Provisional text

JUDGMENT OF THE COURT (First Chamber)
20 September 2017 (*)

(Appeal — Agriculture — Poultrymeat — Frozen chickens — Export refunds — Implementing Regulation (EU) No 689/2013 fixing the refund at EUR 0 — Legality — Regulation (EC) No 1234/2007 — Articles 162 and 164 — Subject matter and nature of the refunds — Criteria for fixing the amount — Powers of the Director-General of the Directorate-General (DG) for Agriculture and Rural Development to sign the contested regulation — Misuse of powers — 'Comitology' — Regulation (EU) No 182/2011 — Article 3(3) — Consultation with the Committee for the Common Organisation of the Agricultural Markets — Presentation of the draft implementing regulation during the meeting of that committee — Compliance with time limits — Infringement of essential procedural requirements — Annulment with maintenance of the effects)

In Case C-183/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 23 March 2016,

Tilly-SabcoSAS, established in Guerlesquin (France), represented by R. Milchior, F. Le Roquais and S. Charbonnel, lawyers,

applicant,

the other parties to the proceedings being:

European Commission, represented by A. Lewis and K. Skelly, acting as Agents,

defendant at first instance,

Doux SA, established in Châteaulin (France),

intervener at first instance,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.-C. Bonichot, A. Arabadjiev (Rapporteur), C.G. Fernlund and S. Rodin, Judges,

Advocate General: N. Wahl,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 1 March 2017,

after hearing the Opinion of the Advocate General at the sitting on 4 May 2017,

gives the following

Judgment

By its appeal, Tilly-Sabco SAS asks the Court to set aside the judgment of the General Court of the European Union of 14 January 2016, *Tilly-Sabco* v *Commission* (T-397/13, EU:T:2016:8, 'the judgment under appeal'), by which the latter dismissed its action for annulment of Commission Implementing Regulation (EU) No 689/2013 of 18 July 2013 fixing the export refunds on poultrymeat (OJ 2013 L 196, p. 13, 'the contested regulation').

Legal context

Regulation No 1234/2007

Under recitals 65 and 77 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 (Single CMO Regulation) (OJ 2007 L 299, p. 1), as amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ 2013 L 158, p. 1) ('Regulation No 1234/2007'):

A [European Union] single market involves a trading system at the external borders of [the Union]. That trading system should include import duties and export refunds and should, in principle, stabilise the [Union] market. The trading system should be based on the undertakings accepted under the Uruguay Round of multilateral trade negotiations.

Provisions for granting refunds on exports to third countries, based on the difference between prices within [the Union] and on the world market, and falling within the limits set by the commitments made within the WTO, should serve to safeguard [the Union's] participation in international trade in certain products falling within this Regulation. Subsidised exports should be subject to limits in terms of value and quantity.'

Article 162(1) of Regulation No 1234/2007 provided, inter alia:

'To the extent necessary to enable exports on the basis of world market quotations or prices and within the limits resulting from agreements concluded in accordance with Article 218 of the Treaty, the difference between those quotations or prices and prices in [the Union] may be covered by export refunds for:

the products of the following sectors to be exported without further processing:

…

poultrymeat'.

Article 164(1) to (3) of Regulation No 1234/2007, entitled 'Export refund fixation', provided:

'1. Export refunds shall be the same for the whole [Union].They may vary according to destination, especially where the world market situation, the specific requirements of certain markets, or obligations resulting from agreements concluded in accordance with Article [218 TFEU] make this necessary.

2. Refunds shall be fixed by the Commission.

Refunds may be fixed:

at regular intervals;

by invitation to tender for products in respect of which provision was made for that procedure before the date of application of this Regulation in accordance with Article 204(2).

Except where fixed by tender, the list of products on which an export refund is granted and the amount of export refunds shall be fixed at least once every three months. The amount of the refund may, however, remain at the same level for more than three months and may, where necessary, be adjusted in the intervening period by the Commission, without the assistance of the Committee referred to in Article 195(1), either at the request of a Member State or on its own initiative.

3. One or more of the following aspects shall be taken into account when refunds for a certain product are being fixed:

the existing situation and the future trend with regard to:

prices and availabilities of that product on the [internal] market,

prices for that product on the world market.

the aims of the common market organisation which are to ensure equilibrium and the natural development of prices and trade on this market

the need to avoid disturbances likely to cause a prolonged imbalance between supply and demand on the [Union] market

the economic aspect of the proposed exports;

the limits resulting from agreements concluded in accordance with Article [218 TFEU];

the need to establish a balance between the use of [Union] basic products in the manufacture of processed goods for export to third countries, and the use of third-country products brought in under processing arrangements

the most favourable marketing costs and transport costs from [Union] markets to [Union] ports or other places of export together with forwarding costs to the countries of destination

demand on the [Union] market;

in respect of the pigmeat, eggs and poultrymeat sectors, the difference between prices within the [Union] and prices on the world market for the quantity of feed grain input required for the production in the [Union] of the products of those sectors.'

Article 195(1) and (2) of Regulation No 1234/2007, entitled 'Committee', provided:

'1. The Commission shall be assisted by the Management Committee for the Common Organisation of Agricultural Markets (hereinafter referred to as the Management Committee).

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period referred to in Article 4(3) of Decision 1999/468/EC shall be set at one month.'

Article 196 of Regulation No 1234/2007, entitled 'Organisation of the Management Committee', also stated:

'The organisation of the meetings of the Management Committee referred to in Article 195(1) shall take into account, in particular, the scope of its responsibilities, the specificities of the subject to be dealt with, and the need to involve appropriate expertise.'

