

Case C-287/24**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:**

23 April 2024

Referring court:

Conseil d'État (Belgium)

Date of the decision to refer:

11 April 2024

Applicant:

Ligue royale belge pour la protection des oiseaux

Defendant:

Région wallonne

1. Subject matter of the main proceedings

- 1 Following the invasion of Ukraine by Russia on 24 February 2022 and its impact on agricultural products, the European Commission adopted Implementing Decision (EU) 2022/484 with the aim of increasing the European Union's agricultural production potential. This decision allows farmers to resume cultivation of land that had been lying fallow in the name of 'agricultural practices beneficial for the climate and the environment', while retaining the full direct payments for which it is a prerequisite that the land lies fallow.
- 2 In this respect, on 12 May 2022 the gouvernement de la Région wallonne (Government of the Wallonian Region) in turn adopted an order 'allowing derogations from certain conditions relating to land laying fallow for 2022'¹.
- 3 According to the Ligue royale belge pour la protection des oiseaux (Belgian Royal League for the Protection of Birds), by encouraging the cultivation of fallow land, the order of 12 May 2022 causes harm to the birds of the plains, which are in

¹ *Moniteur belge*, 19 May 2022, pages 43644 onwards.

decline or even endangered, particularly due to intensive farming of agricultural land.

- 4 It says that in areas without intensive farming, an endangered species can rebuild its population. It cites the example of the grey partridge, a species that was observed by a management plan to undergo a net growth in population in an area where cultivation had been halted entirely.
- 5 It points out that the 150 hectares of fallow land across the Wallonian Region that were permanently given over to farming by the contested order are far from being harmless to bird life.
- 6 It does not believe that the conditions laid down in the legislation for derogations from land laying fallow have been met.
- 7 In a petition lodged on 18 July 2022 before the Conseil d'État, Belgium (Council of State, Belgium), the Belgian Royal League for the Protection of Birds (hereafter the 'applicant') argued that the order of the Government of the Wallonian Region of 12 May 2022 (hereafter the 'contested order') should be annulled.
- 8 In the context of its examination of the action for annulment, the Council of State refers the case to the Court of Justice for a preliminary ruling concerning the validity of Implementing Decision (EU) 2022/484.

2. Legal context

EU law

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

- 9 In Chapter 3 on 'Payment for agricultural practices beneficial for the climate and the environment', Article 43 states the following:

General rules 1. Farmers ... shall observe, on all their eligible hectares ... the agricultural practices beneficial for the climate and the environment ...

2. The agricultural practices beneficial for the climate and the environment shall be the following:

- (a) crop diversification;
- (b) maintaining existing permanent grassland; and

(c) having ecological focus area on the agricultural area.’

10 Article 44, entitled ‘Crop diversification’ states that:

‘1. Where the arable land of the farmer covers between 10 and 30 hectares ... there shall be at least two different crops on that arable land. ...

Where the arable land of the farmer covers more than 30 hectares ... there shall be at least three different crops on that arable land ...

4. For the purposes of this Article, a "crop" means any of the following:

...

(c) land lying fallow;

(d) grasses or other herbaceous forage ...’

11 Article 46 states that:

‘Ecological focus area

[...]

2. By 1 August 2014, Member States shall decide that one or more of the following are to be considered to be ecological focus area: a) land lying fallow;’

12 Chapter I ‘Notifications and emergency’ of Title VII ‘Final provisions’ includes Article 69 which states the following:

‘Measures to resolve specific problems

1. In order to resolve specific problems, the Commission shall adopt implementing acts which are both necessary and justifiable in an emergency. Such implementing acts may derogate from provisions of this Regulation, to the extent and for such a period as is strictly necessary ...

2. Where duly justified imperative grounds of urgency so require, and in order to resolve such specific problems while ensuring the continuity of the direct payments system in the case of extraordinary circumstances, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 71(3).’

Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation

13 Article 45(2) of Delegated Regulation No 639/2014 states that:

‘On land lying fallow there shall be no agricultural production ...’

14 Article 45(10b) of Delegated Regulation No 639/2014 states that:

‘The use of plant protection products shall be prohibited on all areas referred to in paragraphs 2 ...’

