JUDGMENT OF THE COURT (First Chamber)

20 May 2010 (*)

(Common agricultural policy – Integrated administration and control system for certain aid schemes – Regulation (EC) No 1782/2003 – Single payment scheme – Transfer of payment entitlements – Definitive transfer)

In Case C-434/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Oberlandesgericht Oldenburg (Germany), made by decision of 11 September 2008, received at the Court on 1 October 2008, in the proceedings

Arnold und Johann Harms als Gesellschaft bürgerlichen Rechts

v

Freerk Heidinga

THE COURT (First Chamber),

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

Advocate General: J. Mazák,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 3 December 2009,

after considering the observations submitted on behalf of:

– Arnold und Johann Harms als Gesellschaft bürgerlichen Rechts, by F. Schulze, Rechtsanwalt,

– the German Government, by M. Lumma and N. Graf Vitzthum, acting as Agents,

– the European Commission, by F. Erlbacher and F. Clotuche-Duvieusart, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 February 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation 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 the corrigendum thereto, OJ 2004 L 94, p. 70).

2 The reference has been made in the course of proceedings between Arnold und Johann Harms als Gesellschaft bürgerlichen Rechts and Mr Heidinga (‘the purchaser’) concerning the performance of obligations arising from a deed of sale of an agricultural holding.

Legal context

European Union rules

Regulation No 1782/2003

3 Regulation No 1782/2003 establishes, inter alia, an income support scheme for farmers. In the second indent of Article 1 of the regulation that scheme is referred to as the ‘single payment scheme’.

4 According to recital 2 in the preamble to Regulation No 1782/2003:

‘The full payment of direct aid should be linked to compliance with rules relating to agricultural land, agricultural production and activity. Those rules should serve to incorporate in the common market organisations basic standards for the environment, food safety, animal health and welfare and good agricultural and environmental condition. If those basic standards are not met, Member States should withdraw direct aid in whole or in part on the basis of criteria which are proportionate, objective and graduated. Such withdrawal should be without prejudice to sanctions laid down now or in the future under other provisions of Community or national law.’

5 Recital 3 in the preamble to that regulation states, inter alia:

‘In order to avoid the abandonment of agricultural land and ensure that it is maintained in good agricultural and environmental condition, standards should be established which may or may not have a basis in provisions of the Member States …’

6 According to recital 21 in the preamble to Regulation No 1782/2003:

‘The support schemes under the common agricultural policy provide for direct income support in particular with a view to ensuring a fair standard of living for the agricultural community. This objective is closely related to the maintenance of rural areas. In order to avoid misallocations of Community funds, no support payments should be made to farmers who have artificially created the conditions required to obtain such payments.’

7 Recital 24 in the preamble to the regulation states:

‘Enhancing the competitiveness of Community agriculture and promoting food quality and environment standards necessarily entail a drop in institutional prices for agricultural products and an increase in the costs of production for agricultural holdings in the Community. To achieve those aims and promote more market-oriented and sustainable agriculture, it is necessary to complete the shift from production support to producer support by introducing a system of decoupled income support for each farm. While decoupling will leave the actual amounts paid to farmers unchanged, it will significantly increase the effectiveness of the income aid. It is, therefore, appropriate to make the single farm payment conditional upon cross-compliance with environmental, food safety, animal health and welfare [standards], as well as the maintenance of the farm in good agricultural and environmental condition.’

8 Recital 30 in the preamble to the regulation states, inter alia:

‘The overall amount to which a farm is entitled should be split into parts (payment entitlements) and linked to a certain number of eligible hectares to be defined, in order to facilitate transfer of the premium rights. To avoid speculative transfers leading to the accumulation of payment entitlements without a corresponding agricultural basis, in granting aid, it is appropriate to provide for a link between entitlements and a certain number of eligible hectares, as well as the possibility of limiting the transfer of entitlements within a region …’

9 Article 2 of the regulation provides that:

‘… the following definitions shall apply:

(a) “farmer” means a natural or legal person, or a group of natural or legal persons … who exercises an agricultural activity,

…

(c) “agricultural activity” means the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition as established under Article 5,

…’

10 Title II of Regulation No 1782/2003 contains a Chapter 1 entitled ‘Cross compliance’, consisting of Articles 3 to 9. Article 3(1) of the regulation, entitled ‘Main requirements’, provides:

‘1. A farmer receiving direct payments shall respect the statutory management requirements referred to in Annex III, according to the timetable fixed in that Annex, and the good agricultural and environmental condition established under Article 5.

