OPINION OF ADVOCATE GENERAL ELMER

delivered on 15 May 1997 *

Introduction

1. In this case the Diikitiko Protodikio (Administrative Court of First Instance) Athinon (Greece) asks the Court to give a preliminary ruling on the validity of Commission Regulation (EC) No 3477/93 of 17 December 1993 concerning the agricultural conversion rates to be applied in the tobacco sector [1] (hereinafter 'the conversion regulation').

The relevant Community provisions

2. According to Regulation (EEC) No 727/70 of the Council of 21 April 1970 on the common organization of the market in raw tobacco [2] (hereinafter 'the basic regulation') a premium is to be payable to persons who purchase tobacco direct from Community tobacco producers.

3. Regulation (EEC) No 1726/70 of the Commission of 25 August 1970 on the procedure for granting the premium for leaf tobacco [3] (hereinafter 'the implementing regulation'), contains, *inter alia*, the following provisions:

'Article 6

1. The right to the premium shall accrue as soon as the tobacco ... leaves the place in which it was under supervision.

The event giving entitlement to the premium, within the meaning of Article 6 of Regulation (EEC) No 1134/68, shall be considered to have occurred on that date.

...'

* Original language: Danish.

1 — OJ 1993 L 317, p. 30.

2 — 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).

3 — OJ, English Special Edition 1970 (II), p. 587, as amended by Commission Regulation (EEC) No 887/85 of 2 April 1985 amending Regulation (EEC) No 1726/70 as regards the system of supervision of first processing and market preparation of leaf tobacco (OJ 1985 L 96, p. 12).

4. The conversion regulation contains, *inter alia*, the following recitals and provisions:

'... that operative event does not meet the criteria laid down in Article 6 of Regulation (EEC) No 3813/92 and must be amended at the end of the transitional period provided for by Regulation (EEC) No 3820/92; ... therefore, in order to avoid market distortion with the tobacco from the 1993 harvest, 1 July 1993 should be the date determining the operative event for the premium for tobacco from harvests prior to 1993 leaving supervision from that date;' (seventh recital)

'Article 5

For tobacco from harvests prior to the 1993 harvest, leaving supervision from 1 July 1993, the agricultural conversion rate for the premium provided for in Article 3 of [the basic regulation] shall be the rate applicable on 1 July 1993.

Article 6

The following provisions are hereby repealed:

— the second subparagraph of Article 6(1) of [the implementing regulation],

...

Article 7

This regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*. [4]

It shall apply with effect from 1 July 1993.'

4 — It was published on 18 December 1993.

5. In order to provide a satisfactory basis for the answer to be given to the national court's questions, it is necessary to consider certain other rules of Community law. For the sake of clarity and ease of comprehension, I will refer to those rules at the appropriate point in this Opinion.

The dispute before the national court and the questions referred for a preliminary ruling

6. The company P. Moskof AE, of Stavroupoli, Thessaloniki (hereinafter 'Moskof'), carries out first processing of raw tobacco. In 1994 Moskof received a premium of DR 1 793 340 in respect of tobacco harvested in 1992 which, as indicated during the oral procedure, subsequently left the place in which it was under supervision, in June 1994.

7. The amount of the premium was calculated on the basis of the agricultural conversion rate resulting from application of the rule in the second subparagraph of Article 6(1) of the implementing regulation, which had been repealed. Under the new rule in Article 5 of the conversion regulation, the amount of the premium would have been calculated on the basis of the agricultural conversion rate applicable on 1 July 1993, bringing the premium down to DR 564 570.

8. The Ethnikos Organismos Kapnou (the Greek National Tobacco Board) demanded repayment of the difference between the two amounts, that is to say DR 1 228 770.

9. Moskof brought an action for the annulment of that demand for repayment before the Diikitiko Protodikio, claiming that the conversion regulation on which the order was based was invalid. On 24 May 1995 the Diikitiko Protodikio, Athens, referred the following questions to the Court:

'1. Failure by the Commission to submit [the conversion regulation] to the Management Committee for Tobacco in draft form as a regulation having retroactive effect

Does the draft of the above regulation, which was approved by the Management Committee for Tobacco as a draft measure not having retroactive effect by reason of the time which had elapsed — more than five months — from its approval until it was adopted and published, constitute a fresh draft regulation having retroactive effect entailing its invalidity, in view of the fact that such a draft, that is to say having retroactive effect, was not submitted to the competent Management Committee for Tobacco, thus infringing Article 145, third indent, second sentence of the

EC Treaty, Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission, Article 12 of Regulation No 3813/92 and Article 17 of [the basic regulation], given that in those provisions observance of the Management Committee procedure is laid down as a condition of exercise of the executive power of the Commission?

