

Case C-343/21**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:**

2 June 2021

Referring court:

Varhoven administrativen sad (Bulgaria)

Date of the decision to refer:

19 May 2021

Appellant in the appeal in cassation:

PV

Respondent in the appeal in cassation:Zamestnik izpalnitelen direktor na Darzhaven fond ‘Zemedelie’
(Deputy Executive Director of the State Agricultural Fund)**Subject matter of the main proceedings**

Challenge before the courts to an administrative decision establishing a public debt by which the reimbursement of part of the grant received by a farmer under a programme financed by the European Agricultural Fund for Rural Development is ordered on the ground that the beneficiary is unable to comply with the commitments given by him or her and to ensure the use of the whole area originally declared. If it can be assumed that reparcelling has taken place, does the reason for the abovementioned inability constitute a circumstance for which the beneficiary is not responsible and which entitles him or her to refuse to reimburse the funds received?

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

Interpretation of EU law, Article 267 TFEU

Questions referred for a preliminary ruling

1. Does the interpretation of Article 45(4) of Regulation (EC) No 1974/2006 laying down detailed rules for the application of Regulation (EC) No 1698/2005 permit the assumption that, in a case such as the present one, a holding has been ‘reparcelled’ or has been the subject of ‘land-consolidation measures’ as a result of which the beneficiary is unable to comply with the commitments given by him or her?
2. If the first question is answered in the affirmative, does the fact that a Member State has not taken the measures necessary to allow the beneficiary’s commitments to be adapted to the new situation of the holding provide justification for not requiring reimbursement of the funds in respect of the period in which the commitment was effective?
3. If the first question is answered in the negative, how is Article 31 of Council Regulation (EC) No 73/2009 of 19 January 2009 to be interpreted in the light of the facts established in the main proceedings and what is the nature of the time limit under Article 75(2) of Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009?

Provisions of EU law relied on

Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), in particular Article 36(a)(iv)

Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), in particular recital 37 and Article 45(4)

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, in particular Article 31

Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector, in particular Article 75

Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures, in particular Articles 5, 6 and 18

Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, in particular Article 47(3) and (4)

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, in particular Articles 43 and 44

Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions, in particular Article 19

Provisions of national law relied on

Danachno-osiguriteln protsesualen kodeks (Tax and Social Security Procedure Code), in particular Article 162(1) and points 8 and 9 of Article 162(2)

Zakon za podpomagane na zemedelskite proizvoditeli (Law on support for farmers), in particular Article 1, Article 20(1), (2) and (4), Article 27(3), (5) and (7), and point 1 of Paragraph 1 of the Dopalnitelni razporedbi (Additional provisions) for that law

Zakon za sobstvenostta i polzvaneto na zemedelskite zemi (Law on ownership and use of agricultural land; 'the ZSPZZ'), Article 37c

Naredba N° 11 ot 6.04.2009 za usloviata i reda za prilagane na myarka 214 'Agroekologichni plashtania' ot Programata za razvitie na selskite rayoni za perioda 2007 – 2013 (Ordinance No 11 of 6 April 2009 on the conditions and detailed arrangements for the application of measure 214 'Agri-environmental payments' of the Rural Development Programme for the period 2007-2013), issued by the Ministar na zemedeliето i hranite (Minister for Agriculture and Food), in particular Articles 18 and 24, and point 4 of Paragraph 1 and Paragraph 2 of the dopalnitelni razporedbi (Additional provisions)

Naredba za izmenenie i dopalnenie na Naredba N°11 ot 2009 za usloviata i reda za prilagane na myarka 214 ‘Agroekologichni plashtania’ ot Programata za razvitie na selskite rayoni za perioda 2007 – 2013 (Ordinance amending and supplementing Ordinance No 11 of 2009 on the conditions and detailed arrangements for the application of measure 214 ‘Agri-environmental payments’ of the Rural Development Programme for the period 2007-2013 (published in Darzhaven vestnik [State Gazette; ‘DV’] No 29 of 2009, as amended and supplemented), Paragraph 5 of the prehodni i zaklyuchitelni razporedbi (transitional and final provisions)

