JUDGMENT OF THE COURT (Fourth Chamber)

30 September 2010 *

In Case C-133/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Fővárosi Bíróság (Hungary), made by decision of 23 February 2009, received at the Court on 8 April 2009, in the proceedings

József Uzonyi

v

Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve,

THE COURT (Fourth Chamber),

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

* Language of the case: Hungarian.

Advocate General: J. Mazák,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 8 July 2010,

after considering the observations submitted on behalf of:

— Mr Uzonyi, by Y. Uzonyi, ügyvéd,

— the Hungarian Government, by R. Somssich, M. Fehér and K. Szíjjártó, acting as Agents,

— the European Commission, by B. Simon and F. Clotuche-Duvieusart, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 143ba(1) 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), as amended by Council Regulation (EC) No 319/2006 of 20 February 2006 (OJ 2006 L 58, p. 32, 'Regulation No 1782/2003').

2 The reference has been made in proceedings between Mr Uzonyi and the Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve (Central body of the Office for Agriculture and Rural Development, 'the Hivatal') concerning an application for a separate sugar payment.

Legal context

Community law

3 The first subparagraph of Article 143ba(1) of Regulation No 1782/2003, headed 'Separate sugar payment' provides:

'By way of derogation from Article 143b the new Member States applying the single area payment scheme may decide by 30 April 2006, to grant in respect of the years 2006, 2007 and 2008, a separate sugar payment to farmers eligible under the single area payment scheme. It shall be granted on the basis of objective and non-discriminatory criteria such as:

— the quantities of sugar beet, cane or chicory covered by delivery contracts concluded in accordance with Article 19 of Regulation (EC) No 1260/2001,

— the quantities of sugar or inulin syrup produced in accordance with Regulation (EC) No 1260/2001,

— the average number of hectares under sugar beet, cane or chicory used for the production of sugar or inulin syrup and covered by delivery contracts concluded in accordance with Article 19 of Regulation (EC) No 1260/2001

and in respect of a representative period which could be different for each product of one or more of the marketing years 2004/2005, 2005/2006 and 2006/2007 to be determined by Member States before 30 April 2006.'

4 Article 1(2) of Council Regulation (EC) No 2011/2006 of 19 December 2006 adapting Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, Regulation (EC) No 318/2006 on the common organisation of the markets in the sugar sector and Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community, by reason of the accession of Bulgaria and Romania to the European Union (OJ 2006 L 384, p. 1), which entered into force on 1 January 2007, replaced the second sentence of the first subparagraph of Article 143ba(1) with the following:

'It shall be granted in respect of a representative period which could be different for each product of one or more of the marketing years 2004/2005, 2005/2006 and 2006/2007 to be determined by Member States before 30 April 2006, and on the basis of objective and non-discriminatory criteria such as:

— the quantities of sugar beet, cane or chicory covered by delivery contracts concluded in accordance with Article 19 of Regulation (EC) No 1260/2001 or Article 6 of Regulation (EC) No 318/2006 as appropriate,

— the quantities of sugar or inulin syrup produced in accordance with Regulation (EC) No 1260/2001 or Regulation (EC) No 318/2006 as appropriate,

— the average number of hectares under sugar beet, cane or chicory used for the production of sugar or inulin syrup and covered by delivery contracts concluded in accordance with Article 19 of Regulation (EC) No 1260/2001 or Article 6 of Regulation (EC) No 318/2006 as appropriate.'

5 That amendment, which does not apply *ratione temporis* in the main proceedings, is relied on in those proceedings by the defendant as a factor for consideration when interpreting Article 143ba of Regulation No 1782/2003.

National provisions

6 Article 2(1) of Decree (*Rendelet*) of the Ministry of Agriculture and Rural Development (FVM) No 48/2006 (VI.22) concerning the separate sugar payment granted to farmers eligible under the single area payment scheme (*Magyar Közlöny* 2006/75; 'the Ministry of Agriculture and Rural Development Decree') provides:

'The following farmers shall be entitled to the payment:

(a) those eligible for a single area payment under the specific legal provisions in the reference marketing year;

(b) those who are entitled to deliver sugar beet during the reference period or have a contract based on the Slovenian sugar quota;

(c) those who have complied with the obligations attaching to their sugar beet delivery rights.

…'

7 Delivery rights are based on the quantity of sugar beet needed to manufacture the quantity of sugar covered by the sugar quota assigned to the Member State under Community law.

8 Article 5 of the Ministry of Agriculture and Rural Development Decree provides:

'(1) The following documentary evidence must be attached to the application for payment:

(a) a document supplied by the Sugar Board showing the quantity (in tonnes) of the delivery rights (16 %) assigned to the applicant as at 1 July 2004 and 1 July 2005 (to be calculated on the basis of a standard yield of 140 kg/t);

(b) a document supplied by the body administering the sugar beet processing quota showing the quantity (in tonnes) of "A" and "B" (16 %) sugar beet delivered under cultivation contracts in marketing year 2004/2005 or 2005/2006 (the processors'

documents are to be adjusted, where necessary, to take into account a standard sugar yield of 140 kg);

(c) a document supplied by the relevant Regional Federation of Sugar Beet Producers showing that the applicant has complied with the obligations attaching to its delivery rights;

(d) any other documents providing evidence of eligibility.

(2) In the case of members of a producer group, the processors shall certify the total quantity delivered by the producer group, whilst the latter shall certify the quantities delivered by the individual members within the group.

…'

The main proceedings and the question referred for a preliminary ruling

9 On 28 June 2006, Mr Uzonyi, the applicant in the main proceedings, submitted an application to the Hivatal for a separate sugar payment, for the year 2006, in respect of his sugar beet production delivered through an *integrátor*, a body which acts as an intermediary and coordinator and assists farmers belonging to it with their production activity.

10 Mr Uzonyi, however, could provide evidence of his sugar beet delivery rights and of his compliance with the obligations attaching to those rights only in relation to the *integrátor*.

11 By decision of 18 April 2007, the Hivatal refused his application on the ground that he was not eligible for the assistance because he had failed to supply the documentary evidence required under Article 5(1) of the Ministry of Agriculture and Rural Development Decree.

12 Mr Uzonyi lodged a complaint against the decision refusing his application.

13 That complaint was rejected on 6 July 2007 by a decision of the Minister for Agriculture and Rural Development, the predecessor to the Hivatal, the defendant in the main proceedings.

14 As grounds for that decision, it was stated that only farmers who have sugar beet delivery rights and who have complied with the obligations attaching thereto are eligible for the payment. Thus, in so far as the documents annexed to the application did not relate to the delivery rights, and compliance with the obligations attaching thereto, of the applicant himself but to those of the *integrátor*, the requirements of Article 5(1) of the Ministry of Agriculture and Rural Development Decree were not met.

15 Mr Uzonyi brought an appeal against the decision rejecting his application before the referring court. He claimed there was discrimination between sugar beet producers who delivered sugar beet themselves and those who delivered sugar beet through *integrátors*. He claimed application by analogy of Article 5(2) of the Ministry

of Agriculture and Rural Development Decree, which relates to deliveries of beet through producer groups.

16 The defendant in the main proceedings submits before the referring court that the objective and non-discriminatory criteria are to be applied, not in relation to the persons eligible for payment who are covered by Article 143ba of Regulation No 1782/2003, but as regards the representative period to which that provision refers. It finds confirmation of its submission in the amendment made to Article 143ba of Regulation No 1782/2003 by Article 1(2) of Regulation No 2011/2006. It contends that that amendment simply clarified the wording of the provision without altering the meaning. Both before and after the amendment, objective and non-discriminatory criteria are therefore to be applied only in relation to the representative period.

17 The referring court considers that Articles 2 and 5 of the Ministry of Agriculture and Rural Development Decree exclude from the payment those farmers who have not concluded a direct contract with the sugar manufacturer but have concluded a cultivation contract with an *integrátor* having delivery rights based on the areas farmed by the producers belonging to it. Those farmers are not in a position to prove that they themselves have delivery rights, as required by the Ministry of Agriculture and Rural Development Decree, in order to obtain the payment.

18 The referring court points out that, in contrast, farmers who are members of a producer group and who have not concluded a direct contract with the sugar manufacturer but have concluded a cultivation contract with a group which has delivery rights based on the areas farmed by its members may obtain a separate sugar payment under

the provisions in force of Article 5(2) of the Ministry of Agriculture and Rural Development Decree by producing the documents supplied by that group.

19 In its view, account must be taken of the settled case-law of the Court of Justice according to which the second subparagraph of Article 34(2) EC, which prohibits all discrimination in the context of the common agricultural policy, is merely a specific expression of the general principle of equal treatment.

20 The referring court considers that the wording of the provision of EU law to be interpreted is unclear and, furthermore, that that provision was subsequently amended. It adds that if the Court were to rule that under Article 143ba of Regulation No 1782/2003 producers of sugar beet delivering it through an *integrátor* are just as entitled to the separate sugar payment as producers who deliver the sugar beet themselves, such a payment could then also be granted, in respect of 2006, to the applicant in the main proceedings and to many others who have brought proceedings currently pending before the courts, by the application by analogy of Article 5(2) of the Ministry of Agriculture and Rural Development Decree.

21 In those circumstances, the Fővárosi Bíróság (Budapest Municipal Court) decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Does it follow from the provision contained in Article 143ba(1) of Regulation (EC) 1782/2003 in the version in force until 31 December 2006, which stated that "[payment] shall be granted on the basis of objective and non-discriminatory criteria", that, as regards eligibility for the separate sugar payment under the single area payment scheme, it was not possible to draw a distinction between farmers on the basis of whether they delivered the sugar beet for processing directly (themselves) or indirectly (through an *integrátor*)?'

The question referred for a preliminary ruling

22 By its question, read in the light of the grounds of the order for reference, the national court is effectively seeking to determine whether Article 143ba(1) of Regulation No 1782/2003 must be interpreted as precluding national provisions such as those at issue in the main proceedings, which exclude from entitlement to a separate sugar payment a farmer not having delivery rights who delivers sugar beet to a sugar manufacturer through an *integrátor* who does have such rights, while those provisions grant a separate payment to a farmer having delivery rights who delivers sugar beet directly to a sugar manufacturer, and to a farmer not having delivery rights who is a member of a producer group which does have delivery rights and who delivers sugar beet to a sugar manufacturer through that group.

23 In order to reply to that question it is necessary to establish whether such national provisions make for discrimination prohibited under Article 143ba of Regulation No 1782/2003.

24 With regard to the contentions made by the defendant in the main proceedings, as a preliminary point, the Court finds that:

— Article 143ba of Regulation No 1782/2003, in all languages and in the version applicable in the main proceedings, clearly provides that the separate sugar payment is to be granted on the basis of objective and non-discriminatory criteria to farmers eligible under the single area payment scheme;

— none of the language versions of that article establishes a connection between objective and non-discriminatory criteria, on the one hand, and determination of representative periods, on the other hand.

25 The subsequent amendment of Article 143ba under Article 1(2) of Regulation No 2011/2006 does not affect those findings.

26 Although it cannot be excluded that, by way of exception, an amending provision may be a factor for consideration when interpreting an amended provision, such a possibility is excluded a priori where the earlier provision is clear in all language versions.

27 However, it is apparent that the amending provision relied on in the present case is not clear in all the available nineteen versions of it. In six of those versions, namely the Danish, Estonian, French, Hungarian, Polish and Portuguese versions, it contains differences in wording which give rise, at the very least, to uncertainty as to whether objective and non-discriminatory criteria must be applied when granting the payment or when determining the representative period.

28 Furthermore, the thirteen other language versions, namely the versions in Spanish, Czech, German, Greek, English, Italian, Latvian, Lithuanian, Dutch, Slovene, Slovak, Finnish and Swedish are worded as clearly as the provision to be interpreted.

29 The Court must therefore hold that Article 143ba of Regulation No 1782/2003 requires the new Member States to apply objective and non-discriminatory criteria when granting a separate sugar payment.

30 Consequently, that article merely restates the principle of non-discrimination laid down in the second subparagraph of Article 34(2) EC.

31 In that regard, the Court has consistently held that the prohibition on discrimination in the context of the common agricultural policy is merely a specific expression of the general principle of equal treatment, which requires that comparable situations not be treated differently and different situations not be treated alike unless such treatment is objectively justified (see, in particular, with regard to the second subparagraph of Article 34(2) EC, Case C-313/04 *Franz Egenberger* [2006] ECR I-6331, paragraph 33; Case C-33/08 *Agrana Zucker* [2009] ECR I-5035, paragraph 46, and Case C-365/08 *Agrana Zucker* [2010] ECR I-4341, paragraph 42).

32 Regulation No 319/2006 inserted Article 143ba into Regulation No 1782/2003 in the version preceding the changes made by that regulation.

33 It is clear from the second, sixth, seventh and ninth to eleventh recitals in the preamble to Regulation No 319/2006 that its objective is to provide income support for 'farmers' who produce sugar beet and are eligible under the single area payment scheme.

34 That regulation does not establish any connection between the granting of a separate sugar payment and whether the farmers deliver the sugar beet to the sugar manufacturer directly or indirectly. Nor does it establish any connection between a separate sugar payment and whether or not a farmer has delivery rights.

35 In the light of the objective of Regulation No 319/2006, farmers producing sugar beet are therefore in comparable situations whether they deliver that product to a sugar manufacturer directly or indirectly and whether or not they themselves have delivery rights under national provisions.

36 According to the interpretation of the national law applying in the main proceedings as given by the referring court and confirmed by it in response to a request for clarification made by the Court because of the differences of interpretation of that law that had appeared in the written observations lodged before it, a farmer belonging to an *integrátor*, who does not have delivery rights and who delivers sugar beet to a sugar manufacturer through an *integrátor* which does have delivery rights cannot be granted a separate sugar payment directly, unlike either a farmer having delivery rights who delivers sugar beet himself or a farmer not having delivery rights who delivers beet to a sugar manufacturer through a producer group to which he belongs which does have such rights.

37 It follows that national provisions such as those at issue in the main proceedings treat comparable situations differently.

38 It is therefore necessary to ascertain whether such difference in treatment is objectively justified.

39 In its written observations the Hungarian Government maintained that the *integrátor* is usually better placed to carry out the administrative work relating to the separate sugar payment. The procedure under the national provisions is usually more favourable to the producer. It ensures that applications are dealt with more effectively

since the administration only has to rule on applications from *integrátors* and not on applications from all the producers belonging to *integrátors*.

40 During the oral procedure the Hungarian Government stated that, in its view, in order to meet the requirements of Article 143ba of Regulation No 1782/2003, an *integrátor* must itself be eligible under the single area payment scheme.

41 However, it should be noted that, according to the interpretation given by the referring court, the fact that a farmer belongs to a producer group having delivery rights does not preclude that farmer being granted a separate sugar payment directly, even though the farmer himself does not have delivery rights.

42 It thus appears that farmers who are members of a producer group may submit an application for a separate sugar payment themselves without any objections being raised that it would be more efficient for the applications to be dealt with collectively. Such objections are likely to be as valid for that category of farmers as for the category of farmers belonging to an *integrátor* who do not have delivery rights.

43 All the same, even if such objections might be raised against farmers who belong to an *integrátor* or are members of a group and do not themselves deliver to sugar manufacturers, they would not in any event constitute an objective justification for treatment that drew a distinction between those two types of farmer and farmers who deliver to the sugar manufacturer themselves.

44 In particular, those objections could not be raised if the conditions laid down for granting a separate payment upon application by an intermediary ultimately had the effect of depriving the farmers concerned of entitlement to that payment, for example, in circumstances where:

— those farmers, if the intermediary failed to act, would not be allowed to make a direct application for a separate payment in its stead;

— submission of an application for a separate payment on behalf of the farmers by an intermediary was conditional upon the intermediary itself being eligible under the single area payment scheme, although Article 143ba of Regulation No 1782/2003 makes that requirement only in respect of a farmer claiming the separate payment and not in respect of an intermediary representing him.

45 It must therefore be held that a difference in treatment such as the one at issue in the main proceedings is not objectively justified.

46 Consequently, the answer to the question referred for a preliminary ruling is that Article 143ba(1) of Regulation No 1782/2003 must be interpreted as precluding national provisions such as those at issue in the main proceedings which exclude from entitlement to a separate sugar payment a farmer not having delivery rights who delivers sugar beet to a sugar manufacturer through an *integrátor* which does have such rights, although those provisions grant a separate payment to a farmer having delivery rights who delivers sugar beet direct to a sugar manufacturer, and to a farmer not having delivery rights who is a member of a producer group which does have delivery rights and who delivers sugar beet to a sugar manufacturer through that group.

47 In any event, it is for the national court to assess whether it is possible for it to give the national provisions an interpretation which is consistent with the relevant Community law.

Costs

48 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:

Article 143ba(1) 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 319/2006 of 20 February 2006, must be interpreted as precluding national provisions such as those at issue in the main proceedings which exclude from entitlement to a separate sugar payment a farmer not having

delivery rights who delivers sugar beet to a sugar manufacturer through an *integrátor* which does have such rights, although those provisions grant a separate payment to a farmer having delivery rights who delivers sugar beet direct to a sugar manufacturer, and to a farmer not having delivery rights who is a member of a producer group which does have delivery rights and who delivers sugar beet to a sugar manufacturer through that group.

[Signatures]