

Case C-217/21

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:

6 April 2021

Referring court:

Administrativen sad Veliko Tarnovo (Administrative Court, Veliko Tarnovo, Bulgaria)

Date of the decision to refer:

19 February 2021

Applicant:

AGRO – EKO 2013 EOOD

Defendant:

Izpalnitelen direktor na Darzhaven fond ‘Zemedelie’

Subject matter of the main proceedings

Action brought against the tacit refusal of the Izpalnitelen direktor na Darzhaven fond ‘Zemedelie’ (Executive Director of the State Agricultural Fund; ‘the DFZ’) to take a decision on an application for aid submitted by a farmer for the 2018 campaign under the Rural Development Programme for the period 2014-2020 – Dispute between the parties as to whether there was such a tacit refusal

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

Interpretation of Article 75 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy

Article 267 TFEU

Questions referred for a preliminary ruling

1. Does the term ‘payment’ used in Article 75(1) of Regulation No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy signify the conclusion of the procedure initiated on the basis of a payment claim?
2. Does the actual receipt of the amount claimed by a farmer equate to a positive decision by the paying agency on the application for activation of payment entitlements or does the non-receipt of funds in the case of publicly notified payments for the measure concerned constitute a refusal of the claimed payment entitlements where the person has not been notified of the continuation of the procedure by way of new checks?
3. Does the time limit under Article 75(1) of Regulation No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy require the Member States to verify the eligibility conditions before its expiry, and can that verification continue only exceptionally?
4. Does failure to comply with the time limit under Article 75(1) of Regulation No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy constitute a tacit refusal to pay aid where a farmer has not been notified of the carrying out of supplementary checks and there is no written document in relation thereto?

Provisions of EU law relied on

Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549), in particular recital 27 and Articles 40, 63, 72 and 75

Charter of Fundamental Rights of the European Union, Article 41

Provisions of national law and national case-law relied on

1. Provisions of national law relied on

Administrativnoprotsesualen kodeks (Code of Administrative Procedure), Articles 21, 54, 57(1) and 58

Zakon za podpomagane na zemedelski proizvoditeli (Law on support for farmers), Articles 41 and 43

Naredba N° 7 ot 24.02.2015 za prilagane na myarka 10 ‘Agroekologia i klimat’ ot Programata za razvitie na selskite rayoni za perioda 2014 – 2020 (Ordinance No 7 of 24 February 2015 on the application of measure 10 ‘Agri-environment-climate measure’ of the Rural Development Programme for the period 2014-2020), Articles 50 and 52

2. National case-law

The referring court takes the view that the case-law of the Varhoven administrativen sad (Supreme Administrative Court) of the Republic of Bulgaria does not take a consistent stance on the question of whether the failure of the competent authority to take a decision on the aid application of a farmer constitutes a tacit refusal. Most of the case-law of that court proceeds on the assumption that there is no such refusal, since national law does not set a time limit for that decision. According to that case-law, Article 75 of Regulation No 1306/2013 provides for a time limit for payment, but not for the approval or refusal by administrative act of the payment of the aid claimed; paragraph 2 of that provision does not lay down a time limit for carrying out checks. At the same time, some of the judgments of the Supreme Administrative Court state that to accept an absence of a tacit refusal would be to deny farmers who applied for aid legal protection against the competent authority’s failure to act.

Succinct presentation of the facts and procedure in the main proceedings

- 1 AGRO – EKO 2013 EOOD is a commercial company that produces agricultural products and is registered as a farmer.
- 2 The company submitted an aid application with UIN (unique identification number) 04/210518/78639 for the 2018 campaign under the Rural Development Programme for the period 2014-2020, requesting support under the following schemes: ‘Single area payment scheme’, ‘Redistribution payment scheme’, ‘Payment scheme for agricultural practices beneficial for the climate and the environment – Green direct payment scheme’, ‘Scheme for coupled support for ewes and/or she-goats under selection control’, ‘Scheme for coupled support for fruit’, ‘Scheme for coupled support for vegetables’, ‘Scheme for coupled support for protein crops’, ‘Scheme for transitional national aid for agricultural land per hectare’, ‘Scheme for transitional national aid for ewes and/or she-goats, coupled to production’, Measure 10 ‘Agri-environment-climate measure’, ‘Compensation payments for mountain areas’ and ‘Compensation payments for other areas facing significant natural constraints’. The aid application was accompanied by the required documents and the data provided therein were automatically verified.