Succinct presentation of the facts and procedure in the main proceedings

- 1 The appellant in cassation is a farmer who submitted an aid application under measure 214 ‘Agri-environmental payments’ of the 2007-2013 Rural Development Programme in 2013.
- 2 The application was approved and the appellant in cassation entered into a five-year agri-environmental commitment under that measure. One of the conditions that the appellant in cassation undertook to comply with was to carry out the activities specified in the application on the same agricultural area for five consecutive years. That area consists of 857 ha of agricultural land and is used by PV on the basis of agreements from 2012. Under Bulgarian law (Article 37c of the ZSPZZ), the conclusion of such agreements is a complex factual matter. In short, they are concluded for each financial year between the owners and/or the users of agricultural land situated nearby and regulate the use of the land not declared for cultivation in the geographical area of land in question. The agreements establish land groupings for the use of which aid may be claimed. The agreement on the establishment of land groupings or the subdivision thereof is considered to be the legal basis for aid for the farmers who use them. The appellant in cassation participates, with land leased by him, in the land groupings established in that manner. Agreements involving the appellant in cassation were also concluded for the following three financial years.
- 3 During those years, all the mandatory administrative controls and on-the-spot checks were carried out on the holding of the appellant in cassation, and amounts totalling 1 063 317.54 leva (BGN) were paid pursuant to his payment applications under measure 214 ‘Agri-environmental payments’.
- 4 For the 2016/2017 financial year, no agreement was reached on the use of all the land declared by PV. On 29 May 2017, almost ten months after he had become aware that he would not be entitled to use, in the 2016/2017 financial year, part of the land with which he had participated in the measure, and eight months after his entitlement to use it had ceased (that is to say, eight months after the expiry of the last agreement), the appellant in cassation gave notification of the termination of his agri-environmental commitment by letter sent to the territorial division of the Bulgarian paying agency (Darzhaven fond ‘Zemedelie’ in Targovishte). By letter

of 6 August 2018, which constitutes an individual administrative act, the appellant in cassation was notified of the termination of his agri-environmental commitment under the measure. The administrative decision terminating the multiannual commitment under the measure owing to failure to comply with the applicable conditions was served on 17 August 2018. It was not contested by the appellant in cassation and became final fourteen days after it had been served.

- 5 As a result, the zamestnik izpalnitelen direktor na Darzhaven fond 'Zemedelie' (Deputy Executive Director of the State Agricultural Fund) initiated proceedings for the issuance of an administrative decision establishing a public debt (Akt za Ustanovyavane na Publichno Darzhavno Vsemane; the 'AUPDV' or 'administrative decision'), claiming from the appellant in cassation reimbursement of 20% of the total amount disbursed (BGN 1 063 317.54), that is to say, BGN 212 663.51.
- 6 The AUPDV that had been issued established a public debt in the amount of BGN 212 663.51, representing 20% of the subsidy paid under the respective measure for the 2013-2016 campaigns, together with statutory interest for the period running from [the expiry of] the specified time limit for reimbursement (50 days from the date of notification) to the date of either payment by the beneficiary or set-off by the paying agency.
- 7 The administrative court of first instance found that the aid granted had been lawfully reduced and that there was no force majeure within the meaning of Article 31 of Regulation (EC) No 73/2009 in the present case. That court therefore dismissed PV's action against the AUPDV.
- 8 PV challenged the judgment delivered at first instance in cassation proceedings brought before the referring court, which takes the view that the resolution of the dispute requires an interpretation of EU law. For that reason, the Varhoven administrativen sad (Supreme Administrative Court; 'the VAS') makes the present request for a preliminary ruling.

Essential arguments of the parties in the main proceedings

- 9 In the administrative proceedings in which the AUPDV at issue was challenged, the appellant in cassation argues, in essence, that he had put the agricultural land declared by him to use for four years on the basis of an agreement pursuant to Article 37c of the ZSPZZ. He submits that, due to changes in the legislation in October 2015, many farmers withdrew from their agri-environmental commitments in 2015 and some of the parties to the previous agreements under Article 37c of the ZSPZZ opted not to conclude a new agreement for the 2016/2017 financial year. The appellant in cassation takes the view that these are all circumstances which he could not have foreseen at the time when he applied for the aid. He submits that they should therefore be regarded as constituting force majeure within the meaning of the national legislation.

- 10 The administrative authority cites a number of provisions of both national and EU law and does not accept the objections raised by PV.
- 11 The court of first instance finds that there is no force majeure within the meaning of Article 31 of Regulation (EC) No 73/2009. That court justified that finding on the ground that the beneficiary could not have had a legitimate expectation that the owners of agricultural land with whom he had concluded agreements under Article 37c of the ZSPZZ would renew those agreements after their one-year term had expired. The fact that the individuals had refused to conclude such agreements for the 2016/2017 financial year did not constitute a circumstance that was unforeseeable at the time when the commitment was given. It stated that, by participating in the programme with land belonging to others, the appellant in cassation exposed himself to the risk of not being able to comply with his agri-environmental commitment, and that risk materialised at the end of the five-year period.
- 12 That court takes the view that, even if force majeure or exceptional circumstances were to be assumed, the appellant in cassation did not comply with the strict time limit for notifying the administrative authority of those circumstances. Under national law, agreements pursuant to Article 37c of the ZSPZZ must be concluded by 30 August at the latest of a given year. In addition, the applicant was required to notify the paying agency by 9 September 2016 at the latest that there was a circumstance which objectively prevented him from complying with his commitment given for the 2016/2017 financial year. However, such notification did not take place until 29 May 2017.
- 13 In the cassation proceedings, PV submits that the court of first instance wrongly held that there was no force majeure or exceptional circumstances in the present case which would serve as justification for releasing him from the obligation to reimburse part of the payments received under the measure in question. Furthermore, that court erred in finding that the time limit for notification had not been complied with and that that time limit constitutes a strict time limit.
- 14 The appellant in cassation submits that the Ordinance amending and supplementing Ordinance No 11 of 6 April 2009 (in force since 20 October 2015) imposed new conditions under Measure 214 that were more stringent and more difficult to fulfil, and forced some of the beneficiaries of the measure to opt not to participate in the voluntary agreements under Article 37c of the ZSPZZ. He claims that, at the same time, the associated amendment to the ZSPZZ did not serve to regularise the situation. According to the appellant in cassation, these are exceptional circumstances which release him from the obligation to reimburse part of the grant received. In addition, the appellant in cassation also relies on Article 45(4) of Regulation (EC) No 1974/2006, which corresponds to Article 47(3) and (4) of Regulation (EU) No 1305/2013.
- 15 The respondent in cassation considers that the judgment at first instance is correct.

