JUDGMENT OF THE COURT (Fifth Chamber)
20 November 1997 *

In Case C-244/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Diikitiko Protodikio Athinon (Greece) for a preliminary ruling in the proceedings pending before that court between

P. Moskof AE

and

Ethnikos Organismos Kapnou

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 (OJ 1993 L 317, p. 30),

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, J. C. Moitinho de Almeida, J.-P. Puissochet, P. Jann and L. Sevón (Rapporteur), Judges,

* Language of the case: Greek.

Advocate General: M. B. Elmer,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— P. Moskof AE, by Panagiotis Yatagantzidis and Eleni Metaxaki, of the Athens Bar,

— the Ethnikos Organismos Kapnou, by Achilleas Martinis, of the Athens Bar,

— the Greek Government, by Meletis Tsotsanis, Lawyer at the Ministry of Agriculture, acting as Agent,

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

— the Commission of the European Communities, by Dimitrios Gouloussis, Legal Adviser, and Klaus-Dieter Borchardt, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of P. Moskof AE, represented by Panagiotis Yatagantzidis, Eleni Metaxaki and Panagiotis Tridimas, of the Athens Bar; of the Greek Government, represented by Ioannis Chalkias, Assistant Legal Adviser of the State Legal Service, and Panagiotis Mylonopoulos, Grade A Legal Assistant at

the Special Legal Service for the European Community at the Ministry of Foreign Affairs, acting as Agents; of the Italian Government, represented by Oscar Fiumara; and of the Commission, represented by Maria Condou-Durande, of its Legal Service, acting as Agent, at the hearing on 6 February 1997,

after hearing the Opinion of the Advocate General at the sitting on 15 May 1997,

gives the following

Judgment

1 By judgment of 24 May 1995, received at the Court on 12 July 1995, the Diikitiko Protodikio Athinon (Administrative Court of First Instance) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question 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 (OJ 1993 L 317, p. 30, hereinafter 'the regulation at issue').

2 Those questions were raised in proceedings between P. Moskof AE (hereinafter 'Moskof') and the Ethnikos Organismos Kapnou (the National Tobacco Board, hereinafter 'the EOK') concerning the reimbursement by Moskof to EOK of an overpayment of Community premium in respect of Basma variety tobacco harvested in 1992.

The relevant legislation

The common organization of the market in the raw tobacco sector

3 According to the seventh recital in the preamble to Regulation (EEC) No 727/70 of the Council of 21 April 1970 on the common organisation of the market in raw tobacco (OJ, English Special Edition 1970 (I), p. 206) that regulation introduced, in respect of harvests up to and including 1992, *inter alia* a system of norm prices, fixed annually at a level which, account being taken of the direction into which production is to be steered, gives producers an adequate return, and which consequently presupposes rational management and economic viability of undertakings.

4 In order to encourage direct purchases by users from producers at a production price corresponding as closely as possible to the norm price, Article 3 of Regulation No 727/70 provided for a premium to be granted to natural or legal persons purchasing leaf tobacco direct from Community producers and subsequently carrying out first processing and market preparation before manufacture into tobacco products or for export to third countries.

5 Articles 16 to 18 of Regulation No 727/70 introduced the Management Committee procedure.

6 Regulation (EEC) No 1726/70 of the Commission of 25 August 1970 on the procedure for granting the premium for leaf tobacco (OJ, English Special Edition 1970 (II), p. 587) introduced a system of supervision at the stage of first processing and market preparation and, in particular, checks at the beginning and the end of the first processing and market preparation stages. The time when 'the tobacco leaves the place in which it was under supervision' determined the time when the right to

the premium accrued (Article 6(1)), the time when the operative event for the agricultural conversion rate occurred, that is to say, the time when the amount of the premium in ecus was to be converted into national currency (second subparagraph of Article 6(1)) and, finally, the time when the premium was due (Article 7(1)).

7 Article 7(2) of Regulation No 1726/70 provided, however, that, under certain conditions, the purchaser could obtain an advance payment of the total amount of the premium as soon as the tobacco came under supervision.

8 The result of the application of those different provisions was therefore that if between the date on which the premium was advanced and the date on which the premium was due, that is to say the date on which the tobacco left supervision, the currency had been devalued, the undertaking responsible for processing received, when the tobacco left supervision, a supplementary payment corresponding to the difference between the value of the premium converted into national currency at the rate applicable at the time the advance was paid and the same amount converted at the rate applicable when the tobacco left supervision.

9 Until 1990, tobacco could leave supervision at any time. Thereafter, Council Regulation (EEC) No 1329/90 of 14 May 1990 amending Regulation (EEC) No 727/70 on the common organization of the market in raw tobacco (OJ 1990 L 132, p. 25) limited the period during which the processing undertaking could withdraw the tobacco from supervision to four years. Article 3(1)(iv) of Regulation No 727/70 as amended by Regulation No 1329/90 provided that the premium was to be granted only to purchasers who provided proof before the expiry of a period of four years following the year of harvest that the tobacco had been sold for incorporation into manufactured products or exported to third countries.

10 The common organization of the market in the tobacco sector was reformed by 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). The system of norm

pricing was abandoned and, although the premium still passes via the first processor, it is now ultimately payable to the grower. The first indent of Article 6(1) of Regulation No 2075/92 thus provides that the first processor must pay to the grower, in addition to the purchase price, a sum equal to the premium at the time of delivery of the tobacco; Article 6(2) provides that the amount of the premium is reimbursed to the first processor against presentation of the relevant documentary proof.

11 Article 27 of that regulation provides that 'Where transitional measures prove necessary to facilitate the transition from the arrangements set up by Regulation (EEC) No 727/70 to those laid down in this regulation, such measures shall be adopted in accordance with the procedure laid down in Article 23.'

12 Article 28 of Regulation No 2075/92 repealed Regulation No 727/70 with effect from the 1993 harvest, while Article 29 stated that the new regulation applied from that harvest.

The agrimonetary system

13 With a view to the completion of the internal market on 1 January 1993, the existing agrimonetary arrangements were amended by 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).

14 Article 6(1) of the regulation takes up the principle laid down in 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), according to which the agricultural conversion rate

applicable in principle to a specific premium or amount is that applicable when the operative event occurred, that is to say 'the event whereby the economic objective of the operation is attained'.

15 Article 6(2) of Regulation No 3813/92 none the less permits the Commission to determine a specific operative event for the agricultural conversion rate in place of the general operative event referred to in Article 6(1). It provides that:

'2. Where the operative event as referred to in paragraph 1 has to be specified or cannot be taken into account for reasons peculiar to the market organization or the amount in question, a specific operative event shall be determined in accordance with the procedure laid down in Article 12, taking account of the following criteria:

(a) actual applicability as soon as possible of adjustments to the agricultural conversion rate;

(b) similarity of the operative events for analogous operations carried out under those different market organizations;

(c) coherence in the operative events for the various prices and amounts relating to a single market organization;

(d) practicability and effectiveness of checks on the application of suitable agricultural conversion rates.'

16 Article 12 of Regulation No 3813/92 provides that the detailed rules of application for the regulation are to be laid down in accordance with the Management Committee procedure.

17 Article 13(1) adds:

'Where transitional measures prove necessary to facilitate the initial application of this regulation, such measures shall be adopted by the Commission in accordance with the procedure laid down in Article 12 and shall remain applicable for the period strictly necessary to facilitate the introduction of the new arrangements.'

18 Commission Regulation (EEC) No 3819/92 of 28 December 1992 on detailed rules for determining and applying the agricultural conversion rates (OJ 1992 L 387, p. 17) was replaced by 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). Article 23 of Regulation No 1068/93 states that the provisions concerning operative events for the agricultural conversion rates (Articles 9 to 12) are to apply from 1 July 1993 with regard to products or amounts for which there is no marketing year. That is the case for raw tobacco.

19 Finally, on 17 December 1993 the Commission also adopted the regulation at issue. Article 1 of that regulation provides that:

'The agricultural conversion rate to be applied for conversion into national currency of the amount of the premium and the advance on the premium payment referred to in Article 3 of Regulation (EEC) No 2075/92 shall be the 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.'

20 At the same time, Article 5 provides:

'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 Regulation (EEC) No 727/70 shall be the rate applicable on 1 July 1993.'

21 Article 6 repeals the second subparagraph of Article 6(1) of Regulation No 1726/70, according to which the time when the tobacco leaves the place in which it was placed under supervision determines the moment when the amount of the premium in ecus is to be converted into national currency.

22 Finally, Article 7 provides that the regulation at issue is to apply from 1 July 1993.

The dispute in the main proceedings

23 In the second six months of 1992 and 1993 there were significant movements on the exchange markets and a number of monetary realignments. The drachma was devalued on several occasions.

24 Moskof is an undertaking which performs first processing of tobacco. On 24 February 1994 it received the sum of DR 1 793 340 from the EOK in respect of payment of the Community premium for Basma variety tobacco harvested in 1992.

25 The EOK subsequently realized that it had applied the second subparagraph of Article 6(1) of Regulation No 1726/70, which had been repealed by Article 6 of the regulation at issue, instead of Article 5 of that regulation. It therefore claimed repayment of the sum of DR 1 228 770, corresponding to the difference between the premium converted at the rate applicable when the tobacco left the place in which it had been placed under supervision and the premium converted on 1 July 1993, in accordance with Article 5 of the regulation at issue.

26 On 9 December 1994 Moskof challenged the claim for repayment before the Diikitiko Protodikio Athinon. During those proceedings, it relied on the invalidity of Article 5 of the regulation at issue and asked that court to refer a question to the Court of Justice in that connection.

The questions referred for a preliminary ruling

27 In the order for reference, the Diikitiko Protodikio Athinon summarized the pleas in law put forward by Moskof and referred a question to the Court of Justice on the validity of the regulation at issue having regard to the following factors:

'1. Failure by the Commission to submit Regulation No 3477/93 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 Regulation No 727/70, 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. Infringement of Council Regulation No 3813/92 and inadequacy of the statement of reasons in Commission Regulation No 3477/93

(a) Is the statement of reasons in Commission Regulation No 3477/93 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 Commission Regulation No 3477/93 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 Commission Regulation No 3477/93 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 Commission Regulation No 3477/93 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 Council Regulation No 727/70 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 Commission Regulation No 3477/93, 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 Commission Regulation No 3477/93 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 Commission Regulation No 3477/93, 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, was 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 Commission Regulation No 3477/93 overturned the regulatory framework of the common organization of the market in tobacco based on Regulations Nos 727/70 and 1726/70, 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 Council Regulation No 727/70 and Commission Regulation No 1726/70 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 Regulation No 3477/93 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 Commission Regulation No 3477/93 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 No 8/93, OJ 1994 C 65), did the measure in Commission Regulation No 3477/93 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?'

28 The first two questions should be considered first, followed by the third and sixth questions, which should be dealt with together, and then the fifth, fourth, seventh and eighth questions in that order.

Failure to observe the Management Committee procedure

29 By its first question, the national court is essentially asking whether the regulation at issue should be declared invalid on the ground that it infringes the provisions concerning the Management Committee procedure, in so far as the text adopted by the Commission should have been resubmitted to the Management Committee as a new regulation having retroactive effect.

30 On the basis of information provided by the Greek Federation of Tobacco Industries, Moskof states that the procedure followed before the Management Committee for Tobacco was as follows:

— on 11 June 1993 the Commission submitted a draft regulation, Article 5 of which was identical to Article 5 of the regulation at issue; that draft was approved by the Management Committee. The Greek and Italian Republics however voted against approval of that draft.

— On 10 September 1993 the Commission presented a new draft containing a redrafted Article 5; it did not submit it to the vote of the Management Committee, but undertook to do so at a subsequent meeting.

— On 13 October 1993 the Commission indicated that the draft regulation had been withdrawn from the agenda, since the question was being examined by its staff and there would probably be a new draft.

— On 12 November 1993, in response to a question from a national delegation, the Commission explained that it was not in a position to put the regulation to the vote, since it was still under discussion within the Commission. Furthermore, it pointed out that the fact that delivery of the tobacco by the producer to the processor was chosen as the operative event could not be called into question in respect of the 1993 and subsequent harvests, but that the delivery date gave rise to a number of practical problems in respect of harvests prior to that of 1993.

— On 10 December 1993, in response to a question concerning the regulation on operative events in the tobacco sector, the Commission stated that there was a 'horizontal' regulation which covered the whole of the sector, and that the question was being considered by its departments.

— On 17 December 1993, the Commission adopted the regulation at issue.

31 Moskof claims that the Commission failed to observe the procedure provided for by Article 12(c) of Regulation No 3813/92 and Articles 16 to 18 of Regulation No 727/70, first by adopting a regulation which it had withdrawn, after announcing that a new draft was to be submitted, and secondly because it did not resubmit the draft regulation to the Management Committee although that draft, which differed in so far as it had retroactive effect, constituted a new measure. The procedural irregularity is a substantive one and justifies the annulment of the regulation at issue since if the Commission had resubmitted the draft measure to the Management Committee in December 1993, it is likely that that committee would have rejected it and issued a negative opinion.

32 The Greek and Italian Governments support that argument. The Greek Government states that the regulation at issue differed from the first draft approved by the Management Committee not only in so far as it had retroactive effect, but also in the wording of the seventh recital.

33 The Commission explains that the reason why the draft regulation approved on 11 June 1993 by the Management Committee was not immediately adopted was that it had endeavoured to find a compromise which was more acceptable to the Greek and Italian Governments, who had voted against the draft regulation. Furthermore, as the Commission pointed out at the hearing, the draft originally approved was not withdrawn because the new draft was not formally submitted to the vote of the Management Committee. Since the regulation adopted had the same content as the one approved by the Management Committee, it was not necessary to resubmit it to that committee.

34 Furthermore, according to the Commission, the fact that the regulation at issue had retroactive effect because of the date on which it was adopted does not mean that it cannot be the same regulation. As regards the amendment to the seventh recital, it was purely stylistic and was intended only to improve the statement of reasons and had no effect on the content of the measure. At the request of the Court, the Commission has submitted a number of documents concerning the meetings of the Management Committee for Tobacco between June and December 1993.

35 It is clear from an examination of the proceedings of the Management Committee for Tobacco, which are, in principle, confidential, as the Court of Auditors recalls at point 4.62 of Special Report No 8/93 of 21 December 1993 on the common organization of the market in raw tobacco (OJ 1994 C 65, p. 1), that on 11 June 1993 the Management Committee approved document VI/5786/93 on the agricultural conversion rates applicable in the tobacco sector which provided that 1 July 1993 was the date determining the operative event in respect of harvests prior to 1993. The Greek and Italian delegations none the less opposed it because of the choice of date. They raised the principle of protection of legitimate expectations upon which trade could rely as regards 'the maintenance of the previous rules on the operative event' (summary minutes of the meeting of 11 June 1993, point 4). The summary minutes of the meeting of 10 September 1993 states, at point 2, that 'at the request of the Greek delegation, a certain degree of flexibility was introduced into the dates adopted for the operative event consisting of when the tobacco leaves supervision, according to the year of harvest. Since that proposal did not satisfy that delegation, the vote was deferred. Discussion to be continued'. The minutes of the meeting of 13 October 1993 state that the question concerning

the amended document was withdrawn from the agenda. At the meeting on 12 November 1993 several delegations expressed regret that the new regulation was not to be put to the vote. Finally, the document which had initially been approved (VI/5786/93) was adopted by the Commission on 17 December 1993.

36 None of the documents submitted establishes therefore that the Commission withdrew the first draft regulation, which had been approved by the Management Committee on 11 June 1993.

37 Furthermore, it appears from the minutes of the meetings of the Management Committee that the Commission never submitted to the vote of the committee the revised draft regulation which it had drafted in an attempt to satisfy the Greek delegation, without having succeeded.

38 There is therefore nothing to contradict the Commission's explanation that although it was entitled immediately to adopt the text which the Management Committee had approved it had endeavoured — without abandoning the original text — to find a compromise which would be more acceptable to the two national delegations who had voted against approving that text.

39 The Commission cannot be criticized for having tried to find a compromise acceptable to the two delegations which had refused to approve the initial text.

40 Furthermore, the fact that it considered the possibility of compromise cannot be interpreted as an implicit withdrawal of the initial text, which had already been approved by all the other delegations. To hold otherwise would render more difficult any attempt at compromise intended to resolve the problems experienced by certain delegations, and the Commission would no longer wish to take the risk of not immediately adopting an approved text. Such a solution would do more harm as regards the proper functioning of the Management Committee procedures than

tolerating the lapse between the Management Committee's vote on a text and its adoption as a regulation by the Commission of the reasonable time necessary in order to be able to consider what compromises might better resolve the problems raised by certain delegations.

41 As regards the argument based on the retroactive effect of the regulation at issue, 1 July 1993 was a key date in the context of both the new common organization of the market in the tobacco sector and the new agrimonetary system.

42 Furthermore, retaining of the date fixed in Article 5 of the regulation at issue did not cause the operators concerned loss resulting from a reduction in the amount of premium received against which they would have been able to protect themselves if they had been aware of the regulation several months earlier, since the only effect of application of the regulation at issue was that regardless of when the tobacco left supervision the amount paid by way of premium, based on the difference in exchange rates applied to advances on the premium and the premium itself, remained unchanged.

43 The Commission was therefore right to consider that adopting the regulation in December did not make it substantially different from the draft approved by the Management Committee.

44 As regards the different wording of the seventh recital in the preamble, it is apparent from a comparison between the documents submitted to the Management Committee and the regulation at issue that the regulation adopted contains the additional provision that the operative event for tobacco premiums, which occurs when the tobacco leaves the place where it was under supervision, 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 and '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 tobacco from harvests prior to 1993 leaving supervision from that date.

45 That addition and, in particular, the reference to the risk of 'market distortion' merely expands and clarifies the statement of reasons with regard to the position of tobacco from harvests prior to 1993, which were already mentioned in the text submitted to the Management Committee, without amending the content of the decision which was adopted.

46 There is therefore nothing to suggest that in adopting the regulation at issue, the Management Committee procedure was not observed.

Infringement of Regulation No 3813/92 and the obligation to state reasons

47 By its second question the national court is essentially asking whether the regulation at issue should be declared invalid on the grounds that, first, the reference in the seventh recital to 'market distortion' is insufficient to explain the failure to abide by Regulation No 3813/92, which establishes the criteria for determining the operative event for the agricultural conversion rate; secondly, no reasons are given for its retroactive effect; and thirdly, reference is made to the favourable opinion of the Management Committee.

48 According to Moskof, the Commission did not give specific and detailed reasons for the need to abandon the general operative event for the agricultural conversion rate, described in Article 6(1) of Regulation No 3813/92 as 'the event whereby the economic objective of the operation is attained in all other cases.'

49 Moskof explains that, in the context of Regulation No 727/70, the economic objective was only attained when the premium, which was intended as compensation for the high prices paid to producers by processors, was wholly and definitively received by the latter. The operative event for the agricultural conversion rate was,

consequently, the departure of the tobacco from supervision, which coincided with the accrual of the right to the premium and which, in practice, only happened if purchasers for the processed tobacco had been found.

50 It argues that since, contrary to the previous system, the regulation at issue abolishes the link between accrual of the right to the premium and the operative event for the agricultural conversion rate, it should have been reasoned in a particularly detailed manner. It does not indicate on the basis of which of the criteria mentioned in Article 6(2) of Regulation No 3813/92 the Commission determined the specific operative event for the agricultural conversion rate in respect of the premium. Furthermore, none of those four criteria could be taken into consideration in the present case.

51 The Commission recalls that, under Regulation No 727/70, the economic objective of the premium was to ensure a fair income to tobacco producers, not processing undertakings. Furthermore, the choice of the moment of leaving supervision as the operative event for the conversion rate was already a derogation from the general criterion of the agrimonetary system established by Regulation No 1676/85, since the moment when the economic objective of the operation was attained was when the producer received payment for the leaf tobacco and not when the processor removed the processed tobacco from supervision. Enabling the processor to receive an advance equal to the total amount of the premium would have removed any financial justification for selecting the moment the tobacco left supervision as determining the rate for converting the premium into national currency, since that might occur several years after the actual payment of the advance of the entire premium. Moreover, it was in order to restrict the negative effects of that anomaly that an amendment was introduced in 1990 requiring the tobacco to be brought out of supervision no later than four years after the year of harvest.

52 In that respect, it should be noted that Regulation No 3813/92, an agrimonetary regulation, simply reproduces the criteria already introduced by Regulation No 1676/85, according to which the operative event for conversion from ecu into national currency is the event whereby the economic objective of the operation is attained. Even if it were accepted that, under Regulation No 727/70, the economic objective of the premium was to indemnify the processor for the high price paid to

the producer that objective was attained, financially and economically, when the processor received the sum intended to indemnify it, that is to say, in most cases, when it received the advance of the whole of the amount of the premium referred to in Article 7 of Regulation No 1726/70 when the tobacco was placed under supervision.

53 The lapse between the time when the processor actually received the advance on the premium and the time when, according to Regulation No 727/70, he became entitled to the premium, which is the operative event, meant that processors chose to remove tobacco from supervision as late as possible, in order to derive the maximum speculative profit from the devaluation of the national currency and therefore the increase in the supplementary premium. Even after 1990, when it was limited to a period of four years, the lapse of time between payment of the advance on the premium and the removal from supervision entailed expenditure which was unjustified, as was stressed in particular by the Court of Auditors in point 3.4 of Special Report No 8/93 on the common organization of the raw tobacco market.

54 In the light of those circumstances, and since the removal from supervision as the operative event for the agricultural conversion rate was already a derogation from the agrimonetary system in force since 1985, detailed reasoning would have been required rather if it had been decided to maintain that exception to the general scheme.

55 As regards the choice of 1 July 1993 as the operative event for the conversion rate, the objective of Regulation No 3813/92 was the rapid introduction of a new agrimonetary system compatible with the internal market. Consequently, Article 13 provided that the Commission could adopt transitional measures applicable only 'for the period strictly necessary to facilitate the introduction of the new arrangements'.

56 Since according to Regulation No 1068/93 the new agrimonetary regime was applicable from 1 July 1993 in respect of products for which there was no marketing year, such as tobacco, it is entirely logical that, in the regulation at issue, which relates specifically to that sector, the Commission also adopted 1 July 1993 as the date from which the new provisions were to apply and the former provisions were to cease to be applicable and, therefore, as the operative event for harvests prior to 1993. That transitional measure was included in the new regime and did not in any way infringe Regulation No 3813/92.

57 As regards the obligation to state reasons, it is settled case-law that the statement of reasons required by Article 190 of the EC Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the institution which enacted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable to the Court to exercise its powers of review. Furthermore, the statement of reasons for a measure is not required to specify the matters of fact or of law dealt with, provided that it falls within the general scheme of the body of measures of which it forms part (Joined Cases C-9/95, C-23/95 and C-156/95 *Belgium and Germany* v *Commission* [1997] ECR I-645, paragraph 44).

58 In the present case, the regulation at issue falls within the general scheme of the new agrimonetary system. The Commission therefore properly justified the choice of 1 July 1993 as the operative event for tobacco from harvests prior to 1993 by referring to the date on which the agrimonetary Regulation No 1068/93 applied. That reasoning could easily be understood by all the traders in that sector.

59 The reference to 'market distortion' constitutes a supplementary explanation of reasons intended to draw attention to the inconsistency resulting from the simultaneous application of the old and the new provisions, inasmuch as processors were being encouraged to remove tobacco from harvests prior to 1993 from supervision as late as possible, and thus in some cases later than tobacco from the 1993 harvest or subsequent ones.

60 The argument that the choice of 1 July 1993 as the operative event for the agricultural conversion rate for tobacco from harvests prior to 1993 is sufficiently reasoned cannot be called into question on the ground that the regulation at issue has retroactive effect. The question whether traders could legitimately expect the old provisions to be maintained until a new regulation was adopted is a separate issue and, furthermore, is the subject of another question referred by the national court.

61 Finally, as established at paragraph 46 above, the Management Committee issued a favourable opinion in respect of the regulation at issue, as adopted. The reference to that opinion in the eighth recital to the regulation is therefore correct.

62 Consequently, the regulation at issue does not infringe either Regulation No 3813/92 or Article 190 of the Treaty.

Infringement of Article 3(1)(iv) of Regulation No 727/70 and the principle of the protection of legitimate expectations

63 By its third question, the national court is essentially asking whether the regulation at issue should be declared invalid on the ground that by freezing the agricultural conversion rate as of 1 July 1993, it infringes Article 3(1)(iv) of Regulation No 727/70, which permitted tobacco processors to choose when to receive the premium in the course of the four-year period following the harvest. By its sixth question, the national court asks whether the regulation at issue infringes the principle of the protection of legitimate expectations for processing undertakings in so far as the regulation upset rules which had been in force for over 20 years without providing for any transitional measures, when growing contracts for the 1992 harvest had been concluded 18 months prior to its adoption and the tobacco had been harvested and placed under supervision until 15 May 1993.

64 According to Moskof, the variable nature of the operative event for the agricultural conversion rate was, under the regime preceding the regulation at issue, an integral part of the system of premiums: processors could exercise their right, in accordance with Article 3(1)(iv) of Regulation No 727/70, to receive the premium at any time they chose during the four years after the tobacco was placed under supervision. Consequently, the determination by Article 5 of the regulation at issue of a fixed operative event for the agricultural conversion rate, 1 July 1993, for harvests prior to the 1993 harvest prevents processors from exercising that right and therefore infringes Article 3(1)(iv) of Regulation No 727/70.

65 Moskof also observes that the common organization of the tobacco market abolished by Regulation No 2075/92 had existed for over 22 years and that, following the agrimonetary regulations adopted in 1985, the Commission had taken no exception for more than seven years to its practice of taking advantage of the four-year marketing period in order to benefit from the varying agricultural conversion rate, as it was legitimately entitled to do. In those circumstances, upsetting the agrimonetary regulations without transitional measures, which was wholly unforeseeable by a prudent and informed trader, damaged its legitimate expectations.

66 The Commission considers, for its part, that Article 3(1)(iv) of Regulation No 727/70 as amended by Article 1 of Regulation No 1329/90 was not infringed, since the determination of the operative event for agricultural conversion rates is not an integral part of the common organization of markets, but merely a rule for the application thereof which can be altered.

67 Furthermore, the application of the new operative event to harvests prior to 1993 does not constitute retroactive effect, but establishes the detailed rules for managing the common organization of tobacco markets in accordance with Regulation No 3813/92. Since that regulation gave an indication of the adoption of the regulation at issue six months in advance, the principle of the protection of legitimate expectations cannot be considered to have been breached.

68 Whilst the protection of legitimate expectations is one of the fundamental principles of the Community, traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained; this is particularly true in an area such as the common organization of the markets whose purpose involves constant adjustments to meet changes in the economic situation (see in particular Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863, paragraph 57).

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

70 In those circumstances, a provision removing the possibility for tobacco processors to choose when the operative event is to occur during the four-year period following the harvest cannot breach the principle of legitimate expectations.

71 As regards the alleged lack of transitional measures, it should be noted that Article 5 of the regulation at issue has precisely that character. Its purpose is to avoid the inconsistency which would have resulted from the simultaneous application of the old and the new agrimonetary provisions.

72 The above conclusions cannot be called into question on the ground that the growing contracts for the 1992 harvest had been made 18 months prior to the adoption of the regulation at issue and the tobacco had been harvested and placed under supervision until 15 May 1993.

73 Consequently, in freezing the agricultural conversion rate as of 1 July 1993, the regulation at issue does not infringe Article 3(1)(iv) of Regulation No 727/70 or the principle of the protection of legitimate expectations.

Breach of the principle of non-retroactivity

74 By its fifth question, the national court is essentially asking whether the regulation at issue should be declared invalid on the ground that it breaches the principle of non-retroactivity in so far as it was adopted on 17 December 1993 but applies with effect from 1 July 1993.

75 Moskof, supported by the Greek and Italian Governments, considers that the regulation at issue, and more specifically Article 5 thereof, does not satisfy the conditions for retroactive application because it does not serve a higher-ranking public interest and no measures were taken to protect the legitimate expectations of processors.

76 The Commission accepts that the delay in publishing the regulation could give rise to a slight problem of retroactivity in respect of the period between the date of its application and the date of its entry into force, but maintains that that retroactivity was justified by the need to avoid market distortion.

77 The Court has consistently held that, although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time 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 respected (Case C-368/89 *Crispoltoni* [1991] ECR I-3695, paragraph 17).

78 According to the first recital in the preamble to Regulation No 3813/92, the new agrimonetary rules were intended to make agrimonetary arrangements compatible with the completion of the internal market provided for by Article 8a of the Treaty. In that context, Article 5 of the regulation will be seen to be a transitional measure, the purpose of which was to avoid the inconsistency which would have resulted from the simultaneous application of the old and the new rules and would probably have resulted in tobacco from harvests prior to 1993 being removed from supervision later than tobacco from the 1993 harvest and subsequent ones.

79 As pointed out in paragraph 41 of this judgment, 1 July 1993 was a key date in the context of both the new common organization of the market in the tobacco sector and the application of the new agrimonetary system. It was therefore entirely logical for that date to be set by the transitional measure in Article 5 as the limit for application of the old agrimonetary provisions concerning the old system of premiums. The purpose to be attained required that choice of date.

80 Tobacco processors were made aware of the significance of that date by the regulations published beforehand. Furthermore, both Article 27 of the basic regulation, Regulation No 2075/92, and Article 13 of the agrimonetary Regulation No 3813/92 provided that the Commission could adopt transitional measures.

81 Processors had even less legitimate reason to expect that they would continue to benefit from the old provisions because, as noted at paragraphs 52 and 54 of this judgment, those provisions derogated from the principles of the agrimonetary system and had no economic justification since processors had already received payment in advance of the whole of the premium at the time the tobacco was placed under supervision and the provisions encouraged processors to remove the tobacco from supervision on the basis of ecu exchange rates rather than conditions on the tobacco market.

82 Consequently, the regulation at issue does not breach the principle of non-retroactivity.

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

83 By its fourth question, the national court is essentially asking whether the regulation at issue should be declared invalid on the ground that it is not consistent with the objective of stabilization of the markets referred to in Article 39(1)(c) of the Treaty, since the loss suffered by processors would have repercussions for producers because processors would not be able to offer satisfactory prices for tobacco from the harvest following the adoption of the regulation.

84 Moskof maintains that by freezing the agricultural conversion rates, the Commission manifestly failed to observe the objectives set out in Article 39 of the Treaty, in particular that set out in paragraph 1(c) concerning the stabilization of markets.

85 The Commission points out that the stabilization of the markets referred to in that provision is intended to benefit producers, or in any event consumers, but not traders such as Moskof, who cannot therefore rely on that provision in order to challenge the validity of the regulation at issue.

86 The first point to be made in that respect is that the regulation at issue implements Regulation No 3813/92, the main purpose of which, according to the second and third recitals in the preamble, is to make it possible to use the ecu to fix and express the prices or amounts established in the context of the common agricultural policy by determining the conditions for payment of those prices or amounts in national currency.

87 Article 5 of the regulation at issue is a transitional measure intended to enable the rapid application of the new agrimonetary provisions, whilst avoiding market distortion which would have resulted from the simultaneous application of the old and the new provisions.

88 In that respect, Article 5 has had a stabilizing effect on the tobacco market since it enabled appropriate regulation of the disposal of tobacco harvests prior to and following the modification of the agrimonetary system. Furthermore, it ended the destabilization of the market caused by the fact that the tobacco processors based their decision to remove the tobacco from supervision on the conversion rates applicable to the premium rather than the state of the tobacco market.

89 It should be noted that account was specifically taken of the economic position of tobacco producers in the context of the reform of the common organization of the market in the tobacco sector and, in particular, of the new system of premiums introduced by Regulation No 2075/92.

90 Consequently, Article 5 of the regulation at issue does not infringe Article 39(1)(c) of the Treaty.

Breach of the principle of equal treatment of Community traders

91 By its seventh question, the national court, taking up an argument developed by Moskof, essentially asks whether the regulation at issue should be declared invalid on the ground that, since the drachma diverges more from the European unit of account than do the currencies of the other Member States, it infringes the principle of equal treatment of Community traders to the detriment of Greek traders.

92 The Commission notes in that respect that monetary evolution is always uncertain but that the fall in the value of the drachma over recent years is not large and, with respect to the ecu, is no greater than that of the currency of other Member States. The adoption of the regulation at issue therefore did not result in any discrimination against Greek traders.

93 It should be noted that before the adoption of the regulation at issue the difference between the date of payment of the advance equal to the whole of the premium and the date on which the right to the premium accrued meant that traders from Member States with a weak currency, such as Greek traders, were treated more favourably than traders from Member States with strong currencies, since they benefited from the difference, resulting from devaluation, between the amount of the premium, which was expressed in national currency, and the amount of the advance paid on the premium.

94 Contrary to what is claimed by Moskof, by terminating the application of those provisions Article 5 of the regulation at issue re-established equal treatment of Community operators by abolishing the benefits enjoyed by certain traders as a result of the rules determining the operative event for conversion rates, for which there was no economic justification.

95 Consequently, the regulation at issue does not breach the principle of equal treatment of Community traders.

Misuse of powers

96 By its eighth question, the national court is essentially asking whether the regulation at issue should be declared invalid on the ground of misuse of powers,

in so far as it was adopted for budgetary reasons and not, as indicated in the recitals, in order to avoid market distortion.

97 According to Moskof, in the Commission's replies to the Court of Auditors' Special Report No 8/93, which were made when the regulation at issue was adopted, the Commission undertook to adopt the necessary provisions to limit the expenditure resulting from the agricultural conversion rates of the premium paid in the context of the old common organization of the markets. It is therefore clear that Article 5 of the regulation at issue was adopted with the intention of reducing budgetary expenditure and not with a view to avoiding market distortions as regards tobacco from the 1993 harvest, as is expressly indicated in the seventh recital. The Commission is therefore guilty of a misuse of powers within the meaning of the second paragraph of Article 173 of the EC Treaty.

98 The Greek Government also claims that the objective set out in the recitals in the preamble to the regulation at issue does not justify the adoption of Article 5, which in essence seeks to introduce a disguised financial penalty for Greek tobacco processors who, on 1 July 1993, held tobacco from the 1992 and previous harvests, which had not at that time left supervision.

99 In contrast, the Commission considers that it did not misuse its powers since, on the basis of Article 6 of Regulation No 3813/92, it determined a specific operative event in order to avoid market distortions with regard to tobacco from the 1993 harvest. Guided by the need to maintain producers' income, it sought to avoid a general reduction in premiums and thus facilitate the transition from the old regime to the new.

100 It should be recalled that the Court's case-law (see, in particular, Case C-84/94 *United Kingdom* v *Council* [1996] ECR I-5755, paragraph 69) defines misuse

of powers as the adoption by a Community institution of a measure with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case.

101 At point 3.6 of Special Report No 8/93, to which Moskof itself refers, the Court of Auditors stated three grounds justifying a modification of the provision concerning the operative event as regards harvests prior to 1993. It notes first that there is no financial justification for the practice of paying an extra amount of premium; it then states that, unless the regulation was amended, there was likely to be an effect on the smooth operation of the reformed tobacco common market organization, in so far as processing undertakings would be encouraged to retain tobacco from harvests prior to 1993 in order to benefit from any devaluation; finally, it points out that in addition unjustified budgetary expenditure would be incurred.

102 The reference in the Commission's replies to that report to the objective of limiting expenditure cannot be interpreted as a desire by the Commission exclusively to pursue that objective, which would in any case be legitimate in itself; it may reflect the desire to respond usefully to the institution which, under the first subparagraph of Article 188c(2) of the EC Treaty, is responsible for examining whether all expenditure has been incurred in a lawful and regular manner and whether the financial management has been sound.

103 The Court of Auditors itself stated that the need to avoid market distortion justified altering the provision concerning the operative event. It therefore constituted

an objective and substantive reason for adopting the provision at issue, contrary to what is claimed by the Greek Government.

104 Consequently, the Commission did not misuse its powers by adopting the regulation at issue.

Conclusion

105 In the light of all the considerations set out above, it must be held that examination of the various grounds referred to by the national court in its questions has not revealed any factor capable of affecting the validity of Article 5 of the regulation at issue.

Costs

106 The costs incurred by the Greek and Italian Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Diikitiko Protodikio Athinon by judgment of 24 May 1995, hereby rules:

Examination of the various grounds referred to by the national court in its questions has not revealed any factor capable of affecting the validity of Article 5 of Commission Regulation (EC) No 3477/93 of 17 December 1993 concerning the agricultural conversion rates to be applied in the tobacco sector.

Gulmann Moitinho de Almeida Puissochet

Jann Sevón

Delivered in open court in Luxembourg on 20 November 1997.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber