

Case C-267/24

Summary of the request for a preliminary ruling under Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

16 April 2024

Referring court:

Administrativen sad Varna (Bulgaria)

Date of the decision to refer:

4 April 2024

Applicant:

‘Kanevi Komers DS’ EOOD

Defendant:

Zamestnik izpalnitelen direktor na Darzhaven fond ‘Zemedelie’

Subject matter of the main proceedings

Action against a decision whereby support for farmers applied for by the applicant under area-related direct payment schemes was awarded at a reduced rate and penalties were imposed against the applicant because it was found after a check that the areas declared did not correspond to the areas determined

Subject matter and legal basis of the request

Interpretation of EU law, Article 267 TFEU

Questions referred for a preliminary ruling

1. Is Article 15 of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 directly applicable by the Member States, or does the application thereof require the adoption of domestic legal provisions?

2. Must Article 15 of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 be regarded as providing that, for the proper notification of the competent authority by the beneficiary that the aid application or payment claim is incorrect or has become incorrect since it was lodged, it suffices that the information has been submitted in writing and received by the competent authority, without submission through a dedicated platform being provided for?

3. Must the restrictions introduced in Article 15 of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 to the rights of the beneficiary to inform, without incurring a penalty, the competent authority that the aid application or payment claim is incorrect or has become incorrect since it was lodged, that is to say, that ‘the beneficiary has not been informed of the competent authority’s intention to carry out an on-the-spot check’ and ‘the authority has [not] already informed the beneficiary of any non-compliances in the aid application or payment claim’, be interpreted as requiring evidence of the competent authority having informed the beneficiary of its intention to carry out a check or of any non-compliance in the aid application or payment claim? In that regard, where the competent authority did not inform the beneficiary of its intention to carry out an on-the-spot check or of any non-compliance in the aid application or payment claim, is the beneficiary authorised under that provision of the regulation to withdraw the application or claim before being informed by the administrative authority, where a check has already been carried out and non-compliance has been found by that authority?

[4]. Do recital 17 and Article 15 of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 allow a national rule whereby ‘the support applicant cannot withdraw the submitted application or claim in its entirety or in respect of one or more schemes ... therein if: 1. he or she has been informed of overlaps found therein in terms of the parcels with identified overlaps; 2. he or she has been informed that he or she has been selected for an on-the-spot check; 3. he or she has been subjected to an on-the-spot check and has been informed of non-compliances found in terms of the areas and/or animals for which those have been found’ as well as practice on the part of the national authority with regard to on-the-spot checks (whereby the beneficiary is not informed of the check or of its outcome) and practice on the part of the national authority which requires beneficiaries to give written notice of withdrawal through a dedicated system, for the sole purpose of easier processing of applications?

[5]. Is the third sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union (OJ C 202, 7.6.2016, p. 389) applicable in the main proceedings to the penalty imposed on the farmer under Article 19a of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 (*repealed by Commission Delegated Regulation (EU) 2022/1172 of 4 May 2022 supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with regard to the integrated administration and control system in the common agricultural policy and the application and calculation of administrative penalties for conditionality (OJ L 183/12, 8.7.2021) in accordance with its*

recital 16, which reads, 'In the interest of clarity and legal certainty, Delegated Regulation (EU) No 640/2014 should be repealed. However, that Regulation should continue to apply to aid applications for direct payments lodged before 1 January 2023, to payment claims made in relation to support measures implemented under Regulation (EU) No 1305/2013 and to the control system and administrative penalties as regards rules on cross-compliance. '), which was applicable in the 2019 marketing year and at the time the sanction was imposed by means of the letter of notification dated 5 December 2022 on the approval and payment of financial support paid under schemes and measures for area-related direct payments in the 2019 marketing year, file number [...] 05.12.2022, given that, at the time of examination of the case by the court, Commission Delegated Regulation (EU) No 40/2014 of 11 March 2014 in the version applicable from 1 January 2023 (available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0640>) does not contain Article 19a?

