

Case C-234/20**Request for a preliminary ruling****Date lodged:**

4 June 2020

Referring court:

Augstākā tiesa (Senāts) (Supreme Court, Latvia)

Date of the decision to refer:

3 June 2020

Appellant:

SIA Sātiņi-S

Other party to the appeal proceedings:

Lauku atbalsta dienests (Rural Support Service)

[...]

Administratīvo lietu departaments (Administrative Chamber)

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

DECISION

[...] 3 June 2020

[...] [composition of the court]

on the basis of written submissions, [this court] examined the appeal lodged by SIA Sātiņi-S against the judgment of the Administratīvā apgabaltiesa (Regional Administrative Court) of 26 March 2018 in administrative law proceedings originating in an action brought by the aforesaid undertaking seeking an award of compensation from the Lauku atbalsta dienests (Rural Support Service) for the prohibition on establishing plantations of berries of the *Vaccinium* genus in peat bogs situated in nature protection areas.

Subject matter of the main proceedings and relevant facts

1. In 2002 the [now] appellant [(‘the appellant’)] acquired the ‘Liegumi’ [(‘Reserves’)] and ‘Centri’ [(‘Centres’)] lands. These include 7.7 hectares of peat bog. They are located in a nature protection area and in a Natura 2000 area of European importance for conservation (‘Natura 2000 area’).

Under point 16.12. of the Ministru kabineta 2010. gada 16. marta noteikumi Nr. 264 ‘Īpaši aizsargājamo dabas teritoriju vispārējie aizsardzības un izmantošanas noteikumi’ (Decree No 264 of the Council of Ministers of 16 March 2010 on general provisions governing the protection and use of special areas of conservation; ‘Decree No 264’), it is forbidden to establish *Vaccinium* berry plantations in peat bogs situated in nature protection areas.

On 2 February 2017 the appellant submitted a claim to the Rural Support Service for compensation for the restrictions on economic activity during 2015 and 2016 in the peat bog it owned within a Natura 2000 area.

By a decision of 28 February 2017, the Rural Support Service refused the appellant’s claim for compensation for restrictions on economic activity. According to the service, the regulations do not provide for compensation for a prohibition on establishing *Vaccinium* berry plantations in peat bogs, and therefore there is no legal basis for awarding the appellant the compensation it sought.

2. The appellant brought legal proceedings in its attempt to obtain compensation for restrictions on economic activity. After examining the case on appeal, the Regional Administrative Court dismissed the claim. The judgment of that court in the appeal is based — as was the judgment at first instance — on the considerations set out below.

2.1 Article 2(2) of the Likums ‘Par kompensāciju par saimnieciskās darbības ierobežojumiem aizsargājamās teritorijās’ (Law on compensation for restrictions on economic activities in protected areas) establishes that an annual grant will be paid to compensate for restrictions placed on economic activities in Natura 2000 areas of European importance for conservation; payments will be made from the relevant EU funds, in accordance with the procedures laid down in the rules on support for rural development.

2.2 State aid for the development of the agricultural and forestry sector is granted in accordance with the procedures laid down in the Ministru kabineta 2015. gada 7. aprīļa noteikumi Nr. 171 ‘Noteikumi par valsts un Eiropas Savienības atbalsta piešķiršanu, administrēšanu un uzraudzību vides, klimata un lauku ainavas uzlabošanai 2014.–2020. gada plānošanas periodā’ (Decree No 171 of the Council of Ministers of 7 April 2015 relating to the grant, administration and supervision of State and European Union aid for improvements to the environment, climate and rural areas during the programming period for the years 2014 to 2020’; ‘Decree No 171’). With regard to the grant of support in the form of ‘Compensation payments for Natura 2000 forest areas’, Point 56 of Decree

No 171 establishes that the land eligible for support under this measure must be forest land (**excluding peat bogs**). Decree No 171 therefore makes provision for compensation payments for Natura 2000 areas, but does not provide for compensation for restrictions on economic activity in peat bogs.

2.3 Article 6(1) 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 ('Regulation No 1305/2013') establishes that the EAFRD will act in the Member States through rural development programmes. Under Article 10 of the regulation, Member States are to submit to the Commission a proposal for each rural development programme, containing the information referred to in Article 8, and each rural development programme is to be approved by the Commission by means of an implementing act. The rural development programme for Latvia for the period from 2014 to 2020 states that support may be paid where restrictions are placed on forestry activities in Natura 2000 areas or in microreserves located on forest land (**excluding peat bogs**). Thus, for the 2014-2020 EU funds programming period, the Commission approved a rural development programme for Latvia that included support payments in respect of certain restrictions on economic activity on forest land, but not for peat bogs. The programme makes no provision for support in respect of restrictions on agricultural activity in peat bogs located in Natura 2000 areas.

2.4 Moreover, when the appellant acquired the lands, there were statutory restrictions in place on establishing *Vaccinium* plantations in peat bogs. When the appellant acquired the lands, it knew they were in a nature protection area and it was therefore aware of the restrictions that applied to that area.

3. The appellant has lodged an appeal in which it argues that, under Article 30(6)(a) of Regulation No 1305/2013, forest areas designated pursuant to Directives 92/43/EEC and 2009/147/EC are eligible for payments for Natura 2000 areas. The regulation does not exclude peat bogs.

4. In view of the above, these proceedings concern a dispute over whether the appellant is eligible for payments in respect of the restrictions placed on economic activity in peat bogs located in Natura 2000 areas.

Relevant national and EU legislation

5. EU legislation

5.1 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.

Recital 24: [']Support should continue to be granted to farmers and forest holders to help address specific disadvantages in the areas concerned resulting from the

implementation of Directive 2009/147/EC of the European Parliament and of the Council and Council Directive 92/43/EEC and in order to contribute to the effective management of Natura 2000 sites. ...[']

Article 30[,] Natura 2000 and Water Framework Directive payments[:]

[‘]1. Support under this measure shall be granted annually per hectare of agricultural area or per hectare of forest in order to compensate beneficiaries for additional costs and income foregone resulting from disadvantages in the areas concerned, related to the implementation of Directives 92/43/EEC and Directive 2009/147/EC and the Water Framework Directive.

[...]

6. The following areas shall be eligible for payments:

(a) Natura 2000 agricultural and forest areas designated pursuant to Directives 92/43/EEC and 2009/147/EC;

[...][’]

5.2 Annex I to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

5.3 Article 17 of the Charter of Fundamental Rights of the European Union[:]

[‘]Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.[’]

6. National legislation:

6.1 Decree No 264 of the Council of Ministers of 16 March 2010 on general provisions governing the protection and use of special areas of conservation[:]

[‘]16. In nature protection areas it is forbidden:

[...]

16.12. to establish *Vaccinium* berry plantations in peat bogs;

[...][’]

6.2 Decree No 171 of the Council of Ministers of 7 April 2015 relating to the grant, administration and supervision of State and European Union aid for

improvements to the environment, climate and rural areas during the programming period for the years 2014 to 2020.

Point 56: [‘]The area eligible for support under this measure is forest land (*excluding peat bogs*):

56.1. which is included in the list of areas of European importance for conservation (“Natura 2000 areas”) pursuant to Article 6(a) of Regulation No 1305/2013 and determined in accordance with the likums “Par īpaši aizsargājamām dabas teritorijām” (Law on special areas of conservation);

[...]’

