

Case C-409/21**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

2 July 2021

Referring court:

Varhoven administrativen sad (Bulgaria)

Date of the decision to refer:

14 June 2021

Appellant in cassation:

DELID

Respondent in the appeal in cassation:

Izpalnitelen direktor na Darzhaven fond ‘Zemedelie’

Subject matter of the main proceedings

Appeal in cassation brought by the commercial company Delid EOOD against the judgment of the Administrativen sad Plovdiv (Administrative Court, Plovdiv). By that judgment, the action brought by the commercial company against an order of the Izpalnitelen direktor na Darzhaven fond ‘Zemedelie’ (Executive Director of the State Agricultural Fund) of 10 July 2018 was dismissed. By that order, the aid application submitted by the appellant under ID No 16/041/0/02308 and having as the object of the investment ‘Purchase of equipment for a poultry farm’ in the village of Manole, municipality of Maritsa, Plovdiv Province, with a value of 2 933 745 leva (BGN), was refused financing in accordance with Article 20a(2) of the Zakon za podpomagane na zemedelskite proizvoditeli (Law on support for farmers: ‘the ZPZP’), Article 42(1), first sentence, third alternative, read in conjunction with Article 39(1), first alternative, points 1 and 2, read in conjunction with Article 8(1)(2), read in conjunction with Article 26, read in conjunction with Article 11(1) and (2) and Article 15(2) of the Naredba No 9 ot 21.03.2015 za prilagane na podmyarka 4.1 ‘Investitsii v zemedelski stopanstva’ ot myarka 4 ‘Investitsii v materialni aktivi’ ot Programata za razvitie na selskite rayoni za perioda 2014 – 2020 (Regulation No 9 of 21 March 2015 on the

application of Submeasure 4.1 ‘Investments in agricultural holdings’ of Measure 4 ‘Investments in physical assets’ of the Rural Development Programme for the period 2014 – 2020; ‘the Naredba No 9’), read in conjunction with Paragraph 1(13) of the Dopolnitelni razporedbi (Additional provisions) to the Naredba No 9, and Article 60 of 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 (‘Regulation No 1306/2013’).

Subject matter and legal basis of the request

Interpretation of EU law; point (b) of the first paragraph and the third paragraph of Article 267 TFEU

Questions referred for a preliminary ruling

1. Is it consistent with Article 17 of Regulation No 1305/2013 for a national provision such as Article 26 of the Naredba No 9/2015, which establishes an eligibility condition for applicants for financial aid under Submeasure 4.1 ‘Investments in agricultural holdings’ of the measure ‘Investments in physical assets’ of the Rural Development Programme for the period 2014 – 2020, to require that a certificate of registration of a livestock facility in the name of the applicant must be submitted as proof of the exercise of a livestock activity carried out prior to the application for financing in a holding set up by the applicant within the meaning of Article 4 of Regulation No 1307/2013, or is it sufficient for the purposes of the regulation for the farmer to prove that he or she is in the process of obtaining the required registration of a livestock facility in his or her name?
2. Is a condition in a national provision such as Article 8(1)(2) of Naredba (Regulation) No 9 of 21 March 2015 concerning the application of Submeasure 4.1 ‘Investments in agricultural holdings’ of Measure 4 ‘Investments in physical assets’ of the Rural Development Programme for the period 2014 – 2020, according to which applicants must provide evidence of a minimum standard output for the agricultural holding concerned that may not be less than the equivalent in leva (BGN) of EUR 8 000 at the time of the application for aid, to be regarded as compatible with the objective of the support under the measure ‘Investments in physical assets’ pursuant to Article 17 of Regulation No 1305/2013, with the European Union’s rural development priorities under Article 5 of Regulation No 1305/2013 and with the concept of standard output of a holding within the meaning of the repealed Commission Regulation No 1242/2008 of 8 December 2008 establishing a Community typology for agricultural holdings?

3. If the second question is answered in the affirmative, is it to be assumed that farmers that are newly registered at the time of the application for aid under the 'Investments in physical assets' measure are to be excluded from financial support under Regulation No 1306/2013?