Regulation No 1234/2007 was repealed by Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).

Regulation No 182/2011

The first citation of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13), is worded:

'Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(3) thereof'.

In accordance with recitals 4 to 9 of Regulation No 182/2011:

The TFEU now requires the European Parliament and the Council to lay down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

It is necessary to ensure that the procedures for such control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the TFEU as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

In those basic acts which require the control of the Member States for the adoption by the Commission of implementing acts, it is appropriate, for the purposes of such control, that committees composed of the representatives of the Member States and chaired by the Commission be set up.

Where appropriate, the control mechanism should include referral to an appeal committee which should meet at the appropriate level.

In the interests of simplification, the Commission should exercise implementing powers in accordance with one of only two procedures, namely the advisory procedure or the examination procedure.

In order to simplify further, common procedural rules should apply to the committees, including the key provisions relating to their functioning and the possibility of delivering an opinion by written procedure.'

Article 2(1) and (2) of Regulation No 182/2011, entitled 'Selection of procedures', provides:

'1. A basic act may provide for the application of the advisory procedure or the examination procedure, taking into account the nature or the impact of the implementing act required.

2. The examination procedure applies, in particular, for the adoption of:

implementing acts of general scope;

other implementing acts relating to:

programmes with substantial implications;

the common agricultural and common fisheries policies;

the environment, security and safety, or protection of the health or safety, of humans, animals or plants;

the common commercial policy;

taxation.'

Regulation No 182/2011 provides in Article 3(1) to (4) and (7), entitled 'Common provisions':

'1. The common provisions set out in this Article shall apply to all the procedures referred to in Articles 4 to 8.

2. The Commission shall be assisted by a committee composed of representatives of the Member States. The committee shall be chaired by a representative of the Commission. The chair shall not take part in the committee vote.

3. The chair shall submit to the committee the draft implementing act to be adopted by the Commission.

Except in duly justified cases, the chair shall convene a meeting not less than 14 days from submission of the draft implementing act and of the draft agenda to the committee. The committee shall deliver its opinion on the draft implementing act within a time limit which the chair may lay down according to the urgency of the matter. Time limits shall be proportionate and shall afford committee members early and effective opportunities to examine the draft implementing act and express their views.

4. Until the committee delivers an opinion, any committee member may suggest amendments and the chair may present amended versions of the draft implementing act.

The chair shall endeavour to find solutions which command the widest possible support within the committee. The chair shall inform the committee of the manner in which the discussions and suggestions for amendments have been taken into account, in particular as regards those suggestions which have been largely supported within the committee.

…

7. Where applicable, the control mechanism shall include referral to an appeal committee.

The appeal committee shall adopt its own rules of procedure by a simple majority of its component members, on a proposal from the Commission.

Where the appeal committee is seised, it shall meet at the earliest 14 days, except in duly justified cases, and at the latest 6 weeks, after the date of referral. Without prejudice to paragraph 3, the appeal committee shall deliver its opinion within 2 months of the date of referral.

A representative of the Commission shall chair the appeal committee.

The chair shall set the date of the appeal committee meeting in close cooperation with the members of the committee, in order to enable Member States and the Commission to ensure an appropriate level of representation. By 1 April 2011, the Commission shall convene the first meeting of the appeal committee in order to adopt its rules of procedure.

Article 5(1) to (4) of Regulation No 182/2011, entitled 'Examination procedure', states:

'1. Where the examination procedure applies, the committee shall deliver its opinion by the majority laid down in Article 16(4) and (5) [TEU] and, where applicable, Article 238(3) [TFEU], for acts to be adopted on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in those Articles.

2. Where the committee delivers a positive opinion, the Commission shall adopt the draft implementing act.

3. Without prejudice to Article 7, if the committee delivers a negative opinion, the Commission shall not adopt the draft implementing act. Where an implementing act is deemed to be necessary, the chair may either submit an amended version of the draft implementing act to the same committee within 2 months of delivery of the negative opinion, or submit the draft implementing act within 1 month of such delivery to the appeal committee for further deliberation.

4. Where no opinion is delivered, the Commission may adopt the draft implementing act, except in the cases provided for in the second subparagraph. Where the Commission does not adopt the draft implementing act, the chair may submit to the committee an amended version thereof.

…'

Article 8 of that regulation, entitled 'Immediately applicable implementing acts', provides in paragraphs (1) to (4) thereof:

'1. By way of derogation from Articles 4 and 5, a basic act may provide that, on duly justified imperative grounds of urgency, this Article is to apply.

2. The Commission shall adopt an implementing act which shall apply immediately, without its prior submission to a committee, and shall remain in force for a period not exceeding 6 months unless the basic act provides otherwise.

3. At the latest 14 days after its adoption, the chair shall submit the act referred to in paragraph 2 to the relevant committee in order to obtain its opinion.

4. Where the examination procedure applies, in the event of the committee delivering a negative opinion, the Commission shall immediately repeal the implementing act adopted in accordance with paragraph 2.'

Article 9 of Regulation No 182/2011, entitled 'Rules of procedure', states in paragraph (1):

'Each committee shall adopt by a simple majority of its component members its own rules of procedure on the proposal of its chair, on the basis of standard rules to be drawn up by the Commission following consultation with Member States. Such standard rules shall be published by the Commission in the *Official Journal of the European Union*.

In so far as may be necessary, existing committees shall adapt their rules of procedure to the standard rules.'

The comitology decisions

The second paragraph and the first two sentences of the sixth paragraph of Article 2 of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1987 L 197, p. 33), and Article 3(2) and the first two sentences of Article 4(2) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23), which repealed Decision 87/373 ('the comitology decisions') were both worded identically as follows:

'The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter.'

