

# Anonymised version

Translation

C-365/19 — 1

## Case C-365/19

### Request for a preliminary ruling

**Date lodged:**

8 May 2019

**Referring court:**

Verwaltungsgericht Schwerin (Germany)

**Date of the decision to refer:**

16 April 2019

**Applicant:**

FD

**Defendant:**

Staatliches Amt für Landwirtschaft und Umwelt Mittleres  
Mecklenburg

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[...]

ADMINISTRATIVE COURT

SCHWERIN

**ORDER**

In the administrative proceedings of

FD,

[...] Langenhagen [...]

[...]

- Applicant -

v

Staatliches Amt für Landwirtschaft und Umwelt Mittleres Mecklenburg,

[...] Rostock

- Defendant -

concerning

subsidies, adjustment assistance, set-aside premiums **[Or. 2]**

the 4th Chamber of the Verwaltungsgericht Schwerin (Administrative Court, Schwerin) [...] on

16 April 2019

[...]

[...] [composition of the court] [...] made the following order:

The proceedings are stayed and the following question is referred to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 TFEU:

**Does Article 30(6) of Regulation (EU) 1307/2013 — possibly in conjunction with Article 28(2) of Delegated Regulation (EU) 639/2014 — establish a legal right to allocation of payment entitlements for the 2016 claim year for a young farmer even when, on the basis of Article 24 of Regulation (EU) 1307/2013, he has already been allocated payment entitlements free of charge from the 2015 national ceiling corresponding to his area of land at that time?**

**Grounds:**

**I.**

1. In this action, the applicant, first, requests the allocation of payment entitlements for the 2016 claim year and, secondly, requests the granting of (further) direct payments for the 2016 claim year having regard to those payment entitlements.
2. The applicant runs an agricultural holding. She is a young farmer within the meaning of Article 50(2) of Regulation (EU) 1307/2013. Upon her application, she was allocated by the defendant, for the 2015 claim year, having regard to her area of land at that time **[Or. 3]**, 32.17 payment entitlements from the regional ceiling, free of charge, on the basis of Article 24 of Regulation (EU) 1307/2013.
3. On 12 May 2016, indicating that her holding now had an area of 62.777 ha, she requested that a further 30.32 payment entitlements be allocated to her as a young farmer. The defendant refused this by decision of 26 January 2017.

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4. With regard to the request also made on 12 May 2016 for the granting of direct payments for the 2016 claim year and a ‘financial discipline’ refund amount, the defendant granted her aid in the amount of EUR 11 390.16 by decision of 31 January 2017. It is to be taken from the decision that, although the applicant had an established area of 62.4893 ha, given that there were only 32.17 payment entitlements from the allocation from the year 2015, the payment entitlements were the limiting factor for the grant.
5. The applicant’s applications for review filed against the decisions of 26 January 2017 and 31 January 2017 were dismissed by the defendant by decision of 24 November 2017. Despite her status as a young farmer, the applicant could not be allocated any further payment entitlements on the basis of Article 30(6) of Regulation (EU) 1307/2013 as she had already received payment entitlements free of charge from the ceiling in 2015. Under the aforementioned EU provision, in conjunction with Paragraph 16a of the (national) Direktzahlungen-Durchführungsverordnung (Regulation on implementation of direct payments; ‘DirektZahlDurchfV’), payment entitlements could only be allocated to a farmer once. A further allocation of payment entitlements from the reserve to young farmers who had already received payment entitlements from the regional ceiling in the 2015 claim year would give them preferential treatment over farmers who, in 2015, had received payment entitlements from the regional ceiling on the basis of the ‘normal case’ arising from Article 24 of Regulation (EU) 1307/2013 and had no such possibility of an allocation of further payment entitlements free of charge. In addition, young farmers such as the applicant would otherwise have an advantage over young farmers who started later [Or. 4], who also could only receive payment entitlements once (Paragraph 16a of the DirektZahlDurchfV). The applicant’s lack of further payment entitlements ruled out the granting of further aid for the 2016 claim year.
6. The applicant brought proceedings before the Administrative Court on 22 December 2017. She argues that she had a right to the allocation of a further 30.32 payment entitlements as a young farmer. This results, if not from Article 30(4) and (6) of Regulation (EU) 1307/2013, then in any case from Article 28(2) of Delegated Regulation (EU) 639/2014. According to this provision, a young farmer who already has existing payment entitlements has a right to the allocation from the national reserve of that number of payment entitlements that he is missing in order to have sufficient payment entitlements for all of his eligible hectares in 2016. The European legislature did not provide that payment entitlements paid out on the basis of Article 24 of Regulation (EU) 1307/2013 led to the forfeiture of entitlements arising from Article 30(6) of Regulation (EU) 1307/2013 in conjunction with Article 28(2) of Delegated Regulation (EU) 639/2014. In so far as the defendant relies on the national law provision of Paragraph 16a DirektZahlDurchfV, this only excludes young farmers from being allocated payment entitlements from the national reserve for a further — second — time. However, this is irrelevant in the case of the applicant, as the 2015 allocation on the basis of Article 24 of Regulation (EU) 1307/2013 was not made from the national reserve.

