

JUDGEMENT OF THE COURT (Fifth Chamber)

21 January 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 – Expiry of the lease – Obligations of the lessee and the lessor)

In Case C-470/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Gerechtshof te Arnhem (Netherlands), made by decision of 28 October 2008, received at the Court on 3 November 2008, in the proceedings

Kornelis van Dijk

v

Gemeente Kampen

THE COURT (Fifth Chamber),

composed of A. Tizzano, President of the First Chamber, acting as the President of the Fifth Chamber, A. Borg Barthet (Rapporteur) and M. Ilešič, Judges,

Advocate General: J. Mazák,

Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr van Dijk, by J. van Mierlo, advocaat,
- the Gemeente Kampen, by G.F. Snijders, advocaat,
- the Netherlands Government, by C. Wissels and M. de Grave, acting as Agents,
- the German Government, by M. Lumma, acting as Agent,
- the Greek Government, by E. Leftheriotou and A. Vasilopoulou, acting as Agents,
- the Commission of the European Communities, by F. Clotuche-Duvieusart and B. Burggraaf, acting as Agents,

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

gives the following

Judgement

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) 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), and Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Regulation No 1782/2003 (OJ 2004 L 141, p. 1).

2 The reference has been made in the context of a dispute between Mr van Dijk and the Gemeente Kampen (Commune of Kampen) regarding the nature and extent of the obligations resulting from an agricultural lease.

Legal context

Community law

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 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.’

5 Recital 29 in the preamble to the regulation states:

‘In order to establish the amount to which a farmer should be entitled under the new scheme, it is appropriate to refer to the amounts granted to him during a reference period. To take account of specific situations, a national reserve should be established. That reserve may also be used to facilitate the participation of new farmers in the scheme. The single payment should be established at farm level.’

6 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 ...’

7 Article 2 of the regulation provides:

‘... 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,

...'

8 Title III of Regulation No 1782/2003, 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. It is apparent from Articles 33(1)(a), 37(1), 38 and 41 of that regulation that farmers who, during a reference period comprising the calendar years 2000 to 2002, benefited from a payment under at least one of the aid schemes referred to in Annex VI to that regulation are entitled to aid calculated on the basis of a reference amount obtained, for each farmer, from the yearly average for that period of the total amount of payments granted under those schemes.

9 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).'

10 Chapter 3 of Title III of Regulation No 1782/2003 contains Section 1, headed 'Payment entitlements based on areas'. Article 43(1) of the regulation, which forms part of that section, states, *inter alia*:

'Without prejudice to Article 48, a farmer shall receive a payment entitlement per hectare which is calculated by dividing the reference amount by the three-year average number of all hectares which in the reference period gave right to direct payments listed in Annex VI.

The total number of payment entitlements shall be equal to the abovementioned average number of hectares.

...'

11 Under Article 44 of Regulation No 1782/2003:

'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.

3. The farmer shall declare the parcels corresponding to the eligible hectare accompanying any payment entitlement. Except in case of force majeure or exceptional circumstances, these parcels shall be at the farmer's disposal for a period of at least 10-months, starting from a date to be fixed by the Member State, but not earlier than 1 September of the calendar year preceding the year of lodging the application for participation in the single payment scheme.

4. Member States may, in duly justified circumstances, authorise the farmer to modify his declaration on condition that he respects the number of hectares corresponding to his payment entitlements and the conditions for granting the single payment for the area concerned.'

12 Article 46 of Regulation No 1782/2003, headed '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.

3. In case of sale of payment entitlements, with or without land, Member States may, acting in compliance with the general principles of Community law, decide that part of the payment entitlements sold revert to the national reserve or that their unit value is reduced in favour of the national reserve, according to criteria to be fixed by the Commission in accordance with the procedure referred to in Article 144(2).’

13 The provisions of Chapter 5 of Title III of the regulation, entitled ‘Regional and optional implementation’, permit the Member States to decide, by 1 August 2004 at the latest, to apply the single payment scheme provided for in Chapters 1 to 4 of Title III, in particular at regional level or partially.

14 Pursuant to Articles 58(1) and (3) and 59(1) and (2) of the regulation, a Member State may regionalise the single payment scheme by dividing its national ceiling, not individually among the farmers of that State on the basis of their respective reference amounts, but among the different regions which make up its territory, and by distributing the amount of each regional ceiling thus obtained at a standard rate between all the farmers of the region concerned, each of them receiving entitlements the unit of which is calculated by dividing that regional ceiling by the number of eligible hectares established at regional level.

Regulation (EC) No 1234/2007

15 Article 74(4) of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1) states:

‘Where there is no agreement between the parties, in the case of tenancies due to expire without any possibility of renewal on similar terms, or in situations involving comparable legal effects, the individual quotas in question shall be transferred in whole or in part to the producer taking them over, in accordance with provisions adopted by the Member States, taking account of the legitimate interests of the parties.’