2. (a) Is the statement of reasons in [the conversion regulation] correct and sufficient in view of the fact that Moskof wonders whether "market distortion", referred to in the recitals in the preamble to that Commission regulation, can be regarded as one of the criteria listed in Article 6(2) of Council Regulation No 3813/92 or whether it should have been dealt with by legislative intervention on the part of the Council?

(b) Is the statement of reasons in [the conversion regulation] correct and sufficient in view of the fact that the Commission regulation in question, in not applying, as the operative event for the agricultural conversion rate under Article 6(1) of Council Regulation No 3813/92, the event whereby the economic objective of the operation is attained, which in this case is when the raw tobacco leaves the place in which it has been placed under supervision, does not state from which of the four criteria in Article 6(2) the operative event for the purpose of Article 5 has been derived?

(c) Is the statement of reasons in [the conversion regulation] correct and sufficient in view of the fact that the need to avoid market distortion in respect of the 1993 tobacco crop is not referred to in the body of the regulation, nor is reference made to the reason for which it was judged necessary to make the measure retroactive?

(d) Is the statement of reasons in [the conversion regulation] correct and sufficient in view of the fact that in the eighth recital in the preamble to that regulation reference is made to the measures being in accordance with the opinion of the Management Committee for Tobacco, whereas the regulation in question was not submitted to that committee in the form of a draft measure having retroactive effect?

3. Infringement of Article 3(1)(iv) of [the basic regulation] as amended by Article 1 of Council Regulation No 1329/90

In view of the fact that the provision in question enables purchasers to obtain the premium provided the tobacco is incorporated before the expiry of four years from the harvest concerned into

manufactured products or exported to third countries, is the freezing of the agricultural conversion rate adopted by [the conversion regulation] with the result of compelling those entitled to the premium not to avail themselves of the four-year period allowed by the said Council regulation, an infringement of that regulation?

4. Infringement of Article 39(1)(c) of the EC Treaty

In view of the fact that the above Treaty provision lays down as an objective of the common agricultural policy the stabilizing of markets, how is the retroactive measure of freezing the agricultural conversion rate adopted by [the conversion regulation] consistent with that objective given that it results in passing on the harm suffered by processors to producers, since it is impossible for the former to offer adequate prices for tobacco from the harvest following adoption of the regulation?

5. Infringement of the principle of non-retroactivity of Community measures

Does [the conversion regulation], which was published in the *Official Journal of the European Communities* of 18 December 1993 and entered into force, under Article 7, on the third day following its publication in the Official Journal, that is to say on 21 December, but at the same time, on the basis of the second paragraph of Article 7, is to apply from 1 July 1993, infringe the principle of non-retroactivity of Community measures, in view of the fact that Moskof doubts that, in the case in question, the objective of the regulation has the character of higher-ranking public interest in so far as the creation of market distortions cited in the regulation does not arise and, moreover, no transitional measure whatsoever was adopted to protect the legitimate expectations of processors such as Moskof?

6. Infringement of the principle of the protection of legitimate expectations

To what extent is there a breach of the principle of the protection of legitimate expectations of the processing undertakings, in view of the fact that Article 5 of [the conversion regulation] overturned the regulatory framework of the common organization of the market in tobacco based on [the basic regulation and the implementing regulation] which had been in force for over 20 years and had inspired reliance on a special level of stability in the rules, taking into account the fact that no transitional measures have been taken to facilitate the transition from the system laid down by [the basic regulation and the implementing regulation] and also that,

as Moskof alleges, the European cultivation contracts for the 1992 harvest had been concluded one-and-a-half years before Article 5 of [the conversion regulation] was adopted and the tobacco harvested and placed under supervision before 15 May 1993?

