producers reasonably based their production decisions at the start of the 1991 marketing year, actually encouraged a policy of investment in planting. Thus, in particular, the premiums which at the time were payable for the 1990 crop were higher than those fixed for the 1989 crop and no overrun of the MGQ of the tobacco in question had yet been recorded.

17 Moreover, true though it might be that under the system of aid characterised by the setting of an MGQ, the exact amount of the prices and premium to be paid to producers for certain varieties depends ultimately on the possibility of the MGQ being exceeded and on the extent to which it is in fact exceeded, the economic consequences of the untimely reduction of the prices and the premium brought about by the contested regulation crossed the threshold of uncertainty that is inherent in the system of aid established by Regulation No 1114/88. Thus, the reduction of 13% made by the contested regulation had a significant multiplier effect on the reduction of 15% laid down by the Commission in Regulation No 2178/92 following the official finding that the MGQ for the 1991 crop of Burley I tobacco had been exceeded.

18 The national court adds that the advance setting of prices and premiums, and of MGQs, is essential for the attainment of the objectives pursued by the quota system established by Regulation No 1114/88; in fact, although the belated reduction of the prices and premium at issue did not expressly alter the volume of the MGQ, it nevertheless resulted in a substantial change in the value of that MGQ which had been fixed in advance.

19 Accordingly, the national court stayed proceedings pending a preliminary ruling from the Court of Justice on the following questions:

'1. In the light of the principle of the protection of legitimate expectations and of the rationale underlying the quota system, is Council Regulation (EEC) No 1738/91 to be regarded as valid, in so far as it unexpectedly and unpredictably reduced the prices and the processing premium for tobacco of the variety known as Burley I (Italian) at such a late stage in the tobacco crop year that even the most prudent and alert growers were left with no room for manoeuvre?

2. Is the fact that Regulation No 1738/91 fails to give any reasons at all, whether express or implied, for its provisions concerning Burley I tobacco — which was more seriously affected than other tobacco varieties even though excess production of those varieties had been even higher — open to criticism in that it constitutes a breach of essential procedural requirements?'

The first question

20 The plaintiff in the main proceedings observes first that neither the 1988 nor the 1989 harvest of Burley I tobacco gave rise to any overrun of the MGQ and that

both the intervention prices and the processing premium remained unchanged during those two years. Then, for the 1990 harvest, although it left the intervention price unchanged, the Council decided to increase both the MGQ and the processing premium. Finally, Regulation No 1331/90 provided for a further increase of the MGQ for the 1991 harvest.

21 According to the plaintiff in the main proceedings, that information, which was available when plans were being drawn up for the 1991 marketing year, encouraged the producers concerned to continue to cultivate that variety of tobacco. Furthermore, the fact that the MGQ laid down for the 1990 crop of Burley I tobacco had been exceeded could only be ascertained from Commission Regulation (EEC) No 2667/91 of 29 July 1991 determining, for tobacco from the 1990 harvest, the quantity actually produced and the prices and premiums payable under the system of maximum guaranteed quantities (OJ 1991 L 208, p. 26). Consequently, the double reduction of the prices and the premium, first of 13% by the contested regulation and then of 15% by Regulation No 2178/92, was not reasonably foreseeable.

22 It must be borne in mind at the outset that whilst the protection of legitimate expectations is one of the fundamental principles of the Community, traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained; this is particularly true in an area such as the common organisation of the markets whose purpose involves constant adjustments to meet changes in the economic situation (see, in particular, *Crispoltoni II*, paragraph 57).

23 It follows that traders cannot claim a vested right to the maintenance of an advantage which they derive from the establishment of the common organisation of the markets and which they enjoyed at a given time (*Crispoltoni II*, paragraph 58).

