

**Case C-176/20****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:**

7 April 2020

**Referring court:**

Curtea de Apel Alba Iulia (Romania)

**Date of the decision to refer:**

11 February 2020

**Appellant:**

SC 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) dismissing the application by the appellant seeking annulment of the decision of the respondent, the Agenția de Plăți și Intervenție pentru Agricultură (Agency for payments and measures for agriculture; 'APIA' — Dolj District Centre) refusing the single payment application made by the appellant in respect of 2015 and an order requiring the respondent to adopt a decision approving that application

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

An interpretation of Article 4(1)(a) and (c) and Article 9(1) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council, and of Article 60 of

Regulation (EU) No 1306/2013 of the European Parliament and of the Council is requested pursuant to Article 267 TFEU.

### **Questions referred**

(1) Does Regulation (EU) No 1307/2013 of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 preclude national legislation which establishes that the minimum activity to be carried out on agricultural areas normally kept in a state suitable for grazing is to consist in grazing with animals used by a farmer?

(2) In so far as the abovementioned law [of the European Union] does not preclude the national legislation referred to in Question 1, may the respective provisions of Article 4(1)(a) and (c), and of Article 9(1), of Regulation (EU) No 1307/2013 of 17 December 2013 be interpreted as meaning that a legal person who has concluded a concession contract in circumstances such as those in the main proceedings and who keeps animals under loan-for-use contracts concluded with physical persons, by which the lenders entrust to the borrowers, free of charge, the animals which they keep as owners, for the purpose of use for grazing, on the pastureland made available to the borrowers and over the agreed periods of time, may be regarded as an ‘active farmer’?

(3) Must Article 60 of Regulation (EU) No 1306/2013 of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 be interpreted as meaning that artificial conditions also cover the case of a concession contract and loan-for-use contracts such as those at issue in the main proceedings?

### **Provisions of EU law relied on**

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 and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, Article 60

Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, Article 4(1)(a) and (c) and (2)(b), and Article 9

## Provisions of national law relied on

*Ordonanța de urgență a Guvernului [OUG] nr. 3 din 18 martie 2015 pentru aprobarea schemelor de plăți care se aplică în agricultură în perioada 2015-2020 și pentru modificarea articolului 2 din Legea nr. 36/1991 privind societățile agricole și alte forme de asociere în agricultură (Government Emergency Order No 3 of 18 March 2015 approving the payments schemes applicable in agriculture in the period 2015-2020 and amending Article 2 of Law No 36/1991 on agricultural companies and other forms of association in the field of agriculture)*

Article 2(1)(f) defines ‘farmer’ as ‘a natural or legal person or a form of association of natural or legal persons, regardless of their legal status, whose holding is situated in the territory of Romania and who exercises an agricultural activity’, whilst Article 2(d) defines ‘agricultural activity’ as ‘carrying out a minimum activity on agricultural areas normally kept in a state suitable for grazing or cultivation, by grazing, with a guarantee of a minimum grazing density of 0.3 LSU/hectare by the animals used by the farmer or annual mowing on permanent pasture, in accordance with the provisions of the specific legislation in the pasture sector’.

Under Article 7(1), the beneficiaries of payments are to be active farmers, natural and/or legal persons who carry out an agricultural activity as users of areas of agricultural land and/or lawful keepers of animals, within the meaning of the legislation in force.

Article 8(1) provides that, in order to benefit from direct payments, farmers must, inter alia, exploit agricultural land with an area of at least one hectare, the area of agricultural parcel must be at least 0.3 hectares, and in the case of greenhouses, solar greenhouses, vineyards, orchards, crops of hops, nurseries, and fruit bushes, the area of the agricultural parcel must be at least 0.1 hectare and/or, as the case may be, hold a minimum number of animals (subparagraph(c)) and present, when submitting a single payment application or amendments thereto, the necessary documents proving the use of the agricultural land, including land containing areas of ecological interest and animals [subparagraphs (n)].

*Ordinul ministrului agriculturii și dezvoltării rurale nr. 619 din 6 aprilie 2015 pentru aprobarea criteriilor de eligibilitate, [a] condițiilor specifice și a modului de implementare a schemelor de plăți prevăzute la articolul 1 alineatele (2) și (3) din [OUG nr. 3/2015], precum și a condițiilor specifice de implementare pentru măsurile compensatorii de dezvoltare rurală aplicabile pe terenurile agricole, prevăzute în Programul Național de Dezvoltare Rurală 2014-2020 (Order of the Minister for Agriculture and Rural Development No 619 of 6 April 2015 approving the eligibility criteria, the specific conditions and the detailed rules governing implementation of the payments scheme laid down in Article 1(2) and (3) of [OUG No 3/2015], as well as the specific conditions governing the implementation of rural development countervailing measures applicable to*

*agricultural land, as laid down in the National Rural Development Programme 2014-2020)*

Article 2(m) defines ‘animal keeper’ as a person who permanently possesses animals, as the owner of animals and/or owner of a holding, or temporarily possesses animals, as a person into whose custody they have been entrusted for the entire period of the year of application, kept pursuant to an act concluded under the conditions laid down by the legislation in force.

Article 7(3)(a) provides that users of permanent pasture, natural or legal persons governed by private law, who carry out at least a minimum agricultural activity on the permanent pasture at their disposal under the law in force, as active farmers, are to present, when submitting a single payment application to the APIA, the documents provided for in Article 5(1) and (2)(a), (b)(i), (c) and (d), as well as, where applicable, a copy of the identification document of the farm holding to which the animals are registered or a certificate of an authorised veterinarian showing the code of the holding registered in the Registrul național al exploatațiilor (National register of holdings) valid on the date on which the single payment application is submitted, where the owner of the permanent pasture keeps animals by which he guarantees a minimum grazing density of 0.3 LSU/hectare.

*Ordonanța de urgență a Guvernului nr. 34 din 23 aprilie 2013 privind organizarea, administrarea și exploatarea pajiștilor permanente și pentru modificarea și completarea Legii fondului funciar nr. 18/1991 (Government Emergency Order No 34 of 23 April 2013 on the organisation, management and exploitation of permanent pastures, amending and supplementing Law No 18/1991 on land ownership)*

Article 2(c) of that normative act defines ‘livestock unit (LSU)’ as a ‘standard unit of measurement established according to the feed requirements of each animal species, which enables the various categories of animals to be converted’.

### **Succinct presentation of the facts and the main proceedings**

- 1 The appellant SC Avio Lucos SRL is a Romanian legal person, established in the district of Dolj (Romania), whose corporate object consists of ‘activities in support of vegetable production’.
- 2 By a payment application registered with the Agenția de Plăți și Intervenție pentru Agricultură (Agency for payments and measures for agriculture; ‘APIA’ — Centrul Județean Dolj (Dolj District Centre)) on 1 July 2015, the appellant applied, pursuant to OUG No 3/2015, for a payment under the single area payment scheme (SAPS) in respect of an area of 170.36 hectares of pastureland (municipal permanent grassland used individually).
- 3 The following were attached to the application:

- concession contract No 472/28.01.2013, concluded between Consiliul Local al Comunei Podari (Municipal Council, Podari) and Avio Lucos SRL, concerning the concession of privately owned land of the Municipality of Podari, Dolj District, of an area of 341.70 hectares, subsequently amended in respect of an area of 170.36 hectares of pastureland;
  - the certificate issued by the Municipality of Podari attesting that the appellant is registered in the agricultural register with a used agricultural area of 170.36 hectares;
  - the loan-for-use contracts concluded between the appellant and various animal owners;
  - the certificate issued by a veterinary practice showing the code of the appellant's holding;
  - the movement form issued by the ANSVSA [Autoritatea Națională Sanitară Veterinară și pentru Siguranța Alimentelor] (National Veterinary Health and Food Safety Authority) and the annex thereto, containing the holding identification data and the number of animals kept by the company (five animals);
  - the certificate issued by a veterinary practice showing that the natural persons mentioned therein are contractually bound to the appellant and appear in the National Database with a total number of 85 animals.
- 4 In the single payment application the company stated that it was applying for support in respect of an agricultural area of 170.36 hectares and kept 24 bovine animals over two years of age, a bovine animal of under 6 months of age, 60 goats and 20 *equidae* (horses) of over 6 months of age, which contribute to the applicant's agricultural activity.
- 5 By decision of the APIA — Dolj District Centre of 20 October 2017 the appellant's application was rejected on the ground that it had not guaranteed a minimum grazing density of 0.3 LSU/hectare in respect of the entire area of pastureland of 170.36 hectares. The appellant's prior complaint against that decision was dismissed by the APIA — Dolj District Centre on 4 January 2018. By application at first instance registered at the Regional Court, Dolj, the appellant, in proceedings between it and the respondents APIA — Dolj District Centre and APIA — Aparat central (headquarters), sought annulment of the two decisions of APIA — Dolj District Centre, and an order requiring the latter to adopt a decision approving the single payment application.
- 6 By judgment of 28 January 2018, the Regional Court, Dolj dismissed the application as unfounded, holding that the concession contract lodged was concluded in breach of certain legislative provisions and that the appellant had created artificial conditions in order to obtain the financial support.

- 7 The appellant brought an appeal against that judgment before the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania), the referring court.

### **The main arguments of the parties to the main proceedings**

- 8 In its appeal, the appellant stated that Article 4(1)(a) of Regulation (EU) No 1307/2013 defines a farmer as a natural or legal person, or a group of natural or legal persons, regardless of the legal status granted to such group and its members by national law, whose holding is situated within the territorial scope of the Treaties and who exercises an agricultural activity. It considers that it can benefit from payments by proving its status as an active farmer and that it cannot be excluded from that benefit on the basis of its organisation as a commercial company which has concluded loan-for-use contracts with natural persons.
- 9 The appellant also contends that it follows from Article 4 of Regulation (EU) No 1307/2013 that ‘holding’, with regard to the present case, covers agricultural land managed by a farmer and it is irrelevant whether or not the farmer has a right of ownership over the animals grazing on it or a right of ownership over the land.

### **Succinct presentation of the reasons for the request for a preliminary ruling**

- 10 The relevant provisions of national legislation provide that the beneficiaries of the single area payment schemes are to be active farmers, natural and/or legal persons who exercise an agricultural activity as users of areas of agricultural land and/or lawful keepers of animals, within the meaning of the legislation in force.
- 11 The referring court also considers that Article 4(2) of Regulation No 1307/2013 allows the Member States to define the minimum activity to be carried out on agricultural areas normally kept in a state suitable for grazing or cultivation and national legislation established that agricultural activity may also mean the carrying out of a minimum activity on agricultural areas normally kept in a state suitable for grazing or cultivation, by grazing, with a guarantee of a minimum grazing density of 0.3 LSU/hectare by the animals used by the farmer.
- 12 The Court of Appeal asks whether Regulation (EU) No 1307/2013 precludes national legislation which establishes that the minimum activity to be carried out on agricultural areas normally kept in a state suitable for grazing is to consist in grazing by animals used by a farmer and, if not, whether Article 4(1)(a) and (c) and Article 9(1) of Regulation (EU) No 1307/2013 may be interpreted as meaning that a legal person who has concluded a concession contract in circumstances such as those in the main proceedings and who keeps animals under loan-for-use contracts concluded with physical persons, by which the lenders entrust to the borrowers, free of charge, the animals which they keep as owners, for the purpose of use for grazing, on the pastureland made available to the borrowers and over the agreed periods of time, may be regarded as an ‘active farmer’.

- 13 At the same time the Court of Appeal considers it necessary to clarify whether Article 60 of Regulation (EU) No 1306/2013 may be interpreted as meaning that artificial conditions also cover the case of a concession contract and loan-for-use contracts such as those at issue in the main proceedings.
- 14 The referring court, which is called up to resolve the dispute at last instance, considers that the answer to the questions referred cannot be clearly deduced from the case-law of the Court of Justice of the European Union and, furthermore, is not beyond reasonable doubt.

WORKING DOCUMENT