7. Infringement of the principle of equal treatment of traders in the Community

In view of the fact that the drachma varies more in relation to the European Monetary Unit than the currencies of the other Member States, to what extent does the above measure freezing the agricultural conversion rate adopted by [the conversion regulation] lead to discrimination to the detriment of Greek undertakings?

8. Misuse of powers

In view of the Commission's reply to the Court of Auditor's question to the effect that the Commission "will adopt forthwith the appropriate provisions to limit expenditure due to the agricultural conversion rates" (points 3.4 and 3.5 of Special Report of the Court of Auditors No 8/93, OJ 1994 C 65), did the measure in [the conversion regulation] freezing agricultural conversion rates not in fact have a public law character rather than, as stated in the recital, the purpose of avoiding distortion of the market?'

General observations

10. I will first make some observations as regards whether the conversion regulation adversely affects Moskof or whether, in reality, it benefits first processors in Member States in respect of whose currency conversion rates increased during the period at issue.

11. According to Article 3 of the basic regulation, a premium is to be granted to persons who purchase tobacco direct from Community producers. The premium is expressed in units of account and is converted into the relevant national currency before being paid.

12. In order to ensure that the premium is paid only when the conditions laid down in the basic regulation are satisfied, the authorities in the country concerned carry out checks on the type, quality, quantity and a number of other characteristics of the tobacco. The raw tobacco is thus checked

when it is presented to the first processing undertaking. It is again checked when it leaves the first processing undertaking (that is to say the 'place in which it was under supervision') having undergone first processing and market preparation.

13. Article 4(2) of Regulation (EEC) No 1134/68 of the Council [5] provides that, pursuant to provisions on the common agricultural policy, amounts expressed in units of account are to be converted into national currency on the basis of the relationship between the unit of account and the national currency obtaining at the time when the transaction was carried out. It follows from Article 6 that the time when the transaction is carried out is the date on which the operative event giving rise to the debt occurs.

14. The first subparagraph of Article 6(1) of the implementing regulation provides that the right to the premium accrues as soon as the tobacco leaves the place in which it was under supervision. It follows that the premium must be converted from units of account into national currency on the basis of the conversion rate obtaining at the time when the tobacco left the place in which it was under supervision, as the second subparagraph of Article 6(1) of the implementing regulation also expressly provides.

15. The implementing regulation was amended by Commission Regulation (EEC) No 1075/78 [6] so as to enable first processors to obtain an advance on the full amount of the premium at the time when the tobacco was placed under supervision. When the tobacco subsequently left the place in which it was under supervision, a definitive calculation of the amount of the premium payable to the undertaking was made on the basis of the rate obtaining at that time in accordance with the second subparagraph of Article 6(1) of the implementing regulation.

16. In countries whose currency had depreciated, where the conversion rate increased over time, a disparity arose between the advance on the premium and the definitive amount of the premium. The difference was paid to first processors at the time when the tobacco left the place in which it had been under supervision but that was not counterbalanced by any financial risk for those traders in so far as they had received an advance on the full amount of the premium at the time when the tobacco was placed under supervision. [7]

17. Council Regulation (EEC) No 1676/85 [8] repealed Regulation No 1134/68, and thus Article 4(2) thereof, according to which the amount expressed in units of account was to

5 — Regulation (EEC) No 1134/68 of the Council of 30 July 1968 laying down rules for the implementation of Regulation (EEC) No 653/68 on conditions for alterations to the value of the unit of account used for the common agricultural policy (OJ, English Special Edition 1968 (II), p. 396).

6 — Commission Regulation (EEC) No 1075/78 of 23 May 1978 amending Regulation No 1726/70 (OJ 1978 L 136, p. 5).

7 — The Court of Auditors considered that question at paragraph 3.4 of Special Report No 8/93 of 21 December 1993 (OJ 1994 C 65, p. 1) and stated that 'this led to unjustified expenditure'.

8 — Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy (OJ 1985 L 164, p. 1).

be converted into national currency on the basis of the conversion rate obtaining at the time when the transaction was carried out (the event giving rise to the debt). Article 5(1)(c) of Regulation No 1676/85 in conjunction with Article 4 provides, instead, for the conversion to be made using the conversion rate applicable at the time when the event whereby the economic objective of the operation is attained occurs.