Provisions of European Union law and case-law relied on

Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross-compliance, recital 17 and Articles 15, 18, 19 and 19a

Commission Delegated Regulation (EU) 2022/1172 of 4 May 2022 supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with regard to the integrated administration and control system under the common agricultural policy and the application and calculation of administrative penalties for conditionality, recital 16 and Article 13

Charter of Fundamental Rights of the European Union, Article 49(1)

Judgment of 2 October 2014, *Vlaams Gewest*, C-525/13, ECLI:EU:C:2014:2254

Judgment of 29 April 2021, *Agenția de Plăți și Intervenție pentru Agricultură – Centrul Județean Tulcea*, C-294/19 and C-304/19, ECLI:EU:C:2021:340

Judgment of 7 April 2022, *SC Avio Lucos SRL*, C-116/20, ECLI:EU:C:2022:273

Provisions of national law relied on

Zakon za podpomagane na zemedelskite proizvoditeli (Law on Support for Farmers; 'the ZPZP'), Articles 41 and 43

Naredba No 5 ot 27.02.2009 za usloviata i reda za podavane na zayavlenia po shemi i merki za direktni plashtania (Regulation No 5 of 27 February 2009 on the

conditions and procedure for submitting applications under direct payment schemes and measures), Articles 1, 2, 4, 11, 12 and 14 thereof

Under Article 14(1) of that regulation, the support applicant may withdraw the application or claim in its entirety or in respect of one or more schemes or measures therein up to the date of payment under the relevant scheme or measure. The withdrawal is made by written application to the relevant Oblastna direksia na Darhzaven fond ‘Zemedelie’ (Provincial Directorate of the State Agricultural Fund, Bulgaria).

Article 14(6) of the regulation reads as follows: ‘The support applicant cannot withdraw the submitted application or claim in its entirety or in respect of one or more schemes or measures therein if: 1. he or she has been informed of overlaps found therein in terms of the parcels with identified overlaps;

2. he or she has been informed that he or she has been selected for an on-the-spot check;

3. he or she has been subjected to an on-the-spot check and has been informed of non-compliances found in terms of the areas and/or animals for which those have been found.’

Succinct presentation of the facts and procedure in the main proceedings

- 1 The applicant submitted an application for support under several schemes and measures for area-related direct payments for the 2019 marketing year. The support funds are provided by the European Agricultural Guarantee Fund (EAGF), the European Agricultural Fund for Rural Development (EAFRD) and the state budget of the Republic of Bulgaria.
- 2 Administrative checks and an on-the-spot check were carried out following the application. According to the information provided by the applicant in the action brought before the referring court, the State Agricultural Fund carried out a check of the areas declared in the application in the period from 8 to 28 August 2019. The areas declared by the company were found to be fully eligible under several schemes during that check. On request, the national court received information that a check had been carried out between 22 and 25 October 2019, there being no indication that the beneficiary was notified of the results of the check or informed that a check would be carried out. Neither the number nor the date of the order to carry out the check was communicated.
- 3 By means of a notification dated 4 November 2019, registered under file reference 02-250-2600/3865 at the office of the Provincial Directorate of the State Agricultural Fund – Targovishte, the applicant company withdrew the support application for areas enumerated in detail.

- 4 In that context, the Zamestnik izpalnitelen direktor (Deputy Executive Director) of the State Agricultural Fund issued the letter of notification dated 5 December 2022 with individual registration number 662032, file reference 01-2600/6992, on the approval and payment of financial support under the schemes and measures for area-related direct payments in response to application number 25/240419/09561 from the applicant for the 2019 marketing year.
- 5 The letter of notification awarded financial support to the applicant company, but the amounts claimed by it were reduced as follows (mainly because of the identified overdeclaration of areas):

by 13 631.34 leva (BGN) for sub-measure 13.1 – compensation payment in mountain areas; by BGN 2 275.96 for sub-measure 13.2 – compensation payment for other areas facing significant natural constraints; by BGN 46 475.43 under the single area payment scheme; by BGN 58.98 under the redistributive payment scheme; by BGN 22 779.74 under the coupled support scheme for fruit (main group); by BGN 20 082.53 under the coupled support scheme for fruit (plums and table grapes); by BGN 17 632.87 under the payment scheme for agricultural practices beneficial for the climate and the environment – green direct payment scheme; by BGN 1 436.87 under the coupled support scheme for vegetables (tomatoes, cucumbers, gherkins and aubergines); by BGN 12 801.05 under the coupled support scheme for vegetables (sweet peppers) and BGN 1 556.39 under the coupled support scheme for vegetables (potatoes, onions and garlic).