National legislation

16 Neither the Regulation on Common Agricultural Policy Income Support 2006 (Regeling GLB – inkomenssteun 2006), adopted pursuant to Regulations Nos 1782/2003 and 795/2004, nor Title 5 of Book 7 of the Civil Code, concerning agricultural leases, contains any specific provisions on the treatment to be given at the end of the lease to payment entitlements granted under Regulation No 1782/2003 or to their value.

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

17 Since 1982 Mr van Dijk has leased from the Gemeente Kampen a number of parcels of agricultural land totalling 34 hectares, 2 acres and 36 centiares. The lease between the two parties does not contain any clause relating to the income support scheme or payment entitlements.

18 For a number of years Mr van Dijk has received, on the basis of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12), and Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support system for producers of certain arable crops (OJ 1999 L 160, p. 1), compensatory payments under the support scheme for producers which was linked to the production of certain crops. Following the entry into force of Regulation No 1782/2003, he was granted entitlement to payment under Articles 33(1), 38 and 43(1) and (2)(a) of that regulation.

19 A dispute arose between Mr van Dijk and the Gemeente Kampen regarding the nature and the extent of the obligations under the lease.

20 By judgement of 25 September 2007 the Rechtbank Zwolle-Lelystad (District Court, Zwolle-Lelystad) (Netherlands) ruled that Mr van Dijk was obliged, on the expiry of the lease, to transfer to the Gemeente Kampen the land subject to the lease, including the payment entitlements accumulated on or relating to that land, in return for compensation equivalent to half of the value of those entitlements. That court also held that Mr van Dijk was not permitted to transfer those payment entitlements without the prior approval of the Gemeente Kampen.

21 By notice of 24 October 2007, Mr van Dijk brought an appeal against that judgement before the Gerechtshof te Arnhem (Regional Court of Appeal, Arnhem) (Netherlands). In his view, it is apparent from Regulations Nos 1782/2003 and 795/2004 that payment entitlements must remain with the lessee on the expiry of the lease. Mr van Dijk also claims that, unlike milk quotas which in principle are linked to the land which the milk producer or farmer used during the reference period, the payment entitlements are attached to the actual farmer.

22 The Gemeente Kampen contends that neither Regulation No 1782/2003 nor Regulation No 795/2004 specifies what is to happen to the payment entitlements on the expiry of the lease. It infers from this that the legal relations between the lessee and the lessor are regulated by national law.

23 Since it considers that the outcome of the proceedings pending before it depends on the interpretation of the applicable Community rules, the Gerechtshof te Arnhem decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Do Regulation No 1782/2003 and Regulation No 795/2004, or the general principles of Community law, in particular the principle of the prohibition of unjustified enrichment, require a lessee, in the absence of national rules in this respect, to deliver to the lessor the leased land, including the payment entitlements accumulated thereon or relating thereto, on the expiry of the lease?

2. If the answer to [the first] question ... is in the affirmative: do Regulation No 1782/2003 and Regulation No 795/2004, or the general principles of Community law, in particular the principle of the prohibition of unjustified enrichment, require a lessor, in the absence of national rules in this respect, to pay to the lessee compensation for the payment entitlements transferred to the lessor, and if so, should the lessor compensate the lessee for the full value of those entitlements or for only a proportion of that value, and, if the latter, for what proportion?

3. If the answer to [the first] question ... is in the negative: do Regulation No 1782/2003 and Regulation No 795/2004, or the general principles of Community law, in particular the principle of the prohibition of unjustified enrichment, require a lessee, in the absence of national rules in this respect, to pay to the lessor compensation for the payment entitlements retained by the lessee, and if so, should the

lessee compensate the lessor for the full value of those entitlements or for only a proportion of that value, and, if the latter, for what proportion?’

The questions referred

24 By its three questions, which should be dealt with together, the national court essentially asks whether Community law requires a lessee, on the expiry of the lease, to deliver to the lessor the leased land along with the payment entitlements accumulated thereon or relating thereto, or to pay him compensation.

25 It should be noted, at the outset, that there is no provision in either Regulation No 1782/2003 or Regulation No 795/2004 which provides that the lessee is required, on the expiry of the lease, to deliver to the lessor the leased land along with the payment entitlements accumulated thereon or relating thereto. In that respect, the single payment scheme differs from the milk quota scheme which, pursuant to Article 74(1) of Regulation No 1234/2007, is governed by the principle that quotas are transferred with the holding.

26 However, it is apparent from both the objectives and the scheme of Regulation No 1782/2003 that, in the absence of a clause to the contrary, payment entitlements remain with the lessee on the expiry of the lease.

27 First, in accordance with the second indent of Article 1 of Regulation No 1782/2003, the single payment scheme constitutes an income support for farmers, the objective of which is, as stated in recital 21 in the preamble to that regulation, to ensure a fair standard of living for the agricultural community. Under Article 33(1) of that regulation, farmers have access to the single payment scheme if, inter alia, they have been granted a payment in the reference period under at least one of the support schemes referred to in Annex VI to that regulation.