Point 58: [‘]Support may be granted if the eligible area declared for the support is at least 1 hectare and comprises fields of at least 0.1 hectares, and the minimum area subject to some form of restriction within a field measures at least 0.1 hectares, and if the said fields can be identified on a map, are included in the Rural Support Service’s electronic application system and are subject to any of the following restrictions on economic activity from 1 March of the current year under the legislation governing the protection and use of special areas of conservation or the protection of species and biotopes:

58.1 prohibition on forestry activities;

58.2 prohibition on main harvesting and thinning;

58.3 prohibition on main harvesting;

58.4 prohibition on clear cutting.[’]

Reasons why the referring court has doubts as to the interpretation of EU law

7. It can be seen from recital 24 and Article 30(1) of Regulation No 1305/2013 that the purpose of the payments for Natura 2000 areas is to help to address specific disadvantages and to compensate for additional costs and income foregone resulting from disadvantages in the areas concerned, related to the implementation of Directives 92/43/EEC and 2009/147/EC and the Water Framework Directive.

While, in the first instance, it is for Member States, when designing their rural development programmes, to decide how the measures intended to achieve the objectives set by Regulation No 1305/2013 should apply in practice, restrictions adopted by Member States must not eliminate the compensatory aim of the Natura 2000 payments system (see the judgment of the Court of Justice of the European Union of 30 March 2017, *Lingurár*, C-315/16, EU:C:2017:244).

Moreover, payments for Natura 2000 areas must be considered in conjunction with Article 17 of the Charter of Fundamental Rights of the European Union, since the right to property includes the right of use and the right to fair compensation.

8. Peat bogs account for approximately 4% of Latvian territory (according to some sources, the percentage is as much as 10%). Cultivation of the *Vaccinium* genus in peat bogs is a form of fruit farming.

As noted in a publicly available study: ‘At present, the cultivation of berries on an industrial scale provides one of the means to continue economic activity in peat bogs where mineral extraction has ended, and it produces goods — whether berries or processed berry products — that can be exported. According to statistics published by the Rural Support Service, in 2016 applications for single area payments were made in respect of 142 hectares of cranberry cultivation and 250 hectares of blueberry (bilberry) cultivation, but there were no applications for areas given over to lingonberries or cloudberry. It is well known that fields given over to berries of the *Vaccinium* genus occupy a much larger area but, whether because of the land use or for other reasons, no applications were made for support, and therefore no statistics are available.’ (Available at: http://www.silava.lv/userfiles/file/Projektu%20parskati/2016_Lazdina_LVM_kudra.pdf, p. 15).

In view of the fact that a large part of the Natura 2000 areas in Latvia are also covered by peat bogs (annex to the Law on special areas of conservation), the Supreme Court wonders whether the total exclusion of these areas from the Natura 2000 areas compensation payments scheme is contrary to the aim of the compensation payments.

The areas

9. Article 30(6)(a) of Regulation No 1305/2013 establishes that Natura 2000 agricultural and forest areas designated pursuant to Directives 92/43/EEC and 2009/147/EC are eligible for payments.

Annex I to Directive 92/43/EEC, which sets out the habitat types of Community interest whose conservation requires the designation of special areas of conservation, also includes peat bogs and, in particular, bog woodlands.

The prohibition in Point 16.2 of Decree No 264 on establishing *Vaccinium* plantations in peat bogs undoubtedly restricts the owner’s right to use its property freely and to obtain an income from the economic activity that has been restricted.

The section of Decree No 171 dealing with ‘Natura 2000 and Water Framework Directive payments’ includes a subsidiary measure entitled ‘Compensation payments for Natura 2000 forest areas’. Under Point 56 of Decree No 171, in order to be eligible for support under this measure an area must be a forest area (other than a peat bog). The State has therefore restricted the grant of

compensation available to Natura 2000 areas, firstly by stipulating that payments are available only for forest areas and, secondly, by excluding peat bogs located within forest areas. As a result, Decree No 171 does not provide any compensation for restrictions on economic activity in peat bogs located within Natura 2000 areas.

Types of economic activity

10. It is also clear from Article 30(6)(a) of Regulation No 1305/2013 that, under [the system of] Natura 2000 payments, compensation payments are limited to certain areas, namely agricultural or forest areas. However, it is not clear from this provision that compensation payments are limited to certain types of economic activity, that is, to agricultural or forestry activities.

