

**Case C-225/20****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:**

29 May 2020

**Referring court:**

Curtea de Apel Constanța (Romania)

**Date of the decision to refer:**

7 May 2020

**Appellant:**

Euro Delta Danube SRL

**Respondent:**

Agenția de Plăți și Intervenție pentru Agricultură — Centrul Județean Tulcea

**Subject matter of the action in the main proceedings**

Appeal against the civil judgment of 28 June 2019 delivered by the Tribunalul Tulcea (Regional Court, Tulcea, Romania) by which that court dismissed the action brought by the appellant concerning the partial annulment of the respondent's decision relating to the single payment application in respect of 2017.

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

On the basis of Article 267 TFEU, the Curtea de Apel Constanța (Court of Appeal, Constanța, Romania) requests an interpretation of Article 2(23) and Article 19 of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014.

## Question referred

Are the provisions of Article 2(23) and of Article 19 of Delegated Regulation (EU) No 640/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance to be interpreted as precluding national legislation that, in circumstances such as those in the main proceedings, imposes administrative penalties on the farmer for over-declaration on the ground that he does not meet the eligibility criteria for the area considered over-declared, inasmuch as he cultivates an area of land with aquaculture facilities, held under a concession agreement, without providing evidence of the grantor's consent that the land be used for agricultural purposes?

## Provisions of EU law cited

Article 2(23) and Article 19 of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance.

## Provisions of national law cited

*Ordinul ministrului agriculturii și dezvoltării rurale nr. 476 din 7 aprilie 2016 privind sistemul de sancțiuni aplicabil schemelor de plăți directe și ajutoarelor naționale tranzitorii în sectoarele vegetal și zootehnic, aferente cererilor unice de plată depuse la Agenția de Plăți și Intervenție pentru Agricultură, începând cu anul de cerere 2015 (Decree of the Minister for Agriculture and Rural Development No 476 of 7 April 2016 on the penalty scheme applicable to direct payment schemes and transitional State aid in the agricultural and livestock sectors, relating to single payment applications lodged with the Agency for Payments and Intervention in Agriculture with effect from the claim year 2015; 'OMADR No 476/2016').*

– Article 2(2)(ș): ‘over-declaration means the difference between the area claimed for payment and the area determined for payment’;

– Article 6(e): ‘If the area declared for payment exceeds the area determined by more than 50% of the area determined, the farmer shall be excluded from the payment for the payment group concerned. Moreover, the farmer shall incur an additional penalty equal to the amount of aid or support corresponding to the difference between the area declared and the area determined. If the amount calculated as an additional penalty cannot be fully offset in the course of the three

calendar years following the calendar year of the finding, the outstanding balance shall be cancelled’.

*Ordonanța de urgență a Guvernului [OUG] 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

‘(1) 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 when the application is submitted, in the year of the application.

...’

## Article 8

‘(1) In order 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 to the civil register 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 ministrului 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 2(u) “‘area determined” means, for area-related aid schemes, the area for which all eligibility criteria or other obligations relating to the conditions for the granting of the aid have been met; or, for area-related support measures, the area of plots or parcels as identified by means of administrative or on-the-spot checks’.

#### 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 at the farmer's disposal: certified copies of the original title to the property or other instruments evidencing 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 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 (Decree 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 Office No 734/480/1.003/3.727/2015)'.

*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 the present 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 being used.

(2) Within three years of the date of entry into force of the present 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'.

*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’.

### **Succinct presentation of the facts and the main proceedings**

- 1 Euro Delta Danube SRL is a Romanian legal entity involved in the business of aquaculture and cereal cultivation. On 1 October 2002, the company signed a 49-year concession agreement with Consiliul Local Maliuc (Maliuc Municipal Council), covering an area of 137 hectares to be used for aquaculture. Following an amendment to the concession agreement, the area increased from 137 hectares to 142.2632 hectares. On 13 May 2016, Maliuc Municipal Council adopted Decision No 118 authorising agricultural activities on the land granted under concession, comprising an area of 142.2632 hectares for a period of five years.
- 2 On 16 February 2006, the company signed a 44-year concession agreement with Consiliul Județean Tulcea (Tulcea Provincial Council, Romania), covering an area of 315 hectares, to be used for aquaculture.
- 3 Under Amendment No 2 to the agreement, signed on 20 May 2014, it was agreed that, in order to achieve the purpose of the concession agreement of 16 February 2006, aquaculture and crop rotation would be carried out for soil mineralisation purposes, as well as other activities required in accordance with the technical standards for aquaculture, over an area of 200 hectares out of a total of 315 hectares. These consisted of the temporary set-aside from aquaculture production of a facility or part thereof for a period of six months to three years in order to restore soil productivity through cereal cultivation. The land would then revert to use again for aquaculture.
- 4 In the 2017 marketing year, Euro Delta Danube SRL made partial use of the two plots of land under concession for agricultural purposes. Pursuant to OUG No 3/2015, it submitted the single payment application of 15 May 2017 for an area of 288.37 hectares (100.58 hectares held under the concession agreement with Maliuc Municipal Council and 187.79 hectares held under the concession agreement with Tulcea Provincial Council).
- 5 The respondent issued a payment notice on 25 September 2018 which shows that, from an analysis of the documents attached to the application, the area determined was 100.58 hectares out of the total area declared of 288.37 hectares. Accordingly, the total amount payable was set at 30 360.89 Romanian lei (‘RON’) for the area determined of 100.58 hectares, plus additional penalties of RON 364 943.27 for over-declaration, in accordance with Article 19 of Regulation (EU) No 640/2014. The complaint initially lodged against this decision was rejected.
- 6 On 10 January 2019, Euro Delta Danube SRL brought an action before the Tribunalul Tulcea (High Court, Tulcea, Romania) seeking annulment of the decision on the complaint and partial annulment of the payment notice issued by

the Agenția de Plăți și Intervenție pentru Agricultură [APIA] — Centrul Județean Tulcea (Agency for Agricultural Payments and Interventions ('APIA') — Tulcea Provincial Centre, Romania), and specifically of the provisions concerning the application of penalties of RON 364 943.27 as a result of the over-declaration of the areas, and seeking an order requiring the respondent to pay the differences constituting a subsidy.