24 As the Council and the Commission have rightly pointed out, that is particularly so in a case such as this in which the applicable Community rules, namely Regu-

lation No 727/70, which required the Council to determine each year, having regard in particular to market developments and to the harmfulness of the different varieties of tobacco, the prices and premiums for such varieties, expressly provided for the possibility of a reduction in those prices and premiums, followed, if necessary, under Regulation No 727/70, as amended, by a second reduction, subject to a ceiling of 15%, in the event of the MGQ being exceeded.

25 It is true that, in paragraph 21 of its judgment in Case C-368/89 *Crispoltoni* [1991] ECR I-3695 (hereinafter '*Crispoltoni I*'), the Court held that Council Regulation No 1114/88 and Council Regulation (EEC) No 2268/88 of 19 July 1988 fixing, for the 1988 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, the production areas and the guaranteed maximum quantities and amending Regulation (EEC) No 1975/87 (OJ 1988 L 199, p. 20) were invalid in so far as they laid down a MGQ for tobacco of the 'Bright' variety harvested in 1988 on the ground that, although the traders concerned must have considered that measures to limit any increase in tobacco production in the Community and to discourage the production of varieties which were difficult to dispose of were foreseeable, they were nevertheless entitled to expect that they would be notified in good time of any measures affecting their investments.

26 In this case, the contested regulation determining the prices and premiums for tobacco varieties for the 1991 harvest was published on 26 June 1991, that is to say on a date subsequent to that on which producers of Burley I tobacco had to take their decisions concerning the 1991 harvest.

27 However, as the Court made clear in its judgment in Case C-324/96 *Petridi* [1998] ECR I-1333, paragraph 45), the judgment in *Crispoltoni I* concerned the MGQ system with which the traders concerned were unfamiliar, both in regard to the nature of the new measures for the organisation of the tobacco market in the Community and in respect of the date on which those measures were to come into effect.

28 On the other hand, the context in which the contested regulation was adopted is different. Since the publication, on 28 April 1970, of Regulation No 727/70, the traders concerned have been informed of the annual determination of prices and premiums and, therefore, of the possibility of the reduction thereof from one year to the next. Those same traders should also have expected, since the publication of Regulation No 1114/88 on 29 April 1988 and, more particularly with regard to the 1991 harvest, since the publication of Regulation No 1329/90 on 23 May 1990, that the prices and premiums thus determined might be reduced a second time, in proportion to any possible overrun of the MGQ, subject to a ceiling of 15% as compared with the amounts initially fixed.

29 In those circumstances, the plaintiff in the main proceedings cannot properly rely on *Crispoltoni I* to argue that his legitimate expectations have been infringed.

30 In order to establish that the contested measures have frustrated the legitimate expectations of the traders concerned, the plaintiff in the main proceedings also maintains, on the basis of statistics, that the determination of the prices and the premium in the contested regulation runs counter to the objectives pursued by the setting of production quotas, which are to influence production and improve its quality in order to guarantee outlets for tobacco, having regard to the state of supply in the Community. According to the plaintiff in the main proceedings, under the existing quota system, it is precisely by taking action with regard to prices and premiums that the Council could have influenced production in the manner required in order to attain the objectives pursued.

31 That argument, in so far as it amounts to a criticism of the Council for having fixed the prices and premium for Burley I tobacco at a time when the production decisions regarding the 1991 crop had already been made, must, for the reasons set out above, be rejected.

32 To the extent to which, by that argument, Mr Pontillo criticises the Community legislature for failing to take into account the objectives pursued by the setting of production quotas when fixing prices and premiums, it must be held that the plaintiff in the main proceedings has not shown that the reductions of prices and

premium decided on by the Council were manifestly inappropriate, in the light of the objectives pursued by the Community rules, since that institution enjoys a considerable degree of latitude in relation to the common agricultural policy.

33 It is clear from the foregoing that the principle of the protection of legitimate expectations has not been infringed, since the traders concerned were not entitled to expect the prices and premium in question to be maintained at a particular level.