7. Having regard to her further 30.32 payment entitlements, this results in the further aid entitlement claimed in the amount of EUR 9 645.01.
8. [...] [Demand for interest]
9. The applicant requests
10. 1. that, by annulment of the defendant's decision of 26 January 2017 and of its decision of 24 November 2017, in so far as they prevent it, **[Or. 5]** the defendant be obliged to allocate her a further 30.32 payment entitlements for the year 2016 and
11. 2. that, by equivalent annulment of the defendant's decision of 31 January 2017 and of its decision of 24 November 2017, the defendant be obliged to award her further direct payments in the amount of EUR 9 645.01 for the year 2016 plus interest in the amount of 0.5% for each full month since commencement of proceedings.
12. The defendant requests
13. that the action be dismissed.
14. The defendant stands by its legal assessment. In so far as the applicant construes a difference between the national reserve and the regional ceiling, from which she has received payment entitlements free of charge in 2015, the defendant argues that this is incorrect. According to the Direktzahlungen-Durchführungsgesetz (Law on implementation of direct payments), both the national reserve and the regional ceiling form part of the national ceiling for the basic payment scheme under Article 22 of Regulation (EU) 1307/2013.
15. Article 30 of Regulation (EU) 1307/2013 was created for the case of farmers who would not have fulfilled the condition of Article 24 of that regulation in 2015, including the conditions applying therein to 2013, but should be given a possibility of allocation of payment entitlements. Without the right arising from Article 30(6) of Regulation (EU) 1307/2013, young farmers and new entrants would, in general, have to rely on acquiring payment entitlements for a fee. According to Recital 24 of Regulation (EU) 1307/2013, the national reserve should be used, as a matter of priority, to facilitate the participation of young farmers and new entrants in the scheme. However, facilitation was not required by farmers who had already received payment entitlements from the regional ceiling, since they had already participated in the easiest possible manner, namely through allocation of payment entitlements free of charge **[Or. 6]**. Neither did this facilitation constitute an advantage, since it merely opened up the possibility of participation as existed for 'old' farmers in 2015 under Article 24 of Regulation (EU) 1307/2013 through allocation of payment entitlements, instead of these having to be acquired (for a fee). Under Article 24, however, a farmer only received payment entitlements once (in 2015). If, therefore, a young farmer could reapply for the allocation of payment entitlements every year, as long as he held

young farmer status, this would constitute preferential treatment over other farmers. The intention behind Paragraph 16a DirektZahlDurchfV is that this should be precluded.

16. Under Article 30(4) of Regulation (EU) 1307/2013, Member States are obliged to allocate payment entitlements from their national or regional reserves in accordance with objective criteria and in such a way as to ensure the equal treatment of farmers and to avoid distortions of the market and of competition. The relevant group for the purposes of considering equal treatment is all farmers who could be allocated payment entitlements, be it on the basis of Article 24 or Article 30(6) of Regulation (EU) 1307/2013.
17. In so far as the applicant regards Article 28(2) of Delegated Regulation (EU) 639/2014 as a basis for entitlement, this is incorrect. The provision does not establish any entitlement, but is merely a regulation for calculating the number and value of the payment entitlements to be allocated in this way, as is apparent from Recital 29 of the regulation. Also running contrary to the applicant's view is the fact that the Commission has not been empowered to regulate a basis for entitlement going beyond Regulation (EU) 1307/2013 in accordance with the basis for authorisation for the delegated regulation in Article 35(1)(c) of Regulation (EU) 1307/2013.

## II.

18. [...] [Procedural matters]
19. The dispute raises questions of interpretation with regard to provisions in Regulation (EU) 1307/2013 and Delegated Regulation (EU) 639/2014, which are of decisive importance for the resolution [Or. 7] of the proceedings pending at the Administrative Court, Schwerin:
20. 1. In the opinion of the Chamber, the wording of Article 30(6) of Regulation (EU) 1307/2013 argues against the provision directly establishing a legal right to allocation of payment entitlements in favour of (inter alia) young farmers. Whereas it is stated therein that 'Member States shall use their national or regional reserves to allocate payment entitlements, as a matter of priority, to young farmers ...', this does not indicate, in comparison with Article 24(1) of Regulation (EU) 1307/2013 ('payment entitlements shall be allocated to farmers who ...'), that the provision itself establishes an entitlement — an enforceable subjective right — for the individual young farmer. The provision merely suggests to the Member State what the reserve should to be used for as a matter of priority, and sets out a programme in this respect.
21. This interpretation is reinforced by the specification in paragraph 4 of the provision which states that the reserve is to be used for the allocation of payment entitlements 'in accordance with objective criteria and in such a way as to ensure the equal treatment of farmers and to avoid distortions of the market and of competition'. The provision suggests that a requirement for a distribution

programme under national law is also merely regulated in this respect. If Article 30(6) of Regulation (EU) 1307/2013 already conclusively established an entitlement under EU law, how was the nation state then still supposed to be able to observe the requirements of paragraph 4 of the provision?