Commission Implementing Decision (EU) 2022/484 of 23 March 2022 providing for derogations from Regulation (EU) No 1307/2013 of the European Parliament and of the Council and from Commission Delegated Regulation (EU) No 639/2014 as regards the implementation of certain conditions relating to the greening payment for claim year 2022

15 Recital 2 is worded as follows:

‘Article 44(4) of Regulation (EU) No 1307/2013 establishes that, for the purposes of crop diversification, land lying fallow is counted as a different crop from grasses or other herbaceous forage. This implies that land that has been grazed or harvested for production purposes cannot be counted as land lying fallow.’

16 Recital 3 is worded as follows:

‘Article 46(2), first subparagraph, point (a), of Regulation (EU) No 1307/2013, establishes that areas under land lying fallow may be considered as ecological focus areas. Article 45(2) of Delegated Regulation (EU) No 639/2014 requires an absence of agricultural production, and Article 45(10b) of that Regulation prohibits the use of plant protection products, on land lying fallow qualifying as an ecological focus area.’

17 Recital 4 is worded as follows:

‘Russia’s invasion of Ukraine on 24 February 2022 has triggered a sharp commodity price surge and has an impact on the supply and demand for agricultural products. In order to address this situation, the Union agricultural production potential both for food and feed supply should be increased.’

18 Recital 5 is worded as follows:

‘Land laying fallow areas remain arable land areas suitable for crop production that, albeit to varying degrees depending on their conditions such as soil quality,

could be used immediately to produce food and feed. Therefore, in order to allow farmers to make use as much as possible of their available areas for the purpose of food production and feeding animals, Member States should be authorised to derogate from conditions relating to the greening payment, including the use of plant protection products, for claim year 2022 as regards land lying fallow ...’

19 Recital 6 is worded as follows:

‘This Decision should only provide for derogations to the crop diversification and ecological focus area obligations to the extent and for such a period as is strictly necessary. The derogations should be limited to claim year 2022 and aimed at addressing the impact on the supply and demand for agricultural products by allowing for an increase of the total arable land area available for the production of food and feed.’

20 Recital 7 is worded as follows:

‘When deciding on the application of the derogations, those Member States should take due account of the objectives of the agricultural practices beneficial for the climate and the environment and, in particular, the need for sufficient protection of soil quality and quality of natural resources and biodiversity, especially during the most sensitive periods for flowering and nesting birds.’

21 Recital 8 is worded as follows:

‘In order to ensure that the derogations authorised by this Decision are effective with a view to the objectives pursued, i.e. a mitigation of rising commodity prices and the impact on the supply and demand, Member States should take their decisions on the application of the derogations within 21 days from the date of notification of this Decision, and should notify the Commission of those decisions taken within 7 days after the date on which the decisions were taken.’

22 Article 1 states that:

‘Decisions derogating from certain conditions relating to the greening payment for claim year 2022

1. By way of derogation from Article 44(4) of Regulation (EU) No 1307/2013, for claim year 2022, Member States may decide that land lying fallow **is considered as a distinct crop even though such land has been grazed or harvested for production purpose or has been cultivated** *.

2. By way of derogation from Article 45(2) of Delegated Regulation (EU) No 639/2014, for claim year 2022, Member States may decide that land lying fallow **is considered as ecological focus area** pursuant to Article 46(2), first subparagraph, point (a), of Regulation (EU) No 1307/2013 **even though such**

* The two passages in bold are reproduced almost word for word in the contested order.

land has been grazed or harvested for production purpose or has been cultivated *. The weighting factor set out for land lying fallow in Annex X to Regulation (EU) No 1307/2013 shall apply.

By way of derogation from Article 45(10b) of Delegated Regulation (EU) No 639/2014, where Member States make use of the derogation referred to in the first subparagraph of this paragraph, they may also decide to allow for the use of plant protection products on those areas where grazed or harvested for production purpose or where cultivated.’

Belgian law

Order of the Government of the Wallonian Region of 12 May 2022 allowing derogations to certain conditions relating to land laying fallow for 2022

23 In its preamble, the contested order focuses on Regulation No 1307/2013, Delegated Regulation No 639/2014 and Implementing Decision 2022/484.

24 The preamble also states the following:

‘Having regard to the urgency justified by the fact that the invasion of Ukraine by Russia on 24 February 2022 aggravated the food commodity price surge and had effects on the supply and demand for agricultural products at a global level;

In order to address this situation, the agricultural production potential of the Wallonian Region both for food and feed supply should be increased, as part of the European effort;

To this end, certain derogations to the ban on using land lying fallow for agricultural production should be decreed for the year 2022;

[...]