Provisions of European Union law relied on

Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006: Article 2(36) and (37)

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)

Commission Regulation (EC) No 1242/2008 of 8 December 2008 establishing a Community typology for agricultural holdings: Article 5

Provisions of national law relied on

Zakon za podpomagane na zemedelskite proizvoditeli (Law on support for farmers; 'the ZPZP'): Article 20a(2)

Zakon za veterinarnomeditsinskata deynost (Law on veterinary activity; 'the ZVMD'): Article 137(1), read in conjunction with Article 137(6) and (8)

Naredba No 9 ot 21.03.2015 za prilagane na podmyarka 4.1 'Investitsii v zemedelski stopanstva' ot myarka 4 'Investitsii v materialni aktivi' ot Programata za razvitie na selskite rayoni za perioda 2014 – 2020 (Regulation No 9 of 21 March 2015 on the application of Submeasure 4.1 'Investments in agricultural holdings' of Measure 4 'Investments in physical assets' of the Rural Development Programme for the period 2014 – 2020): Article 42(1), first sentence, third alternative, read in conjunction with Article 39(1), first alternative, points 1 and 2,

read in conjunction with Article 8(1)(2), read in conjunction with Article 26, read in conjunction with Article 11(1) and (2) and Article 15(2), read in conjunction with Paragraph 1(13) of the Dopolnitelni razporedbi (Additional provisions) to the Naredba No 9

Succinct presentation of the facts and procedure in the main proceedings

- 1 Delid EOOD is a Bulgarian single-member limited liability company which has its registered office and central administration in the village of Manole, Plovdiv Province, with PM as its managing director. The company was registered as farmer with the Oblastna direksia 'Zemedelie' grad Plovdiv (Provincial Directorate of Agriculture, City of Plovdiv) on 17 April 2015, as evidenced by the registration card submitted in the proceedings.
- 2 On 28 May 2015, Delid EOOD submitted an aid application with ID No 16/041/0/02308 and having as the object of the investment 'Purchase of equipment for a poultry farm' in the village of Manole, municipality of Maritsa, Plovdiv Province, with a value of 2 933 745 leva (BGN), under Submeasure 4.1 'Investments in agricultural holdings' of Measure 4 'Investments in physical assets' of the Rural Development Programme for the period 2014 – 2020.
- 3 At the time of submission of the aid application, the undertaking was rearing 500 ducks on livestock facility No 4137-0362, located in the village of Manole, Plovdiv Province, registered in the name of the owner of the livestock facility – Businesspark Manole OOD. The land is used on the basis of a lease agreement of 15 May 2014 between Delid EOOD and Businesspark Manole.
- 4 According to certificate No 1203 of 3 July 2013, the livestock facility No 4137-0362 registered by Businesspark Manole OOD is intended for the rearing of 20 000 mulard ducks.
- 5 Delid EOOD does not have its own registered livestock facility and carries out its activities on the abovementioned facility, whereby it submitted an invoice dated 29 June 2015 for the sale of 500 ducks in order to establish a standard output with a value equivalent to EUR 20 451.68.
- 6 Following checks of livestock facility No 4137-0362 by the Direksia 'Protivodeystvie na izmamite' kam Darzhaven fond 'Zemedelie' – Razplashtatelna agentsia (Anti-Fraud Directorate of the State Agricultural Fund – Paying Agency), it was found that, at the time of the check, there was a livestock facility which was not operational and was not registered in the name of the applicant Delid EOOD. It was also found that there were no animals in the facility, as the last ones were transferred on 7 March 2016, according to the documents submitted. The checks also revealed that, in addition to Delid EOOD, two other companies, namely Nik Food BG EOOD and Promular EOOD, had submitted applications under Submeasure 4.1 'Investments in agricultural holdings' of Measure 4 'Investments in physical assets' of the Rural Development

Programme for the period 2014 – 2020. Those companies do not have livestock facilities registered in their names either and, in order to prove the minimum standard output of their holdings, they state that they raise ducks on the same livestock facility – No 4137-0362 – under lease agreements.

