

Case C-304/19**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

12 April 2019

Referring court:

Curtea de Apel Constanța (Romania)

Date of the decision to refer:

29 March 2019

Appellant/applicant at first instance:

Ira Invest SRL

Respondent/defendant at first instance:

Agenția de Plăți și Intervenție pentru Agricultură — Centrul Județean Tulcea

Subject matter of the main proceedings

Appeal against the civil judgment of 27 February 2018 given by the Tribunalul Tulcea (Regional Court, Tulcea, Romania) by which it dismissed the action brought by the applicant at first instance concerning the annulment of the refusal decision of the defendant at first instance concerning the single payment application in respect of 2016.

Subject matter and legal basis of the request for a preliminary ruling

Pursuant to Article 267 TFEU, the Curtea de Apel Constanța (Court of Appeal, Constanța, Romania) asks for an interpretation of Article 4(1)(b), (c), (e) and (f), Article 21(1) and Article 32(1) to (5) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013.

Question referred

Must Article 4(1)(b), (c), (e) and (f), Article 10, Article 21(1) and Article 32(1) to (5) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 be interpreted as precluding national legislation which, in the circumstances of the main proceedings, excludes a farmer from payment of entitlements on the ground that land with aquaculture facilities used as arable land does not constitute an ‘agricultural area’ within the meaning of Article 4 of the regulation?

Provisions of EU law relied on

Article 4(1)(b), (c), (e) and (f), Article 10, Article 21(1) and Article 32(1) to (5) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009.

Provisions of national law relied on

Ordonanța de urgență a Guvernului nr. 3/2015 pentru aprobarea schemelor de plăți care se aplică în agricultură în perioada 2015-2020 și pentru modificarea articolului 2 din Legea nr. 36/1991 privind societățile agricole și alte forme de asociere în agricultură (Government Emergency Order No 3/2015 approving the payment schemes applicable to agriculture in the period 2015-2020 and amending Article 2 of Law No 36/1991 on agricultural companies and other forms of associations in agriculture; (‘OUG No 3/2015’))

Article 2

‘For the purposes of this Emergency Order:

...

(e) ‘holding’ means all the production units used for agricultural activities and managed by a farmer situated within the territory of Romania;

(f) ‘farmer’ means a natural or legal person, or a form of association of natural or legal persons, regardless of their legal status, whose holding is situated within the territory of Romania and who exercises an agricultural activity;

...

(n) ‘agricultural area’ means any area taken up by arable land, permanent grassland and permanent pasture, or permanent crops;

(o) ‘arable land’ means land cultivated for crop production or areas available for crop production but lying fallow, irrespective of whether or not that land is taken up by crops under greenhouses, photovoltaic greenhouses or under other fixed or mobile protective devices;

...

(r) ‘land use’ means use for agricultural activities of the area of agricultural land within the holding which is available to the farmer at the time the application is submitted, in the year of the application’.

Article 8

‘(1) To receive the direct payments provided for in Article 1(2), farmers must:

...

(n) produce, when submitting an application for a single payment or the amendments made thereto, the necessary documents proving that the agricultural land ... is available to them or, where necessary, a copy of Annex No 24 of the registry of administrative territorial units. The documents showing that the agricultural land is available to the farmer must be signed before the single payment application is submitted and must be valid on the date on which the application is submitted’.

Ordinul Ministerului Agriculturii și Dezvoltării Rurale nr. 619/2015 pentru aprobarea criteriilor de eligibilitate, condițiilor specifice și a modului de implementare a schemelor de plăți prevăzute la articolul 1 alineatele (2) și (3) din Ordonanța de urgență a Guvernului nr. 3/2015 pentru aprobarea schemelor de plăți care se aplică în agricultură în perioada 2015-2020 și pentru modificarea articolului 2 din Legea nr. 36/1991 privind societățile agricole și alte forme de asociere în agricultură, precum și a condițiilor specifice de implementare pentru măsurile compensatorii de dezvoltare rurală aplicabile pe terenurile agricole, prevăzute în Programul Național de Dezvoltare Rurală 2014-2020 (Order of the Minister for Agriculture and Rural Development No 619/2015 approving the eligibility criteria, specific conditions and detailed rules for the application of the payment schemes set out in Article 1(2) and (3) of Government Emergency Order No 3/2015 approving the payment schemes applicable to agriculture in the period 2015-2020 and amending Article 2 of Law No 36/1991 on agricultural companies and other forms of associations in agriculture, and the specific conditions for implementing the rural development countervailing measures applicable to agricultural land set out in the National Rural Development Plan 2014-2020; (‘OMADR No 619/2015’))

Article 5

‘(2) As from the claim year 2015, documents which show the lawful use of the land and which are submitted to the [Agenția de Plăți și Intervenție pentru

Agricultură — Agency for payments and measures for agriculture], pursuant to Article 8(1)(n) of the Government Emergency Order shall be those which concern:

- (a) the holding in which the agricultural activity is exercised: the attesting document must be completed in accordance with the framework model ... and be accompanied by a certified copy of the original pages on which the data were entered ... in the 2015-2019 agricultural register, in accordance with the framework model ... and
- (b) the agricultural land which is available to the farmer: certified copies of the original title to the property or other acts proving ownership of the land or other documents ...;
- (c) unequivocal identification of the agricultural parcels used’.

Article 10

‘(5) The following areas shall not be eligible for payment:

...

- (o) areas with aquaculture facilities, as provided for in Article 23(20) of the Normele tehnice de completare a registrului agricol pentru perioada 2015-2019 (Technical standards for supplementing the agricultural register for the period 2015-2019) approved by Ordinul ministrului agriculturii și dezvoltării rurale, al ministrului dezvoltării regionale și administrației publice, al ministrului finanțelor publice și al președintelui Institutului Național de Statistică nr. 734/480/1.003/3.727/2015 (order of the Minister for Agriculture and Rural Development, the Minister for Regional Development and Public Administration, the Minister for Public Finance and the President of the National Statistics Institute No 734/480/1.003/3.727/20)’.

Legea nr. 283/2015 pentru modificarea Legii nr. 82/1993 privind constituirea Rezervației Biosferei „Delta Dunării” (Law No 283/2015 amending Law No 82/1993 on the creation of the ‘Danube Delta’ Biosphere Reserve)

Article I

‘1. Throughout the territory of the reserve, the change of use of agricultural land used as productive agricultural land or as aquaculture facilities shall be made with the agreement of the administrator, solely on the basis of technical studies carried out by experts’.

Article II

‘(1) Within 12 months of the date of entry into force of this law, the owners, tenants and concessionaires of land used as agricultural or aquaculture facilities

whose use has been changed are required to have studies carried out by experts, with the agreement of the administrator, showing the way in which the agricultural or aquaculture facilities in question are used.

(2) Within three years of the date of entry into force of this law, the owners/concessionaires of the land whose use has been changed, without the studies carried out by experts justifying it, are required to return it to its original state’.

Legea fondului funciar nr. 18/1991 (Law on land ownership No 18/1991) — Article 2, which classifies land according to its use and includes in the category ‘agricultural land’, inter alia, ‘productive agricultural land’ and ‘aquaculture facilities’

Ordonanța de urgență nr. 23 privind pescuitul și acvacultura (Emergency Order No 23 on fisheries and aquaculture) of 5 March 2008 — Article 2(2), which defines ‘aquaculture facility’

Brief outline of the facts and the main proceedings

- 1 The applicant at first instance, SC Ira Invest SRL, is a legal person incorporated under Romanian law which engages in, as its principal activity, aquaculture and, as a secondary activity, inter alia, the growing of cereals, leguminous plants and oilseed-producing plants, the growing of rice and vegetables and auxiliary activities relating to [the growing of] crops.
- 2 The applicant at first instance concluded, as concessionaire, with the Consiliul Județean Tulcea (Tulcea Provincial Council), as the grantor of the concession, concession contract No 30 of 18 March 2002 concerning the use for aquaculture purposes of an overall area of 1 344 hectares. By addendum No 5 of 15 May 2014 to the concession contract, the parties agreed that, for the purpose of achieving the object of the above concession contract, the concessionaire would perform aquaculture crop rotation to mineralise the soil and other activities required, in accordance with the technical standards for aquaculture, on a surface of 959 hectares of aquaculture land. Aquaculture crop rotation is a component of the technology applied periodically in aquaculture facilities, which consists in the temporary set-aside of the aquaculture production of an aquaculture facility or part thereof to ensure the restoration of soil productivity by growing cereals and industrial plants.
- 3 The applicant at first instance submitted to the Agenția de Plăți și Intervenție pentru Agricultură (Agency for payments and measures for agriculture (‘the APIA’)) — Centrul Județean Tulcea (Tulcea Provincial Centre) single payment application No TL-9639 of 30 May 2016 to obtain final support for the scheme/measures which had been requested. In the application the company declared, for the purposes of the support requested, a total agricultural area of 757.07 hectares and a total used agricultural area of 757 07 hectares.

- 4 By decizia nr. 1622/27.03.2017 (decision No 1622 of 27 March 2017), the APIA Tulcea, following an administrative check on the single payment application submitted by SC Ira Invest SRL, detected various deficiencies, including the lack of an attesting document conforming to the Registrul Agricol ('the Agricultural Register') and infringement of Article 5(2)(a) of OMADR No 619/2015, Article 6 of OUG No 3/2015 and Article I(1) of Legea nr. 283/2015.
- 5 SC Ira Invest SRL filed an initial complaint against that administrative decision which was dismissed by decision No 5011/08.05.2017.
- 6 In its application submitted at first instance to the Tribunalul Tulcea — Secția Contencios Administrativ și Fiscal (Regional Court, Tulcea, Second Civil Chamber for administrative and tax matters), the applicant at first instance sought annulment of decision No 5011/08.05.2017 and, consequently, annulment of decision No 1622/27.03.2017 relating to the single payment application for 2016, given by the APIA Tulcea.
- 7 By civil decision 324/27.02.2018, the Tribunalul Tulcea dismissed the application for annulment of the administrative acts as unfounded. It considered that the grounds for adopting the refusal decision are the lack of an attesting document conforming to the Agricultural Register and the lack of proof of fulfilment of the requirement that the farmer be active.
- 8 On 29 March 2018 the Curtea de Apel Constanța — Secția a II-a civilă, de contencios administrativ și fiscal (Court of Appeal, Constanța, Second Civil Chamber for administrative and tax matters) was seized of an appeal brought by the appellant and applicant at first instance, SC Ira Invest SRL, against the civil judgment of the Tribunalul Tulcea, claiming that the judgment should be set aside and the action should be allowed.

The essential arguments of the parties to the main proceedings

- 9 The appellant/applicant at first instance argued that decision No 5011/08.05.2017 is unlawful and unfounded since, as regards the attesting document conforming to the Agricultural Register, Regulation No 1307/2013 contains, in Article 4(f), a definition of the term 'arable land' in relation to the areas for which farmers can apply for financial support: 'land cultivated for crop production'. Therefore, such an attesting document is not necessary or, in any event, it is not necessary that it strictly conform to the Agricultural Register, since, precisely as in the case of the applicant company, there may be arable land within the meaning of the above regulation which, however, is not entered in the Agricultural Register. That conclusion is made all the more inevitable by the fact it is absolutely clear from the definition contained in OUG No 3/2015 relating to arable land that the land concerned is cultivated for crop production (and that the act does not provide for any exceptions).

- 10 The appellant/applicant at first instance claims that Legea nr. 18/1991 (Law No 18/1991) and the Agricultural Register are intended to ensure uniform documentation as regards, inter alia, the categories of land use, whilst Regulation No 1307/2013 and OUG No 3/2015 use a different classification of types of land for which subsidies may be granted.
- 11 The appellant/applicant at first instance also claimed that the application of OUG No 3/2015 and other national legislation governing the grant of financial support — which use concepts equivalent to those in Regulation No 1307/2013 — render irrelevant the fact that the cultivated land belongs to an aquaculture holding or other category of use, provided that the land is unquestionably used for crop production within the meaning of Article 4 of the regulation and Article 2 of OUG No 3/2015.
- 12 The appellant/applicant at first instance noted that in order to obtain financial support it is essential that the land be cultivated for crop production and not that it belong to one or other category of agricultural land defined in another national law.
- 13 On the other hand, the respondent/defendant at first instance stated that OUG No 3/2015 does not depart from EU law and, on the contrary, constitutes transposition thereof into national law. It is not clear from the wording of any EU or national law that the financial support granted in the form of direct payments concerns aquaculture facilities/holdings.
- 14 It is clear from Article 2(2) and Article 10(1) of OUG No 3/2015 and Article 10(5)(o) of OMADR No 619/2015 that aquaculture facilities do not form part of the category of productive arable land and therefore are ineligible for payment.

Succinct presentation of the reasons for the request for a preliminary ruling

- 15 The Curtea de Apel is the court of last instance in the proceedings and considers that, in the factual context set out, it is required to refer to the Court of Justice of the European Union ('the Court of Justice') a question for a preliminary ruling.
- 16 The particular circumstances of the dispute under examination, consisting of the fact that the applicant at first instance uses, for agricultural purposes, land entered in the administrative registers as falling within another use category — aquaculture facilities — and thus is expressly excluded by national law from the grant of financial support, call into question in particular the interpretation of Article 32(2) of Regulation No 1307/2013.
- 17 The Curtea de Apel invokes previous case-law of the Court of Justice (judgments in C-422/13, *Wree*, and C-684/13, *Demmer*), according to which the actual use of the land in question is relevant in classifying areas as eligible. However, in the present case the land of the holding was used as arable land even though it was

registered as land belonging to an aquaculture facility. Applicable national law, for its part, excludes aquaculture facilities from the grant of support under that payment scheme.

- 18 Therefore, since it has doubts as to the direct applicability in the present case of the two cited judgments, on account of the particular circumstances consisting of the registration of the land in a category of use excluded from payment by national legislation, the Curtea de Apel considers that the answer to the question referred for a preliminary question cannot be clearly deduced from the case-law of the Court of Justice and, furthermore, is not beyond reasonable doubt.

WORKING DOCUMENT