28 In accordance with Article 43(1) of Regulation No 1782/2003, the payment entitlements granted to a farmer under the single payment scheme depend on the number of hectares which he held during the reference period and the payments which he was granted under those support schemes.

29 In addition, Article 44(1) of that regulation recognises that there is a link between payment entitlements and agricultural areas in that each payment entitlement which corresponds to an eligible hectare gives a right to payment of the amount fixed by the payment entitlement.

30 It is in that context that Article 36(1) of Regulation No 1782/2003 states that aid under the single payment scheme is to be paid in respect of payment entitlements accompanied by an equal number of eligible hectares.

31 In that regard, as is apparent from recital 30 in the preamble to Regulation No 1782/2003, such a link exists between payment entitlements and eligible hectares, inter alia in order to avoid speculative transfers leading to the accumulation of payment entitlements without a corresponding agricultural basis.

32 By contrast, it is not apparent from Article 36(1) that the payment entitlements are linked to specific parcels, in particular to those which the farmer held during the reference period.

33 Thus, what ultimately matters is that, for the grant of the aid, the number of a farmer’s payment entitlements corresponds to an equivalent number of eligible hectares, and not to specific parcels. Article 44(4) of Regulation No 1782/2003 also expressly provides for the possibility for the Member States, in duly justified circumstances, to authorise a farmer to modify his declaration in relation to the parcels corresponding to the eligible area linked to a payment entitlement, on condition that he respects

the number of hectares corresponding to his payment entitlements and the conditions for granting the single payment for the area concerned.

34 Second, it should be noted that Article 46 provides for the possibility to transfer payment entitlements in accordance with the objective referred to in recital 30 in the preamble to Regulation No 1782/2003.

35 In particular, Article 46(2) provides that payment entitlements without land may be transferred only by definitive transfer. In such a case, a farmer who benefited from payment entitlements up until that point definitively waives his claims on the sale of his entitlements to another farmer, who then activates them for his benefit. In order to be able to claim payment of those entitlements, in accordance with Article 44(1) of Regulation No 1782/2003, the farmer concerned would have to have a sufficient number of eligible hectares of agricultural land in order to ensure the existence of a sufficient agricultural basis for the payment entitlements.

36 By contrast, in the case of a lease or similar types of transactions, payment entitlements may be transferred only if the payment entitlements transferred are accompanied by the transfer of an equivalent number of eligible hectares. That rule laid down in Article 46(2) of Regulation No 1782/2003 seeks to avoid speculative transfers leading to the accumulation of payment entitlements without a corresponding agricultural basis, in accordance with the objective laid down in recital 30 in the preamble to that regulation.

37 Article 46(1) of Regulation No 1782/2003 also states that, except in the case of transfer by actual or anticipated inheritance, payment entitlements may only go to another farmer established within the same Member State. In that regard, it should be noted that, under Article 33(1)(a) of Regulation No 1782/2003 in conjunction with Article 2(a) and (c) thereof, the single payment scheme is aimed at farmers, namely persons who exercise an 'agricultural activity', consisting of the production, rearing or growing of agricultural products or maintaining the land in good agricultural and environmental condition.

38 However, a lessor of land is not necessarily a farmer within the meaning of Article 2(a) of Regulation No 1782/2003. Accordingly, if the Community legislature had wanted payment entitlements to revert back to the lessor in all circumstances on the expiry of the lease, it would have enacted a provision to that effect.

39 The inevitable conclusion from the above considerations is that Regulations Nos 1782/2003 and 795/2004 do not contain any obligation on farmers who have leased land to transfer their payment entitlements to the lessor on the expiry of the lease.

40 There is also no reason to suppose that the principle prohibiting unjust enrichment requires a farmer, on the expiry of the lease, to transfer his payment entitlements to the lessor or to pay him compensation.

41 In accordance with the principles common to the laws of the Member States, the right to restitution from the person enriched is conditional upon there being no valid legal basis for the enrichment at issue (*Case C-47/07 P Masdar (UK) v Commission* [2008] ECR I-0000, paragraphs 44 to 46 and 49).

42 It cannot be considered that the payment entitlements which a farmer enjoys are devoid of any legal basis in so far as they were attributed to him in accordance with the provisions of Regulation No 1782/2003.

43 It is apparent from all of the above considerations that Community law does not require a lessee, on the expiry of the lease, to deliver to the lessor the leased land, including the payment entitlements accumulated thereon or relating thereto, or to pay him compensation.

Costs

44 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 (Fifth Chamber) hereby rules:

Community law does not require a lessee, on the expiry of the lease, to deliver to the lessor the leased land, including the payment entitlements accumulated thereon or relating thereto, or to pay him compensation.

[Signatures]

* Language of the case: Dutch.