Pursuant to Articles 19 and 19a of Regulation No 640/2014, penalties, to be recovered from future payments, were applied as follows:

under the single area payment scheme: BGN 22 712.35; under sub-measure 13.1 – compensation payment in mountain areas: BGN 6 920.23; under sub-measure 13.2 – compensation payment for other areas facing significant natural constraints: BGN 1 533.15; under the coupled support scheme for fruit (main group): BGN 22 779.74.

- 6 With regard to the withdrawal of parcels, the defendant stated before the referring court that, in its view, the applicant's assertion that a withdrawal of areas had been effected by means of the letter of notification of 4 November 2019, file reference 02-250-2600/3865, was unfounded. A withdrawal, it argued, is only valid if it is made through the integrated administration and control system (IACS) in a manner and procedure which allows a trace be left in relation to the processing of the application. It explained that a function is integrated into the IACS which, when an application for full or partial withdrawal of areas is submitted, conducts an admissibility check with a view to confirming or disallowing withdrawal. Any other type of withdrawal, which does not allow an objective possibility for the admissibility of the withdrawal to be assessed, it added, is not entered in the file documenting the application procedure and is not treated as an application for withdrawal. In this context, the managing director of the applicant company was informed, in a letter dated 18 December 2019, reference 02-2600/6724#1, that he

was not permitted to effect the withdrawal of the parcels in a manner contrary to the requirements of Article 14(6) of Regulation No 5 of 27 February 2009.

The essential arguments of the parties in the main proceedings

- 7 ‘Kanevi Komers DS’ EOOD states that Regulation 2021/2115 does not apply, since it relates to the period from 2023 to 2027. It argues that the provisions of Regulation No 1306/2013 and Regulation No 640/2014 are applicable to the dispute in the main proceedings. The applicant submits that it informed the administrative authority of the withdrawal of the declared areas in due time and that it complied with the written form prescribed by Article 15 of Regulation No 640/2014. The order for the on-the-spot check, it states, does not list any parcels, which means that the administrative authority has no proof that the on-the-spot check was ordered for those precise areas which were withdrawn. Under Article 15 of Regulation No 640/2014, it argues, the administrative penalties provided for in that chapter do not apply with regard to the part of the aid application or payment claim as to which the beneficiary informs the competent authority in writing that the aid application or payment claim is incorrect or has become incorrect since it was lodged, provided that the beneficiary has not been informed of the competent authority’s intention to carry out an on-the-spot check and that the authority has not already informed the beneficiary of any non-compliances in the aid application or payment claim. The applicant submits that the information given by the beneficiary as referred to in Article 15(1) of the regulation has the effect that the aid application or payment claim is adjusted to the actual situation. According to the applicant, because of the direct application of the provision of EU law, the situations in which withdrawal is not permissible which are described in Article 14(6) of national Regulation No 5 likewise amount to two cases, namely the one described in point 1, in which the applicant, before submitting the application for withdrawal, has been informed of non-compliances found in his or her application, and the second case – a synthesis of the situations described in points 2 and 3 – in which the applicant has been informed, before submitting his or her application for withdrawal, that he or she has been selected for an on-the-spot check, which has been carried out and during which non-compliances have been found. However, the applicant asserts that neither of the two impediments to withdrawal apply in the present case.
- 8 The Deputy Executive Director of the State Agricultural Fund states that a reference for a preliminary ruling is not necessary, arguing that there is no contradiction between national law and EU law. The penalty provision from Article 19a of Regulation No 640/2014 was correctly applied, in his view, as the administrative act was adopted before 1 January 2023.

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

The dispute concerns the validity of the procedure for the withdrawal of the parcels followed by the applicant company and, in particular, whether the

company was entitled to withdraw the parcels for which it had applied for support, not through the IACS but in the manner described in Article 15 of Delegated Regulation No 640/2014 and Article 14 of national Regulation No 5 of 27 February 2009, that is to say by means of a written application addressed to the Provincial Directorate of the State Agricultural Fund, given that the applicant had not been informed of the competent authority's intention to carry out an on-the-spot check or of any non-compliance in the aid application or payment claim.

The dispute over the applicability of the national provision must be examined in the light of recital 17 and Articles 15 and 19a of Delegated Regulation No 640/2014, due consideration being given to the fact that that regulation has been repealed by Delegated Regulation 2022/1172, and to the third sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union.