25 Article 2(1) of the contested order states that:

Art. 2 (1). In accordance with Article 1 of the Commission Decision, the following provisions are adopted for the year 2022;

1. By derogation from Article 44(4) of Regulation (EU) No 1307/2013, land lying fallow that has been grazed, harvested for production purposes or cultivated are considered as different crops;

2. By derogation from Article 45(2) of Regulation (EU) No 639/2014, land lying fallow that has been grazed, harvested for production purposes or cultivated is considered as ecological focus areas.’

26 Paragraph 2 lists the crops for which the cultivation of land lying fallow is authorised.

3. Position of the parties

Applicant

- 27 In support of its action for annulment, the applicant maintains that Implementing Decision 2022/48 infringes Regulation No 1307/2013, from which it derogates, and Article 45(2) and (10b) of Delegated Regulation 639/2014 (see paragraphs 13 and 14 above).
- 28 It indicates that Implementing Decision 2022/484 was taken on the basis of Article 69 of Regulation No 1307/2013 and that the imperative urgency invoked by Implementing Decision 2022/484 is mainly summarised in Recital 4, which refers to the ‘sharp commodity price surge’ (see paragraph 17 above).
- 29 The applicant notes that, at the time, there was not yet any talk of a risk of food shortages, but simply of a price surge that should be reduced by increasing production. In its view, however, the justification provided for the urgency is actually quite obscure, as the famous ‘commodities’ are not in any way defined and no figures or details are given regarding the ‘surge’. Pursuant to the principle of proportionality and the rule laid down in Article 69(1) of Regulation No 1307/2013, according to which derogation is only possible ‘to the extent and for such a period as is strictly necessary’, the applicant’s view is that the urgency should be justified in a more convincing, detailed and objective manner, and that the famous products that had been subject to a price increase should be identified. The applicant believes that the scope of the measure adopted should therefore be limited to the production of these commodities.
- 30 The applicant cites a note issued prior to the final adoption of the contested order, indicating that:
- ‘The [European] Commission has specified that Member States have significant room for manoeuvre with regard to the implementation of the proposed derogations.
- They are thus free to determine the geographical scope of application of derogations, the farming methods that they intend to authorise on land lying fallow (grazing, harvesting or cultivation), and the list of authorised crops.’
- 31 The applicant is unaware of from where the Wallonian Region gained this information, but it appears to be confirmed by the facts, and it is not admissible for a derogation to be so broad and vague. It therefore considers that, as a principal claim, Article 69(1) and (2) of Regulation No 1307/2013 have been infringed.
- 32 Insofar as the contested order is based on Implementing Decision 2022/484, the terms of which it reproduces, the applicant suggests that the Council of State ask the Court of Justice the question as to whether this Implementing Decision is

compliant with Article 69 of Regulation No 1307/2013, combined with Article 45 of Delegated Regulation No 639/2014.

Opposing party:

- 33 The opposing party maintains, firstly, that the plea put forward by the applicant is inadmissible, as it has not directly brought an action before the Court of Justice for the annulment of Implementing Decision (EU) 2022/484. It also considers that it seems doubtful that the Court could have a question referred to it for a preliminary ruling when the action for annulment, presuming it were possible, has been disregarded. It refers, in this regard, to the order of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90).
- 34 It then claims that there are no grounds for the plea. Its opinion is, firstly, that the applicant is mistaken in invoking infringement of Article 69(1) and (2) of Regulation No 1307/2013, as Implementing Decision 2022/484 is based precisely on Article 69(1). It then considers that the applicant does not expand on its plea in any way, and that it appears that the applicant simply does not like the justification for Implementing Decision 2022/484. The opposing party therefore argues that the plea is inadmissible.
- 35 Regarding the lack of reasons given for Implementing Decision 2022/484, the opposing party explains that the Court only annuls a legal measure on the basis of infringement of the obligation to state the reasons in certain cases. In its view, the Court checks, by putting the measure in its context, whether its reasons are sufficiently clear, unequivocal and allow it to be understood why the act was adopted. In this case, the opposing party claims that Implementing Decision 2022/484 expresses the reasons for its adoption on several occasions, i.e., ‘Russia’s invasion of Ukraine on 24 February 2022 has triggered a sharp commodity price surge and has an impact on the supply and demand for agricultural products’ therefore ‘In order to address this situation, the Union agricultural production potential both for food and feed supply should be increased’ (Recital 4 of Implementing Decision 2022/484). According to the opposing party, this recital contains the two conditions stated in the Court’s case-law [in particular in the judgment of 22 November 2018, *Swedish Match* (C-151/17, EU:C:2018:938)], namely, firstly the overall situation that led to it being adopted, i.e., the invasion of Ukraine by Russia and its consequences, and secondly, the objectives to be achieved, i.e., to increase the Union’s agricultural production potential. It also highlights Recital 6, claiming that the general situation and its objectives are identified.

