Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

3 October 2013 *

(Agriculture — Common agricultural policy — Single payment scheme — Regulation (EC) No 1782/2003 — Calculation of payment entitlement — Setting the reference amount — Reference period — Article 40(1), (2) and (5) — Exceptional circumstances — Farmers under agri-environmental commitments according to Regulation (EEC) No 2078/92 and Regulation (EC) No 1257/1999 — Determination of the right to revalorisation of the reference amount — Principle of protection of legitimate expectations — Equal treatment between farmers)

In Case C-298/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (France), made by decision of 4 May 2012, received at the Court on 18 June 2012, in the proceedings

Confédération paysanne

v

Ministre de l'Alimentation, de l'Agriculture et de la Pêche,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, M. Berger, A. Borg Barthet (Rapporteur), E. Levits and J.-J. Kasel, Judges,

Advocate General: J. Kokott,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 18 April 2013,

after considering the observations submitted on behalf of:

— the Confédération paysanne, by M. Jacquot, avocat,

— the French Government, by C. Candat and D. Colas, acting as Agents,

— the European Commission, by B. Schima and H. Tserepa-Lacombe, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 May 2013,

gives the following

* Language of the case: French.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 40(1), (2) and (5) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1, and – corrigendum – OJ 2004 L 94, p. 70), as amended by Council Regulation (EC) No 1009/2008 of 9 October 2008 (OJ 2008 L 276, p. 1) ('Regulation No 1782/2003').

2 This request has been made in proceedings between the Confédération paysanne and the French Minister for Food, Agriculture and Fisheries, concerning the lawfulness of several provisions of the Order of 23 February 2010, amending the Order of 20 November 2006 applying Decree No 2006-710 of 19 June 2006 on the implementation of the income support provided for by Council Regulation (EC) No 1782/2003 of 29 September 2003 (JORF of 28 February 2010, p. 4141, 'the Order of 23 February 2010').

Legal context

EU law

Regulation No 1782/2003

3 Under Article 37(1) of Regulation No 1782/2003:

'The reference amount shall be the three-year average of the total amounts of payments, which a farmer was granted under the support schemes referred to in Annex VI, calculated and adjusted according to Annex VII, in each calendar year of the reference period referred to in Article 38.

…'

4 In accordance with Article 38 of that regulation, the reference period comprises the calendar years 2000, 2001 and 2002.

5 Article 40 of Regulation No 1782/2003, entitled 'Hardship cases' provided:

'1. By way of derogation from Article 37, a farmer whose production was adversely affected during the reference period by a case of *force majeure* or exceptional circumstances occurring before or during that reference period shall be entitled to request that the reference amount be calculated on the basis of the calendar year or years in the reference period not affected by the case of *force majeure* or exceptional circumstances.

2. If the whole reference period was affected by the case of *force majeure* or exceptional circumstances, the Member State shall calculate the reference amount on the basis of the 1997 to 1999 period.

…

3. A case of *force majeure* or exceptional circumstances, with relevant evidence to the satisfaction of the competent authority, shall be notified by the farmer concerned in writing to the authority within a deadline to be fixed by each Member State.

4. *Force majeure* or exceptional circumstances shall be recognised by the competent authority in cases such as, for example:

(a) the death of the farmer;

(b) a long-term professional incapacity of the farmer;

(c) a severe natural disaster gravely affecting the holding's agricultural land;

(d) the accidental destruction of livestock buildings on the holding;

(e) an epizootic affecting part or all of the farmer's livestock.

5. Paragraphs 1, 2 and 3 of this Article shall apply, *mutatis mutandis*, to farmers who, during the reference period, were under agri-environmental commitments according to Regulations (EEC) No 2078/92 [of the Council of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ 1992 L 215, p. 85)] and (EC) No 1257/1999 [of the Council of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80), as amended by Council Regulation (EC) No 2223/2004 of 22 December 2004 (OJ 2004 L 379, p. 1, 'Regulation No 1257/1999')] to hop farmers who, during the same period, were under a grubbing-up commitment in accordance with [Council] Regulation (EC) No 1098/98 [of 25 May 1998 introducing special temporary measures for hops (OJ 1998 L 157, p.7)], as well as to tobacco farmers who have participated in the quota buy-back programme in accordance with [Council] Regulation (EEC) No 2075/92 [of 30 June 1992 on the common organisation of the market in raw tobacco (OJ 1992 L 215, p.70)].

In the case where the measures referred to in the first subparagraph covered both the reference period and the period referred to in paragraph 2, Member States shall establish, according to objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, a reference amount in accordance with the detailed rules to be laid down by the Commission in accordance with the procedure referred to in Article 144(2).'

