

**Case C-830/19**

**Request for a preliminary ruling**

**Date lodged:**

15 November 2019

**Referring court:**

Tribunal de première instance de Namur (Belgium)

**Date of the decision to refer:**

6 November 2019

**Applicant:**

C.J.

**Defendant:**

Région wallonne

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.....

\*\*\*\*\*

...[Procedure]

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**I. FACTS AND BACKGROUND TO THE DISPUTE**

1. ...
2. ...
3. [C.J.] took over part (one third) of his parents' agricultural holding ... in order to continue the operation of the family farm.

He operates the holding in the form of an unincorporated association with his father, F.J., who holds one third of the farm, with the remaining third belonging to his wife, mother of C.J.

4. ....
5. On 27 January 2016, C.J. submitted an application to the Walloon Region for start-up aid (setting up for the first time)<sup>1</sup> on behalf of the unincorporated association J.F. and C. ('the unincorporated association'). ...
6. On 28 October 2016, the Walloon Region informed the unincorporated association of its decision dismissing that application for the following reasons:

*'Unfavourable opinion issued on account of non-compliance with Article 25(1)(6) of the Walloon Government Decree on development and investment aid in the agricultural sector and non-compliance with Article 7(2) of [its implementing] decree. The holding taken over has a Standard Gross Production (SGP) with an upper threshold which exceeds the authorised threshold of EUR 1 000 000.'*

7. On 2 November 2016, an appeal was lodged before the Paying Agency .... The appeal was lodged on the basis of the fact that, when setting the upper threshold of the SGP, account should be taken of the fact that the farm is held by three people.
8. On 17 February 2016, ... the Paying Agency upheld the first decision:  
...
9. On 12 October 2017, C.J. brought an action against the Walloon Region before this court.

He claims that the court should:

*'... Order the Walloon Region to pay Mr C.J. start-up aid in the amount of EUR 70 000, plus interest ..., in accordance with the Walloon Government Decree of 10 September 2015 on development and investment aid in the agricultural sector ...?'*

10. The Walloon Region contends that the court should dismiss the action as ... unfounded ....
11. ...
12. ...

## **II DISCUSSION**

### **II.1. National and EU law applicable to the dispute**

13. The dispute concerns an application for start-up aid lodged by C.J. pursuant to:

<sup>1</sup> ...

- Walloon Government Decree of 10 September 2015 on development and investment aid in the agricultural sector;
- Ministerial [Implementing] Decree of 10 September 2015 ....

### **II.1.1.**

14. Those legal texts implement ... the provisions of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005.
15. ...
16. In ‘Title III RURAL DEVELOPMENT SUPPORT’, ‘CHAPTER I Measures’ of that regulation, Article 19, which is entitled ‘Farm and business development’, provides:

*‘1. Support under this measure shall cover:*

- (a) business start-up aid for:*
  - (i) young farmers;*
  - (ii) non-agricultural activities in rural areas;*
  - (iii) the development of small farms;*
- (b) investments in creation and development of non-agricultural activities;*
- (c) annual payments or one-off payments for farmers eligible for the small farmers scheme established by Title V of Regulation (EU) No 1307/2013 (“the small farmers scheme”) who permanently transfer their holding to another farmer;*

*2. Support under point (a)(i) of paragraph 1 shall be granted to young farmers.*

*Support under point (a)(ii) of paragraph 1 shall be granted to farmers or members of a farm household who diversify into non-agricultural activities and to micro- and small- enterprises and natural persons in rural areas.*

*Support under point (a)(iii) of paragraph 1 shall be granted to small farms as defined by Member States.*

*Support under point (b) of paragraph 1 shall be granted to micro- and small enterprises and natural persons in rural areas, as well as to farmers or members of a farm household.*

*Support under point (c) of paragraph 1 shall be granted to farmers eligible to participate in the small farmers scheme who, at the time of submitting their application for support, have been so eligible for at least one year and who undertake to permanently transfer their entire holding and the corresponding payment entitlements to another farmer. Support shall be paid from the date of the transfer until 31 December 2020 or calculated in respect of that period and paid in the form of a one-off payment.*

*3. Any natural or legal person or a group of natural or legal persons, whatever legal status is granted to the group and its members by national law, may be considered to be a member of a farm household, with the exception of farm workers. Where a legal person or a group of legal persons is considered to be a member of the farm household, that member must exercise an agricultural activity on the farm at the time of the support application.*

*4. Support under point (a) of paragraph 1 shall be conditional on the submission of a business plan. Implementation of the business plan must start within nine months from the date of the decision granting the aid.*

*For young farmers receiving support under point (a)(i) of paragraph 1, the business plan shall provide that the young farmer complies with Article 9 of Regulation (EU) No 1307/2013, regarding active farmers within 18 months from the date of setting up.*

*Member States shall define upper and lower thresholds for allowing agricultural holdings access to support under points (a)(i) and (a)(iii) of paragraph 1. The lower threshold for support under point (a)(i) of paragraph 1 shall be higher than the upper threshold for support under point (a)(iii) of paragraph 1. Support shall be limited to holdings coming under the definition of micro and small enterprises.*

*5. Support under point (a) of paragraph 1 shall be paid in at least two instalments over a period of maximum five years. Instalments may be degressive. The payment of the last instalment, under points (a)(i) and (a)(ii) of paragraph 1 shall be conditional upon the correct implementation of the business plan.*

*6. The maximum amount of support under point (a) of paragraph 1 is laid down in Annex II. Member States shall define the amount of support under points (a)(i) and (a)(ii) of paragraph 1 also taking into account the socio-economic situation of the programme area.*

*7. Support under point (c) of paragraph 1 shall be equal to 120% of the annual payment that the beneficiary is eligible to receive under the small farmers scheme.*

*8. In order to ensure the efficient and effective use of EAFRD resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 83 laying down the minimum content of business plans and the criteria to be used by Member states for setting the thresholds referred to in paragraph 4 of this Article.'*

17. ....

18. On that basis, Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions was adopted.

19. Recital 5 of the delegated regulation is worded as follows:

*‘The business plans referred to in Article 19(4) of Regulation (EU) No 1305/2013 should provide sufficient elements to allow assessment of the attainment of the targets of the selected operation.*

*In order to ensure equal treatment among beneficiaries across the Union and to facilitate monitoring, the criterion to be used for setting the thresholds referred to in Article 19(4) of that Regulation should be production potential of the agricultural holding.’*

20. Article 2(1) of the delegated regulation, which is entitled ‘Young farmer’, provides:

*‘Member States shall establish and apply specific conditions for access to support where a young farmer as defined in Article 2(1)(n) of Regulation (EU) No 1305/2013 is not setting up as a sole head of the holding, irrespective of its legal form. These conditions shall be equivalent to those required for a young farmer setting up as sole head of a holding. In all cases, control over the holding shall be held by young farmers.’*

21. Article 5, which is entitled ‘Farm and business development’, provides:

*‘1. The business plan referred to in Article 19(4) of Regulation (EU) No 1305/2013 shall describe at least:*

*(a) in the case of start-up aid to young farmers:*

*(i) the initial situation of the agricultural holding;*

*(ii) milestones and targets for the development of the activities of the agricultural holding;*

*(iii) details of the actions, including those related to environmental sustainability and resource efficiency, required for the development of the activities of the agricultural holding, such as investments, training, advice;*

*(b) in the case of start-up aid for non-agricultural activities in rural areas: ...*

*(c) in the case of start-up aid for the development of small farms:*

- (i) *the initial situation of the agricultural holding; and*
- (ii) *details of the actions, including those related to environmental sustainability and resource efficiency, that could support the achievement of economic viability, such as investments, training, cooperation.*

2. *Member States shall define the thresholds referred to in the third subparagraph of Article 19(4) of Regulation (EU) No 1305/2013 in terms of production potential of the agricultural holding, measured in standard output, as defined in Article 5 of Commission Regulation (EC) No 1242/2008 (14), or an equivalent.'*

### **II.1.2.**

22. Walloon Government Decree of 10 September 2015 on development and investment aid in the agricultural sector defines the criteria for eligibility
- of setting up by takeover and by creation;
  - of the applicant;
  - of the holding taken over or created.

23. With regard to the admissibility of the holding, Article 25 of the Walloon Government Decree provides:

*'The holding taken over or created shall respect the following conditions:*

...

*6. its standard gross production within the meaning of Article 5 of Commission Regulation (EC) No 1242/2008 of 8 December 2008 establishing a Community typology for agricultural holdings shall respect the upper and lower thresholds defined by the Minister. ...*

....'

24. Ministerial [Implementing] Decree of 10 September 2015 provides in Article 7 thereof:

' ...

*The upper threshold referred to in the first subparagraph of Article 25(6) of the Walloon Government Decree of 10 September 2015 shall be EUR 1 000 000 where a young farmer is setting up and EUR 1 500 000 where two or more young farmers are setting up at the same time.'*

## II.2. Application in the present case

25. With regard to the application lodged by C.J., only the criterion relating to the holding taken over was called into question in the decision of the Walloon Region dismissing that application.
26. More specifically, non-compliance with the sixth condition as set out in the second subparagraph of Article 7(2) of the Ministerial Implementing Decree, namely, where the holding's standard gross production (SGP)<sup>2</sup> exceeds the upper threshold of EUR 1 000 000.
27. In order to examine the application submitted by C.J. and determine whether the SGP exceeded the upper threshold, the Walloon Region took account of the entire holding.
28. In so far as he has taken over only part of the holding, C.J. considers that setting the upper threshold value in accordance with the production potential of the entire holding is discriminatory and disproportionate since it disregards the objectives pursued by the legislation.
29. He alleges:
  - infringement of Article 2 of Regulation No 807/2014 by the Ministerial Decree of 10 September 2015, in so far as no distinction is drawn, for the purposes of setting the upper threshold, between the situation of a young farmer who is not setting up as a sole head of the holding, like him, and that of a young farmer who is taking over the holding to set up as sole head;

– ....

### Infringement of Article 2 of Regulation No 807/2014

30. In order to ensure equal treatment among beneficiaries across the Union and to facilitate monitoring, the criterion to be used for setting the thresholds referred to in Article 19(4) of Regulation No 1305/2013 ... should be production potential of the agricultural holding.<sup>3</sup>
31. Again for that purpose, according to Article 2, subparagraph 1, of Regulation No 807/2014, which is entitled 'Young farmer':

*'Member States shall establish and apply specific conditions for access to support where a young farmer as defined in Article 2(1)(n) of Regulation (EU) No 1305/2013 is not setting up as a sole head of the holding, irrespective of its*

<sup>2</sup> The SGP aims at establishing the economic size of the holding. It describes the production potential of holdings. ...

<sup>3</sup> Recital 5 of Commission Regulation No 807/2014.

*legal form. These conditions shall be equivalent to those required for a young farmer setting up as sole head of a holding. In all cases, control over the holding shall be held by young farmers.'*

32. C.J. considers that provision to require Member States to establish and apply specific conditions for access to support for a young farmer who is not setting up as a sole head of the holding in order to take account of the difference in his situation compared to that of a young farmer who is taking over the holding to set up as sole head. Article 7 of the Ministerial Decree does not comply with that provision, however. That could have been the case only had account been taken of the SGP in proportion to his takeover share in the holding.
33. ...
34. The Walloon Region considers that Article 2 does not concern possible discrimination between a young farmer who takes over the holding on his own and a young farmer who enters an existing operation but seeks only to prohibit Member States from discriminating on grounds of legal form. It notes that *'the European rules regard business start-up aid as support for taking over a holding and the operation of that holding by young people.'*
35. Nevertheless, support may be granted, as provided by the Walloon rules in the case of setting up by takeover, that is to say, *'the acquisition of all or part of an existing agricultural holding'*,<sup>4</sup> to a young farmer who is not setting up as a sole head but only to exercise effective control over the holding.
36. In that case, the young farmer exercises ... control over the holding with people not eligible for the aid in question.
37. Doubts therefore remain as to:
  - the interpretation of Article 2 of Regulation No 807/2014 with regard to the specific conditions for access to support where a young farmer is not setting up as a sole head of the holding and the concept of *'conditions equivalent to those required for a young farmer who is setting up as sole head of a holding'*;
  - whether that provision requires Article 7 of the Ministerial Decree of 10 September 2015 to provide for account to be taken only of the share of the young farmer in the holding or of work units in order to determine the SGP to be used in relation to the upper threshold.

### **II.3. The question referred for a preliminary ruling**

38. ...

<sup>4</sup> Article 17 of the Walloon Government Decree.

39. ...
40. ...
41. ...
42. The decision of the Walloon Region dismissing the support application is based on the upper threshold being exceeded. It therefore seems appropriate to consider it in the question referred. Likewise, the concept of exercising joint control over a holding is an important consideration.
43. It is therefore necessary to refer a question for a preliminary ruling worded as stated in the operative part of the judgment.

**ON THOSE GROUNDS,**

...

**THE COURT, ...**

44. Before arriving at a decision on the substance, refers the following question to the Court of Justice:

*Do Articles 2, 5 and 19 of Regulation (EU) No 135/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, read in conjunction with Article 2 of Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions, preclude, in the implementation of those provisions, Member States from taking account of the entire holding and not only the share of the young farmer in it and/or of work units in order to determine the upper and lower thresholds where the agricultural holding is operated in the form of an unincorporated association in which the young farmer acquires an undivided share and exercises joint control over the holding?*

...