2. The competent national authority shall provide the farmer with the list of statutory management requirements and good agricultural and environmental condition to be respected.’

11 Title III of the said regulation, entitled ‘Single payment scheme’, contains, in Chapters 1 to 4 thereof, the basic rules applicable to that income support scheme for farmers ‘decoupled’ from production.

12 According to Article 33(1) of the same regulation:

‘Farmers shall have access to the single payment scheme if:

(a) they have been granted a payment in the reference period referred to in Article 38 under at least one of the support schemes referred to in Annex VI, or

(b) they have received the holding or part of the holding, by way of actual or anticipated inheritance, by a farmer who met the conditions referred to in point (a), or

(c) they have received a payment entitlement from the national reserve or by transfer.’

13 Article 36(1) of Regulation No 1782/2003 states:

‘Aid under the single payment scheme shall be paid in respect of payment entitlements as defined in Chapter 3, accompanied by an equal number of eligible hectares as defined in Article 44(2).’

14 Under Article 44 of the said regulation, entitled ‘Use of payment entitlements’:

‘1. Any payment entitlement accompanied by an eligible hectare shall give right to the payment of the amount fixed by the payment entitlement.

2. “Eligible hectare” shall mean any agricultural area of the holding taken up by arable land and permanent pasture except areas under permanent crops, forests or used for non agricultural activities.

…’

15 Article 46 of Regulation No 1782/2003, entitled ‘Transfer of payment entitlements’, states:

‘1. Payment entitlements may only be transferred to another farmer established within the same Member State except in case of transfer by actual or anticipated inheritance.

…

2. Payment entitlements may be transferred by sale or any other definitive transfer with or without land. In contrast, lease or similar types of transactions shall be allowed only if the payment entitlements transferred are accompanied by the transfer of an equivalent number of eligible hectares.

Except in case of force majeure or exceptional circumstances as referred to in Article 40(4), a farmer may transfer his payment entitlements without land only after he has used, within the meaning of Article 44, at least 80% of his payment entitlements during at least one calendar year or after he has given up voluntarily to the national reserve all the payment entitlements he has not used in the first year of application of the single payment scheme.

…’

16 Chapter 5, Section 1, of the regulation, entitled ‘Regional and optional implementation’, permits the Member States to implement the single payment scheme at regional level.

17 Article 59(1) and (3) of the said regulation, which is part of Section 1, provides:

‘1. In duly justified cases and according to objective criteria the Member State may divide the total amount of the regional ceiling established under Article 58 or part of it between all the farmers whose holdings are located in the region concerned, including those who do not meet the eligibility criterion referred to in Article 33.

…

3. In case of partial division of the total amount of the regional ceiling, farmers shall receive entitlements whose unit value is calculated by dividing the corresponding part of the regional ceiling established under Article 58 by the number of eligible hectares, within the meaning of Article 44(2), established at regional level.

4. In case the farmer is also entitled to receive entitlements calculated on the remaining part of the regional ceiling, the regional unit value of each of his entitlements, except for set-aside

entitlements, shall be increased by an amount corresponding to the reference amount divided by the number [of] his entitlements established in accordance with paragraph 4.

…’

18 Article 62 of Regulation No 1782/2003 permits the Member States to decide that the amounts resulting from dairy premiums and additional payments, provided for in Articles 95 and 96 of the regulation, are to be included at national or regional level, in part or in full, in the single payment scheme starting from 2005.