Regulation No 2078/92

6 Recitals 2 and 12 in the preamble to Regulation No 2078/92 stated:

'… measures to reduce agricultural production in the Community must have a beneficial impact on the environment;

…

… the measures provided for in this regulation must encourage farmers to make undertakings regarding farming methods compatible with the requirements of environmental protection and maintenance of the countryside, and thereby to contribute to balancing the market; whereas the measures must compensate farmers for any income losses caused by reductions in output and/or increases in costs and for the part they play in improving the environment'.

7 Under Article 1(a) of that regulation, the aid scheme instituted by it was intended to promote 'the use of farming practices which reduce the polluting effects of agriculture, a fact which also contributes, by reducing production, to an improved market balance.'

8 Article 2(1) of Regulation No 2078/92 provided:

'Subject to positive effects on the environment and the countryside, the scheme may include aid for farmers who undertake:

(a) to reduce substantially their use of fertilizers and/or plant protection products, or to keep to the reductions already made, or to introduce or continue with organic farming methods;

(b) to change, by means other than those referred to in (a), to more extensive forms of crop, including forage, production, or to maintain extensive production methods introduced in the past, or to convert arable land into extensive grassland;

(c) to reduce the proportion of sheep and cattle per forage area;

(d) to use other farming practices compatible with the requirements of protection of the environment and natural resources, as well as maintenance of the countryside and the landscape, or to rear animals of local breeds in danger of extinction;

(e) to ensure the upkeep of abandoned farmland or woodlands;

(f) to set aside farmland for at least 20 years with a view to its use for purposes connected with the environment, in particular for the establishment of biotope reserves or natural parks or for the protection of hydrological systems;

(g) to manage land for public access and leisure activities.'

Regulation No 1257/1999

9 Under Article 22 of Regulation No 1257/1999:

'Support for agricultural methods designed to protect the environment, maintain the countryside (agri-environment) or improve animal welfare shall contribute to achieving the Community's policy objectives regarding agriculture, the environment and the welfare of farm animals.

The purpose of the support is to promote:

(a) ways of using agricultural land which are compatible with the protection and improvement of the environment, the landscape and its features, natural resources, the soil and genetic diversity,

(b) an environmentally-favourable extensification of farming and management of low-intensity pasture systems,

(c) the conservation of high nature-value farmed environments which are under threat,

(d) the upkeep of the landscape and historical features on agricultural land,

(e) the use of environmental planning in farming practice,

(f) the improvement of animal welfare.'

10 The first subparagraph of Article 24(1) of Regulation No 1257/1999 provides:

'Support in respect of an agri-environmental or animal welfare commitment shall be granted annually and be calculated on the basis of:

(a) income foregone,

(b) additional costs resulting from the commitment given, and

(c) the need to provide an incentive.

French law

The Decree of 19 June 2006

11 Under the ninth and tenth paragraphs of Article 1 of Decree No 2006-710 of 19 June 2006 on the implementation of the income support provided for by Council Regulation (EC) No 1782/2003 of 29 September 2003 (JORF of 20 June 2006, p. 9220), as amended by Decree No 2008-1261 of 2 December 2008 (JORF of 4 December 2008, p. 18530, 'the Decree of 19 June 2006'):

'For the application of Article 40(5) of [Regulation (EC) No 1782/2003] consideration shall be given only to those agri-environmental commitments listed by order of the Minister for Agriculture and which, as the case may be, have resulted in a reduction equivalent to at least 20%:

— either in the amount of aid received in respect of the affected years, calculated in accordance with the detailed provisions set out in that order, in comparison with that paid in respect of the unaffected years of the reference period;

…

where *force majeure*, an exceptional circumstance or an agri-environment commitment affects all the years … of the reference period … and leads … to a reduction in the amount of the aid …, an order of the Minister for Agriculture shall define the method for calculating that reduction.

…'

The Order of 20 November 2006

12 Article 5 of the Order of 20 November 2006 applying Decree No 2006-710 of 19 June 2006 (JORF of 25 November 2006, p. 17707), as amended by the Order of 23 February 2010 ('the Order of 20 November 2006') provides:

'For the application of the ninth paragraph of Article 1 of Decree No 2006-710 of 19 June 2006 referred to above, the amount of the aid received during a year taken into account shall be equal to the total of all the amounts received for each of the 11 types of aid referred to in Article 1 of this Order.'