Decision 1999/468 was repealed by Regulation No 182/2011.

The rules of procedure of the management committee

Article 3 of the rules of procedure of the management is worded as follows:

'1. For the purpose of the second subparagraph of Article 3(3) of Regulation (EU) No 182/2011, the chair shall submit the invitation, the draft agenda and the draft implementing act on which the committee is asked to give an opinion to the members of the committee well in advance of the meeting, taking into account the urgency and the complexity of the matter, and no later than 14 calendar days before the date of the meeting. Other documents related to the meeting, in particular documents accompanying the draft implementing act, shall, as far as possible, be submitted within the same time limit.

However, where swift action is required on a regular basis, or where the basic act lays down specific and mandatory time limit for action, a shorter time limit may be applied.

…

2. In duly justified cases, the chair may, on his/her own initiative or at the request of a member of the committee, shorten the time limit for submission of documents referred to in paragraph 1. The committee shall deliver its opinion on the draft implementing act within a time limit which the chair may lay down according to the urgency of the matter. Time limits shall be proportionate and shall afford committee members early and effective opportunities to examine the draft implementing act and express their views.'

Background to the dispute

Tilly-Sabco is a French company engaged in the export of whole frozen chickens to the countries of the Middle East.

In accordance, inter alia, with Articles 162 and 164 of Regulation No 1234/2007, the Commission is to fix at regular intervals the amount of the export refunds in the poultrymeat sector by means of implementing regulations.

Since the adoption of Commission Regulation (EC) No 525/2010 of 17 June 2010 fixing the export refunds on poultrymeat (OJ 2010 L 152, p. 5), the amount of those refunds has gradually decreased for three categories of deep-frozen chickens. First it was reduced from EUR 40/100 kg to EUR 32.50/100 kg. After being maintained by eight successive implementing regulations, that amount was then reduced to EUR 21.70/100 kg pursuant to Commission Implementing Regulation (EU) No 962/2012 of 18 October 2012 fixing the export refunds on poultrymeat (OJ 2012 L 288, p. 6).

A further reduction, bringing the amount of the refunds to EUR 10.85/100 kg for the three categories of frozen chickens at issue was made by Commission Implementing Regulation (EU) No 33/2013 of 17 January 2013 fixing the export refunds on poultrymeat (OJ 2013 L 14, p. 15). That amount was then maintained by Commission Implementing Regulation (EU) No 360/2013 of 18 April 2013 fixing the export refunds on poultrymeat (OJ 2013 L 109, p. 27).

By the contested regulation, the Commission repealed Implementing Regulation No 360/2013 and fixed at zero the amount of export refunds for the three categories of frozen chickens, the codes for which are 0207 12 10 9900, 0207 90 9190 and 0207 90 9990. The amount of the refunds for the six other products, essentially chicks, set out in the contested regulation, which had been fixed at zero by Commission Implementing Regulation (EU) No 1056/2011 of 20 October 2011 fixing the export refunds on poultrymeat (OJ 2011 L 276, p. 31) was not changed. According to the annex to the contested regulation, the destinations concerned by the export refunds are, inter alia, the countries of the Middle East.

The draft contested regulation was presented and put to a vote at the meeting of the Management Committee of 18 July 2013.

As regards the procedure followed in that regard, the Commission stated the following before the General Court.

On 16 July, two days before the meeting of the Management Committee, the Commission sent to the members of the management committee by email a document entitled 'EU Market situation for poultry' ('the document submitted to the Management Committee').

During the morning session of the meeting of the Management Committee held on 18 July 2013, the Commission presented the situation on the poultry market. In the afternoon, when that meeting continued, after 13.00, the Commission presented the draft of the contested regulation to the Management Committee. The document in question

was a standard regulation in which only the figures had been updated. More specifically, it was a photocopy of the previous regulation fixing the export refunds in which the references to the amounts of the refunds had been crossed out in pencil.

The draft of the contested regulation was then put to the vote. The Director-General of the Commission's Directorate-General for Agriculture and Rural Development completed the formalities for self-certification on the same day, at 15.46, so as to enable the contested regulation to be published in the *Official Journal of the European Union* on the next day, with an immediate entry into force and application.

Recitals 1 to 3, 6 and 7 of the contested regulation are worded as follows:

Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products referred to in Part XX of Annex I to that Regulation and prices in the Union for those products may be covered by an export refund.

In view of the current situation on the market in poultrymeat, export refunds should be fixed in accordance with the rules and certain criteria provided for in Articles 162, 163, 164, 167 and 169 of Regulation (EC) No 1234/2007.

Article 164(1) of Regulation (EC) No 1234/2007 provides that export refunds may vary according to destination, especially where the world market situation, the specific requirements of certain markets or obligations resulting from agreements concluded in accordance with Article [218 TFEU] make this necessary.

…

In order to prevent divergence with the current market situation, to prevent market speculation and to ensure efficient management this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*.

The [Management Committee] has not delivered an opinion within the time limit set by its Chair.'

Article 1(1) of the contested regulation provides:

'Export refunds as provided for in Article 164 of Regulation (EC) No 1234/2007 shall be granted on the products and for the amounts set out in the Annex to this Regulation subject to the conditions provided for …'

In that annex, the amounts of export refunds are set at zero for all the products mentioned.

The contested regulation was signed by the Director-General of DG Agriculture and Rural Development, was published in the *Official Journal of the European Union* on 19 July 2013 and entered into force on the same day.