18. The rules relating to premiums are intended to ensure that producers receive a fair remuneration for their products. In that respect, that economic goal is attained when first processors pay producers the minimum price fixed for the tobacco. In the light of the new rule in Article 5(1)(c) of Regulation No 1676/85 in conjunction with Article 4, the amount in ecus, which replaced units of account in the common agricultural policy in 1979, had thus to be converted into national currency at the time when the producer delivered the raw tobacco to the first processor for payment. The second subparagraph of Article 6(1) of the implementing regulation was not, however, brought into conformity with the new rule in Regulation No 1676/85, [9] and the premium therefore continued to be converted from ecus into national currency using the rate obtaining at the time when the tobacco left the place in which it was under supervision.

19. Article 3 of the basic regulation was amended by Council Regulation (EEC) No 1329/90 [10] so as to make payment of the premium subject to the condition that first processors provide proof before the expiry of a period of four years following the year of harvest that the tobacco has been sold for incorporation into manufactured products or exported to third countries, or undertake themselves to incorporate the tobacco in the manufactured products or to export it to third countries within the same period.

20. Although Council Regulation (EEC) No 3813/92, [11] which entered into force on 1 January 1993, repealed the whole of Regulation No 1676/85, Article 6(1) took up the rule that the amount in ecus must be converted into national currency using the conversion rate obtaining at the time when the event whereby the economic objective of the operation is attained occurs. Article 6(2) of Regulation No 3813/92 permits the Commission, in certain circumstances, to lay down specific rules concerning the conversion rate which should be applied. Furthermore, Article 11(2) permits the Commission

9 — The Commission stated that it relied on Article 5(2) of Regulation No 1676/85. According to that provision, an operative event other than those referred to in paragraph 1 may be taken if the time at which the economic objective is attained: (a) cannot be established, or (b) for reasons peculiar to the relevant sector or amount, cannot be taken into consideration. Article 5(3) provides that operative events are to be determined in accordance with the procedure laid down in Article 12 without prejudice to the specific provisions already adopted under that procedure.

10 — Council Regulation (EEC) No 1329/90 of 14 May 1990 amending Regulation (EEC) No 727/70 (OJ 1990 L 132, p. 25).

11 — 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).

to derogate from the regulation in the event of exceptional monetary practices liable to jeopardize the application of the legal instruments relating to the common agricultural policy.

21. On the same day that the Council adopted Regulation No 3813/92, the Commission adopted Regulation (EEC) No 3820/92, [12] Article 1 of which provides that up to the end of the 1992/1993 marketing year the provisions referring to Regulation No 1676/85, together with any amendments, are to apply to the new Council Regulation No 3813/92. By that rule the Commission retained the implementing measures under the old arrangements (including, in respect of the tobacco sector, the second subparagraph of Article 6(1) of the implementing regulation) until the end of the 1992/1993 marketing year, that is to say 1 July 1993, in order to facilitate transition towards the new agrimonetary arrangements.

22. In Regulation (EEC) No 1068/93 [13] the Commission laid down rules for the implementation of Regulation No 3813/92 which apply to all agricultural sectors, including tobacco. Article 10(2) of Regulation No 1068/93 provides that the operative event for the agricultural conversion rate is the first operation which occurs after the date of taking over of the products by the operator concerned. When applied to the tobacco sector, those rules mean that the premium must be converted from ecus into national currency at the time when the raw tobacco is delivered to the first processors. That provision is therefore consistent with the basic rule contained in Article 6(1) of Council Regulation No 3813/92 according to which the conversion is to be made using the conversion rate obtaining at the time when the economic objective of the operation is attained (see point 18 above).

23. The rule in Article 10(2) of Regulation No 1068/93 applied not only to future harvests, but also to tobacco from previous harvests which had not yet left the place in which it was under supervision. In practice that meant tobacco delivered to first processors between 1989 and 1992. Use of the conversion rate obtaining at the time when the tobacco was placed under supervision (1989, 1990, 1991 or 1992), rather than that obtaining more recently at the time when the tobacco left the place in which it was under supervision, seems to have been very detrimental to first processors in countries whose currency had depreciated where the conversion rate had increased over time and first processors stockpiled tobacco, sometimes for four years, in order to reap the possible benefit of the steady increase in the conversion rate.

12 — Commission Regulation (EEC) No 3820/92 of 28 December 1992 on transitional measures for the application of the agrimonetary arrangements laid down in Council Regulation No 3813/92 (OJ 1992 L 387, p. 22).