13 Under Article 6(4) and (5) of the Order of 20 November 2006:

'4. A farmer's reference amount, calculated in accordance with Article 40(1) of [Regulation No 1782/2003], shall be revalorised by an amount equal to a third of the difference between the average amount of the aid received during the years of the reference period not affected by an agri-environmental commitment and the amount of the aid received during the years of the reference period affected by an agri-environmental commitment when the ratio of:

— the third of the difference between the average amount of the aid received during the years of the reference period not affected by an agri-environmental commitment and the amount of the aid received during the years of the reference period affected by an agri-environmental commitment;

— to the sum of the third of that difference and the amount of the reference, calculated according to Article 40(1) of [Regulation No 1782/2003];

is at least equal to 6.6%.

5. Article 6(3) and (4) shall not apply where the farmer was subject to at least one of the agri-environmental commitments referred to in Article 3 during each of the three years of the reference period.'

14 Article 7 of the Order of 20 November 2006 provides:

'(1) Where a farmer was subject to one of the agri-environmental commitments defined in Article 3 of this order during each of the three years of the reference period, the rate of reduction calculated for the purposes of applying the ninth paragraph of Article 1 of the abovementioned Decree of 19 June 2006 shall correspond to the ratio of:

— the difference between the amount of the aid received during the last year not affected by an agri-environmental commitment and the average of the amounts of aid received during the reference period;

— to the sum of that difference and the reference amount, calculated in accordance with Article 37 of [Regulation No 1782/2003].

For the purposes of the second subparagraph, the amount of the aid received during the last year not affected by an agri-environmental commitment shall correspond to the amount of the aid, calculated in accordance with Article 5 of this order, received during the last year not affected by an agri-environmental commitment, to which a coefficient equal to the ratio of the average of the agricultural area used during the reference period to the agricultural area used during the last year not affected by an agri-environmental commitment shall be applied.

(2) Where the rate of reduction calculated in accordance with paragraph 1 reaches the threshold of 20% referred to in Article 1(9) of the abovementioned Decree of 19 June 2006, an amount shall be added to its reference amount, calculated in accordance with Article 37 of [Regulation No 1782/2003].

The amount to be added shall be equal to the difference between the amount of the aid received during the last year not affected by an agri-environmental commitment calculated in accordance with the last subparagraph of (1) and the average of the amounts of aid received during the reference period.

(3) For the application of the present article, the last year not affected by an agri-environmental commitment shall not be earlier than 1992.'

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

15 On 28 April 2010, the Confédération paysanne applied to the Conseil d'État (Council of State) seeking to have Article 1(2) to (4) of the Order of 23 February 2010 annulled.

16 In support of that application, it relies on two pleas in law in particular.

17 First, the Confédération paysanne claims that the contested provisions must be annulled in so far as they were adopted pursuant to Article 1(9) of the Decree of 19 June 2006. In its opinion, Article 1(9) infringes Article 40(1) and (5) of Regulation No 1782/2003 in so far as it bases the right to revalorisation of the reference amount for farmers who have been subject to agri-environmental commitments during all or part of the reference period on the reduction of the amount of the aid received by the farmers and not on the reduction of their level of production.

18 Second, the Confédération paysanne claims that, by basing the right to revalorisation of the reference amount for farmers whose production has been seriously affected by reason of agri-environmental commitments to which they have been subject, during the entire reference period, on the comparison of the amount of aid received during the last year not affected by an agri-environmental commitment, which may be as early as 1992, and the average of the amounts of aid received during the reference period, Article 1(2) and (4) of the Order of 23 February 2010 fails to satisfy the requirement of equal treatment between farmers laid down in Article 40(5) of Regulation No 1782/2003. That breach of equal treatment is based on the fact that the amount of the aid referred to in Article 1 of the Order of 20 November 2006 increased significantly during the period 1992-2000 so that, as regards farmers who were subject to agri-environmental commitments several years before the beginning of the reference period, such a comparison could only exceptionally show a sufficient reduction in the amount of aid to give rise to the right to a revalorisation of the reference amount.

19 Taking the view that the answer to the pleas in law raised by the Confédération paysanne depended on the interpretation of Article 40(1), (2) and (5) of Regulation No 1782/2003, the Conseil d'État decided to stay its proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Do paragraphs 1 and 5 of Article 40 of [Regulation No 1782/2003], regard being had not only to their wording, but also to their purpose, authorise Member States to base the right to revalorisation of the reference amount for farmers whose production has been seriously affected by reason of agri-environmental commitments to which they have been subject, for all or part of the reference period, on a comparison of the amounts of the direct payments received during the years affected by such commitments with those received during years which were not affected by such commitments?