National legislation

19 Pursuant to Paragraph 2(1) of the Law implementing the single payment scheme (Betriebsprämiendurchführungsgesetz, ‘the Implementing Law’), the single payment is to be granted at regional level with effect from 1 January 2005 in accordance with the detailed rules laid down in the said law and the regulation implementing the single payment scheme.

20 Paragraph 5(1) of the Implementing Law provides that the reference amount of the single payment, pursuant to the provisions of Article 59(1) and (3) of Regulation No 1782/2003, read in conjunction with each other, consists, for each farmer, of an amount which is farm specific and an amount based on size.

21 The farm specific amount is calculated on the basis of the earlier direct payments set out in point 1 of Paragraph 5(2) of the Implementing Law, to which must be added dairy premiums and supplements to dairy premiums. The amount based on size is calculated by dividing the remaining part of the regional ceiling by the number of eligible hectares.

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

22 It is apparent from the order for reference that, by way of a deed of sale drawn up by a notary and dated 8 November 2005, Amkeline Gertha Harms and Johann Harms (‘the sellers’) sold to the purchaser agricultural land and buildings, fodder stocks and milk reference quantities. In addition to the transfer of 9.6 hectares of land owned by the sellers, the deed of sale also provided that the purchaser could take over approximately 100 hectares of land, pursuant to agreements with the owners or, as the case may be, the beneficial owners, which had been leased by the sellers or been used by them by agreement with the landowners.

23 The parties to the deed of sale also agreed that the sellers would transfer to the purchaser, free of charge, all payment entitlements to be allocated to them on the ground that they farm the land that is the subject of the deed as well as the land that the sellers leased or was made available for their use, and which the purchaser took over.

24 Paragraph 9 of the deed of sale contained, inter alia, the following provisions:

‘Once the payment entitlements have been definitively determined and allocated, the sellers shall inform the purchaser of the amount within two weeks of having been notified, but at the latest on 15 January 2006.

The parties agree to enter, by 15 February 2006, into a contract … for the transfer of the actual payment entitlements that will set out the features by which those entitlements can be identified and the amount.

Within one month of entering into the above contract, the parties shall register the transfer with the Central Database of the Integrated Administration and Control System.

The parties agree between themselves that the purchaser shall be entitled to 40 payment entitlements in respect of arable land and 40 payment entitlements in respect of permanent pasture as well as only that part of the farm-specific payment entitlements ("top-ups") that is allotted in respect of the milk reference quantities (approximately 622 000 kg) transferred to the purchaser under a lease in the context of the farm purchase.

The purchaser hereby agrees to pass on to the sellers … the payments received in relation to land-related or farm-specific payment entitlements exceeding the above (approximately 15 payment entitlements in respect of arable land, approximately 15 payment entitlements in respect of permanent pasture and milk compensation payments for approximately 1 000 000 kg of milk reference quantities).'

25 The deed of sale was executed and the agricultural land sold under the contract transferred into the name of the purchaser. On 1 April 2006, 111.79 payment entitlements were assigned to the purchaser.

26 By way of a written act of assignment dated 29 January 2007, the sellers ceded to the appellant in the main proceedings the claims arising under the deed of sale.

27 On the basis of that deed of sale and the related agreement of 6 January 2006, the appellant in the main proceedings, inter alia, claimed payment from the purchaser of EUR 40 823.05 in respect of payment entitlements for 2006 which were due to the sellers pursuant to the internal agreement between the parties.

28 Following the dismissal of that application by the Landgericht Aurich, the appellant in the main proceedings appealed to the Oberlandesgericht Oldenburg.

29 The court making the reference considers that the outcome of the proceedings before it depends on the validity of the provision appearing in paragraph 9 of the deed of sale, having regard in particular to the restrictions on the transfer of payment entitlements laid down in Article 46 of Regulation No 1782/2003 and the objectives of the single payment scheme.

