

**Case C-119/20****Request for a preliminary ruling****Date lodged:**

28 February 2020

**Referring court:**

Augstākā tiesa (Senāts) (Supreme Court, Latvia)

**Date of the decision to refer:**

24 February 2020

**Applicant at first instance and appellant in cassation:**

Līga Šenfelde

**Other party to the proceedings:**

Lauku atbalsta dienests (Rural environment support service, Latvia)

[...]

Chamber for administrative-law proceedings

**Latvijas Republikas Senāts (Supreme Court of the Republic of Latvia)****ORDER**

In Riga, on 24 February 2020

[...] [composition of the court]

examined in written proceedings the appeal in cassation brought by Līga Šenfelde (*whose name, at the appellant's request, has not been anonymised but is reproduced in full*) against the judgment of the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) of 29 September 2017 in the administrative-law proceedings initiated by the application brought by Līga Šenfelde with a view to obtaining an order requiring the Lauku atbalsta dienests (Rural environment support service, Latvia) to issue an administrative instrument granting her application for approval of the project [...] entitled 'ZS "Purenes" pārņemšana un attīstība' ('purchase and development of the "Purenes" agricultural holding').

### Subject matter and relevant facts of the dispute in the main proceedings

[1] On 5 October 2015, the applicant [at first instance and now appellant in cassation; ‘the appellant’] made an application for approval of a project under sub-measure 6.3 of the farm and business development measures ([under the heading] ‘Support for business start-ups through the development of small agricultural holdings’; ‘business start-up aid’). On 15 January 2016, the Lauku atbalsta dienests approved that project.

On 27 July 2016, the appellant purchased the ‘Purenes’ agricultural holding.

On 23 August 2016, the appellant made an application for approval of the project [...] entitled ‘purchase and development of the “Purenes” agricultural holding’, under sub-measure 6.1 (‘Business start-up aid for young farmers’; ‘young farmer start-up aid’). During that period, the appellant also continued to pursue the activities provided for under sub-measure 6.3.

By decision of 6 January 2017, the Lauku atbalsta dienests refused to grant the young farmer start-up aid on the ground that, on 15 January 2016, it had approved the project in respect of which the appellant had received business start-up aid. According to the Lauku atbalsta dienests, 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 (‘Regulation No 1305/2013’) provides that holdings in receipt of support fall into different categories and there must therefore be no overlap of support measures. In its opinion, that conclusion also follows from point 1 of the Ministru kabineta 2015.gada 9.jūnija noteikumi Nr. 292 ‘Valsts un Eiropas Savienības atbalsta piešķiršanas kārtība pasākuma “Lauku saimniecību un uzņēmējdarbības attīstība” apakšpasākumā “Atbalsts uzņēmējdarbības uzsākšanai, attīstot mazās lauku saimniecības”’ (Decree No 292 of the Council of Ministers of 9 June 2015 on provisions relating to the procedure for granting national and EU support under the sub-measure entitled ‘Support for business start-ups through the development of small agricultural holdings’, which forms part of the measure entitled ‘Farm and business development’) (‘Decree No 292’), and point 1 of the Ministru kabineta 2015.gada 16.jūnija noteikumi Nr. 323 ‘Valsts un Eiropas Savienības atbalsta piešķiršanas kārtība pasākuma “Lauku saimniecību un uzņēmējdarbības attīstība” apakšpasākumam “Atbalsts jauniekiem lauksaimniekiem uzņēmējdarbības uzsākšanai”’ (Decree No 323 of the Council of Ministers of 16 June 2015 on provisions relating to the procedure for granting national and EU support under the sub-measure entitled ‘Business start-up aid for young farmers’, which forms part of the measure entitled ‘Farm and business development’) (‘Decree No 323’), which provide for a single payment by way of young farmer start-up aid and by way of business start-up aid. The Lauku atbalsta dienests is of the opinion that, within the context of a [single] measure, an applicant may receive either business start-up aid or young farmer start-up aid.