- 7 The investment projects of the abovementioned commercial companies that applied for financial aid in the form of grants are similar and include expenditure on the purchase of equipment for the rearing of mulard ducks. The applicants concluded contracts for consultancy services in connection with the preparation and administration of aid applications with the same company, Agentsia Maya EOOD. The business plans drawn up by that company for the three farmer undertakings are similar, contain the same general information, the same sales prices for the finished products, the same types of expenditure in the cost pricing, etc.
- 8 Businesspark Manole OOD supplies ducks for fattening and feed to all three applicants, namely Delid EOOD, Nik Food BG EOOD and Promular EOOD. One of the shareholders of Businesspark Manole OOD is Enikak EOOD, which holds 99.3% of the shares. The latter company is owned by PM, who is the managing director of Delid EOOD.
- 9 On the basis of those circumstances, the Executive Director of the State Agricultural Fund issued, on 10 July 2018, an order by which the aid application of Delid EOOD with ID No 16/041/0/02308 and having as the object of the investment 'Purchase of equipment for a poultry farm' in the village of Manole, municipality of Maritsa, Plovdiv Province, with a value of 2 933 745 leva (BGN), was refused financing in accordance with Article 20a(2) of the ZPZP, Article 42(1), first sentence, third alternative, read in conjunction with Article 39(1), first alternative, points 1 and 2, read in conjunction with Article 8(1)(2), read in conjunction with Article 26, read in conjunction with Article 11(1) and (2) and Article 15(2) of the Naredba No 9, read in conjunction with Paragraph 1(13) of the Dopolnitelni razporedbi to the Naredba No 9, and Article 60 of 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.
- 10 Delid EOOD brought an action against the order before the Administrative Court, Plovdiv.

The essential arguments of the parties in the main proceedings

- 11 In its action before the Administrative Court, Plovdiv, Delid EOOD raises the following objections: (a) The Executive Director of the State Agricultural Fund does not make a distinction between activity demonstrating standard output as a condition of the applicant's eligibility under Submeasure 4.1 and activity for which support is applied for. That company submits that, in the present case, the applicant has proven standard output by means of its duck rearing activity on an

existing farm and applied for investment for another activity, namely for a new duck fattening farm on another plot of land. (b) The company will obtain a licence for a livestock facility in its own name once it has made the investment, and this is not contrary to Article 26 of the Naredba No 9. (c) Delid EOOD has submitted all the documents required to prove that the applicant meets the eligibility conditions: it is registered as farmer; an appropriate questionnaire and appropriate survey forms for farmers have been submitted; proof of the holding's minimum standard output for the current financial year at the time of application has been provided. (d) Activity in the livestock sector has been demonstrated by the rearing and sale of ducks on a leased livestock facility, and the relevant veterinary certificates in the name of Businesspark Manole allowing the movement of ducks to and from the facility are also available.

- 12 The Executive Director of the State Agricultural Fund, for his part, submits the following: (1) The appellant does not meet the eligibility conditions under Article 8(1)(2) and Article 8(3)(a) of the Naredba No 9, as it did not have a livestock facility registered in its name on which it could rear ducks in 2014. (2) Delid EOOD artificially created the conditions for obtaining financial aid within the meaning of Article 11 of the Naredba No 9, namely by deliberately coordinating its actions, together with the undertakings Nik Food BG EOOD and Promular EOOD, in aid applications submitted at the same time for the same activity, namely the equipping of a duck rearing farm, whereby, in view of the limit on financial resources under Submeasure 4.1 laid down in Article 15(2) of the Naredba No 9, which may not be exceeded, the three undertakings attempted to divide a project into three seemingly smaller ones, each within the limits of the eligible expenditure for financial aid. (3) The administrative act was issued in accordance with the proper procedure and in compliance with the substantive law.
- 13 By the judgment [now] appealed before the Varhoven administrative sad (Supreme Administrative Court, Bulgaria), the Administrative Court, Plovdiv dismissed the action brought by Delid EOOD against the order of the Executive Director of the State Agricultural Fund of 10 July 2018. In arriving at that legal outcome, that court held that the contested administrative act was issued by a substantively and territorially competent authority in the written form prescribed by law, without any material procedural violations and in accordance with the substantive provisions and the purpose of the law.
- 14 First, the Administrative Court, Plovdiv states that the object of the project in respect of which the appellant undertaking applied for financing is the rearing of ducks on a livestock facility which is not registered in the name of the applicant. The activity is carried out on leased premises on livestock facility No 4137-0362, registered in the name of Businesspark Manole.
- 15 Second, after comparing the content of the submitted lease agreements concluded with Businesspark Manole OOD on 15 May 2014 and Avispal OOD on 14 April 2015, the Administrative Court, Plovdiv found that the applicant, Delid EOOD, leased premises on the Manole pig rearing farm, located on plot 47086.608.1,