22. Article 30(10) of Regulation (EU) 1307/2013, in which the Member States are granted a choice in implementing the objectives of paragraph 6 of the provision (allocating new entitlements or increasing the unit values of all of the existing entitlements), also argues against a direct establishment of entitlement.
23. Finally, that conclusion is also not altered by Article 50 of Regulation (EU) 1307/2013. The ‘annual payment to young farmers’ regulated therein in paragraph 1 does not relate [Or. 8] to the question of the allocation of payment entitlements at issue here. According to paragraph 4 of the provision, this payment for young farmers instead requires the activation of (existing, awarded) payment entitlements through the agricultural areas available to the young farmer in the year of operation. This annual payment is a special payment made for a limited period, which is set out in more detail in national law in Germany in Paragraph 19 of the Law on implementation of direct payments.
24. 2. In contrast, however, the wording of Article 28(2) of Delegated Regulation (EU) 639/2014 is clear. According to this provision, where a young farmer who already holds payment entitlements (such as the applicant) applies for further payment entitlements from the national or regional reserve, ‘he shall receive a number of payment entitlements equal to the number of eligible hectares he holds ... for which he does not hold any payment entitlement (owned or leased-in)’.
25. However, the defendant’s interpretation that this regulation merely involves a restriction of the scope of possible payment entitlements to be allocated, namely that the current area of land dictates the ceiling of the additional allocation of payment entitlements but does not establish a direct legal right to allocation under EU law, also appears to be compatible with the wording, albeit less obviously when considered in isolation.
26. In the opinion of the Chamber, the latter interpretation is supported by the fact that Article 35(1)(c) of Regulation (EU) 1307/2013 in this respect only empowers the regulator of Delegated Regulation (EU) 639/2014 to regulate ‘the establishment and calculation of the value and number of payment entitlements received from the national reserve or regional reserves’. In so far as Article 30(6) of Regulation (EU) 1307/2013 itself does not establish such a legal right, which the Chamber considers to be correct (see above), this empowerment provision raises the question of whether the regulator of the delegated regulation can establish such a legal right, since [Or. 9] it may all but take action in the scope of the empowering regulation of the European Parliament and the Council.
27. The Chamber is therefore inclined not to infer a ‘basis for entitlement’ or ‘subjective right’ to the allocation of further payment entitlements for a young

farmer from the cited provisions of EU law. Such entitlements could only consist of a distribution practice of the nation state on the basis of the principle of equal treatment and its own commitments where — as in Germany — there is no determined normative entitlement arrangement. There are no arguments or indications that there is a distribution practice in favour of young farmers binding the defendant in this respect with regard to the principle of equal treatment.

28. 3. If a conclusive legal right to allocation of payment entitlements from the national or regional reserve for a young farmer were to be directly derived from Article 30(6) of Regulation (EU) 1307/2013, possibly in conjunction with Article 28(2) of Delegated Regulation (EU) 639/2014, this would raise the question of how the nation state, when allocating payment entitlements, is supposed to ensure in this respect the equal treatment of farmers and the avoidance of distortions of the market and of competition, as it is required to do under Article 30(4) of Regulation (EU) 1307/2013.
29. Reference is made to the examples cited by the defendant in this respect.
30. Otherwise, under EU law a young farmer could then — for the duration of his young farmer status — repeatedly demand allocations of further payment entitlements from the reserve as his agricultural area increases over several years. The national law provision of Paragraph 16a of the DirektZahlDurchfV would then be contrary to EU law and certainly not — as considered correct by the defendant — also applicable to cases in which a young farmer was allocated payment entitlements not on the basis of Article 30(6) but on the basis of Article 24 of Regulation (EU) 1307/2013 in 2015. [Or. 10]
31. On the basis of Article 267 TFEU, this results in the following request for a preliminary ruling to the Court of Justice of the European Union:
32. **Does Article 30(6) of Regulation (EU) 1307/2013 — possibly in conjunction with Article 28(2) of Delegated Regulation (EU) 639/2014 — establish a legal right to allocation of payment entitlements for the 2016 claim year for a young farmer even when, on the basis of Article 24 of Regulation (EU) 1307/2013, he has already been allocated payment entitlements free of charge from the 2015 national ceiling corresponding to his area of land at that time?**
33. [...] [Procedural matters]  
[...]