

Case C-443/21**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:**

19 July 2021

Referring court:

Curtea de Apel Pitești (Romania)

Date of the decision to refer:

5 July 2021

Appellant:

SC Avicarvil Farms SRL

Respondents:

Ministerul Agriculturii și Dezvoltării Rurale

Agenția pentru Finanțarea Investițiilor Rurale

Agenția de Plăți și Intervenție în Agricultură

Agenția de Plăți și Intervenție în Agricultură – Centrul Județean Vâlcea

Subject matter of the main proceedings

Appeal against a judgment delivered on 15 February 2019 by which the Tribunalul Vâlcea (Regional Court, Vâlcea) dismissed an action brought by the appellant disputing the lawfulness of certain administrative acts of the respondents. In essence, the question arises as to whether EU law precludes a national administrative practice consisting of the reduction of the amount of financial support provided for in Romania's rural development programme for the period 2007-2013 (the 'PNSR'), approved by decision of the European Commission, on account of the finding by the European Court of Auditors of an error in the calculation of that support.

Subject matter and legal basis of the request

An interpretation is sought, pursuant to Article 267 TFEU, of Article 143 of Regulation No 1303/2013, Article 310 TFEU and Article 40(3) of Regulation No 1698/2005, and of the principles of the protection of legitimate expectations and of legal certainty.

Question referred for a preliminary ruling

Does Article 143 of Regulation No 1303/2013, in conjunction with Article 310 TFEU (principle of sound financial management) and Article 40(3) of Regulation (EC) No 1698/2005 [reproduced in Article 33(3) of Regulation (EU) No 1305/2013], together with the principles of the protection of legitimate expectations and of legal certainty, preclude an administrative practice of the national authorities involved in the implementation of a non-repayable financial support measure which, as a result of a calculation error found by the European Court of Auditors, have issued acts ordering a reduction in the amount of the financial support granted in the PNSR, approved by European Commission Decision C(2012) 3529 of 25 May 2012, before the adoption of a new European Commission decision excluding from financing amounts exceeding the additional costs and income foregone resulting from the commitment made, as a result of those calculation errors?

Provisions of European Union law and case-law of the Court of Justice relied on

Treaty on the Functioning of the European Union, Article 310;

Council Regulation (EC) No 1698/2005 of 20 September 2005, Article 40;

Commission Regulation (EC) No 1974/2006 of 15 December 2006, Article 27(2) to (13);

Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013, Article 143;

Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013, Article 33;

Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013, Article 58;

Commission Decision C(2008) 3831 of 16 July 2008 approving Romania's rural development programme for the period 2007-2013, as amended by Commission Decision C(2012) 3529 of 25 May 2012;

Commission Implementing Decision (EU) 2018/873 of 13 June 2018;

Judgment of 7 August 2018, *Ministru kabinet*, C-120/17, EU:C:2018:638, paragraphs 48 to 52.

Provisions of national law and case-law relied on

Programul de dezvoltare rurală al României pentru perioada 2007-2013 (versiunea a X-a) (Romania's rural development programme for the period 2007-2013, version X) Under the provisions of the PNSR, support for the welfare of animals is to take the form of a fixed annual payment per livestock unit (LU) and constitute compensation for income foregone and additional costs incurred by farmers; the payment is made entirely to the farmer. As regards package (b) in Measure 215, concerning the grant of payments for the welfare of poultry, the PNSR provided that the amount granted annually to cover the additional costs and income foregone as a result of applying the animal welfare measures was to amount to 14.29 EUR/LU in respect of sub-package (3b) – improving the welfare conditions of the poultry during transport – and 29.49 EUR/LU in respect of sub-package (4b) – correction of the level of nitrites and nitrates in the water used;

Decrees No 239/2012, No 1125/2013 and No 826/2016 of the Ministerul Agriculturii și Dezvoltării Rurale (Ministry of Agriculture and Rural Development) approving the model for applications for payments relating to Measure 215;

Decision No 32 of 26 January 2021 of the Curtea de Apel Brașov (Court of Appeal, Brașov), ECLI:RO:CABRV:2021:005.000032, granting, in a similar case, the appellant's application for full payment of the support.

Succinct presentation of the facts and procedure in the main proceedings

- 1 On 16 July 2008, the Commission adopted Decision C(2008) 3831, which approved the PNSR drawn up by the Romanian Ministry of Agriculture and Rural Development) ('MADR'). On 14 September 2011, the MADR sent the Commission a request for a review of the PNSR, and one of the proposed amendments was the introduction of Measure 215, entitled 'Animal welfare payments'. The proposed amendments were approved by Commission Decision C(2012) 3529 of 25 May 2012.
- 2 Measure 215 provided for payments to cover the income foregone and the additional costs incurred by farmers rearing poultry or pigs who, in accordance with the PNSR, had implemented certain animal welfare standards on a voluntary basis. The support was granted in connection with multiannual commitments made by farmers for a minimum period of five years.
- 3 In that context, the appellant submitted to the respondent Agenția de Plăți și Intervenție în Agricultură – Centrul Județean Vâlcea (Agency for Payments and Interventions in Agriculture – Vâlcea District Centre; 'APIA Vâlcea'), on

14 November 2012, an application for aid regarding Measure 215, sub-packages (3b) and (4b), undertaking on that occasion to ensure and maintain poultry welfare conditions and to comply with certain requirements for a minimum period of five years in return for the non-repayable financial support established by the PNSR.

- 4 In 2013 and 2014, the appellant received financial support in the amounts provided for in the PNSR and in MADR Decrees No 239/2012 and No 1125/2013. On 14 November 2014, it submitted to APIA Vâlcea a payment application in respect of the third year of the commitment.
- 5 Following checks by the Direcția Sanitară Veterinară și pentru Siguranța Alimentelor Argeș (Veterinary Health and Food Safety Directorate, Argeș), and a further check by the Agenția pentru Finanțarea Investițiilor Rurale (Agency for the Financing of Rural Investments), all carried out in 2015, the adoption of the payment decision relating to the third year of the commitment was postponed pending completion of those checks.
- 6 On 25 February 2016, APIA Vâlcea, a respondent, issued a partial payment decision in respect of the third year of the commitment and, after being informed of the outcome of the abovementioned further check, issued a correcting decision. By those two decisions, which are contested in the present case, it was established that the amount owed to the appellant in respect of the third year of the commitment should be fixed by applying reduced amounts compared to those provided for in the PNSR.
- 7 That reduction was applied following the communication, by the MADR, of the note of 20 January 2016 informing the respondent APIA Vâlcea that, in connection with an audit carried out in 2015 by the European Court of Auditors concerning the correctness of the grant of payments to the beneficiaries of Measure 215, calculation errors in the methodology for calculating the compensatory payments had been found in respect of packages (3b) and (4b), that is to say that the amounts established are higher than those necessary to cover the income foregone and additional costs resulting from compliance with the standards provided for in the support measure. Therefore, until the analysis of the situation was completed and a final decision adopted, the MADR proposed, in order to reduce the risk of undue payments being granted to the beneficiaries of Measure 215, that the files in respect of which the payments had not been finalised be re-examined, whilst as regards the payment applications under consideration, a situation in which the appellant found itself, the MADR ordered that partial payments be made, on the basis of provisional amounts, that is to say, respectively, 3.92 EUR/LU/year rather than 14.29 EUR/LU/year in respect of sub-package (3b), and 10.91 EUR/LU/year rather than 29.49 EUR/LU/year in respect of sub-package (4b).
- 8 The appellant was informed of that explanation of the reduction in the amount owed by notification of 8 March 2016 issued by APIA Vâlcea. Subsequently, on the entry into force of Decree No 826/2016, the reduction in the amount of non-

repayable financial support relating to sub-packages (3b) and (4b) became final. Since it came later, the abovementioned decree does not apply to the acts which are contested in the present case.