30 In those circumstances, the Oberlandesgericht Oldenburg decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Article 46(2) of [Regulation No 1782/2003] to be interpreted as meaning that the following contractual arrangements are incompatible with that provision and hence invalid: contractual arrangements outwardly effecting a complete and definitive transfer of payment entitlements, but stipulating – according to an internal agreement between the parties – that the seller is to remain the beneficial owner of those payment entitlements, whereby the purchaser, in his capacity as the person formally entitled to them, is to activate the payment entitlements through cultivation of the corresponding land and to pass on to the seller the full amount of the single payments made to him, or contractual arrangements pursuant to which area payments are transferred to the purchaser in such a way that he remains under an ongoing obligation to pay to the seller a part of the single payments (the farm-specific part), at any rate once those payments have been activated and disbursed?'

The question referred for a preliminary ruling

Admissibility

31 The appellant in the main proceedings argues that the reference for a preliminary ruling is inadmissible on the ground that the question referred does not correspond to the factual background of the case in the main proceedings.

32 In that regard, it should be borne in mind that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case, the relevance of the questions which it submits to the Court (see, in particular, Case C-138/08 *Hochtief and Linde-Kca-Dresden* [2009] ECR I-0000, paragraph 20 and the case-law cited).

33 Furthermore, under the division of jurisdiction between the Courts of the European Union and the national courts, the Court must take account of the factual and legislative context, as described in the order for reference, in which the questions put to it are set (Case C-153/02 *Neri* [2003] ECR I-13555, paragraph 35).

34 The reference for a preliminary ruling must therefore be held to be admissible and it must be examined in the factual framework described by the Oberlandesgericht Oldenburg in its order for reference.

Substance

35 By its question, the national court is asking, essentially, whether Article 46(2) of Regulation No 1782/2003 is to be interpreted as precluding a contractual arrangement such as that at issue in the main proceedings the object of which is to effect a definitive transfer of payment entitlements whereby the transferee, in his capacity as the person entitled to them, is required to activate the payment entitlements and to pass on to the transferor the full amount, or a part thereof, of the payments made to him on that basis.

36 First, it must be borne in mind that, although a contract is characterised by the principle of freedom of the parties to arrange their own affairs, according to which, in particular, parties are free to enter into obligations with each other, limitations on freedom of contract may none the less arise from the applicable European Union rules (see, to that effect, Case C-240/97 *Spain* v *Commission* [1999] ECR I-6571, paragraph 99).

37 In particular, the contractual freedom of a person having payment entitlements does not permit him to enter into commitments which contradict the objectives of Regulation No 1782/2003.

38 In that regard, it must be recalled that, according to the second indent of Article 1 of Regulation No 1782/2003, the single payment scheme is an income support for farmers. As is stated in recital 21 in the preamble to that regulation, the objective of ensuring a fair standard of living for the agricultural community is closely related to the maintenance of rural areas. That is why recital 24 in the preamble to the regulation states that it is appropriate to make the single payment conditional upon cross-compliance with environmental, food safety, animal health and welfare standards, as well as the maintenance of the farm in good agricultural and environmental condition. Indeed, the legislature has made disbursement of the aid subject to the condition that the farmer holds a number of hectares that are eligible for aid which corresponds to the number of payment entitlements (see, to that effect, Case C-470/08 *van Dijk* [2010] ECR I-0000, paragraph 33).

39 It follows that a farmer cannot benefit from the aid scheme established by Regulation No 1782/2003 if he no longer fulfils the conditions laid down by that regulation. In the contrary case, he would obtain an advantage which is not in compliance with the objectives of the single payment scheme.

40 With regard to the rules laid down in Regulation No 1782/2003 concerning the transfer of payment entitlements which are at issue in the case in the main proceedings, Article 46(2) of the

regulation provides, inter alia, that transfer of payment entitlements may be made by definitive transfer or by lease or similar type of transaction.

41 In a definitive transfer, as is the case in the main proceedings, a farmer who benefited from payment entitlements up until that point definitively waives his claims on the transfer of his entitlements to another farmer who then activates them for his benefit (see, to that effect, *van Dijk*, paragraph 35).

