

Case C-189/21**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:**

26 March 2021

Referring court:

College van Beroep voor het bedrijfsleven (Netherlands)

Date of the decision to refer:

23 March 2021

Applicant:

R. en R.

Defendant:

Minister van Landbouw, Natuur en Voedselkwaliteit

Subject matter of the action in the main proceedings

Appeal against the decision of the defendant to impose on the applicant, on the basis of the Uitvoeringsregeling rechtstreekse betalingen GLB (Implementing Regulation for CAP direct payments), a cross-compliance reduction of 3% of the direct payments applied for in 2018 due to the use of an unauthorised plant protection product.

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

Management requirement 10 in Annex II to Regulation No 1306/2013 refers exclusively to Article 55, first and second sentences, of Regulation No 1107/2009, which provides that plant protection products must be used properly. The referring court seeks to ascertain, in essence, whether that management requirement must be interpreted as also covering the situation in which use is made of a plant protection product which is not authorised in the Member State concerned.

Question referred for a preliminary ruling

Must management requirement (SMR) 10, as laid down in Annex II to 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, which refers to Article 55, first and second sentences, of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, be interpreted as meaning that that management requirement also covers the situation in which use is made of a plant protection product which is not authorised in the Member State concerned pursuant to that latter regulation?

Provisions of EU law cited

Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market: Article 3

Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001: Article 3; Annex III, management requirement 9

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: Article 4; Annex II, management requirement 9

Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC: recitals 7, 8 and 35; Articles 28 and 31, Article 55, first and second sentence, Article 83

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: recitals 53, 54 and 59; Articles 91 to 93; Annex II, management requirement 10

Regulation (EU) No 1310/2013 of the European Parliament and of the Council of 17 December 2013 laying down certain transitional provisions on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), amending Regulation (EU) No 1305/2013 of the European Parliament and of the Council as regards resources and their distribution in respect of the year 2014 and amending Council Regulation (EC) No 73/2009 and Regulations (EU) No 1307/2013, (EU) No 1306/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards their application in the year 2014: recital 16

Provisions of national law cited

Uitvoeringsregeling rechtstreekse betalingen GLB (Implementing Regulation for CAP direct payments; ‘the Implementing Regulation’): Article 3.1(1); Annex 3, parts 10.1 and 10.2

Wet gewasbeschermingsmiddelen en biociden (Law on plant protection products and biocidal products: ‘the Wgb’): Article 20(1) and (3)

Brief summary of the facts and the procedure in the main proceedings

- 1 On 20 March 2018, the applicant (R. en R.) submitted an application to the defendant (the Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality)) for the making of direct payments.
- 2 On 11 October 2018, the Netherlands Voedsel- en Warenautoriteit (Food and Consumer Product Safety Authority; ‘the NVWA’) established that the applicant had used the plant protection product MECOP PP-2. That plant protection product has mecoprop-P as its active ingredient. According to the website of the College voor de toelating van gewasbeschermingsmiddelen en biociden (Board for the Authorisation of Plant Protection Products and Biocides; ‘the Ctgb’), which is responsible for the implementation of the Wet gewasbeschermingsmiddelen en biociden, the authorisation for MECOP PP-2 had expired on 30 January 2016. The sell-by date (latest date by which the expired product could be sold) was set at 30 July 2016 and the use-by date (the period within which the remaining stocks of the product could still be used) was set at 30 January 2017.
- 3 By decision of 4 April 2019, the defendant, on the basis of the Uitvoeringsregeling rechtstreekse betalingen GLB, imposed a cross-compliance reduction of 3% on the direct payments payable to the applicant for the year 2018, on the ground that the applicant had used an unauthorised plant protection product. By decision of 21 August 2019 (‘the contested decision’), the defendant rejected as baseless the applicant’s objection to the decision to impose the cross-compliance reduction.

- 4 In the contested decision, the defendant stated that the applicant had failed to comply with a cross-compliance rule. In its view, the use of an unauthorised plant protection product comes under management requirement 10 as set out in Annex II to Regulation No 1306/2013.
- 5 The applicant brought an appeal against the contested decision before the referring court.

Main submissions of the parties to the main proceedings

- 6 The applicant acknowledges that it used a plant protection product which was not authorised (or was no longer authorised) and had thus breached Article 28 of Regulation No 1107/2009. The applicant argues, however, that the defendant was wrong to impose on it a cross-compliance reduction, because the (improper) use of an unauthorised plant protection product does not come under management requirement 10, as set out in Annex II to Regulation No 1306/2013. The applicant argues that the use of an unauthorised plant protection product constitutes a breach of Article 28 of that regulation, which stipulates that a plant protection product may not be placed on the market or used unless it has been authorised. That does not mean that it has breached the management requirement set out in Article 55 of Regulation No 1107/2009. It is clear from Annex II to Regulation No 1306/2013, and more specifically from management requirement 10, that this must involve an infringement of Article 55, first and second sentences, of Regulation No 1107/2009. Article 28 of Regulation No 1107/2009 is not mentioned in Annex II to Regulation No 1306/2013, with the result that a breach of that provision does not constitute a breach of a cross-compliance rule. In addition, the applicant points out that Article 28 of Regulation No 1107/2009, on the one hand, and Article 55 of Regulation No 1107/2009, on the other hand, involve two different types of conduct and that both types of conduct can also constitute a separate infringement under Article 20 of the Wgb.
- 7 The defendant relies on a more systematic interpretation of management requirement 10, to which Article 55 of Regulation No 1107/2009 is central. It takes the view that the (improper) use of an unauthorised plant protection product falls under management requirement 10. According to the defendant, Article 55 of Regulation No 1107/2009 gives rise to a general obligation to use all plant protection products properly. There is nothing to suggest that unauthorised plant protection products are exempt from this obligation. According to the defendant, an unauthorised plant protection product cannot, by definition, be used properly. Under Article 55 of Regulation No 1107/2009, a proper use implies, among other things, that the requirements laid down in accordance with Article 31 of Regulation No 1107/2009 are met. The content of the authorisation is regulated by Article 31 of Regulation No 1107/2009. The use of an unauthorised plant protection product does not fulfil the requirements of Article 31 of Regulation No 1107/2009, because those requirements are laid down solely for authorised plant protection products.