13 — Commission Regulation (EEC) No 1068/93 of 30 April 1993 on detailed rules for determining and applying the agricultural conversion rates (OJ 1993 L 108, p. 106).

24. Following the repeal and replacement of the basic regulation in the meantime by a new organization of the market in 1993 [14] according to which the premium is to be paid directly to producers, on 17 December 1993 the Commission adopted the conversion regulation which is intended, *inter alia*, to regulate conversion within the framework of the new organization of the market. In that respect, Article 1 of the regulation provides that the premium or the advance on the premium is to be converted from ecus into national currency on the basis of the conversion rate valid on 1 August of the year of harvest, as regards deliveries up to 31 December of that year, and the rate valid on 1 January of the following year, as regards later deliveries. Article 1, which applies only to agricultural conversion rates for tobacco, thus derogates from the rule in Article 10(2) of Regulation No 1068/93, which applies to all agricultural sectors, according to which the conversion is to be made on the basis of the rate obtaining at the time when the operator concerned takes over the products.

25. Even though Article 1 of the conversion regulation derogates from the general rule in Article 10(2) of Regulation No 1068/93, it clearly links the conversion rate to the time when the tobacco is delivered to the first processors. Application of Article 1 of the conversion regulation to tobacco delivered to first processors between 1989 and 1992 would thus have had the same negative consequences for those traders in countries whose currency had depreciated, where conversion rates increased over time, as application of the rule in Article 10(2) of Regulation No 1068/93 (see in that respect point 23 above). The scope of Article 1 is thus expressly limited to the premiums and amounts of premiums referred to in Regulation No 2075/92.

26. In contrast, Article 5 of the conversion regulation provides that for tobacco from harvests prior to the 1993 harvest, leaving supervision from 1 July 1993, the agricultural conversion rate applicable to the premium provided for in the basic regulation is to be the rate applicable on 1 July 1993. That rule means that the premium for tobacco delivered to first processors between 1989 and 1992, which has not yet left the place in which it was under supervision, is to be converted from ecus into national currency on the basis of the rate applicable on 1 July 1993. A derogation in favour of first processors in countries whose currency has depreciated is thus made from the rule in Article 10(2) of Regulation No 1068/93, according to which the conversion is to be made on the basis of the rate obtaining at the time when the tobacco was delivered to the first processors.

27. In 1994 Moskof received a premium of DR 1 793 340 for tobacco harvested in 1992. That amount was mistakenly calculated, in accordance with the rule in the second subparagraph of Article 6(1) of the implementing regulation, on the basis of the conversion rate obtaining in June 1994, when the tobacco left the place in which it had been

14 — Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organization of the market in raw tobacco (OJ 1992 L 215, p. 70).

under supervision. The Ethnikou Organismou Kapnou demanded repayment of DR 1 228 770 on the ground that the conversion should have been made according to the rule in Article 5 of the conversion regulation, that is to say the conversion rate applicable on 1 July 1993, which would have resulted in a premium of DR 564 570. If Article 5 of the conversion regulation is held to be invalid, the conversion should, in contrast, be made according to the rule in Article 10(2) of Regulation No 1068/93, on the basis of the conversion rate obtaining at the time when the tobacco was delivered to Moskof, that is to say in 1992. If, as indicated during the proceedings, the conversion rate at that time was still less favourable than that obtaining on 1 July 1993, the Ethnikos Organismos Kapnou should have required Moskof to repay an amount greater than DR 1 228 770.

28. It must therefore be held that Article 5 of the conversion regulation does not adversely affect first processors in countries whose currency has depreciated but, on the contrary, operates to their advantage.

29. Moskof challenged the validity of both Article 5 of the conversion regulation and the regulation as a whole and thus, also, the validity of Article 6 thereof which repeals the second subparagraph of Article 6(1) of the implementing regulation. Should the conversion regulation and, therefore, Article 6 thereof, be held to be wholly invalid, the second subparagraph of Article 6(1) of the implementing regulation would no longer be formally repealed.