- 9 In addition, the Commission adopted on 13 June 2018, after the acts had been issued, Implementing Decision (EU) No 2018/873, by which it applied to Romania a financial correction relating, inter alia, to sub-packages (3b) and (4b) in Measure 215. The Romanian State brought an action for annulment of that decision, which, however, was dismissed by the Courts of the European Union.
- 10 The appellant lodged an administrative complaint against the payment decision and the correcting decision, which was rejected on 25 April 2016. The appellant brought an action against all those decisions, claiming that they should be annulled and the respondents should be ordered to pay compensation for the damage sustained as a result of the contested acts, by paying the difference between the amount granted in the contested acts and the amount to which it was entitled under the PNSR.
- 11 The Tribunalul Vâlcea dismissed that action by judgment of 15 February 2019. In essence, the Tribunalul Vâlcea considered that the rates of support set in the PNSR constituted overcompensation (by a factor of almost three) for the damage caused to the appellant by its adoption of the animal welfare standards. It is therefore an error on the part of the administrative authorities which entails unjust enrichment of the beneficiary of an administrative act. However, that situation does not give rise to a right to continue to benefit from that error even after it has been discovered by the administrative authorities, since the latter are entitled to remedy it, at least for the future, without the possibility of raising against it a ‘legitimate expectation’ on the part of the beneficiary of the incorrect act to continue to exploit the error in question. It is doubtful whether the intention of a legal person to benefit from an error of another legal person can be legitimate, even where the latter is an administrative authority.
- 12 In the view of the Tribunalul Vâlcea, it cannot be justifiably argued that, since the appellant undertook to comply with animal welfare rules on the basis of the amounts laid down in the PNSR, it should continue to be paid the same amounts on the basis of the principles of legal certainty, protection of legitimate expectations or foreseeability of administrative conduct.
- 13 The Tribunalul Vâlcea considers that, in a situation such as that at issue, where the appellant’s intention to continue to enrich itself unjustly is weighed up against legitimate interest of all the other legal persons, whose contributions make up the European and national budgets, considerations of equity preclude the appellant’s interest from prevailing on the basis of the legitimate expectation on which it relies. Moreover, the principles invoked by the appellant did not prevent the Commission from applying the financial corrections in respect of calculation errors committed by the Romanian authorities.

- 14 The Tribunalul Vâlcea further held that the PNSR, even though approved (incorrectly) by the Commission, cannot amend a regulation, in this case Regulation No 1698/2005. Consequently, it was not necessary for the Romanian authorities to issue any normative act establishing new rates of support in order to give legal effect to the acts issued by the respondents, since those acts had a sufficient basis in above provisions of that regulation.
- 15 An appeal lodged by the appellant against the judgment of Tribunalul Vâlcea is currently pending before the referring court.

The essential arguments of the parties in the main proceedings

- 16 **The appellant** considers that the contested administrative acts infringed the provisions of the PNSR, approved by the Commission's decision, and those of MADR Decrees No 239/2012 and No 1125/2013. It emphasises that the rates of non-repayable financial support relating to Measure 215 were fixed by the Romanian State in accordance with Article 40 of Regulation No 1698/2005 and Article 27(2) to (13) of Regulation No 1974/2006, and became binding on it on the approval by the Commission of the PNSR by Decision C(2008) 3831 of 16 July 2008. The PNSR is binding and can be amended by the Romanian State only in compliance with the time limits and procedure laid down in Article 9 of Regulation No 1974/2006, which is not so in the present case.
- 17 Furthermore, since the reduction in the amount of the support relating to sub-packages (3b) and (4b) is the result of an error by the MADR in the calculation method, the issuing of the contested administrative acts infringes the principles of legal certainty, protection of legitimate expectations and foreseeability since the appellant made commitments for a period of five years on the basis of the initial amount of the subsidies valid on the date on which the application for aid was submitted.
- 18 The appellant submits that the acts of the Romanian authorities, who adopted the PNSR, and the acts of the Commission, which analysed Measure 215 proposed in the PNSR and verified its compliance with EU legislation, created a reasonable and legitimate expectation in the beneficiaries of the measure that they would receive the amounts initially approved until the end of the commitment. In that regard, the appellant claims that the principle of sound financial management does not prevail over the principles protecting the rights of individuals. On the contrary, it claims that those rights must be applied over the principle of sound financial management, and relies, to this end, on the judgment of 7 August 2018, *Ministru kabinet*, [C-120/17,] EU:C:2018:638.
- 19 **The respondents** invoked as justification for issuing the contested acts the findings of the European Court of Auditors, in connection with the 2015 audit, according to which there were calculation errors in the methodology for quantifying the income foregone and the additional costs resulting from the application of the animal welfare standards in respect of both sub-package (3b)

and sub-package (4b). They also cited the MADR's note of 20 January 2016 which provisionally fixed the reduced amounts of aid in respect of sub-packages (3b) and (4b) in Measure 215 in order to reduce the risk of undue payments being granted.