The procedure before the General Court and the judgment under appeal

By application lodged at the Registry of the General Court on 6 August 2013, Tilly-Sabco brought an action for annulment of the contested regulation.

In support of the action, the applicant raised five pleas in law, alleging, first, breach of essential procedural requirements and abuse of process; second, procedural irregularity and lack of competence; third, failure to state reasons; fourth, infringement of the law or a manifest error of assessment; and fifth a breach of the principle of the protection of legitimate expectations.

By the judgment under appeal, the General Court, first, held that the action was admissible, holding that the contested regulation was a regulatory act not entailing implementing measures within the meaning of Article 263, fourth paragraph, TFEU, next, it dismissed the action on the merits and, finally, ordered Tilly-Sabco to bear its own costs.

Forms of order sought by the parties

Tilly-Sabco claims that the Court should:

set aside the judgment under appeal;

annul the contested regulation; and

order the Commission to pay the costs.

The Commission contends that the Court should:

dismiss the appeal, and

order Tilly-Sabco to bear the costs.

The appeal

In support of its appeal, Tilly-Sabco raises four grounds of appeal. The first is divided into five parts, claiming the incorrect interpretation of Article 3(3) of Regulation No 182/2011 and Articles 162 and 164 of Regulation No 1234/2007; second, lack of competence on the part of the Director-General of DG Agriculture and Rural Development to sign the contested regulation; third, which is divided into five parts, of an infringement of Article 296 TFEU, a number of contradictions in the grounds and infringement of Article 164(3) of Regulation No 1234/2007 and, fourth, divided into three parts, contradictions in the grounds, infringement of Article 164(3)(b) of Regulation No 1234/2007 and a distortion of the evidence.

First, the fifth part of the first ground of appeal, the second ground of appeal, the third part of the third ground of appeal and the first and second parts of the fourth ground of appeal, alleging essentially an incorrect interpretation of Articles 162 and 164 of Regulation No 1234/2007 and, second, the first ground of appeal, parts one to four, alleging an incorrect interpretation of Article 3(3) of Regulation No 182/2011, must be examined together.

The fifth part of the first ground of appeal, the second ground of appeal, the third part of the third ground of appeal and the first and second parts of the fourth ground of appeal: incorrect interpretation of Articles 162 and 164 of Regulation No 1234/2007

Arguments of the parties

By the fifth part of the first ground of appeal, Tilly-Sabco claims that by dismissing the second part of the first plea in its action, the General Court vitiated the judgment under appeal by contradictory reasoning.

In that connection, Tilly-Sabco takes the view that the summary of the Commission's arguments by the General Court in paragraphs 149 to 255 of the judgment under appeal show a misuse of powers, in that the Commission based its arguments on Article 164 of Regulation No 1234/2007, using the Management Committee in order to take a political decision to abolish export refunds, a decision which should have been taken solely on the basis of Article 162 thereof.

In particular, in paragraphs 162 to 164 of the judgment under appeal, the General Court disregarded the effect of the Commission's failure to adopt a new periodic regulation in October 2013 maintaining, where necessary, at EUR 0 the amount of the refunds, on account of the market conditions, as it had done previously in cases where the refund rates were maintained.

By its second ground of appeal, Tilly-Sabco claims that the General Court infringed Article 164(2) of Regulation No 1234/2007 and vitiated the judgment under appeal by a contradiction in the reasoning by dismissing the second plea in its action, based on the lack of competence of the Director-General of DG Agriculture and Rural Development to sign the contested regulation, rejecting its argument, in paragraph 200 of the judgment under appeal that the contested regulation could not be treated as a periodic agricultural instrument.

In that connection, Tilly-Sabco observes that it is common ground that the contested regulation was not renewed and concludes that that regulation cannot be treated as a periodic agricultural instrument. It recalls that the Commission's practice was to adopt regulations on refunds every three months, but that it decided not to convene a meeting of the Management Committee in October 2013 to re-evaluate the refund rate. If it was a periodic agricultural instrument, the Commission would have been obliged to undertake that re-evaluation.

By the third part of the third ground of appeal, Tilly-Sabco asserts that paragraphs 253 to 259 of the judgment under appeal are vitiated by contradictory reasoning, in that they indicate that setting the refund rates at zero was part of a progressive reduction of the amounts of those refunds, and that the last reduction was not structurally different from the previous ones. Tilly-Sabco argues that that progressive reduction was a political decision and not an application of the criteria laid down in Article 164(3) of Regulation No 1234/2007, as the Commission acknowledged in its defence at first instance by referring to an international undertaking made in that regard.

By the first part of the fourth ground of appeal, Tilly-Sabco complains that the General Court vitiated the judgment under appeal, in paragraphs 301 and 302, by contradictory reasoning and infringed Article 164(3)(a) of Regulation No 1234/2007 by retaining the various reference periods, spreading over several years the evaluation required by that provision of the 'existing situation' of the international and domestic markets.

By the second part of the fourth ground of appeal, Tilly-Sabco submits that the General Court infringed Article 164(3)(b) of Regulation No 1234/2007 by endorsing a manifest error of assessment by the Commission. Tilly-Sabco observes that the General Court held, in paragraph 289 of the judgment under appeal, that the difference in price with chickens from Brazil was estimated at EUR 44.73 per 100 kilos. It observed that that difference is significant and requires the grant of export refunds. Furthermore, the General Court took only the international market into consideration and failed also to take into consideration the domestic market as required by that provision.

The Commission challenges Tilly-Sabco's arguments and contends, in particular, that those arguments are based on an incorrect understanding of the objectives pursued under the common agricultural policy by the grant of export refunds.