30. As I have said, the rule in the second subparagraph of Article 6(1) of the implementing regulation conflicts with Council Regulations No 1676/85 and No 3813/92, which both provide for use of the conversion rate obtaining at the time when the event whereby the economic objective of the operation is attained occurs. The Commission, however, retained the second subparagraph of Article 6(1) of the implementing regulation and, as indicated, based its decision to do so on Article 5(2) of Regulation No 1676/85. That regulation and, therefore, Article 5(2) thereof, was repealed by Regulation No 3813/92, which entered into force on 1 January 1993. In order to facilitate the transition from the old agri-monetary arrangements to the new, the Commission maintained in force the effects of the implementing regulation by means of Regulation No 3820/92, which was adopted on the basis of Regulation No 3813/92 and, more specifically, Article 11(2) thereof, for an additional period from 1 January to 1 July 1993, when Regulation No 1068/93 entered into force. [15]

31. Since 1 July 1993, there is therefore no longer any legal basis for maintaining in force the second subparagraph of Article 6(1) of the implementing regulation. Since it is incompatible with Article 6(1) of Regulation No 3813/92, the second subparagraph of

15 — In respect of tobacco.

Article 6(1) of the implementing regulation has thus given way to the new rule in Article 10(2) of Regulation No 1068/93 since that regulation entered into force on 1 July 1993. In my opinion, it is therefore not possible to rely on the second subparagraph of Article 6(1) of the implementing regulation instead of Article 10(2) of Regulation No 1068/93, even in the event that the whole of the conversion regulation, and thus the repealing measure in Article 6, is held to be invalid.

32. Nor could recourse be had to the second subparagraph of Article 6(1) of the implementing regulation if the repealing provision in Article 6 of the conversion regulation was specifically held to be invalid and the other provisions in the regulation maintained. In such a situation, that provision would be rendered inoperative by Article 5 of the conversion regulation, in view of the fact, *inter alia*, that it is incompatible with the basic rule in Article 6(1) of Council Regulation No 3813/92.

33. It must therefore be concluded that the second subparagraph of Article 6(1) of the implementing regulation cannot be relied upon under any circumstances, meaning that the repeal of that provision by Article 6 of the conversion regulation is merely a formality.

The question of legitimate expectations

34. Article 5 of the conversion regulation exempts tobacco already harvested from application of the effects of the transition from the old agrimonetary arrangements to the new. In my opinion, Article 5 does not fail to protect the legitimate expectations of first processors but demonstrates, on the contrary, that those expectations are taken into account. Although Article 5 is not quite so favourable to first processors as the second subparagraph of Article 6(1) of the implementing regulation would have been if it had continued to apply, it is none the less significantly more favourable than the new arrangements under Article 10(2) of Regulation No 1068/93.

35. As I said, the second subparagraph of Article 6(1) of the implementing regulation conflicts with the fundamental principle introduced by Regulation No 1676/85 and maintained by Regulation No 3813/92 that the conversion is to be made on the basis of the rate obtaining at the time when the event whereby the economic objective of the operation is attained occurred. Since 1985, therefore, it was possible for first processors to ascertain that the second subparagraph of Article 6(1) of the implementing regulation conflicted with a Council regulation. Those traders could even have established that Regulation No 1134/68, which is referred to by the second subparagraph of Article 6(1) of the implementing regulation, was repealed by Regulation No 1676/85.

36. Furthermore, first processors could not have held a legitimate expectation in respect of a conversion rate or a specified amount, in so far as the conversion rate was known only when the tobacco left the place in which it had been under supervision and the amount of the premium depended on the conversion rate which happened to apply at that time. In practice, it was only a matter of speculation on the continuance of inflation.

37. In view of the foregoing, I do not see how there can have been any failure to protect legitimate expectations.

The question of retroactive effect

38. The conversion regulation is dated 17 December 1993 and was published in the *Official Journal of the European Communities* on 18 December 1993. In accordance with Article 7, the regulation entered into force on the third day following its publication in the *Official Journal*, but applied with effect from 1 July 1993. In my opinion, the conversion regulation therefore has retroactive effect.

39. According to the case-law of the Court, [16] although in general the principle of legal certainty precludes a Community measure from taking effect before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly protected. In my opinion those conditions are satisfied in so far as the conversion regulation benefits first processors in countries whose currency has depreciated (see point 28 above) and, as indicated at point 37, those traders had no grounds whatsoever for holding the slightest legitimate expectation.