34 The answer to be given to the national court must therefore be that consideration of the first question has disclosed no factor of such a kind as to affect the validity of the contested regulation.

The second question

35 According to the Greek Government, the preamble to the contested regulation does not disclose the reasons which prompted the Council to adopt the contested measures. In those circumstances, the regulation should be declared invalid for breach of essential procedural requirements.

36 In that connection, it should be borne in mind that, whilst the reasoning required by Article 190 of the EC Treaty must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure so as to enable the persons concerned to ascertain the reasons for it and to enable the Court to exercise judicial review, the authority is not required to go into every relevant point of fact and law (see, in particular, Case C-84/94 *United Kingdom* v *Council* [1996] ECR I-5755, paragraph 74). More particularly, it is not possible to require that the statement of reasons should set out the various facts, often very numerous and

complex, on the basis of which a regulation was adopted, or *a fortiori* that it should provide a more or less complete evaluation of those facts (see, in particular, Case 5/67 *Beus* [1968] ECR 83).

37 In this case, the preamble to the contested regulation clearly discloses the criteria applied when the prices and premiums were fixed in the raw tobacco sector for the 1991 harvest.

38 Thus, according to the first recital in the preamble, when the prices for raw tobacco are fixed, account should be taken of the objectives of the common agricultural policy which are, in particular, to ensure a fair standard of living for the agricultural community, to assure the availability of supplies and to ensure that supplies reach consumers at reasonable prices. The second recital makes it clear that the norm and intervention prices must be fixed in accordance with the criteria laid down in Article 2(2) of Regulation (EEC) No 727/70 in order to encourage producers to convert to the cultivation of those varieties which are most in demand and most competitive as well as being the least harmful to health.

39 As regards the premiums granted to the purchasers of Community tobacco, it is clear from the seventh recital that they are designed to enable the producers of leaf tobacco to be paid a price which is at the level of the norm price, account being taken of the trend in world market prices, and of the level of prices established by the interaction of supply and demand on the Community market.

40 In those circumstances, the statement of the reasons on which the contested regulation is based must be considered to be sufficiently precise to enable the persons concerned to ascertain the reasons for it and to enable the Court to exercise judicial review; it therefore meets the requirements laid down in Article 190 of the Treaty.

41 If, as the plaintiff in the main proceedings maintains, the national court seeks also to ascertain, by its second question, whether the producers of Burley I tobacco have received less favourable treatment than the producers of other varieties of tobacco, it must be pointed out that, by virtue of the general principle of equal treatment in Community law, of which the prohibition of discrimination laid down in Article 40(3) of the EC Treaty is a specific expression, comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified.

42 The attainment of the objectives pursued by the system of prices and premiums, which are set out in paragraphs 38 and 39 of this judgment, in particular the orientation of tobacco production towards the varieties most in demand, most competitive and the least harmful to health, necessarily involves the adoption of measures which differ according to the varieties in question. Moreover, as the Council and the Commission have rightly pointed out, varieties other than Burley I, such as Mavra and Tsebelia, whose production had exceeded the prescribed MGQ by a percentage similar to that recorded for the variety at issue, were the subject, for the 1991 harvest, of a price and premium reduction similar to that applied to Burley I.

43 The answer to be given to the national court must therefore be that consideration of the second question has disclosed no factor of such a kind as to affect the validity of the contested regulation.

Costs

44 The costs incurred by the Italian and Greek Governments and by the Council and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in

the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Pretura Circondariale di Caserta by order of 14 October 1996, hereby rules:

Consideration of the questions submitted has disclosed no factor of such a kind as to affect the validity of Council Regulation (EEC) No 1738/91 of 13 June 1991 fixing, for the 1991 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, the production areas and the guaranteed maximum quantities and amending Regulation (EEC) No 1331/90.

Gulmann Wathelet Moitinho de Almeida

Edward Puissochet

Delivered in open court in Luxembourg on 17 September 1998.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber