

In Case C-116/20**Summary of a request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

28 February 2020

Referring court:

Curtea de Apel Timișoara (Romania)

Date of the decision to refer:

6 February 2020

Appellant:

S. C. Avio Lucos SRL

Respondents:

Agenția de Plăți și Intervenție pentru Agricultură — Centrul Județean Dolj

Agenția de Plăți și Intervenție pentru Agricultură (APIA) — Aparat Central

Subject matter of the dispute in the main proceedings

Appeal against the judgment of the Tribunalul Dolj (Regional Court, Dolj, Romania) of 25 February 2019 dismissing the action for annulment of the report by which the Agenția de Plăți și Intervenție pentru Agricultură (Agency for payments and measures for agriculture; ‘APIA’ — Dolj District Centre) established that the applicant owed a debt to the State under Article 73(1) of Regulation (EC) No 796/2004

Subject and legal basis of the request for a preliminary ruling

The Curtea de Apel Timișoara (Court of Appeal, Timișoara, Romania) is seeking, pursuant to Article 267 TFEU, an interpretation of Article 2 of Council Regulation (EC) No 73/2009 of 19 January 2009, and a determination as whether certain provisions of national law conform to EU law, in particular Regulation (EC)

No 73/2009 and Council Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009.

Questions referred

(1) Does [EU] law applicable to financial support relating to the agricultural year 2014 — in particular Regulation (EC) No 73/2009 and Regulation No 1122/2009 — preclude the introduction, through national legislation, of an obligation to provide proof of the right to use an area of land for the purpose of obtaining financial support relating to area schemes?

(2) In so far as the abovementioned [EU] law does not preclude the national legislation referred to in Question 1, does [EU] law (including the principle of proportionality) preclude — in the particular case where the right to exploit the agricultural area has been justified by the beneficiary by submitting a concession contract for an area of pastureland (under which the applicant acquired the right to exploit the pastureland at his own risk and for his benefit, in return for a fixed sum) — national legislation which imposes, for such a concession contract to be valid, the condition that the future concessionaire must be only a keeper or owner of animals?

(3) Does the activity of a beneficiary under an area scheme who — after concluding a concession contract for pastureland for the purpose of obtaining the right to exploit that area and obtaining rights to aid in the agricultural year 2014 — subsequently concludes a cooperation contract with livestock farmers by which he permits use, free of charge, of the land granted for the purposes of grazing animals, and the beneficiary retains the right to use the land but undertakes not to hinder grazing and to clean up the pastureland, fall within the definition of agricultural activity set out in Article 2 of Regulation No 73/2009?

(4) Does [EU] law preclude an interpretation of a national legal provision, such as Article 431(2) of the Code of Civil Procedure — on the status of res judicata of a final judicial decision — to the effect that a final judicial decision finding a payment application ineligible on the ground of failure to comply with national law as regards the requirement relating to the lawfulness of the right to exploit/use the land in respect of which an area scheme has been applied for in the agricultural year 2014 (in a dispute in which annulment of the decision imposing multiannual penalties has been sought), and which prevents analysis of the conformity of that national requirement with [EU] law applicable in the agricultural year 2014 in a new dispute in which the lawfulness of the measure recovering the sums unduly paid to the applicant is examined, in respect of the same agricultural year 2014, and the measure is based on the same facts and the same national legislation which were analysed in the earlier final judicial decision?

Provisions of EU law relied on

Article 2 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003; recital 61 and Article 71 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

The first paragraph of Article 80 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003.

Provisions of national law relied on

Ordonanța de urgență a Guvernului nr. 125/2006 pentru aprobarea schemelor de plăți directe și plăți naționale directe complementare, care se acordă în agricultură începând cu anul 2007, și pentru modificarea articolului 2 din Legea nr. 36/1991 privind societățile agricole și alte forme de asociere în agricultură, publicată în *Monitorul Oficial al României*, Partea I, nr. 1.043 din 29 decembrie 2006, aprobată cu modificări și completări prin Legea nr. 139/2007, cu modificările și completările ulterioare (Government Emergency Order No 125/2006 approving direct payments schemes and complementary national direct payments granted for agriculture as from 2007 and amending Article 2 of Law No 36/1991 on agricultural companies and other forms of association in the field of agriculture, published in the *Official Journal of Romania*, Part I, No 1043, of 29 December 2006, as subsequently amended and supplemented), Article 7(1)(f), under which:

‘(1) To receive payments under single area payment schemes, applicants must be registered in the Registrul fermierilor (Register of Farmers), managed by the Agenția de Plăți și Intervenție pentru Agricultură (Agency for payments and measures for agriculture), must submit an application for payment within the time limit imposed, and must satisfy the following general conditions:

...

(f) documents demonstrating lawful use of the land in respect of which the application has been submitted must be presented;

Ordonanța de urgență a Guvernului nr. 34/2013 privind organizarea, administrarea și exploatarea pajiștilor permanente și pentru modificarea și completarea Legii fondului funciar nr. 18/1991, publicată în *Monitorul Oficial al României*, Partea I, nr. 267 din 13 mai 2013, aprobată cu modificări și completări prin Legea nr.

86/2014 (Government Emergency Order No 34/2013 on the organisation, management and exploitation of permanent pastures, amending and supplementing Law No 18/1991 on land ownership, published in the *Official Journal of Romania*, Part I, No 267 of 13 May 2013, as approved, amended and supplemented by Law No 86/2014), Article 2(d), under which:

‘For the purposes of this Emergency Order, the following definitions shall apply:

...

(d) user of pastures and grassland shall mean a livestock farmer, a natural/legal person registered in the Registrul național al exploatațiilor (National register of holdings; ‘the RNE’) who carries on specific activities falling within the category covering the use of pastures and grassland, in accordance with the statistical classification of economic activities in the European Union for plant and animal production, who holds the legal right to use an agricultural area and who exploits the land as pasture by grazing flocks of animals owned by him, or by mowing it at least once a year’;

Codul de procedură civilă aprobat prin Legea nr. 134/2010 (Code of Civil Procedure approved by Law No 134/2010), Article 431(2), under which:

‘Either party may challenge the earlier judgment in a different dispute if it is connected with the resolution of that dispute’.

Succinct presentation of the facts and the main proceedings

- 1 The applicant, S. C. Avio Lucos SRL, submitted a single area payment application in respect of 2014, registered with the APIA — Dolj District Centre, for a total area 341.70 hectares. By way of evidence of the right to use the land it deposited the concession contract concluded on 28 January 2013 with the Consiliul Local al Comunei Podari (Podari Municipal Council) pursuant to Government Emergency Order No 34/2013, by which it obtained the concession to an area of 341.70 hectares, being land of Podari Municipal Council, the private property of the local authority.
- 2 Under the concession contract, S. C. Avio Lucos SRL has the right to exploit directly, at its own risk and under its own responsibility, the assets received by way of concession, has the right to use and collect the fruits of the assets covered by the concession, according to the nature thereof and in accordance with the objectives laid down in the concession contract. It is required to ensure that the land is exploited by grazing and may not grant a sub concession for, or lease, the land covered by the concession.
- 3 Following the conclusion of the concession contract, S. C. Avio Lucos SRL entered, on 30 January 2013, into a joint venture contract with four natural persons who are the owners of animals.

- 4 Under that contract, the parties are to enter into a partnership to exploit the pasture on the municipal land covering an area of 341.70 hectares, which is the private property of the municipality of Podari, as identified in the concession contract. The land will in fact be exploited by the partners who are natural persons providing the company S. C. Avio Lucos SRL with animals (cows, sheep, goats etc.) in the number owned and specified in the contract, for the purpose of continuous grazing on the land referred to above. The provision of the animals is not conditional on the transfer of the right of ownership of the animals to S. C. Avio Lucos SRL and the natural persons remain the legal owners thereof.
- 5 For its part, S. C. Avio Lucos SRL provides, for free, permanent and unconditional pasture, the municipal land covering area of 341.70 hectares, access to the pasture being free, permanent and not subject to any payment requirement or other benefit in return. The company will, on an annual basis, at its own expense, clean up the pastureland, uproot weeds and remove excess water from the land, thereby ensuring optimal conditions for the restoration of the pasture.
- 6 Following the submission of the application, the APIA — Dolj District Centre, granted financial support for the 2014 financial year, in relation to an area of 341.70 hectares, totalling RON 529 340.24. After the applicant had collected that sum, the APIA — Dolj District Centre, re-examined the applications for support and found that at the time the concession contract was concluded, the applicant was not entitled to grant a concession in respect of grassland in the public domain or in the private sector of the municipalities, since it was not a livestock farmer, as is clear from the joint venture contract. Therefore, APIA — Dolj District Centre, adopted:
 - (a) **the decision of 28 December 2015** which provided for multiannual penalties to be imposed on the applicant totalling RON 555 729.59, pursuant to the third paragraph of Article 58 of Regulation (EC) No 1122/2009, on the ground of over-declaration of the areas in respect of which it had applied for financial support relating to the single area payment scheme and agri-environmental payments.
 - (b) **the report of 31 January 2017**, contested in the present case, establishing that the applicant owes a debt to the State totalling RON 529 340.24, under Article 73(1) of Regulation (EC) No 796/2004, consolidated version.
- 7 The applicant challenged the report of 31 January 2017 before the Tribunalul Dolj (Regional Court, Dolj), which dismissed the action on 12 December 2017. The appeal lodged against that judgment was allowed by the Curtea de Apel Craiova (Court of Appeal, Craiova) and the case was referred back to the court ruling on the substance for reconsideration. By civil judgment of 25 February 2018, the Tribunalul Dolj dismissed the application, ruling, in essence, that a copy of the document identifying the agricultural holding had not been submitted together with the single payment application and that the applicant had failed to provide proof of its status as livestock farmer and that the land is used. The applicant also

appealed against that judgment, the case being registered with the Curtea de Apel Craiova and subsequently transferred to the Curtea de Apel Timișoara.

The essential arguments of the parties to the main proceedings

- 8 In essence, the applicant has asked the appeal court to declare that the judgment of the court at first instance is unlawful and unfounded, alleging that the court ruling on the merits: (i) failed to set out which eligibility criteria were not fulfilled and which rules are applicable to such applications; (ii) failed to carry out an analysis of the case from the point of view of EU law, despite an express request to do so, and; (iii) did not analyse the eligibility criteria in accordance with the definitions set out in the EU regulations referred to in the decision which was at issue in the proceedings, but rather in the light of certain concepts of national law which have no equivalent in EU law.
- 9 In the appeal arguments were also raised regarding: (i) fulfilment of the eligibility criteria set out in the case-law of the Court of Justice of the European Union in Case C-375/08 (which sets out the principle that the actual use to which an area is put is the overriding consideration), in Case C-61/09 (concerning the possibility of using areas under an atypical contract where the area farmed preserves the nature of the eligible area) and in Joined Cases C-333/15 and C-334/15 (concerning the absence of any eligibility requirement that the applicant should be a keeper of animals who carries on livestock farming activities, the judgment establishing what are in fact the eligibility criteria) and the provisions of EU law (Article 2 of Regulation No 73/2009) which contain definitions of the concepts relevant to the resolution of the case, and (ii) the claim that the relevant provisions of national law are inconsistent with those contained in the instruments of the European Union.
- 10 The respondent raised, *inter alia*, a plea alleging *res judicata* in respect of the decision of the Curtea de Apel Craiova of 29 October 2018, which dismissed the action brought by the appellant against the judgment of the Tribunalul Dolj of 24 April 2018, dismissing the action for annulment of the decision of 28 December 2015 adopted by the APIA — Dolj District Centre (imposing multiannual penalties on the appellant). The Curtea de Apel Craiova ruled that the court ruling on the merits was right to find that S.C. Avio Lucos SRL had failed to provide proof of eligibility, as expressly provided for in the legislation, since it is not a livestock farmer, does not own animals registered in the RNE, and was unable to provide proof of use of the land, and therefore over-declared the land.

Brief summary of the grounds for the reference

- 11 The referring court considers that an answer from the Court of Justice is necessary as to whether EU law precludes national legislation which requires proof of the right to use or exploit an area of land for the purpose of obtaining financial support relating to area schemes. As regards other legislation, namely Council

Regulation (EC) No 1254/1999, the referring court notes that the Court of Justice held that ‘the Community legislation — and, in particular, ... Regulation (EC) No 1254/1999 ... — does not make the eligibility of an application for special premiums for male bovine animals or payments for extensification conditional upon the production of a valid legal document attesting to the aid applicant’s right to use the forage areas to which the application relates. However, subject to compliance with the objectives pursued by the Community legislation, as well as the general principles of Community law and, in particular, the principle of proportionality, the Community legislation does not preclude Member States from imposing, under their national legislation, a requirement to produce such a document’ (judgment of 24 June 2010, *Pontini and Others*, C-375/08, paragraph 90).

- 12 The national court also considers that it is necessary to establish the compatibility with EU law of the requirement that the beneficiary under an area scheme must be a keeper or owner of animals in order to be granted an area of pasture where the applicant contends that such a requirement is incompatible with EU law and the defendant has not indicated any provision of EU law which justifies it.
- 13 Furthermore, in the light of the reference to the definition of agricultural activity set out in Article 2 of Regulation (EC) No 73/2009, it is necessary to determine whether the activity actually carried out by the appellant falls within that definition.
- 14 Finally, as regards the status of *res judicata* relied on by the respondent, it entails a prohibition on ruling on an application which has already been determined by a final judicial decision which is presumed to be correct. Therefore, a person may bring a claim before the courts only once and, after a final judgment has been delivered in the case, any dissatisfaction on the part of the party concerned as to the final outcome can be resolved only by invoking legal remedies against final judgments thus delivered and not by bringing similar claims before the courts.
- 15 Whilst stressing that the merits of the plea relating to the status of *res judicata* will be established after a reply to the questions set out above has been received from the Court of Justice, the Curtea de Apel Timișoara starts from the premiss that if it were to be concluded that the plea relating to the status of *res judicata* raised by the appellant is well founded, that should lead to a finding that the issues relating to the legal effects of the concession contract concluded by the appellant, and the consequence of the appellant not having the status of livestock farmer for the purpose of the application for the sums available under area schemes, were the subject of final judicial decisions, and points out that, in the present case, annulment was sought of a measure adopted in respect of the agricultural year 2014 other than that contested in the case in which the Curtea de Apel Craiova gave a final judgment.