4. Findings of the Council of State

- 36 The Council of State firstly recalls the provisions of Article 267 TFEU, and then points out that as the supreme administrative court of Belgium, it rules at last

instance and is therefore, in principle, bound to refer a question to the Court of Justice when the response is required in order to resolve the dispute.

37 The Court of Justice has specified the scope of this obligation in the following terms:

‘... in respect of national courts or tribunals against whose decisions there is no judicial remedy under national law, ... such courts or tribunals are required, where a question of [EU] law is raised before them, to comply with their obligation to make a reference, unless they have established that the question raised is irrelevant or that the [EU law] provision in question has already been interpreted by the Court or that the correct application of [EU] law is so obvious as to leave no scope for any reasonable doubt.’ [judgment of 15 September 2005, *Intermodal Transports* (C-495/03, EU:C:2005:552), paragraph 33]

38 The Court went on to state that:

‘The existence of such a possibility must be assessed in the light of the specific characteristics of [Union] law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the [Union].’ [judgments of 15 September 2005, *Intermodal Transports* (C-495/03, EU:C:2005:552, paragraph 33), and of 9 September 2015, *Ferreira da Silva e Brito and Others* (C-160/14, EU:C:2015:565, paragraph 37)]

39 In this case, Implementing Decision 2022/484 is based on Article 69(1) of Regulation No 1307/2013.

40 The applicant’s argument is therefore based on an erroneous premise insofar as it indicates that Implementing Decision 2022/484 is based on Article 69(2) of Regulation No 1307/2013, which requires ‘duly justified imperative grounds of urgency’, while paragraph 1 does not require the same degree of urgency.

41 However, the question referred for a preliminary ruling by the applicant amounts to questioning the Court about the validity of a European Union measure and the Council of State cannot itself rule on the validity of European Union law.

42 Thus, it is for the Court of Justice alone to determine whether the question referred for a preliminary ruling suggested by the applicant is admissible, despite the fact that the applicant did not directly bring an action before that court for the annulment of Implementing Decision 2022/484.

43 Similarly, it shall be the responsibility of the Court alone to rule as to whether the grounds for Implementing Decision 2022/484 are legally valid. In this respect, it has been held that the obligation to state reasons must apply to any act having legal effects which may be the subject of an action for annulment, i.e., all provisions adopted by the institutions, in whatever form, that have compulsory legal effects. The Court has also specified that this obligation to state reasons ‘requires that all of the measures concerned should contain a statement of the

reasons which led the institution to adopt them, in order that the Court can exercise its power of review and that the Member States and the third parties concerned may learn of the conditions under which the Community institutions have applied the Treaty’ (judgment of 1 October 2009, *Commission v Council*, C-370/07, EU:C:2009:590, paragraph 37).

- 44 It should also be pointed out that the criticism put forward regarding the proportionality of the measure, or more precisely of the statement of reasons for it, only takes into account Recital 4 of Implementing Decision 2022/484, without considering Recitals 5, 6, 7 and 8 (see paragraphs 18 to 21 above).
- 45 The Council of State will consequently refer the question suggested by the applicant to the Court of Justice for a preliminary ruling.

5. Question referred for a preliminary ruling

- 46 ‘Is Commission Implementing Decision (EU) 2022/484 of 23 March 2022 providing for derogations from Regulation (EU) No 1307/2013 of the European Parliament and of the Council and from Commission Delegated Regulation (EU) No 639/2014 as regards the implementation of certain conditions relating to the greening payment for claim year 2022 compliant with Article 69 of 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, in conjunction with Article 45 of Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation?’