42 In the present case, it is apparent from the order for reference that the sellers transferred to the purchaser all payment entitlements allocated to them. The deed of sale provided, inter alia, that the parties were to register the definitive transfer of the payment entitlements with the central database of the system for the identification and registration of payment entitlements.

43 However, between themselves, the parties to the deed of sale agreed, by a provision in paragraph 9 thereof, to allocate to the purchaser a specified number of payment entitlements, the purchaser agreeing to pass on to the sellers the payments to be received annually in relation to the remaining entitlements after activating them.

44 It appears to follow from the wording of that provision, which stipulates expressly that the purchaser is entitled, not to all the payment entitlements transferred to him, but only to a part of them, that the intention of the parties, between themselves, was to allocate to the sellers part of the payment entitlements transferred, in disregard of the objectives of Regulation No 1782/2003. Interpreted a contrario, the necessary result of that provision is that the remaining payment entitlements revert to the sellers. That assessment is reinforced by the fact that it is clear from the evidence presented to the Court that the parties did not place any limit in time on the transferee is obligation to pass on to the transferor a part of the payments made to him in respect of those payment entitlements.

45 Such a provision, under which the transferee of payment entitlements is allocated, by agreement between the parties, only part of the payment entitlements which were formally transferred to him, cannot be regarded as being in compliance with the objectives of Regulation No 1782/2003, as set out in paragraph 38 of the present judgment, inasmuch as the object of the provision is to permit the transferor to continue to benefit from the support scheme established by that regulation without itself being subject to the obligations laid down in Title II, Chapter 1, of the regulation and to the conditions governing eligibility to receive aid referred to in Article 33 thereof.

46 However, the appellant in the main proceedings argued at the hearing that, when the deed of sale was entered into, the payment entitlements had not yet been allocated in the Federal Republic of Germany and in Lower Saxony in particular. Thus, the purpose of the aforementioned provision, the wording of which is infelicitous, was not to transfer back to it part of the payment entitlements transferred to the transferee but to determine by reference to the value of that part of the payment entitlements, the agreed price for the transfer of all the payment entitlements.

47 In that regard, it must be considered that, in the absence of a provision to the contrary in Regulation No 1782/2003, the parties are, in principle, free to determine the amount of consideration to be paid for the transfer of the payment entitlements.

48 In those circumstances, the decisive question is whether the provision at issue is the result of the parties' intention to allocate to the transferor, as between themselves, part of the payment entitlements formally transferred, in disregard of the provisions of Regulation No 1782/2003, or to determine, by reference to the value of that part of the payment entitlements, the agreed price for all the payment entitlements.

49 It is for the national court to ascertain, on the basis of the facts, which it alone is in a position to assess, the real intention of the parties.

50 It follows from all the foregoing considerations that Regulation No 1782/2003 must be interpreted as not precluding a contractual arrangement, such as that at issue in the main proceedings, the object of which is to effect a definitive transfer of payment entitlements whereby the transferee, in his capacity as the person entitled to them, is to activate the payment entitlements and to pass on to the transferor, without any limit in time, the full amount, or a part thereof, of the payments received on that basis, provided that the purpose of such an arrangement is not to permit the transferor to retain a part of the payment entitlements which he has formally transferred, but to determine, by reference to the value of that part of the payment entitlements, the agreed price for the transfer of all the payment entitlements.

Costs

51 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:

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 must be interpreted as not precluding a contractual arrangement, such as that at issue in the main proceedings, the object of which is to effect a definitive transfer of payment entitlements whereby the transferee, in his capacity as the person entitled to them, is to activate the payment entitlements and to pass on to the transferor, without any limit in time, the full amount, or a part thereof, of the payments received on that basis, provided that the purpose of such an arrangement is not to permit the transferor to retain a part of the payment entitlements which he has formally transferred, but to determine, by reference to the value of that part of the payment entitlements, the agreed price for the transfer of all the payment entitlements.

[Signatures]

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* Language of the case: German.