

**Case C-361/19****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:**

3 May 2019

**Referring court:**

College van Beroep voor het Bedrijfsleven (Netherlands)

**Date of the decision to refer:**

23 April 2019

**Applicant:**

De Ruiter vof

**Defendant:**

De Minister van Landbouw, Natuur en Voedselkwaliteit

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

The applicant has lodged an appeal against the defendant's decision under the Uitvoeringsregeling rechtstreekse betalingen GLB (Implementing Regulation CAP Direct Payments; 'Uitvoeringsregeling') to apply a cross-compliance reduction of 5% to the direct payments to be granted to him for 2016. The cross-compliance reduction is an administrative penalty imposed on the basis of EU legislation which is the subject of the question referred for a preliminary ruling.

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

Request pursuant to Article 267 TFEU.

In essence, the question referred for a preliminary ruling asks whether Article 99(1) of Regulation (EU) No 1306/2013 and Article 73(4)(a) of Implementing Regulation (EU) No 809/2014, are valid, in so far as, in those provisions, the year of the finding of non-compliance is decisive for the determination of the year for which the cross-compliance reduction is calculated, more particularly in a situation such as that in the main proceedings, where the

year of the non-compliance with the cross-compliance rules is not the same as the year of the finding of non-compliance.

### **Question referred for a preliminary ruling**

Are Article 99(1) of Regulation (EU) No 1306/2013 of the European Parliament and the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and Article 73(4)(a) of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance valid, in so far as, in those provisions, the year of the finding of non-compliance is decisive for the determination of the year for which the cross-compliance reduction is calculated, in a situation where the year of the non-compliance with the cross-compliance rules is not the same as the year of the finding of non-compliance.

### **Provisions of European Union law cited**

Articles 91, 92 and 99 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy

Article 39 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

Articles 73 and 74 of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance

### **Provisions of national law cited**

Article 4.8 of the Uitvoeringsregeling rechtstreekse betalingen GLB (Implementing Regulation on CAP Direct Payments; ‘Uitvoeringsregeling’)

Article 3.1 of the Regeling houders van dieren (Regulation on Animal-keepers)

Article 2.36 of the Besluit houders van dieren (Decision on Animal-keepers)

### **Brief summary of the facts and the procedure in the main proceedings**

- 1 Following an ante-mortem inspection of a cow by a veterinarian at the applicant's business on 3 December 2015, and a subsequent check by the Voedsel- en Warenautoriteit (Netherlands Food and Consumer Product Safety Authority; 'NVWA'), two reports were drawn up with findings about the applicant's business. In those reports, the defendant stated that it had reason to impose a cross-compliance reduction of 5% on the applicant on the basis of the Uitvoeringsregeling rechtstreekse betalingen GLB (Implementing Regulation CAP Direct Payments; 'Uitvoeringsregeling'). The cross-compliance reduction is an administrative penalty for non-compliance by farms with the requirements laid down by EU legislation that must be met in order to receive support (direct payments).
- 2 That reduction was initially based on five, and ultimately on three, non-compliances: two in the area of health and one in the area of animal welfare. The cross-compliance reduction was calculated by the defendant in relation to the direct payments for the year 2016.
- 3 By decision of 16 February 2017 (the primary decision), the defendant set the cross-compliance reduction at 5%. By decision of 30 June 2017 (the contested decision), the defendant rejected the applicant's objection as unfounded. The applicant then lodged an appeal with the referring court against the contested decision.

### **Main submissions of the parties to the main proceedings**

- 4 There were two non-compliances (the first and the second) in the area of health, namely, the incorrect registration of the application of veterinary medicines and the failure to comply with the prescribed waiting period after the application of a veterinary medicine. In addition, there was an instance of non-compliance in the area of animal welfare (the third), namely, the lack of a dry and clean berth for calving. The referring court has disregarded the second non-compliance in the order for reference and in the statement of reasons for the question referred.
- 5 Since it is established, according to the referring court, that the aforementioned instances of non-compliance could give rise to a cross-compliance reduction, the only question that remained to be answered was the basis on which it should be calculated.
- 6 As regards the calculation of the cross-compliance reduction, the applicant submits that the defendant had erroneously set it at 5% of the direct payments to be granted to it for 2016. That argument gave rise to the question referred for a preliminary ruling.