- 20 In addition, they cite the need to protect the financial interests of the Union, as provided for in Article 58 of Regulation No 1306/2013.

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

- 21 The referring court observes that the amount of the non-repayable financial support requested by the appellant was initially fixed in the PNSR, approved by Commission Decision C(2008) 3831, as amended by Decision C(2012) 3529.
- 22 In the light of Article 40(3) of Regulation No 1698/2005, it was incumbent on the Romanian authorities to quantify the additional costs and income foregone and any losses incurred by farmers who make animal welfare commitments on a voluntary basis. In that regard, the amount of non-repayable financial support in respect of sub-package (3b) was fixed at 14.29 EUR/LU/year and, in respect of sub-package (4b), at 29.49 EUR/LU/year.
- 23 On the basis of the application for support and the applications for annual payments, the appellant received, in 2013 and 2014, financial support in the abovementioned amounts which, however, were subsequently revealed, following an audit by the European Court of Auditors, to have been calculated incorrectly and resulted in over-compensation of the damage caused by the adoption of the animal welfare standards. For that reason, following the European Court of Auditors' finding and reporting of those errors, the national authorities limited the compensatory payments to the level which actually covered the damage caused. Consequently, in respect of the application for payment relating to the third year of the commitment, which was being authorised at the time when the calculation errors were reported, the appellant received reduced amounts of financial aid as the reduction was an administrative measure ordered by the Romanian authorities with the stated aim of reducing the risk of undue payments being granted to the beneficiaries of Measure 215.
- 24 The reduction was initially conceived as a provisional measure in the form of a partial payment. Since the Commission adopted the decision to exclude the beneficiary of the payments from financing, and that decision became final when the action brought by the Romanian State seeking its annulment was dismissed, the beneficiary is now at the stage where the measure reducing the amount has become final. It claims in particular that there is no national legal framework providing for a reduction in the amount of the payments and, secondly, that the application of the principle of sound financial management cannot give rise to an infringement of the principles of protection of legitimate expectations and of legal certainty.

- 25 Recalling paragraphs 48 and 51 of the judgment of the Court of Justice of 7 August 2018, *Ministru kabinetu*, EU:C:2018:638, the referring court points out that, in the present case, the legitimacy of the expectation that the target recipients of the payments have that they will continue to receive, for the entire duration of the compensation, the amounts of the support initially approved, is at issue in particular in this case given that it has emerged in course of the commitment that those amounts were fixed incorrectly and led to over-compensation of the damage resulting from compliance with the animal protection standards.
- 26 In the absence of a national legal framework governing the measures which can be taken by the Romanian State in a situation such as that in the present case, where systematic errors of calculation, which have led to an overestimation of the income foregone and additional costs involved in the application of the animal welfare standards, have been identified, the lawfulness of the administrative practice adopted by the national authorities, of paying only part of the amount provided for in the PNSR and other national normative acts, should be analysed in the light of Article 143 of Regulation No 1303/2013, in conjunction with Article 310 TFEU and Article 40(3) of Regulation No 1698/2005. However, it is not possible to disregard the reasonable expectations of the beneficiary of the support measure, who made those commitments for a period of five years and finds himself in a situation of receiving in future, following the reporting of the calculation errors, an amount significantly lower than that initially approved and which prompted him to make the multiannual commitment.
- 27 In the light of those considerations, the referring court considers that it is necessary to determine whether, in factual circumstances such as those described in the present case, the principle of sound financial management, in conjunction with Article 143 of Regulation No 1303/2013 and Article 40(3) of Regulation No 1698/2005 and with the principles of the protection of legitimate expectations and of legal certainty, permits or, on the contrary, precludes such administrative practice of the national authorities.