Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

4 October 2012 *

(Agriculture — Sugar sector — Common organisation of the markets — Application for restructuring aid — Undertaking by the producer to cease delivery of a certain quantity of quota sugar beet — Definition — Unilateral declaration of the producer — Refusal to grant aid — Need to terminate the existing delivery contract)

In Case C-390/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Czech Republic), made by decision of 8 July 2011, received at the Court on 22 July 2011, in the proceedings

CS AGRO Ronov s.r.o.

v

Ministerstvo zemědělství,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, A. Prechal, L. Bay Larsen (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: V. Trstenjak,

Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 28 June 2012,

after considering the observations submitted on behalf of:

— CS AGRO Ronov s.r.o., by E. Auersvaldová, advokáta,

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

— the European Commission, by Z. Malůšková and P. Rossi, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Czech.

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Article 4a of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the European Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (OJ 2006 L 58, p. 42), as amended by Council Regulation (EC) No 1261/2007 of 9 October 2007 (OJ 2007 L 283, p. 8; 'Regulation No 320/2006').

2 The reference has arisen in the context of a dispute between the company CS AGRO Ronov s.r.o. ('CS AGRO') and the Ministerstvo zemědělství (Ministry of Agriculture) concerning restructuring aid for sugar beet producers.

Legal context

Regulation No 1261/2007

3 Recitals 1 and 7 to 10 of Regulation No 1261/2007 are worded as follows:

'(1) Council Regulation (EC) No 320/2006 was adopted with the aim to enable the least competitive sugar producers to give up their quota production. However, the renunciation of quotas under that Regulation has not reached the level that was initially expected.

...

(7) It is considered that the restructuring scheme would give better result if growers were able to give up on their own initiative their production of beet or cane intended to be processed into quota sugar. To that end, growers should in the 2008/2009 marketing year be given the possibility to apply directly for the aid provided for in Article 3(6) of Regulation (EC) No 320/2006 provided that they cease to deliver sugar beet or cane to the undertakings to which they were bound by delivery contracts in the previous marketing year. As a consequence, Member States should reduce the quota of the sugar undertakings concerned. ...

(8) In order to avoid endangering the economic viability of the sugar undertakings concerned by growers' aid applications, the quota reduction should be limited to 10% of the quota allocated to each undertaking, which corresponds to the percentage of quota which the Member State can re-allocate each marketing year in accordance with Article 11(1) of Regulation (EC) No 318/2006.

(9) Where the quota of a sugar undertaking is reduced as a result of growers' aid applications, that undertaking should be granted restructuring aid as referred to in Article 3(1)(c) of Regulation (EC) No 320/2006. ...

(10) A sugar undertaking concerned by growers' aid applications should until 31 January preceding the marketing year concerned retain the right to submit an application for restructuring aid as provided for in Articles 3 and 4 of Regulation (EC) No 320/2006, provided that it renounces a quota corresponding to at least the same level of quota reduction that would have resulted from the applications for aid lodged by growers. In that case the sugar undertaking's aid application should replace the growers' applications.'

Regulation No 320/2006

4 Article 3(1) of Regulation No 320/2006, under the heading 'Restructuring aid' provides, inter alia, that any undertaking producing sugar to which a quota was allocated before 1 July 2006 is, under certain conditions, to be entitled to a restructuring aid per tonne of quota renounced.

5 Article 4(1) of Regulation No 320/2006, under the heading 'Application for restructuring aid', provides that applications for restructuring aid are to be submitted to the Member State concerned by 31 January preceding the marketing year during which the quota is to be renounced.

6 Article 4a of Regulation No 320/2006, headed 'Application for restructuring aid by growers', provides:

'1. For the 2008/2009 marketing year, any grower of sugar beet or cane intended to be processed into quota sugar may submit to the Member State concerned a direct application for the aid provided for in Article 3(6) and 3(7), accompanied by a commitment to cease his delivery of quota beet or cane to the undertaking with which he has concluded a delivery contract in the preceding marketing year.

...

2. The applications referred to in paragraph 1 shall be submitted by 30 November 2007. Applications may be submitted as from 30 October 2007.