The Lauku atbalsta dienests states that, in accordance with the rural development programme agreed with the European Commission, a Member State has the power to refuse to cumulate awards in favour of a farmer where the cumulation sequence laid down in the [Latvian] rural development programme has not been complied with. It follows from the findings of the Lauku atbalsta dienests that a person may not apply first for business start-up aid and then for young farmer start-up aid, since this would not meet the first business or first farm purchase requirement.

[2] Disagreeing with that decision, the appellant referred the matter to the courts. The Administratīvā rajona tiesa (District Administrative Court, Latvia) and the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) dismissed her claims.

The courts concurred with the opinion of the Lauku atbalsta dienests and also concluded that it followed from the objectives set out in the aforementioned projects that the second was a continuation of attaining the objective initiated by the first. The young farmer start-up aid could not therefore be regarded as being used for its proper purpose of supporting young people setting up an agricultural holding for the first time. Granting the young farmer start-up aid would infringe the single payment rule. A joint interpretation of the provisions of Decree No 292, Decree No 323 and Regulation No 1305/2013 does not show that it was the legislature's aim that aid should be awarded twice to a single applicant. In accordance with point 22 of Decree No 323, the Lauku atbalsta dienests is to evaluate the quality of the business plan, the consistency of the investment with the objectives pursued and the proportionality of the objectives in relation to the total amount of the aid, and is to verify that aid is granted in the most effective manner. Granting aid twice in support of a single objective could not be regarded as a proportionate use of funds in relation to other applicants. Decree No 323 provides that, in order to receive young farmer start-up aid, the applicant must be setting up (or purchasing or inheriting) an agricultural holding for the first time as head of that holding. In accordance with the provisions of Decree No 292, on the other hand, business start-up aid is granted for the development of existing farms. In addition, point 1 of both decrees provides that the form of aid in question is to be granted in a single payment. This means that aid can be granted only once in the course of an economic activity, since the forms of aid available are designed as single incentives to promote the development of small holdings.

[3] The appellant has brought an appeal in cassation on the ground that the courts misinterpreted, inter alia, the provisions of Regulation No 1305/2013. In her view, receipt of the aid available under each of the sub-measures is governed by different legal rules and the limitation to the effect that aid may not be received more than once applies only to each specific sub-measure. According to the appellant, beneficiaries of business start-up aid may apply for young farmer start-up aid, since it is logically consistent with the objectives of business development that a smaller business may grow into a larger one.

[4] Consequently, the present case is concerned with whether the appellant qualifies for only one form of aid or for both.

### **Relevant national and EU legislation**

[5] EU legislation:

[5.1] Article 19 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:

[‘]1. Support under this measure shall cover:

(a) business start-up aid for:

(i) young farmers;

[...]

(iii) the development of small farms;

[...]

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

[...]

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

4. [...]

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.

[...][’]

[5.2] Point [(35)29] [of section 2.4 (‘definitions’)] of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 provides that ‘young farmer’ means a person who is no more than

40 years of age on the date of submitting the aid application, possesses adequate occupational skills and competences and is setting up for the first time in an agricultural holding as head of that holding.

[6] National legislation:

[6.1] Decree No 292 of the Council of Ministers of 9 June 2015 on provisions relating to the procedure for granting national and European Union support under the sub-measure entitled ‘Business start-up support through the development of small agricultural holdings’, which forms part of the measure entitled ‘Farm and business development’.

Point 1: [‘]These provisions lay down the procedure for granting national and European Union support under the sub-measure entitled ‘Business start-up support through the development of small agricultural holdings’, which forms part of the measure entitled ‘Farm and business development’, *in the form of a single payment*[’].

Point 20: [‘]Within a programming period, an applicant may receive the support referred to in these provisions only once[’].

[6.2] Decree No 323 of the Council of Ministers of 16 June 2015 on provisions relating to the procedure for granting national and European Union support for the sub-measure entitled ‘Business start-up aid for young farmers’, which forms part of the measure entitled ‘Farm and business development’.

Point 1: [‘]These provisions lay down the procedure for granting national and European Union support under the sub-heading entitled ‘Business start-up aid for young farmers’, which forms part of the measure entitled ‘Farm and business development’, *in the form of a single payment*[’].

#### **Reasons why the referring court has doubts about the interpretation of European Union law**

[7] From the explanations provided by the Lauku atbalsta dienests, which were also endorsed by the lower-instance courts, it follows that a farmer loses ‘young farmer’ status solely by virtue of having received small farm development aid, as provided for in Article 19(1)(a)(iii) of the Regulation, two years previously.

The Senāts (Supreme Court, Latvia) is uncertain whether that fact alone warrants the loss of the aforementioned status.

[8] Article 11 of Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of 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 (EAFR) (‘Regulation No 808/2014’) provides for the possibility of combining measures, but it does not expressly provide for the possibility of combining the measures

referred to in Article 19(1) of Regulation No 1305/2013, nor does it provide the Member State with a discretionary power to impose any appropriate restrictions on the receipt of aid in relation to a single measure.

In its observations on the appeal in cassation, the Lauku atbalsta dienests submits that, in accordance with the obligation laid down in Article 10 of Regulation No 1305/2013, Latvia has agreed with the European Commission a programming document (the Latvian Rural Development Programme) for the years 2014 to 2020 (available on the Ministry of Agriculture's website at: <https://www.zm.gov.lv/zemkopibas-ministrija/statiskas-lapas/latvijas-lauku-attistibas-programma-2014-2020-gadam?id=6426#jump>). In its view, the content of that document supports the conclusion that Latvia did not choose to allow sub-measures 6.1 and 6.3 to be cumulated. The Lauku atbalsta dienests draws attention to points 8.2.5.3.1.11 (condition governing the cumulation referred to on page 276 of the document in question) and 8.2.5.3.2.11 (condition governing the cumulation referred to on page 283 of the document in question) of the aforementioned programme. The drafting of the Programme for 2014 to 2020 was informed by the principle that only the activities specified in that document are permissible; those not specified there are not permitted.

In the view of the Senāts (Supreme Court), it is not clear whether the European Union legislation authorises a Member State to enact rules to the effect that a farmer is not to be paid the aid provided for in Article 19(1)(a)(i) of the Regulation if he or she has already been granted the aid provided for in Article 19(1)(a)(iii). There is therefore some uncertainty as to the correct interpretation of the relevant European Union rules.

[9] The Senāts (Supreme Court) further states that it follows from the observations of the Lauku atbalsta dienests that the fact that, at the time when the application was made, the total amount of the aid requested and the aid previously received was in excess of the upper threshold (EUR 40 000) cannot in itself justify the refusal to award the aid. If Member States cannot prohibit the cumulative receipt of aid, then, account being taken of the principle of sound administration, the Lauku atbalsta dienests, after receiving the appellant's application for the second aid award and after concluding that the amount requested, taken in conjunction with that of the aid already granted, was in excess of the threshold, could have told the appellant that the amount requested needed to be corrected and reduced by at least EUR 15 000, since it exceeded the upper threshold.

[10] In order to clarify the interpretation to be given to the provisions of Regulation No 1305/2013 and its Implementing Regulation No 808/2014, the Senāts (Supreme Court) considers it necessary to refer the matter to the Court of Justice of the European Union.

### **Operative part**

In accordance with Article 267 of the Treaty on the Functioning of the European Union, [...] [reference to national procedural provisions], the Senāts (Supreme Court)

**makes the following order**

The following questions are referred to the Court of Justice of the European Union for a preliminary ruling:

Must Article 19(1)(a) 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, in conjunction with other provisions of the aforementioned regulation and the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, be interpreted as meaning that:

- 1) a farmer loses his or her ‘young farmer’ status solely by virtue of having received small farm development aid, as provided for in Article 19(1)(a)(iii) of the Regulation, two years previously;
- 2) those provisions authorise Member States to enact legislation to the effect that a farmer is not to be paid the aid provided for in Article 19(1)(a)(i) of the Regulation if he or she has already been granted the aid provided for in Article 19(1)(a)(iii);
- 3) a Member State is has the power to refuse to cumulate aid for a farmer in the case where the cumulation sequence laid down in the rural development programme agreed with the European Commission has not been complied with?

The proceedings are stayed pending a ruling from the Court of Justice of the European Union.

This order is non-appealable.

[...] [signatures and formalities]