**Brief summary of the reasons for the referral**

- 7 The first non-compliance took place in 2015, whereas the third non-compliance and the finding of both non-compliances took place in 2016. For the first instance of non-compliance, the year of non-compliance and the year of the finding therefore do not coincide.
- 8 For both the first and the third non-compliance with the cross-compliance rules, the defendant has determined a reduction of 3% on the basis of Article 39(1) of Regulation 640/2014. Since the two instances of non-compliance with the cross-compliance rules were found in the same year (namely 2016) and relate to different areas of cross-compliance, namely, health and animal welfare, the defendant has added the two reductions together, and set the combined amount at the 5% maximum laid down in Article 74 of Regulation 809/2014.
- 9 As laid down in Article 99(1) of Regulation 1306/2013 and Article 73(4)(a) of Regulation 809/2014, the defendant has calculated the cross-compliance reduction in relation to the direct payments for the year in which the non-compliances with the cross-compliance rules were found. The text of those provisions is clear — also in the French- and English-language versions — that the cross-compliance reduction is calculated on the basis of the payments for the year of the finding of non-compliance.
- 10 However, the referring court has doubts about the validity of Article 99(1) of Regulation 1306/2013 and of Article 73(4)(a) of Regulation 809/2014, in so far as, in those provisions, the year of the finding of non-compliance is decisive for the determination of the year for which the cross-compliance reduction is calculated, in a situation where the year of non-compliance with the cross-compliance rules is not the same as the year of the finding of non-compliance. It finds support for this view in the judgment of the Court of Justice of 25 July 2018 in Case C-239/17 (*Teglgaard and Fløjstrupgård* (ECLI:EU:C:2018:597), paragraphs 34 to 59).
- 11 The referring court acknowledges that the judgment in *Teglgaard and Fløjstrupgård* relates to the precursors of the Regulations applicable here and thus to different Regulations, that there were differences between the language versions of those Regulations and that that case relates to the interpretation of those Regulations and, more specifically, to whether reductions of direct payments due to non-compliance with the cross-compliance rules are to be calculated on the basis of the payments granted or to be granted in the year during which that non-compliance occurred or in the year of the finding of non-compliance. Nevertheless, the grounds on which the Court of Justice concludes in that case that reductions of direct payments due to non-compliance with the cross-compliance rules are to be calculated on the basis of the payments granted or to be granted in the year during which that non-compliance occurred may have the consequence that the choice of the Union legislature to take as its point of departure in the Regulations applicable here the year of the finding of non-compliance is contrary to the principles of equal treatment, proportionality and legal certainty to the

extent that the year of non-compliance with the cross-compliance rules is not the same as the year of the finding of non-compliance. After all, the Court of Justice has ruled that, if the year of the finding of non-compliance with the cross-compliance rules is taken into account when calculating the reduction of direct payments, there is a risk that the amount of the payments to which the reduction is applied will be considerably higher than that of the year in which the non-compliance with the cross-compliance rules occurred or, conversely, that the reduction applied is considerably lower when the amount of the direct payments has decreased between the year of the non-compliance and the year of the finding of non-compliance, that the link between the farmer's behaviour and the resulting reduction or withdrawal is not always guaranteed and that it is difficult for the farmer to foresee the financial consequences to be borne (see point 47 et seq. of the Opinion of Advocate General Sharpston of 17 May 2018, ECLI:EU:C:2018:328, in particular points 87 to 101).

- 12 Referring to the judgment of 22 October 1987 in Case 314/85 (*Foto-Frost* (ECLI:EU:C:1987:452)), the referring court states that, having regard to those doubts about the validity of the relevant provisions of EU law, it is required to request a preliminary ruling from the Court of Justice under Article 267 TFEU.
- 13 Should the Court of Justice rule that Article 99(1) of Regulation 1306/2013 and Article 73(4)(a) of Regulation 809/2014 are invalid, in so far as, in those provisions, the year of the finding of non-compliance is decisive for the determination of the year for which the cross-compliance reduction is calculated, in a situation where the year of non-compliance with the cross-compliance rules is not the same as the year of the finding of non-compliance, that appears to have the consequence for the decision in the present case that the defendant incorrectly based the 5% reduction to the direct payments to be granted to the applicant for 2016, as imposed by that decision, on the first non-compliance with the cross-compliance rules, in 2015. On the basis — solely — of the third non-compliance with the cross-compliance rules in 2016, a cross-compliance reduction of 3% should have been determined, based on the direct payments to be granted to the applicant for 2016.
- 14 The question then is whether there is a basis in European Union law for nevertheless imposing a cross-compliance reduction with regard to non-compliance with cross-compliance rules in a situation where the year of non-compliance with the cross-compliance rules is not the same as the year of the finding of non-compliance, as is the case here with regard to the first non-compliance with the cross-compliance rules in 2015. Although that question is not at issue in the present dispute — after all, the decision only concerns the reduction of the direct payments in 2016 — the referring court is of the view that that question must be borne in mind when addressing the question referred for a preliminary ruling. The absence of such a basis would undermine the objective of Regulation 1306/2013 as regards compliance with the cross-compliance rules, as follows from recitals 53 and 54 of the preamble thereto, which links the full payment of direct payments to compliance with rules relating to land

management, agricultural production and agricultural activity. Those rules aim to incorporate basic standards concerning the environment, climate change, good agricultural and environmental condition of land, public health, animal health, plant health and animal welfare in the Common Agricultural Policy (see the judgment in *Teglgaard and Fløjstrupgård*, cited above, paragraph 40).

WORKING DOCUMENT