3. The Member State concerned shall establish a list of applications referred to in paragraph 1 in the chronological order of their lodging and shall communicate the total amount of quota affected by the applications received within 10 working days following the deadline for submission as referred to in paragraph 2 to the Commission and the undertakings concerned.

4. By 15 March 2008, the Member State concerned shall, on the basis of the chronological order referred to in paragraph 3 ..., grant growers' applications corresponding to up to 10% of the sugar quota allocated to each undertaking and shall reduce in proportion the sugar quota of the undertaking concerned in accordance with Article 11(4) of Regulation (EC) No 318/2006 ...

In the case where any of the limits of 10% referred to in the first subparagraph is reached, the Member State concerned shall reject the applications above this limit according to the chronological order of submission.

...

5. As a result of the Member State's acceptance of applications in accordance with paragraph 4, the amount of restructuring aid to be granted shall be as follows:

(a) for growers and contractors, ...

(b) for undertakings, ...

6. Paragraphs 4 and 5 of this Article shall not apply where an undertaking's application in accordance with Article 4 has been granted as from the marketing year 2008/2009 renouncing an amount of quota higher than the quota affected by the growers' applications. The same shall apply in any case, where an undertaking's application has been granted as from the marketing year 2008/2009 renouncing more than 10% of its quota.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

7 On 14 February 2007, CS AGRO, a sugar beet producer, concluded with the sugar beet processing company Cukrovary TTD a.s. a long-term sales agreement for deliveries of sugar beet towards manufacture of the production quota for sugar for the years 2007 to 2013. According to that agreement, the plaintiff had to conclude each year an annual sale contract for the delivery of sugar beet.

8 CS AGRO concluded that sale contract for the marketing year 2007/2008, but not for 2008/2009. By letter of 24 October 2007, it informed Cukrovary TTD a.s. of that intention.

9 On 30 October 2007, CS AGRO submitted to the Státní zemědělský intervenční fond (Agricultural Intervention Fund; 'the SZIF') an application for restructuring aid for the marketing year 2008/2009.

10 On 26 November 2007, the SZIF called upon CS AGRO to add to its application, within seven days, written evidence of the amendment or termination of its long-term sales agreement in relation to the amount of sugar beet in respect of which it undertook to cease delivery. CS AGRO did not comply with that instruction.

11 In its application form for restructuring aid, CS AGRO expressed its intention not to conclude the annual sales contract for the delivery of sugar beet for the marketing year 2008/2009. Thus, by decision of 22 January 2008, the SZIF rejected CS AGRO's application on the ground that the latter had not adduced evidence of compliance with the basic conditions for the granting of restructuring aid referred to in Article 4a(1) of Regulation No 320/2006.

12 CS AGRO lodged an objection to the decision of the SZIF before the Ministerstvo zemědělství, which was dismissed. The company appealed against that decision before the Měststký soud (City Court), Prague, which likewise dismissed the appeal. CS AGRO then brought an action in cassation against the judgment of the Měststký soud, Prague, before the Nejvyšší správní soud (Supreme Administrative Court).

13 In those circumstances, the Nejvyšší správní soud decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) On a proper interpretation of Article 4a(4) of [Regulation No 320/2006], does the commitment to cease delivery of a certain amount of quota beet to the undertaking with which he has concluded a delivery contract in the preceding marketing year mean a unilateral declaration of the grower that he will not deliver sugar beet in the marketing year 2008/2009, or does that commitment mean the written termination of the contractual relationship of the grower with the sugar company concerning deliveries of sugar beet for the said marketing year?

(2) May the fact that a contractual party uses a step provided for by a directly binding EU legal provision result in the unenforceability of an obligation of that contractual party under a valid private law contract, on condition that, as a result of that fact, the other contractual party is granted funds from the public budget?'

The questions referred for a preliminary ruling

The first question

14 By its first question, the national court asks, in essence, whether Article 4a(1) of Regulation No 320/2006 must be interpreted as meaning that the undertaking to cease delivery of a certain quantity of sugar beet during the marketing year 2008/2009 may take the form of a unilateral declaration by the producer, or whether the producer may not enter into such an undertaking unless he has already actually terminated the contractual relationship binding him to the sugar company.