Point 58 of Decree No 171 stipulates that the support is available only in connection with restrictions on forestry activities. However, it is also possible to carry on agricultural activities in peat bogs located within forest lands, by establishing *Vaccinium* plantations.

11. Under the national legislation, owners of peat bogs in a Natura 2000 area are in practice completely excluded from the Natura 2000 payment system and do not receive any compensation for the restrictions imposed in these areas.

In view of this fact, and given that it is not clear from the provisions in Regulation No 1305/2013 to which restrictions the discretion available to Member States as regards the imposition of restrictions on Natura 2000 payments applies, the Supreme Court has doubts whether a Member State has the right: 1) to pass legislation which completely excludes peat bogs located in Natura 2000 areas from Natura 2000 support payments; and 2) to restrict the receipt of support, by stipulating that, in a particular area, support may be granted only in connection with restrictions on a particular type of economic activity.

12. In the present case, the appellant was aware when it acquired ownership of the assets that they included a nature [protection] area. Moreover, when the applicant acquired ownership of the assets, there were already restrictions on the economic activity of establishing *Vaccinium* plantations in peat bogs.

Article 17 of the Charter of Fundamental Rights of the European Union states that no one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss.

While the right to property includes the right to use those possessions, including the pursuit of the maximum possible financial return, when the owner acquires the property he must take into account the various restrictions that apply to it, and he must be aware that he cannot decide at any point to use the property in whatever way he wishes. Where a purchaser acquires property that is subject to restrictions, he is able to plan in advance what he intends to use the purchase for. Therefore, in

the view of the Supreme Court, when the appellant purchased the property it should have taken into account the restriction on establishing *Vaccinium* plantations in peat bogs. In consequence, the appellant is not entitled subsequently to rely on its intention to obtain income from establishing *Vaccinium* plantations in the peat bogs on its land in order to claim compensation for foregoing that income.

Article 30(1) of Regulation No 1305/2013 stipulates that the support is to be granted in order to compensate for foregone income. If it transpires that the regulation also applies to peat bogs, the Supreme Court has doubts whether, in a case such as the present one, the interested party can be considered to have foregone income. In other words, whether someone is entitled to a Natura 2000 payment if, when he acquired the property, he was aware of the restrictions that applied to it and of their restrictive effect on potential economic activity.

13. Having regard to the considerations set out above, in the view of the Supreme Court the matter needs to be referred to the Court of Justice of the European Union in order to clarify the correct interpretation of the provisions in Regulation No 1305/2013.

Operative part

Pursuant to Article 267 of the Treaty on the Functioning of the European Union, the Supreme Court:

orders

That the following questions be referred to the Court of Justice of the European Union:

- 1) Must Article 30(6)(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 be interpreted as meaning that peat bogs are completely excluded from Natura 2000 payments?
- 2) If the reply to the first question is in the negative, are peat bogs included in agricultural or forest areas?
- 3) If the reply to the first question is in the negative, must Article 30 of Regulation No 1305/2013 be interpreted as meaning that a Member State may completely exclude peat bogs from Natura 2000 payments and that such national provisions are compatible with the compensatory aim of those payments established in Regulation No 1305/2013?
- 4) Must Article 30 of Regulation No 1305/2013 be interpreted as meaning that a Member State may restrict support payments for Natura 2000 areas by

making support available only in connection with restrictions on a particular type of economic activity, for example, by limiting support in forest areas to forestry activities?

- 5) Must Article 30(1) of Regulation No 1305/2013, read together with Article 17 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that someone is entitled to a Natura 2000 payment by virtue of his plans for a new economic activity if, when he acquired the property, he was already aware of the restrictions that applied to it?

That proceedings be stayed until the Court of Justice of the European Union gives judgment.

[...]

WORKING DOCUMENT