2. Do paragraphs 2 and 5 of Article 40 of [Regulation No 1782/2003] authorise Member States to base the right to revalorisation of the reference amount for farmers whose production has been seriously affected by reason of agri-environmental commitments to which they have been subject, during the entire reference period, on a comparison of the amount of direct payments received during the last year not affected by an agri-environmental commitment, including cases in which that year is eight years before the reference period, with the annual average amount of direct payments received during the reference period?'

Consideration of the questions referred

The first question

20 By its first question the referring court asks, in essence, whether the first subparagraph of Article 40(5) of Regulation No 1782/2003 must be interpreted as meaning that the Member States are entitled to base the right to revalorisation of the reference amount for farmers whose production has been seriously affected by reason of agri-environmental commitments to which they have been subject, for all or part of the reference period, on a comparison of the amounts of the direct payments received during the years affected by such commitments with those received during the years which were not affected by such commitments.

21 Before answering that question, it must be pointed out at the outset, as it was by the Advocate General at point 24 of her Opinion, that of the different language versions of Regulation No 1782/2003, before any amendment thereof, only the French version of Article 40(1) of the regulation uses the expression 'gravement affectée' (seriously affected). The Spanish, German Italian, Portuguese and Finnish versions of that provision provide, as the sole condition for paying aid to farmers, that production has been 'affected', whereas the Danish, Greek, English, Dutch and Swedish versions require an 'adverse influence' without, however, requiring production to have been seriously affected.

22 According to settled case-law, the necessity of uniform application and, accordingly, of uniform interpretation of an EU measure makes it impossible to consider one version of the text in isolation, but requires it to be interpreted on the basis of both the real intention of its author and the aim pursued by the latter, in the light, in particular, of the versions in all the other official languages (see, inter alia, Case C-569/08 *Internetportal und Marketing* [2010] ECR I-4871, paragraph 35, and Case C-52/10 *Eleftheri tileorasit and Giannikos* [2011] ECR I-4973, paragraph 23).

23 In that regard, it must be noted, first, that the singularity of the French version of Article 40(1) of Regulation No 1782/2003 already existed in the text of the proposal for a Council regulation establishing common rules for direct support schemes under the common agricultural policy and support schemes for producers of certain crops [COM(2003) 23 final].

24 Second, it should be borne in mind that the derogation clause laid down in Article 40 of Regulation No 1782/2003 is designed to adjust the rule for calculating the reference amount provided for in the context of the what is known as the 'historic' method, and pursuant to which farmers having benefited, during a reference period comprising the calendar years 2000 to 2002, from a payment under at least one of the support schemes referred to in Annex VI to that regulation, are entitled to aid calculated on the basis of a reference amount obtained, for each farmer, on the basis of the annual average, for that period, of the total payments granted under those schemes.

25 In particular, Article 40(5) of Regulation No 1782/2003, read in conjunction with Article 40(1), entitles farmers who, during the reference period, were under agri-environmental commitments pursuant to Regulation No 2078/92 and Regulation No 1257/1999 to request that their reference amount be calculated on the basis of the calendar year or years in the reference period which were not affected by those commitments (see Case C-152/09 *Grootes* [2010] ECR I-11285, paragraph 60).

26 By extending the exceptional circumstances scheme to farmers who, during the reference period, were under agri-environmental commitments pursuant to Regulation No 2078/92 and Regulation No 1257/1999, the EU legislature considered that a farmer who has entered into agri-environmental commitments cannot be penalised in the context of a subsequent Union support scheme by reason of those very commitments, as that farmer was not in a position to foresee that his decision might have consequences on future direct payments under rules subsequently adopted (see *Grootes*, paragraphs 36 and 44).

27 That interpretation is supported by the preparatory documents to Regulation No 1782/2003, and, in particular, by the document entitled 'Single payment scheme, special cases, national reserve' distributed on 28 May 2003 during the Working Party on Horizontal Agricultural Questions [(DS 200/03 REV 1), and reproduced at Annex IV to Council document No 9971/03 of 3 June 2003] under which, in accordance with Case 120/86 *Mulder* [1988] ECR 2321, paragraph 24, farmers who were subject to agri-environmental commitments were allowed to benefit from the exceptional circumstances scheme.

28 Neither the preparatory documents to Regulation No 1782/2003 nor any provision of it indicate that the intention of the legislator was to make the application of that scheme, with regard to farmers, subject to the condition that their production had been 'seriously' affected.

29 That made clear, in order to answer the first question, it must be noted that, as is apparent from paragraph 26 of this judgment, the objective which the legislature intended to achieve was to ensure that farmers who, during the reference period, were subject to those agri-environmental measures were placed in the same situation as they would have been if they had not participated in those measures.