- 7 By civil judgment of 28 June 2019, the High Court, Tulcea, dismissed the action as unfounded. Euro Delta Danube SRL lodged an appeal against the judgment of the lower court before the Curtea de Apel Constanța (Court of Appeal, Constanța, Romania) on 13 August 2019.

### **The essential arguments of the parties to the main proceedings**

- 8 The appellant submits that over-declaration occurs where there are excessive differences between the areas declared by the farmer as agricultural parcels used within a physical block and the reference areas of the physical block included in the integrated administration and control system (IACS) actually cultivated. The appellant considers that the lower court incorrectly applied the provisions of Article 2(2)(ş) of OMADR No 476/2016, which define over-declaration.
- 9 For that reason, the appellant seeks a finding that the penalty for over-declaration applies only in the case where the farmer declares an area that, under Delegated Regulation (EU) No 640/2014, is more than 50% larger than the area actually used within a physical block, determined by an administrative or on-the-spot check by the APIA, and not where the farmer fails to document in writing the payment application for part of the area.
- 10 It argues that, if the APIA had considered that the documents lodged on the date of submission of the payment application did not demonstrate the right of use over the land, the official responsible for the administrative check of payment applications should have refused to register the application on the basis of ineligibility criteria. Furthermore, the APIA had the option of requesting any further information that it deemed necessary.
- 11 The appellant seeks a finding that non-fulfilment of the eligibility criteria for the entire area in respect of which payment was claimed (in other words, the lack of evidence concerning the use of the land for productive agricultural purposes) does not constitute a ground for applying the multiannual penalties for over-declaration of cultivated areas.
- 12 The respondent submits that the land granted under concession for aquaculture purposes, but used as agricultural land without the grantor's consent and without meeting the statutory requirements for change of use, is not eligible for payment, with the result that the penalties for over-declaration were applied correctly.

**Succinct presentation of the grounds for the request for a preliminary ruling**

- 13 The appeal court is required to rule on the legality of the administrative acts by which the appellant's application for financial support was partially rejected. For part of the area declared, the provisions of national law requiring payment for land comprising aquaculture facilities used as arable land have not been complied with unless certain formalities have been fulfilled. The situation was assessed by the respondent as constituting 'over-declaration' and penalties were imposed accordingly.
- 14 The provisions of national law define 'over-declaration' as the difference between *the area for which payment is claimed and the area determined for the purposes of payment*; however, EU law does not contain a definition of 'over-declaration' and merely lays down payment methods and penalties in the event of 'over-declaration'.
- 15 The area declared (the area in respect of which payment is requested) by the appellant is 288.37 hectares, as shown in the single payment application for the year 2017.
- 16 So far as the area determined is concerned, the Romanian legislature, in line with EU legislation — Article 2(u) of Decree No 619/2015 and Article 2(23) of Delegated Regulation (EU) No 640/2014 — has established that it corresponds, for area-related aid schemes, to the area for which all eligibility criteria or other obligations relating to the conditions for the granting of the aid have been met, regardless of the number of payment entitlements at the beneficiary's disposal, or for area-related support measures, the area of plots or parcels as identified by means of administrative or on-the-spot checks.
- 17 It is noted that both the national and the EU legislatures draw a distinction between area-related aid schemes and area-related support measures. In the case of the appellant, as is apparent from the payment notice issued, the amount to be paid has been fixed under a payment scheme.
- 18 The referring court has already submitted to the Court of Justice of the European Union a request for a preliminary ruling concerning the interpretation of 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, on the ground that national law excludes from payment land with aquaculture facilities used as arable land because it does not constitute an 'agricultural area' within the meaning of Article 4 of that regulation (Case C-304/2019, *Ira Invest*).
- 19 In the present case, the authorities, having ascertained that part of the area declared and granted for aquaculture purposes is being used for agricultural purposes without the grantor's consent to change of use, have concluded — besides the fact that it is not eligible for payment since it is not an 'agricultural area' — that the situation amounts to one of 'over-declaration' requiring payment

of a penalty, calculated on the basis of the difference in relation to the area declared.

- 20 National law permits exclusion from payment for an area considered ineligible according to the law. However, at the same time, in identical situations, it permits the exclusion of an area of land from the category of 'area declared' by the farmer for non-compliance with the eligibility criteria, resulting in a difference between the area declared (for which payment is claimed) and that determined by the authority (by excluding land considered ineligible for payment), in which case penalties apply.
- 21 In such circumstances, it is useful to determine whether the definition of 'over-declaration' in national law corresponds to EU legislation and whether the 'area determined' by the authority by excluding an area considered ineligible corresponds, in the case of over-declaration, to the area determined by applying the concept of 'area determined', which exists in national and EU law.
- 22 Therefore, having doubts as to how national law is to be applied differently in identical situations (the exclusion from payment of an area that does not meet the eligibility criteria and the simultaneous exclusion from payment and the application of a penalty), the national court deems it useful, in the context of the present case, to refer a question to the Court of Justice for a preliminary ruling.

WORKING DOCUMENT