

**Case C-36/21****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:**

22 January 2021

**Referring court:**

College van Beroep voor het bedrijfsleven (Netherlands)

**Date of the decision to refer:**

22 December 2020

**Appellant:**

Sense Visuele Communicatie en Handel vof (also trading under the name De Scharrelderij)

**Defendant:**

Minister van Landbouw, Natuur en Voedselkwaliteit

**Subject of the action in the main proceedings**

The main proceedings concern a dispute between Sense Visuele Communicatie en Handel vof (also trading under the name ‘De Scharrelderij’; ‘the appellant’) and the Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality) relating to the defendant’s refusal to compensate the appellant for the damage that it allegedly suffered as a result of the erroneous information provided by the defendant concerning the application of a provision of EU law.

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

This application under Article 267 TFEU concerns the application of the principle of the protection of legitimate expectations. More specifically, it concerns the question whether, if erroneous information supplied by a national administrative body involves an unambiguous provision of EU law, which excludes the possibility of invoking the principle of the protection of legitimate expectations

under EU law, it is possible to assess, on the basis of the principle of the protection of legitimate expectations under national law, whether that body has acted unlawfully in failing to compensate the person concerned.

### **Question referred for a preliminary ruling**

Does EU law preclude an assessment on the basis of the principle of the protection of legitimate expectations under national law of whether a national administrative body has created expectations contrary to a provision of EU law and has thus acted unlawfully under national law in failing to compensate the injured party for the damage suffered as a result, where the injured party cannot successfully invoke the principle of the protection of legitimate expectations under EU law because it involves an unambiguous provision of EU law?

### **Provision of EU law cited**

Article 50 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 ('Regulation No 1307/2013')

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

- 1 The appellant is a general partnership with two partners: A and B. A was born on 21 January 1977. The appellant has operated a pig-fattening farm since 2017.
- 2 The defendant has entrusted the implementation of the common agricultural policy in the Netherlands to the Rijksdienst voor Ondernemend Nederland (Netherlands Enterprise Agency; 'the RVO'). As the appellant did not have payment entitlements for 2018, it contacted the RVO several times to find out whether and how it could acquire those rights. It was apparent from the RVO's answers that the appellant would be eligible for payment entitlements from the national reserve for young farmers since A was under 41 years of age at some point in 2018. The RVO has confirmed this information by email and the RVO's website likewise stated in 2018 that, in order to qualify as a young farmer, the person had to be under 41 years of age in the claim year.
- 3 On the basis of that information, the appellant applied in its single application of 5 April 2018 for, inter alia, payment entitlements from the national reserve for young farmers. The defendant rejected this application on the basis that A was over 40 years of age in 2018 – having turned 41 on 21 January 2018 – and therefore did not fall under the age limit prescribed in Article 50(2)(b) of Regulation No 1307/2013. According to that provision, young farmers are persons who, in the year of submission, are 'no more than 40 years of age'. By decision of

22 March 2019 ('the contested decision'), the defendant dismissed the appellant's objection to that rejection as unfounded.

### **Main arguments of the parties to the main proceedings**

- 4 The parties to the main proceedings do not dispute that, in 2018, the appellant was not eligible for payment entitlements from the national reserve for young farmers. The appellant, however, is of the view that, as a result of the erroneous information provided by the defendant, it had suffered damage which the defendant should compensate. After all, having proceeded on the assumption that it was entitled to an allocation of payment entitlements from the national reserve, it did not purchase any payment entitlements for 2018, thereby forgoing direct payments in that year. In the appellant's view, since the contested decision did not take account of the abovementioned erroneous information and the resulting damage, it is contrary to the principle of the protection of legitimate expectations and is therefore unlawful.
- 5 The defendant does not deny that the appellant was misinformed by the RVO. According to the defendant, however, it follows from the case-law of the Court of Justice that the principle of the protection of legitimate expectations cannot be invoked in respect of an unambiguous provision of EU law, such as Article 50 of Regulation No 1307/2013 (see judgments of 26 April 1988, *Krücken*, 316/86, EU:C:1988:201, and of 20 June 2013, *Agroferm*, C-568/11, EU:C:2013:407). An act of a national body entrusted with the application of EU law which is contrary to that law cannot give rise to a legitimate expectation, regardless of whether it was in good faith.

### **Brief summary of the reasons for the referral**

- 6 The appellant was entitled to assume that the RVO represented the defendant's view. It is plausible that it, on the basis of the information supplied by the RVO, applied for an allocation of payment entitlements from the national reserve for young farmers and did not purchase any payment entitlements. As a result, it missed direct payments and suffered damage. The issue in these proceedings is whether the defendant has acted contrary to the principle of the protection of legitimate expectations and has thus acted unlawfully in failing to compensate the appellant for that damage. The appellant therefore does not claim that the defendant should still allocate to it payment entitlements from the national reserve for young farmers, but seeks compensation for the damage it has suffered.
- 7 It is clear from the case-law of the Court of Justice that where, in applying EU law, Member States are required to take account of the principle of the protection of legitimate expectations under EU law – as is the case here – there is no scope for the additional application of the principle of the protection of legitimate expectations under national law (see judgments of 13 March 2008, *Vereniging Nationaal Overlegorgaan Sociale Werkvoorziening*, C-383/06, EU:C:2008:165,

paragraphs 52 and 53, and of 20 June 2013, *Agroferm*, C-568/11, EU:C:2013:407, paragraph 51). The referring court infers from this that, even if the principle of the protection of legitimate expectations under national law afforded the appellant greater legal protection, it would not be able to invoke it successfully. This means that an expectation created by the national administrative body contrary to EU law cannot result in the appellant's still being entitled to payment entitlements from the national reserve for young farmers.

- 8 It is not clear to the referring court, however, whether the appellant is not entitled to compensation from the national administrative body for the damage suffered also as a result of the erroneous information provided by the defendant. In previous judgments, the referring court deemed there to be scope to assess, on the basis of the principle of the protection of legitimate expectations under national law, whether the national administrative body had created expectations and had acted unlawfully in failing to compensate the person concerned for the damage suffered as a result.
- 9 Also Advocate General Mancini, in his Opinion of 11 February 1988 (*Krücken*, 316/86, EU:C:1988:78), explained that the finding that the trader in question did not qualify for protection on the basis of the principle of the protection of legitimate expectations does not deprive the person who has suffered damage of the possibility of bringing an action for damages before the national courts against the bodies responsible for that loss. Furthermore, the Netherlands literature – in reference to the judgment of the Court of Justice of 16 July 1992, *Bélovo* (C-187/91, EU:C:1992:333, paragraph 11) – does not exclude the possibility that expectations created by a national administrative body contrary to EU law may give rise to an action for damages under national law.
- 10 Not all the arguments set out by Advocate General Kokott in her Opinion of 24 January 2013 (*Agroferm*, C-568/11, EU:C:2013:35) appear to preclude such compensation. The application of the EU law principle of the protection of legitimate expectations ensures that the uniform application of EU law in all Member States and that – in short – expectations contrary to EU law cannot lead to the individual's acquiring entitlements that are contrary to that EU law. Compensation payable by the national administrative body, however, does not adversely affect the EU budget, nor does it lead to serious distortions of competition between Member States. On the other hand, the argument referred to by Advocate General Kokott according to which the principle of the protection of legitimate expectations under EU law must be applied uniformly irrespective of whether the EU institutions or Member States apply EU law in specific cases appears to militate in favour of the exclusive application of the principle of the protection of legitimate expectations under EU law, which therefore leaves no scope for the application of the principle of the protection of legitimate expectations under national law.
- 11 In the light of the foregoing considerations, it is not beyond reasonable doubt that EU law precludes the assessment, on the basis of the principle of the protection of

legitimate expectations under national law, of whether, contrary to a provision of EU law, a national administrative body has created expectations and has thus acted unlawfully under national law in failing to compensate the injured party for the damage suffered as a result, where the injured party cannot successfully invoke the principle of the protection of legitimate expectations under EU law because it involves an unambiguous provision of EU law. Since the interpretation of EU law on this point is necessary for the resolution of the dispute before it, the referring court refers the question formulated above to the Court of Justice for a preliminary ruling.

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