Brief summary of the reasons for the referral

- 8 It is not in dispute between the parties that the authorisation for the plant protection product MECOP PP-2 expired with effect from 30 January 2016 and that, at the time of its use by the applicant, the maximum use-by period had expired. The applicant thus acknowledges that it acted in a manner contrary to Article 28 of Regulation No 1107/2009.
- 9 Under Articles 91, 92 and 93 of Regulation No 1306/2013, the full payment of the direct payments applied for by a farmer such as the applicant is subject to compliance with the rules on cross-compliance. The question is whether the defendant was entitled to impose a cross-compliance reduction on the applicant on account of the use of an unauthorised plant protection product. Article 93(1) of Regulation No 1306/2013 provides that the rules on cross-compliance contain the statutory management requirements under EU law as listed in Annex II. It is thus that Annex II (and not the national Implementing Regulation) which is decisive for the question of whether cross-compliance rules are at issue here.
- 10 In Annex II to Regulation No 1306/2013, management requirement 10 refers to Article 55, first and second sentences, of Regulation No 1107/2009; Article 28 of Regulation No 1107/2009 is not mentioned therein. Article 28 of Regulation No 1107/2009, which concerns authorisation for placing on the market and use and which features in Section 1, 'Authorisation', of Chapter III, provides that a plant protection product may not be placed on the market and used unless it has been authorised in the Member State concerned. Article 55, first and second sentences, of Regulation No 1107/2009, which concerns the use of plant protection products and which features in Section 2, 'Use and information', of Chapter III, provides that plant protection products must be used properly, which implies application of the principles of good plant protection practice and compliance with the conditions of use. From the wording of these provisions and their place in Chapter III of Regulation No 1107/2009, it can be deduced that the articles concern two distinct forms of conduct. The defendant's view that Article 55 of Regulation No 1107/2009 contains a general obligation relating to the proper use of all plant protection products, seems difficult to reconcile with this. According to that view, the prohibition in Article 28 of Regulation No 1107/2009 of the use of an unauthorised plant protection product would be superfluous and thus meaningless, because such a prohibition would already be covered by Article 55 of Regulation No 1107/2009. Therefore, a literal interpretation of management requirement 10, as set out in Annex II to Regulation No 1306/2013, would imply that that management requirement does not cover the situation in which an unauthorised plant protection product is used. However, such an interpretation has the curious and possibly undesirable consequence that no cross-compliance reduction can be imposed in a situation in which a farmer has used an unauthorised plant protection product, whereas it can be imposed in the case of the improper use of an authorised plant protection product.

- 11 Having regard to the objectives of the standards governing the use of plant protection products laid down by Regulation No 1107/2009 and the cross-compliance objectives laid down by Regulation No 1306/2013, namely, the protection of the environment and of the health of humans, animals and plants and the development of sustainable agriculture, it is not logical that that cross-compliance system should cover only the situation in which an authorised plant protection product is used and not also the situation in which an unauthorised plant protection product is used. An interpretation based on the objectives of Regulation No 1306/2013 and Regulation No 1107/2009 would imply that Management Requirement 10, as set out in Annex II to Regulation No 1306/2013, also covers the situation in which an unauthorised plant protection product is used.
- 12 In that regard, the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry) also refers to Regulation No 1782/2003 and Regulation No 73/2009, the predecessors of Regulation No 1306/2013. There, management requirement 9 (which corresponds to management requirement 10 of Regulation No 1306/2013) refers to Article 3 of Directive 91/414. That latter article stipulated that only an authorised plant protection product may be used (paragraph 1) and that plant protection products must be used properly (paragraph 3). In the absence of an explanatory note relating to the amended approach adopted in Regulation No 1107/2009, it is not clear to the referring court whether the EU legislature took the view that a reference in management requirement 10 of Regulation No 1306/2013 to the first and second sentences of Article 55 of Regulation No 1107/2009 was sufficient to cover also the situation in which an unauthorised plant protection product is used, or whether, on the contrary, it was in fact the EU legislature's intention not to cover that situation.
- 13 Finally, the College van Beroep voor het bedrijfsleven points out that beneficiaries must be able to understand clearly their cross-compliance obligations, as is evident from recital 59 of Regulation No 1306/2013. It is questionable to what extent those obligations can be understood clearly by a farmer if the interpretation of management requirement 10 is based not so much on its wording as on the objectives and the context of Regulations No 1306/2013 and No 1107/2009.