15 As stated in the first recital of Regulation No 1261/2007, Regulation No 320/2006 was adopted with the aim of enabling the least competitive sugar producers to give up their quota production. However, the renunciation of quotas under that regulation has not reached the level that was initially expected.

16 In accordance with recital 7 thereof, Regulation No 1261/2007 has the aim of improving the results of the restructuring scheme by allowing producers, during the 2008/2009 marketing year, to give up on their own initiative their production of beet or cane intended to be processed into quota sugar.

17 To that end, the producer may, under Article 4a(1) of Regulation No 320/2006, make a direct application for restructuring aid accompanied by a commitment to cease delivery of a certain amount of quota beet or cane to the undertakings with which he concluded a delivery contract in the preceding marketing year.

18 As provided in Article 4a(4) of Regulation No 320/2006, applications made directly by producers cause the Member State to reduce the sugar companies' quota within the maximum limit of 10% of the quota allocated to each undertaking.

19 In that respect, it should be noted that neither Article 4a of Regulation No 320/2006, nor any other provision of EU law, provides that such applications must be preceded by the prior termination of the delivery contracts binding the producers to the sugar companies.

20 The attainment of the objective of reducing sugar production quotas, referred to in paragraph 18 of this judgment, would risk being compromised if such a reduction could be made subject to the collaboration of the sugar companies, in the form, in particular, of the prior termination, by mutual agreement, of the delivery contract binding the producer to the undertaking.

21 Moreover, it should be remembered that, in the context of direct aid applications by producers in accordance with Article 4a(4) of Regulation No 320/2006, attainment of the maximum limit of 10% of the sugar quota allocated to each undertaking entails an obligation on the Member State concerned to dismiss applications which exceed that limit according to the chronological order in which they were submitted.

22 Thus, if the producer had to terminate his delivery contract in order to be able to claim restructuring aid, and if, subsequently, his application were not granted, he would have neither the possibility of delivering beet or cane sugar under a contract, nor the possibility of obtaining that aid.

23 Such a risk would be likely to deter producers from undertaking not to deliver beet or cane to the sugar companies and would go against the objective of reducing sugar production quotas at the initiative of those producers.

24 The same would apply if the sugar company made its own aid application in accordance with Article 4(1) of Regulation No 320/2006 and, pursuant to Article 4a(6) of Regulation No 320/2006, the producer's application for aid were not accepted.

25 Having regard to the above, the answer to the first question is that Article 4a(1) of Regulation No 320/2006 must be interpreted as meaning that the undertaking to cease delivery of a certain quantity of sugar beet during the marketing year 2008/2009 may take the form of a unilateral declaration by the producer.

The second question

26 By its second question, the national court asks, in essence, whether Article 4a(1) of Regulation No 320/2006 must be interpreted as meaning that the unilateral undertaking of the producer to cease delivery of a certain quantity of sugar beet during the marketing year 2008/2009 entails, by virtue of that provision, the inapplicability of his contractual obligations towards the sugar company.

27 As is apparent from the answer give to the first question, Article 4a(1) of Regulation No 320/2006 has as such no legal effect on the contractual obligations of the parties.

28 The answer to the second question is therefore that Article 4a(1) of Regulation No 320/2006 must be interpreted as meaning that the unilateral undertaking of the producer to cease delivery of a certain quantity of sugar beet during the marketing year 2008/2009 does not as such entail the inapplicability of its contractual obligations towards the sugar company.

Costs

29 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **Article 4a(1) of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the European Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy, as amended by Council Regulation (EC) No 1261/2007 of 9 October 2007, must be interpreted as meaning that the undertaking to cease delivery of a certain quantity of sugar beet during the marketing year 2008/2009 may take the form of a unilateral declaration by the producer.**

2. **Article 4a(1) of Regulation No 320/2006, as amended by Regulation No 1261/2007, must be interpreted as meaning that the unilateral undertaking of the producer to cease delivery of a certain quantity of sugar beet during the marketing year 2008/2009 does not as such entail the inapplicability of its contractual obligations towards the sugar company.**

[Signatures]