Findings of the Court

It must be stated at the outset that, by its arguments alleging contradictory reasoning by which the General court vitiated the judgment under appeal, Tilly-Sabco in fact challenges the assessment by the General Court of the legality of the contested regulation with regard to Articles 162 and 164 of Regulation No 1234/2007, as it dismissed all of the appellant's pleas and arguments seeking to challenge that legality.

Furthermore, as the Commission rightly argued, it is clear from a combined reading of Articles 39 and 40 TFEU, recitals 65 and 77 of Regulation No 1234/2007 and Article 164(3)(b) thereof, that the main objective pursued by the grant, where appropriate, of export refunds is to stabilise the internal market.

In that connection, Article 162 of Regulation No 1234/2007 grants a wide margin of discretion to the Commission as to whether or not to introduce export refunds and, therefore, to withdraw any refunds introduced.

In accordance with Article 164(2) of that regulation, the Commission is to fix refunds, in particular, at regular intervals at least once every three months. However the amount of the refund may remain at the same level for more than three months and may, where necessary, be adjusted in the intervening period.

Article 164(3) of Regulation No 1234/2007 sets out the elements to take into consideration in order to fix the amount of those refunds, while allowing the Commission to take account of one or more of those elements.

Thus, according to Article 164(3)(a) of that regulation, the existing situation and the future trend with regard to prices and availabilities of that product on the internal market and the prices for that product on the world market may be taken into consideration. Under Article 164(3)(b), the aims of the common market organisation which are to ensure equilibrium and the natural development of prices and trade on that market may be taken into account.

First of all, it follows that since no specific amount or any particular method of calculation are imposed by Article 164(3) of Regulation No 1234/2007 there is nothing to prevent the examination by the Commission of the elements set out in that provision resulting in temporarily fixing the amount at zero.

Next, as Article 164(2) of that regulation allows the Commission either to maintain the refunds at the same level for more than three months or to adjust them in the intervening period, it cannot be held that that provision requires it to systematically convene meetings of the Management Committee every three months solely for the purpose of renewing the refunds previously fixed. Such an interpretation, which would require the Commission and the Management Committee to hold unnecessary meetings, would be incompatible with the principle of proper administration.

Finally, given that, under the same provisions of Article 164(3) of Regulation No 1234/2007, the Commission may fix export refunds on the basis of one or more of several elements laid down in that provision, it must be held that a regulation adopted on the basis of that provision is not vitiated by a manifest error of assessment if that assessment could validly be based on at least one of those elements.

First, in the present case, it is clear from Article 1(1) of the contested regulation and recitals 2 and 3 thereof that, by adopting that regulation, the Commission did not withdraw the export refunds previously granted and fix a positive amount, under Article 162 of Regulation No 1234/2007, but fixed the export refunds at zero under Article 164 of Regulation No 1234/2007.

Second, it is common ground that fixing that amount was based, in particular, on the criterion laid down in Article 164(3)(b) of Regulation No 1234/2007.

Tilly-Sabco's argument that the General Court failed to take into account the internal market in its assessment or to have regard for the fact that the price differential with chickens from Brazil required the grant of export refunds, derives from an incorrect reading of the judgment under appeal as, in paragraphs 282 to 294 thereof, the General Court examined in detail the situation prevailing in the internal market on the date on which the contested regulation was adopted.

Furthermore, as the Commission rightly stated, that argument proceeds from an incorrect understanding of the objectives of export refunds in general and Article 164(3)(b) of Regulation No 1234/2007 in particular, as a price differential by itself is not sufficient for the grant of export refunds.

It follows that Tilly-Sabco's arguments alleging an infringement by the General Court of Article 164(3)(b) of Regulation No 1234/2007 are without foundation.

In those circumstances and in accordance with the findings set out in paragraph 56 of the present judgment, the arguments by which Tilly-Sabco challenges the General Court's assessment of the legality of the contested regulation in the light of Article 164(3)(a) of Regulation No 1234/2007 must be dismissed as irrelevant.

Third, Tilly-Sabco's arguments relating to the Commission's failure to adopt a new regulation in October 2013 could not be accepted in any event, even if they were admissible, having regard to the considerations in paragraph 55 of the present judgment. Furthermore, it follows that the competence of the Director-General of DG Agriculture and Rural Development to sign the contested regulation is in no way called into question by those arguments.

Fourth, in so far as Tilly-Sabco considers that the evidence that it relied on before the General Court is capable of establishing a misuse of powers, it must be recalled that an act is vitiated by misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken 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 (judgment of 4 December 2013, *Commission* v *Council*, C-117/10, EU;C:2013:786, paragraph 96).

It must be stated that Tilly-Sabco has not furnished such evidence.

First, as regards the Commission's aims when adopting the contested regulation, there is no evidence in the documents before the Court that that institution pursued one single or main purpose other than that laid down in recitals 2 and 3 of that regulation, that is, to fix the export refunds in accordance with Article 164 of Regulation No 1234/2007.

In that connection, it must be observed that that provision confers a wide margin of discretion on the Commission and that its failure to adopt a new regulation in October 2013 and the alleged reference by the Commission to international undertakings taken prior to the adoption of the contested regulation cannot be treated as objective, relevant and consistent factors establishing that that institution pursed objectives other than those laid down, in particular, in Article 164(3)(b) of Regulation No 1234/2007.

Second, Tilly-Sabco does not allege that the Commission seeks to circumvent a procedure laid down by primary law.

From the foregoing considerations there is no evidence of any error of law committed by the General Court justifying the setting aside of the judgment under appeal.

In those circumstances, the fifth part of the first ground of appeal, the second ground of appeal, the third part of the third ground of appeal and the first and second parts of the fourth ground of appeal must be dismissed as unfounded.

The first to the fourth parts of the first ground of appeal: incorrect interpretation of Article 3(3) of Regulation No 182/2011

Arguments of the parties

By the first part of the first ground of appeal, Tilly-Sabco claims that, in paragraphs 89 and 90 of the judgment under appeal, the General Court made an incorrect assessment of the notion of 'proportionate time limit' in Article 3(3) of Regulation No 182/2011.

That provision, which states that 'time limits shall be proportionate and shall afford the [Management Committee] members early and effective opportunities to examine the draft implementing act and express their views', aims to ensure that that committee has a sufficient period of reflection and analysis.

The presentation to members of the management committee of the draft of the contested regulation setting out the figures for the refunds after 13.00, when the committee meeting ended at 15.46, did not afford them 'real possibilities' at an early stage to examine the draft implementing act and to express their views and, therefore, it is not a 'proportionate time limit' within the meaning of that provision.

By the second part of first ground of appeal, Tilly-Sabco submits that the General Court misconstrued that provision by holding that the situation at issue was characterised by its urgency, whereas no urgency had been raised by the Commission.

Tilly-Sabco points out that Article 3(3) of Regulation No 182/2011 allows a time limit laid down to be ignored in 'duly justified cases', so that a time limit may be shortened 'according to the urgency of the matter'. It states that, the General Court held, in paragraphs 111 and 112 of the judgment under appeal, that the Commission had not mentioned any urgency in the present case and that, in paragraphs 113 to 119 of the judgment under appeal, the General Court held that the situation concerned was characterised by its urgency which justified ignoring the time limit.

By such reasoning, the General Court not only adopted a justification that was not even raised by the Commission, but also vitiated the judgment under appeal with contradictory reasoning. Furthermore, the risk of leaks of the proposed figures has not been established, is not mentioned in Article 3(3) of Regulation No 182/2011 and, therefore, cannot justify the lack of a time limit for examining the draft under consideration. The standard rules of procedure state that there is extreme urgency 'in particular where there is a threat to human or animal health'.

By the third part of the first ground of appeal, Tilly-Sabco claims that the General Court failed to take account of the time limit laid down in that provision.

First, Tilly-Sabco notes that that provision requires that the draft implementing act containing the amount of the proposed refunds to be submitted within the period prescribed and, second, that the General Court indicated, in paragraph 93 of the judgment under appeal, that the information on the market situation considered had been sent to the members of the Management Committee in good time. The fact that those documents were sent cannot remedy the failure to comply with the time limit for submitting the draft of the contested regulation.

Contrary to the General Court's findings in paragraph 95 of the judgment under appeal, the presentation of those documents did not allow those members to seek the views of the operators concerned, including the appellant, with regard to the proposed amount of the refunds. Furthermore, those documents were not sufficient in any case to allow the members of the Management Committee to give an informed opinion, since the proposed amount was missing.

Consequently, a real debate between the Member States, before the meeting of the Management Committee, or between the members of that committee during the meeting which was held on the morning of 18 July 2013 could not have taken place, contrary to Article 3(3) of Regulation No 182/2011, which expressly requires 'early and effective opportunities' to be given to the members of that committee to examine the draft implementing act and express their opinion.

By the fourth part, Tilly-Sabco claims that the General Court infringed that provision in that it validated a practice of the Commission which is unlawful and is described as being consistent since 1962 by waiving any obligation to justify the use of a shortened time limit. It observes that, if that practice was indeed consistent and necessary, after 39 years of reliance on it, there was nothing to prevent the Commission from taking account of that practice when adopting Regulation No 182/2011.

The Commission takes the view that the first to fourth parts of the first ground of appeal only criticise the judgment under appeal in so far as the General Court wrongly held that the Commission's consultation of the Management Committee was lawful. As regards the interpretation of Article 3(3) of Regulation No 182/2011 and Article 3 of the Management Committee's rules of procedure, the judgment under appeal is not vitiated by any error.

Furthermore, the General Court held, using its unfettered discretion, that the members of the Management Committee were in a position to deliberate on the draft of the contested regulation during the morning before its adoption because of the information on the market situation provided by the Commission and they did not complain about the Commission's conduct.

In any event, the General Court rightly observed, in paragraphs 123 and 124 of the judgment under appeal, that the rules for the consultation of a committee are intended to ensure that the prerogatives of its members are respected, not to protect the rights of economic operators. Therefore, those operators cannot rely on a possible breach of those rules.

The Commission adds that, in paragraphs 125 to 129 of the judgment under appeal, the General Court held for the sake of completeness that, as required by the case-law of the Court, Tilly-Sabco failed to establish that in the absence of the alleged infringement the outcome of the procedure would have been different. The appeal does not contain any elements capable of invalidating that finding, even though there is no legal or practical impediments preventing the production of such evidence in the present case. It must be held that the outcome of the deliberation of the Management Committee would have been similar if it had had a period of 10 extra days to examine the draft of the contested regulation, since all the data would have resulted in the refunds being fixed at zero.

Findings of the Court

In paragraphs 83 to 120 of the judgment under appeal the General Court held that the practice of the Commission challenged, which is described in paragraphs 76 to 78 thereof and consists essentially in submitting drafts of regulations classified as 'standard' (which differ from those they replace solely by an alteration to the figures they adopt) only in the course of Management Committee meetings, to be consistent with the requirements laid down by Article 3(3) of Regulation No 182/2011.

While Tilly-Sabco claims that that practice fails to comply with those requirements, the Commission submits that the reasons adopted by the General Court are well founded, and further submits that Tilly-Sabco cannot, in any event, rely on an infringement of that provision, even assuming it were established.

It must be recalled, first of all, that, although there is only one definition of 'regulation' in Article 288, second paragraph, TFEU, the FEU Treaty distinguishes between 'legislative' regulations adopted according to the ordinary or special legislative procedure in Article 289 TFEU, 'delegated' regulations adopted by the Commission and intended to

supplement or amend certain non-essential elements of legislative acts in Article 290 TFEU and, finally, 'implementing' regulations defined in Article 291 TFEU.

In accordance with Article 291(1) TFEU, it falls to the Member States to adopt 'measures of national law necessary to implement legally binding Union acts'. Under Article 291(2) thereof, except in specific cases, it is only where uniform conditions for implementing legally binding Union acts are needed and those acts shall confer implementing powers on the Commission that that institution may adopt implementing acts.

In that connection, Article 291(3) TFEU establishes mechanisms for control by Member States of the Commission's exercise of implementing powers and provides that it is for the Parliament and the Council, acting by means of regulations to lay down in advance the rules and general principles concerning those control mechanisms.

It follows from the first citation and recital 4 of Regulation No 182/2011, which refer to Article 291(3) TFEU and repeat the wording of that provision, recital 7 thereof and Article 3(7) which states that the same regulation is to establish a control mechanism required by Article 291(3) TFEU, and recital 5 of Regulation No 182/2011, according to which that regulation must reflect the institutional requirements of the FEU Treaty, that that regulation constitutes a 'legislative' regulation.

Therefore, Regulation No 182/2011, which replaced Decision 1999/468, lays down the rules and general principles relating to control mechanisms.

According to recitals 8 and 9 of Regulation No 182/2011, in the interests of simplification, the number of procedures has been reduced to two, so that only the advisory procedure and the examination procedure have been retained and common procedural rules have been applied to the committees, including the key provisions relating to their functioning.

Under the examination procedure, referred to in Article 5 of Regulation No 182/2011 and which applies in the present case, the committee is to deliver its opinion by the majority laid down in Article 16(4) and (5) TEU and, where applicable, Article 238(3) TFEU. Under Article 5(3) of Regulation No 182/2011, if the committee delivers a negative opinion, the Commission shall not adopt the draft implementing act.

The essential provisions governing the advisory procedure and the examination procedure are set out in Article 3 of Regulation No 182/2011.

As regards the content of the rules established by Article 3(3) of Regulation No 182/2011, they must be compared with the corresponding provisions of the comitology decisions, which were in force during the period in which the Commission's disputed practice was introduced.

In that connection, it must be observed, first, that, although the comitology decisions provided that a draft of measures to be taken had to be submitted to the committee, Article 3(3) of Regulation No 182/2011 requires the draft of an implementing act to be adopted must be submitted to that committee.

Second, while the comitology decisions did not lay down time limits between the submission of draft measures, sending the draft agenda and holding the relevant meeting of the Management Committee, Regulation No 182/2011 fixes a time limit of at least 14 days, except in duly justified cases, between the submission of the draft implementing act and the draft agenda to the Management Committee and convening a meeting of the committee.

Third, it must be held that the wording of Regulation No 182/2011 relating to the fixing of the time limit within which the committee is to deliver its opinion is identical to that used by the comitology decisions. Therefore, the second time limit may be fixed by the president of the committee in accordance with the urgency of the matter concerned.

Fourth, the introduction by Article 3(3) of Regulation No 182/2011 of two separate time limits to comply with is supported by the use in the plural in most of the language versions of the last phrase of that provision, 'time limits shall be proportionate and shall afford', and by the fact that the third subparagraph of Article 3(7) introduces two similar time limits under the new appeal procedure.

Fifth, it must be held that, although the first of those two time limits may be shortened 'in duly justified cases' and the second is fixed 'according to the urgency of the matter', both must be 'proportionate and afford the committee members early and effective opportunities to examine the draft implementing act and express their views'.

In those circumstances, it must be held that the first time limit is to enable an unhurried examination of a draft implementing act before a meeting, by the Management Committee members, and that the second must enable them to express their views on the draft. That finding is supported by Article 3(4) of Regulation No 182/2011 which states that, 'until the committee delivers an opinion, any committee member may suggest amendments'.

Furthermore, since Article 291(3) TFEU expressly provides for control by Member States of the Commission's exercise of implementing powers conferred on it by paragraph 2 of that article, it must be held that the first time limit also aims to guarantee that the governments of the Member States are informed through their Management Committee members about the Commission's proposals, so that those governments may, by means of internal and external consultations, define a position in order to protect the specific interests of each of them within the Management Committee.

As is clear from Article 3(7) of Regulation No 182/2011, the members of the Management Committee are representatives of those governments which are responsible for deciding the appropriate level of their representation at the various stages of the procedure.

Having regard to those findings, it must be held that a practice consisting in the submission of the draft of an implementing act to the Management Committee only in the course of a meeting convened in order to the examine it is incompatible with both the wording and the objectives pursued by Article 3(3) of Regulation No 182/2011. By proceeding in that way, the Commission fails to comply with the first time limit of 14 days.

Moreover, such a practice is contrary to the scheme of Regulation No 182/2011, Article 8 of which authorises the Commission to adopt, where necessary, regulations which are directly applicable without prior consultation of the

Management Committee.

Finally, that practice, which makes it impossible for the Management Committee members to express their views or suggest amendments before the relevant meeting, is contrary to Article 3(4), first subparagraph, of that regulation, according to which those members must be in a position to do so at any time before the adoption of that act.

As to the justification for the non-compliance with the first time limit of 14 days relied on by the Commission, that there is a risk of leaks, it must be observed that to accept that justification would amount to systematically dispensing the Commission from compliance with the first time limit, since there is always a risk of leaks as the Commission itself affirms. Similarly, to consider, as did the General Court in paragraphs 113 to 115 of the judgment under appeal, that an urgent situation suddenly arises each time an implementing regulation is to be adopted, would amount to making the exception provided for routine.

Moreover, no other conclusion can be drawn from the reference, in recital 5 of Regulation No 182/2011, to the objective of efficient procedures and the experience acquired and the common practice followed in the implementation of Decision 1999/468 specifically as regards the adoption of standard implementing regulations which differ from those which they replace solely by a change to the figures which are updated and adopted after each meeting of the Management Committee.

In that connection, it must be recalled that Article 3(3) of Regulation No 182/2011 does not continue a common practice but substantially alters it, inter alia, by introducing the first time limit of 14 days, distinguishing the purpose of that time limit from that of the time limit preceding the delivery of the Management Committee's opinion, and prohibiting those time limits being shortened disproportionately or in a manner which deprives them of their purpose.

It must also be recalled that the Parliament and the Council have reduced the number of control mechanisms to two and that, in the interests of simplification, those procedures are governed by a set of common provisions. Following a different practice for the adoption of the most common implementing regulations would amount, in substance, to creating a new subcategory of procedures obeying separate rules.

The choice of such an option not only has no basis in Regulation No 182/2011 but is also contrary to the objectives set out by the EU legislature.

It follows that, although the Commission's consistent practice could fit within the previous legal framework for the adoption of that regulation, that is the framework defined by the comitology decisions, the amendments to primary law resulting from the adoption of the FEU Treaty and, subsequently, those of secondary legislation resulting from the adoption of Regulation No 182/2011, preclude its continuation.

Second, having regard, in particular, to the findings made in paragraphs 90, 91, 94, 95 and 102 to 104 of the present judgment, it must be held that the requirements laid down by Article 3(3) of Regulation No 182/2011 are essential procedural requirements intended by the FEU Treaty, which are essential procedural requirements governing the proper conduct of proceedings, breach of which renders the act concerned void (see, to that effect, judgments of 10 February 1998, *Germany* v *Commission*, C-263/95, EU:C:1998:47, paragraph 32; of 24 June 2014, *Parliament* v *Council*, C-658/11, EU:C:2014:2025, paragraph 80; and of 23 December 2015, *Parliament* v *Council,* C-595/14, EU:C:2015:847, paragraph 35).

In particular, the Court has consistently held that the failure to comply with the procedural rules relating to the adoption of an act adversely affecting a person constitutes an infringement of an essential procedural requirement and if the EU judiciature finds that it was not validly adopted, it must draw the necessary conclusions from the infringement of an essential procedural requirement and, consequently, annul the act vitiated by that defect (judgments of 4 September 2014, *Spain* v *Commission*, C-197/13 P, EU:C:2014:2157, paragraph 103, and of 24 June 2015, *Spain* v *Commission*, C-263/13 P, EU:C:2015:415, paragraph 56).

Without there being any need to rule on the Commission's argument that Tilly-Sabco lacks standing to rely on an infringement of Article 3(3) of Regulation No 182/2011, it suffices to observe that, where it finds such an infringement the Court of the European Union must examine that infringement of its own motion (judgment of 24 June 2015, *Spain* v *Commission*, C-263/13 P, EU:C:2015:415, paragraph 56).

Having regard to the foregoing consideration, the first to the fourth parts of the first ground of appeal must be declared well founded.

In those circumstances, there is no need to examine the other grounds of appeal and the judgment under appeal must be set aside.

Consideration of the action at first instance

According to the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the latter may, where the decision of the General Court has been annulled, either itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

In the present case, the state of the proceedings permits the Court of Justice to give final judgment.

Having regard to the considerations set out in paragraphs 86 to 118 of the present judgment, the contested regulation must be annulled for infringement of an essential procedural requirement.

Maintaining the effects of the contested regulation until it is replaced

Under Article 264, second paragraph, TFEU, the Court may, if it considers this necessary, state which of the effects of a regulation which it has declared void are to be considered as definitive.

In the present case, although the present appeal proceedings have established that the contested regulation was adopted in breach of essential procedural requirements, no error has been disclosed affecting the conformity of the act, which contains the measures necessary for the implementation of Regulation No 1234/2007, with the latter regulation.

Therefore, to declare the annulment of the contested decision without providing for the maintenance of its effects until it is replaced by a new act would not only adversely affect that implementation but would also affect legal certainty.

It is therefore necessary to maintain the effects of the contested decision until the entry into force of a new act intended to replace it.

Costs

Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

Since the Commission has been unsuccessful and Tilly-Sabco has applied for costs, the Commission must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby:

Sets aside the judgment of the General Court of the European Union of 14 January 2016, *Tilly-Sabco* v *Commission* (T-397/13, EU:T:2016:8);

Annuls Commission Implementing Regulation (EU) No 689/2013 of 18 July 2013 fixing the export refunds on poultrymeat;

Maintains the effects of Implementing Regulation No 689/2013 until the entry into force of a new act intended to replace it;

Orders the European Commission to pay the costs.

[Signatures]

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* Language of the case: French.