30 It is clear, moreover, from the scheme of Article 40 of Regulation No 1782/2003, that the fact of having been subject to agri-environmental commitments during the reference period pursuant to Regulation No 2078/92 and Regulation No 1257/1999 is in itself sufficient for the farmer concerned to be entitled to have his reference amount calculated on the basis of the calendar year or years of that period not subject to such commitments, without it being necessary to assess whether, as a result of such commitments, that farmer's production has been affected.

31 As is apparent from Article 2 of Regulation No 2078/92, read in the light of Article 1(a) and of recitals 2 and 12 in the preamble to that regulation, and of Article 22 of Regulation No 1257/1999, those commitments, in so far as they require ways of using agricultural land to be put in hand involving, inter alia, a reduction in the use of fertilizers and plant protection products, more extensive methods of using agricultural land, a reduction in the proportion of sheep and cattle per forage area so as to lead to income losses, setting aside farmland with a view to its use for purposes connected with the environment, or yet the management of land for public access and leisure activities, intrinsically have the effect of adversely affecting production of a farmer who is subject to them.

32 Moreover, a farmer whose production has been affected by the application of measures resulting from agri-environmental commitments could, in certain circumstances, find himself faced with difficulties, or even unable to establish the precise link between those commitments and the reduction in his agricultural production.

33 It is precisely for these reasons that, pursuant to Article 40(5) of Regulation No 1782/2003, participation in the agri-environmental measures laid down by Regulation No 2078/92 and Regulation No 1257/1999 leads to the same consequences for farmers as when their production is adversely affected by a case of *force majeure* or exceptional circumstances.

34 It follows that the first subparagraph of Article 40(5) of Regulation No 1782/2003 must be interpreted as meaning that a farmer, by the mere fact of having been subject, during the reference period, to agri-environmental commitments pursuant to Regulation No 2078/92 and Regulation No 1257/1999, is entitled to request that his reference amount be calculated on the basis of the calendar year or years in the reference period which were not affected by those commitments.

The second question

35 By its second question, the referring court asks, in essence, whether the second subparagraph of Article 40(5) of Regulation No 1782/2003 must be interpreted as meaning that Member States are entitled to base the right to revalorisation of the reference amount for farmers whose production has been affected by reason of agri-environmental commitments to which they have been subject, during the 1997-2002 period, on the comparison of the amount of direct payments received during the last year not affected by an agri-environmental commitment, even if that year is eight years before the reference period, and the annual average amount of direct payments received during the reference period.

36 Having regard to the answer to the first question, the answer to the second question must be that the second subparagraph of Article 40(5) of Regulation No 1782/2003 must be interpreted as meaning that a farmer, by the mere fact of having been subject, during the period 1997-2002, to agri-environmental commitments pursuant to Regulation No 2078/92 and Regulation No 1257/1999, is entitled to request that his reference amount be calculated on the basis of objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, which it is for the referring court to determine.

37 It must be added that, in accordance with the principle of 'cooperation in good faith', it is for the national courts to apply, within the exercise of their jurisdiction, the first and second subparagraphs of Article 40(5) of Regulation No 1782/2003 and to give full effect to those provisions, refusing if necessary to apply any conflicting provision of national legislation, including any subsequent national provision (see, to that effect, Case 106/77 *Simmenthal* [1978] ECR 629, paragraph 24, and Case C-617/10 *Åkerberg Fransson* [2013] ECR, paragraph 45).

Costs

38 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 (First Chamber) hereby rules:

1. **The first subparagraph of Article 40(5) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, as amended by Council Regulation (EC) No 1009/2008 of 9 October 2008, must be interpreted as meaning that a farmer, by the mere fact of having been subject, during the reference period, to agri-environmental commitments pursuant to Regulations (EEC) No 2078/92 of the Council of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside, and (EC) No 1257/1999 of the Council of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, as amended by Council Regulation (EC) No 2223/2004 of 22 December 2004, is entitled to request that his reference amount be calculated on the basis of the calendar year or years in the reference period which were not affected by those commitments.**

2. **The second subparagraph of Article 40(5) of Regulation No 1782/2003, as amended by Regulation No 1009/2008, must be interpreted as meaning that a farmer, by the mere fact of having been subject, during the period 1997-2002, to agri-environmental commitments pursuant to Regulation No 2078/92 and Regulation No 1257/1999, as amended by Regulation No 2223/2004, is entitled to request that his reference amount be calculated on the basis of objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, which it is for the referring court to determine.**

[Signatures]