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

- 16 Article 45(4) of Regulation No 1974/2006 provides that: Where a beneficiary is unable to continue to comply with commitments given because the holding is re-parcelled or is the subject of public land-consolidation measures or of land-consolidation measures approved by the competent public authorities, Member States shall take the measures necessary to allow the commitments to be adapted to the new situation of the holding. If such adaptation proves impossible, the commitment shall expire and reimbursement shall not be required in respect of the period during which the commitment was effective.
- 17 The referring court takes the view that the provision governs three cases: the holding is re-parcelled or is the subject of public land-consolidation measures or of land-consolidation measures approved by the competent public authorities.
- 18 It considers that, according to a grammatical interpretation of the phrase 'the holding is re-parcelled' (taking into account the French version of the provision – 'son exploitation fait l'objet d'un remembrement'), it can be assumed that the first case concerns a case such as that in the present proceedings. This follows, first, from the schematic position of Article 45(4) of Regulation (EC) No 1974/2006 – namely after the provisions on the reinforcement of the agri-environmental obligation due to an increase in the area of the holding – which suggests that the provision in question concerns cases in which there is a reduction in the area of the holding due to the re-parcelling of some of its individual parts between the beneficiary and other persons (as in the present case). Moreover, the provision in question does not state any reasons for the re-parcelling, and it can be inferred from this that the reason is irrelevant and that what matters, above all, is an objective outcome, irrespective of the fact that the beneficiary had previously assumed that that outcome was possible.
- 19 However, the second and third cases governed by Article 45(4) of Regulation (EC) No 1974/2006 concern situations in which the beneficiary, irrespective of his or her will, is subject to administrative measures as a result of which he or she is not able to comply with the commitments given by him or her.
- 20 If it were assumed that the present case could be subsumed under one of the cases governed by Article 45(4) of Regulation (EC) No 1974/2006, the legal consequences of the termination of the agri-environmental commitment would not include an obligation to reimburse all or part of the aid received where the commitments are not adapted to the new situation of the holding, even though the Member State concerned has taken the necessary measures to that effect.
- 21 It follows that the provision in question confers rights on individuals, who could rely directly on it to establish that there is no claim against them which is the subject of the AUPDV at issue. On the other hand, if the present case is to be subsumed under one of the cases of the provision in question, it would be necessary to determine whether the fact that Bulgaria did not take the necessary

measures to adapt the beneficiary's commitments to the new situation of the holding serves as justification for not requiring reimbursement of the funds in respect of the period during which the commitment was effective.

- 22 In the event that the first question referred is answered in the negative, the referring court then asks how Article 31 of Regulation (EC) No 73/2009 is to be interpreted in the light of the present case.
- 23 The Supreme Administrative Court states that it requires interpretative guidance in order to give primacy of application to a provision of EU law. On the one hand, the beneficiary was aware, as the court of first instance also found, that the agreements on the use of land belonging to others under Article 37c of the ZSPZZ were each concluded for a period of one year and that the owners and users of part of the land for which he received aid might refuse to conclude an agreement for each of the following financial years. On the other hand, the appellant in cassation submits that the Ordinance amending and supplementing Ordinance No 11 of 6 April 2009 (in force since 20 October 2015) imposed new more stringent conditions under Measure 214, which forced some of the beneficiaries of the measure to opt not to participate in voluntary agreements under Article 37c of the ZSPZZ. The VAS confirms that the beneficiary would not have been able to rely on the enacted amendment to the ZSPZZ.
- 24 The referring court, ruling at final instance, finds that the question as to how Article 31 of Regulation (EC) No 73/2009 is to be interpreted, including with regard to the nature of the time limit for notification under Article 75(2) of Regulation (EC) No 1122/2009, is relevant to the resolution of the dispute.
- 25 The doubts as to the meaning of the provisions of EU law in their direct application serve as justification for a request for their interpretation by the Court of Justice of the European Union, which has jurisdiction in that regard.