40. Furthermore, it follows from the case-law of the Court that decisions having retroactive effect must include in the statement of reasons on which they are based particulars which justify the desired retroactive effect. According to the case-law of the Court, the statement of grounds required by Article 190 of the EEC Treaty is intended to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights and the Court to exercise its power of review. [17]

41. In so far as the conversion regulation benefits the persons concerned, as indicated at point 28 above, no statement of reasons is necessary in order to enable those persons to defend their rights or to enable the Court to protect those rights.

16 — Case C-368/89 *Crispoltoni* [1991] ECR I-3695, paragraph 17 and Joined Cases C-260/91 and C-261/91 *Diversinte and Iberlacta* [1993] ECR I-1885, paragraph 9.

17 — *Diversinte and Iberlacta*, cited at footnote 16 above, paragraphs 10 and 11.

42. If Article 7 of the conversion regulation had provided that it would apply from the date on which it was published, and not from 1 July 1993, Article 10(2) of Regulation No 1068/93 would have applied to tobacco leaving the place in which it was under supervision between 1 July 1993 and the date of publication of the conversion regulation. In my opinion, that constitutes sufficient grounds for the retroactive effect. Even if that reasoning is not apparent from the recitals in the preamble to the conversion regulation, the Court can establish that it exists and thus exercise its power of review.

The question of infringement of the principle of equal treatment

43. Moskof and the Greek Government claim that Article 5 of the conversion regulation adversely affects first processors in countries whose currency has depreciated, thereby infringing the principle of equal treatment.

44. In that respect I would point out that since first processors are able to receive an advance on the total amount of the premium, they do not run any financial risk. On the contrary, as a result of the earlier arrangements, they have enjoyed an opportunity to speculate without risk on rising inflation at the cost of the Community. The Commission was thus justified in intervening to rectify the situation, as stated in the observation of the Court of Auditors referred to at footnote 6, which estimated the costs of that speculation to be approximately ECU 50 million per annum.

The question of infringement of Article 39(1)(c) of the Treaty

45. According to that provision, the objective of the common agricultural policy is, *inter alia*, to stabilize markets. Moskof and the Greek Government claim, amongst other arguments, that freezing the conversion rate at 1 July 1993 is contrary to that objective.

46. In my opinion, that plea is clearly unfounded. On the contrary, freezing the conversion rate is more likely to stabilize markets than the previous arrangements, under which the fluctuating rate and speculation determined the conduct of traders on the market.

The question of the relationship with Article 3(1)(iv)

47. Article 3(1)(iv) provides that the premium is to be granted only to purchasers who provide proof before the expiry of a period of four years following the year of harvest that the tobacco has been sold for incorporation into manufactured products or exported to third countries or who undertake, after having subjected the tobacco to

first-stage processing, themselves to incorporate the tobacco in the manufactured products or to export it to third countries, within the same period.

48. Moskof and the Greek Government claim that freezing the conversion rate at 1 July 1993 is contrary to the right to choose the time, within the prescribed period of four years, when the tobacco leaves the place in which it was under supervision and thus the decisive moment for calculating the conversion rate.

49. In my opinion, freezing the conversion rate at 1 July 1993 does not affect the right to choose the time, within the prescribed period of four years, when the tobacco leaves the place in which it was under supervision. I therefore consider there to be no infringement of that provision of the basic regulation.

The question of the statement of reasons and misuse of powers

50. The seventh recital to the conversion regulation states, by way of reasoning, that the operative event referred to by the second subparagraph of Article 6(1) of the implementing regulation does not meet the criteria laid down in Article 6 of Regulation No 3813/92. As stated above, the second subparagraph of Article 6(1) of the implementing regulation is based on Articles 4(2) and 6 of Regulation No 1134/68, according to which the conversion is to be made on the basis of the conversion rate obtaining at the time when the transaction is carried out. That fundamental principle was amended by Article 5 of Regulation No 1676/85, which substituted the rule according to which the conversion is to be made at the time when the event whereby the economic objective of the operation is attained occurs. That rule was taken up in Article 6(1) of Regulation No 3813/92. In view of that fact, it must therefore be held that the explanation in the seventh recital to the conversion regulation constitutes a correct and sufficient statement of reasons for the introduction of new rules concerning agricultural conversion rates.