under both agreements. As stated above, livestock facility No 4137-0362, located on the abovementioned plot of land, is registered in the name of Businesspark Manole OOD, which is also the supplier of ducklings for the activities of the appellant. There is no evidence of the registration of a livestock facility in respect of the company Avispal OOD.

- 16 Third, the Administrative Court, Plovdiv held that, according to the accounting experts heard in the proceedings, the applicant provided evidence of the declared and legally prescribed minimum standard output (Article 8 of the Naredba No 9).
- 17 However, the expert veterinary reports admitted and heard in the proceedings refute the veracity of the agricultural activity declared. According to the veterinarians [heard as] experts, in the present case there was animal mortality which is atypical for the production process and the quantities of feed purchased were insufficient to feed the animals.
- 18 For the reasons set out above, the Administrative Court, Plovdiv found that the minimum standard output declared by the applicant (rearing of 500 ducklings at the time of the application) appears objectively possible, but the chronological development of the holding in the period 2014-2015 is not established beyond dispute.
- 19 Having also established beyond dispute that other undertakings, between which there were legal and factual links, had also submitted applications for aid for duck rearing on the livestock facility at issue, the Administrative Court, Plovdiv found that there were links between the applicants that are atypical for a competitive market.
- 20 Lastly, and in summary, the Administrative Court, Plovdiv found that there is a fundamental obstacle in that the applicant provided evidence of the minimum standard output for its holding at the time of application in relation to one registered livestock facility, while its future investment for the same activity relates to another livestock facility.
- 21 That court took the view that the lack of clarity as to which livestock facility that is, whether it is registered and who owns it does not enable the applicant's agricultural activity as declared in the business plan submitted to be checked. The infringement of the mandatory requirement under Article 137(1) of the ZVMD, read in conjunction with Article 137(6) and (8) thereof, read in conjunction with Article 26 of the Naredba No 9, justifies the administrative authority's lawful refusal to finance the application for aid.
- 22 The judgment of the Administrative Court, Plovdiv is the subject of the appeal in cassation before the Supreme Administrative Court and is subject to judicial review.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 23 The Supreme Administrative Court has heard a number of disputes in similar cases. The subject matter of the dispute in these proceedings is [in each case] the refusal of financial support under Submeasure 4.1 ‘Investments in agricultural holdings’ of Measure 4 ‘Investments in physical assets’ of the Rural Development Programme for the period 2014 – 2020, as the applicants do not meet the condition under Article 8(1)(2) of the Naredba No 9/2015 that the minimum standard output of the agricultural holding must not be less than the equivalent in leva (BGN) of EUR 8 000. In addition, Article 26 of the Naredba No 9, in accordance with which the exercise of a livestock activity must be proven by registration of a livestock facility in the name of [the applicants], was not complied with. There are also other grounds for refusal as regards some of the applicants.
- 24 Notwithstanding the existence of case-law of the national court in which the actions brought are dismissed as unfounded, the referring court has doubts as to the interpretation of Article 5 of Commission Regulation (EC) No 1242/2008 of 8 December 2008 establishing a Community typology for agricultural holdings (consolidated version in force from 1 January 2010 to 31 December 2014, repealed with effect from 1 January 2015), Article 4(1)(a) of Regulation (EU) No 1307/2013 and Article 60 of 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. It finds that an interpretation of those provisions is necessary for the decision on the appeal in cassation before it, since the rules of secondary EU law require a uniform and consistent interpretation of the applicable provisions, which is within the jurisdiction of the Court of Justice of the European Union.