- 3 On-the-spot checks were carried out on part of the plots cultivated by AGRO – EKO 2013 EOOD, during which it was established that the eligibility conditions had been met.
- 4 AGRO – EKO 2013 EOOD received payments in respect of the requested support under the schemes and measures with the exception of Measure 10 ‘Agri-environment-climate measure’, whereby no notification letters were sent to it.
- 5 By request of 21 February 2020, processing number 02-040-2600/3712#4, addressed to the Executive Director of the DFZ, the company requested that payment be made on the basis of the aid application with UIN 04/210518/78639 for the 2018 campaign under the Rural Development Programme for the period 2014-2020 in respect of Measure 10 ‘Agri-environment-climate measure’. A decision on that request has not been taken.
- 6 In the course of the court proceedings, a letter (processing number 02-040-2600/37121/5/09.03.2020) was presented at the hearing on 24 June 2020 requesting a recalculation in respect of the aid application with UIN 04/210518/78639 for the 2018 campaign under the Rural Development Programme for the period 2014-2020 in respect of Measure 10 ‘Agri-environment-climate measure’ and the issuance of a notification letter concerning the approval and payment of the aid in relation to that measure. The basis for the request for recalculation is another letter from the Direksia ‘Tehnicheski inspektorat’ (Directorate of the ‘Technical Inspectorate’) of 8 November 2019 concerning a check on a parcel of land. No details regarding the receipt of a reply to the letter, the initiation of an administrative procedure, a correction and the issuance of a written decision to grant aid were provided by the time of the conclusion of the procedure for taking of evidence. It is apparent from a database printout submitted by the defendant that no payment had been made in respect of the requested support under Measure 10 for the 2018 campaign by the time of the conclusion of the procedure for taking of evidence on 20 January 2021. It is also clear from that printout that the amount claimed under that measure had not been approved.

Essential arguments of the parties in the main proceedings

- 7 According to the applicant, the Executive Director of the DFZ tacitly refused the aid application with UIN 04/210518/78639 for the 2018 campaign under the Rural Development Programme for the period 2014-2020 in respect of Measure 10 ‘Agri-environment-climate measure’. It claims that the decision must be taken within the time limit under Article 75(1) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy, since the applicant had not been informed that further supplementary checks were required in addition to the on-the-spot checks carried out on its holding.

- 8 The defendant considers that there is no tacit refusal by the Executive Director of the DFZ where there is an obligation to issue a separate administrative act. It submits that a tacit refusal is also not permissible because there is no provision for a time limit by which the administrative authority is to take a decision.

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

- 9 The parties are not in dispute as to the facts of the case. The applicant submitted an aid application for the 2018 campaign, on which the authority did not take a decision in writing, and no payment was made for Measure 10. The defendant has not issued an administrative act ordering either the suspension of the administrative procedure initiated on the basis of the application or the performance of necessary supplementary checks.
- 10 The dispute between the parties centres on the question of whether there is a tacit refusal by the defendant of support for the 2018 campaign.
- 11 In strict application of the rules provided for in the Administrativnoprotsesualen kodeks (Code of Administrative Procedure; ‘the APK’) on the adoption of individual administrative acts (which is undoubtedly what takes place when an administrative authority takes a decision on whether the payment conditions for the support claimed under the support schemes and measures are met), the time limit for issuing a notification letter is up to 14 days from the submission of the aid application. Obviously, the 14-day time limit under the APK is not sufficient to carry out the assessment of the eligibility conditions. Under such circumstances, a document suspending the procedure would have to be issued for each application. In view of the document flow that complicates the procedures for the consideration of aid applications for direct payments, it has been held in the case-law that the time limits under the APK are not applicable in procedures for the adoption of individual administrative acts on aid applications submitted for direct payments.
- 12 At the same time, the substantive provisions do not set specific time limits for issuing notification letters on the authorisation and payment of the support claimed under the support schemes and measures. Moreover, even the Zakon za podpomagane na zemedelskite proizvoditeli (Law on support for farmers) does not provide for the adoption of a separate administrative act on the aid application submitted. Article 43 of that law refers to ‘direct payments’, and lays down the conditions for making, refusing or reducing payments. This legislative approach is in line with Regulation Nos 1306/2013 and 1307/2016, in which aid applications are referred to as ‘applications for payment entitlements’ and payment deadlines are established.
- 13 The sub-statutory rules governing the conditions of Measure 10 ‘Agri-environment-climate measure’ establish the obligation of the paying agency (DFZ) to provide written notification to farmers, whereby that obligation is not

subject to a time limit and the scope of the information provided to farmers includes written notification of the aid paid to them.

- 14 At the same time, every payment made under each individual measure is published on the website of the paying agency (DFZ), with the result that farmers can also find out about effected payments through the media.
- 15 Since the administrative authority uses the terms ‘authorisation’, ‘approval’ and ‘payment’ as individual elements of the procedure for the final processing of aid applications, whereas Regulation No 1306/2013 does not provide for a requirement that the procedure for the examination of applications for payment entitlements must be concluded with the adoption of a separate administrative act, the present Chamber takes the view that clarification is required as to the nature of the time limit laid down in Article 75(1) of Regulation No 1306/2013 and as to the term ‘payment’ used in that provision.
- 16 According to the referring court, the examination of applications for direct payments without being subject to a time limit is not compatible with the principle of good administration enshrined in the Charter of Fundamental Rights of the European Union. The latter is applicable in the present case, as both the administrative authority and the national court are implementing provisions of EU law. It is a cause for concern in terms of legal protection and the possibility of payment of judicially recognised support that no direct payment notification letters have been issued from the 2016 campaign until today, as evidenced by the data on undelivered notification letters published on the defendant’s website.
- 17 The referring court is not aware of any case-law of the Court of Justice of the European Union on the interpretation of Article 75 of Regulation No 1306/2013 in the light of the right to good administration in the implementation of provisions of EU law by a Member State within the meaning of Article 41 of the Charter of Fundamental Rights of the European Union.