There is no interpretation of these contentious issues by the Court of Justice of the European Union of which the national court could avail itself.

In formulating the questions referred for a preliminary ruling, the referring court notes that Article 15 of Regulation No 640/2014 provides as follows: 'The administrative penalties provided for in this Chapter shall not apply with regard to the part of the aid application or payment claim as to which the beneficiary informs the competent authority in writing that the aid application or payment claim is incorrect or has become incorrect since it was lodged, provided that the beneficiary has not been informed of the competent authority's intention to carry out an on-the-spot check and that the authority has not already informed the beneficiary of any non-compliances in the aid application or payment claim.'

With regard to the dispute in the main proceedings, the following questions arise regarding the application of the abovementioned provision:

First, how is the part of the provision worded 'the beneficiary informs the competent authority in writing that the aid application or payment claim is incorrect or has become incorrect since it was lodged' to be understood, and does it follow from its interpretation that it suffices for compliance with that provision that the information has been submitted in writing and received by the competent authority, or must the information be provided (as in the national practice) in a specific form and through a specific platform, even if such requirements are not set out in the regulation and there is no express provision assigning competence to Member States to lay down supplementary rules for the application of the regulation?

Second, how should one interpret the part of the provision worded 'provided that the beneficiary has not been informed of the competent authority's intention to carry out an on-the-spot check and that the authority has not already informed the beneficiary of any non-compliances in the aid application or payment claim', which requires an interpretation to answer the following questions: until what date, in relation to the submission of the beneficiary's request for the withdrawal

of areas, must the negative conditions ‘provided that the beneficiary has not been informed of the competent authority’s intention to carry out an on-the-spot check and that the authority has not already informed the beneficiary of any non-compliances in the aid application or payment claim’ be satisfied, and, given the wording of the cited provision, should it be interpreted as meaning that, if the beneficiary has not been informed that the authority intends to carry out a check and/or has not been informed of any non-compliance in its application or claim, the beneficiary is entitled to inform the competent authority in writing that the aid application or payment claim is incorrect or has become incorrect since it was lodged until such time as it is informed that the negative conditions for the submission of that information are present?

Article 19a of Delegated Regulation No 640/2014 provides for the penalties imposed on the company which is the applicant in the main proceedings.

The referring court notes that Article 19a, with the wording set out above, is contained in the version of Delegated Regulation No 640/2014 accessed on 3 April 2024 at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0640-20210903>.

Article 19a is absent from the subsequent version of Delegated Regulation No 640/2014, accessed on 3 April 2024 at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0640>.

The referring court notes that recital 16 of Delegated Regulation 2022/1172 reads, ‘In the interest of clarity and legal certainty, Delegated Regulation (EU) No 640/2014 should be repealed. However, that regulation should continue to apply to aid applications for direct payments lodged before 1 January 2023, to payment claims made in relation to support measures implemented under Regulation (EU) No 1305/2013 and to the control system and administrative penalties as regards rules on cross-compliance.’ Article 13 (‘Repeal’) reads as follows: ‘Delegated Regulation (EU) No 640/2014 is repealed with effect from 1 January 2023. However, it shall continue to apply to: (a) aid applications for direct payments lodged before 1 January 2023; (b) payment claims made in relation to support measures implemented under Regulation (EU) No 1305/2013; (c) the control system and administrative penalties as regards rules on cross-compliance.’

The question arises as to the validity of the expiry of Article 19a of Delegated Regulation No 640/2014 in its last version (the version applicable from 1 January 2023 and at the time of examination of the case).

If the question concerning the expiry of the penalty provision of Article 19a in the last version of Delegated Regulation No 640/2014 is answered in the affirmative, and given that the administrative act imposing the penalty under that legal basis – now no longer extant – was adopted on 5 December 2022, that is to say, before the entry into force of the last version of Delegated Regulation No 640/2014, but was

then challenged, and that the referring court is to decide on the legality of the administrative act after the expiry of Article 19a of the regulation, the question arises as to the applicability of the third sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union to the penalty applied.

Having regard to the facts of the main proceedings, EU law, national law and legal doctrine, the referring court considers that a reference for a preliminary ruling to the Court of Justice of the European Union under Article 267 TFEU is necessary for it to fulfil its obligation to interpret national law in conformity with EU law.

WORKING DOCUMENT