51. The seventh recital to the conversion regulation states that, in order to avoid market distortion with the tobacco from the 1993 harvest, 1 July 1993 should be the date determining the operative event for the premium for tobacco from harvests prior to 1993 leaving supervision from that date.

52. It follows from the wording of Article 5 of the conversion regulation that it applies to tobacco from harvests prior to 1993, leaving supervision from 1 July 1993. The choice of that date is fortunate, in so far as the second subparagraph of Article 6(1) of the implementing regulation was replaced on 1 July 1993 by Regulation No 1068/93 precisely on that date. In my opinion it is logical that 1 July 1993 was also chosen as the date determining the conversion rate.

The question of the procedure before the Management Committee

53. On 11 June 1993 the Management Committee for Tobacco, with the exception of the Hellenic Republic and the Italian Republic, approved a draft conversion regulation. The Commission could then have adopted that regulation immediately and published it in the *Official Journal* before 1 July 1993, the date on which it was due to enter into force. The regulation was not adopted until 17 December 1993, however, and was published in the *Official Journal* on 18 December 1993.

54. The Commission indicated that one of its members had requested that additional research be carried out, as a result of which the Commissioner for Agriculture asked the relevant department to endeavour to find a solution which was more acceptable to the Hellenic Republic and the Italian Republic. On 10 September 1993 a proposal to the effect that Article 6(1) of the implementing regulation would be maintained, in respect of tobacco from the 1992 harvest, until 1 July 1994 was submitted to the Management Committee for Tobacco. The Greek delegation was, however, unable to accept the proposed expiry date. At a new meeting on 13 October 1993, that delegation stated that it could not adopt a position on the new proposal, which was therefore withdrawn by the Commission. The Commission subsequently decided to adopt the version of the conversion regulation submitted to the Management Committee for Tobacco on 11 June 1993.

55. I would point out that there is no mention in the minutes of the meetings of the Management Committee for Tobacco in the period between 11 June and 3 December 1993, which were produced during these proceedings, of the Commission withdrawing the draft which was approved on 11 June 1993 or in any other way waiving its right to adopt the version of the conversion regulation contained in that draft.

56. The fact that the Commission submits a new proposal, seeking to obtain the support of the Hellenic Republic and of the Italian Republic by suggesting amendments to a draft measure which has been approved, does not in itself mean that it waives its right to adopt the version of the conversion regulation contained in the approved draft.

57. The wording of the various articles of the conversion regulation correspond entirely with that of the draft approved by the Management Committee for Tobacco on 11 June 1993. However, the Commission inserted the two grounds examined above [18] into the seventh recital at a later stage. Those grounds replaced a statement in the approved draft according to which 1 July 1993 should be the date determining the operative event for the conversion rate for the tobacco from harvests prior to 1993 leaving the place in which it was under supervision from that date.

18 — Those grounds were inserted in the draft submitted to the Management Committee for Tobacco on 10 September 1993.

58. In my opinion that statement was not a statement of reasons, but merely repetition of the provisions of Article 5 of the conversion regulation, so that its deletion does not in any way constitute a failure to fulfil the duty to state reasons. The amendment should be considered to be a stylistic change.

59. Accordingly, I consider that the fact that the Commission failed to submit the new wording of the seventh recital to the conversion regulation to the Management Committee for Tobacco does not constitute sufficient grounds for declaring the regulation invalid.

60. As I said, the delay in adopting the conversion regulation resulted in its having retroactive effect in so far as it provides that it is to apply with effect from 1 July 1993. The draft conversion regulation was not resubmitted to the Management Committee in order for it to give an opinion on the retroactive effect.

61. In my opinion, the retroactive effect is purely a matter of form and, as stated at point 28 above, benefits first processors in countries whose currency has depreciated. Accordingly, the fact that the draft conversion regulation was not resubmitted to the Management Committee for Tobacco does not, in my opinion, constitute sufficient grounds for declaring the regulation invalid.

Conclusion

62. In the light of the foregoing I propose that the Court give the following answer to the questions raised by the Diikitiko Protodikio:

Examination of Commission Regulation (EC) No 3477/93 of 17 December 1993 concerning the agricultural conversion rates to be applied in the tobacco sector in the light of the order for reference and the other information contained in the case-file has not revealed any factor capable of affecting its validity.