

**Case C-329/22****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:**

17 May 2022

**Referring court:**

Varhoven administrativen sad (Bulgaria)

**Date of the decision to refer:**

27 April 2022

**Appellant in cassation:**

Zamestnik izpalnitelen direktor na Darzhaven fond ‘Zemedelie’

**Respondent in cassation:**

IW

**Subject matter of the main proceedings**

Appeal in cassation concerning the refusal of financial support under measure 11 ‘Organic farming’ of the Rural Development Programme for the period 2014-2020, contained in a letter of notification from the zamestnik izpalnitelnia direktor na Darzhaven fond ‘Zemedelie’ (Deputy Executive Director of the State Fund for Agriculture). That letter was annulled by a judgment of the court of first instance, namely the Administrativen sad Haskovo (Administrative Court, Haskovo). In the cassation proceedings brought before the Varhoven administrativen sad (Supreme Administrative Court), the Deputy Executive Director of the State Fund for Agriculture challenged the judgment of the Administrative Court, Haskovo annulling the letter of notification, that is to say, the refusal of financial support.

**Subject matter and legal basis of the request**

Request for a preliminary ruling under Article 267 TFEU on the interpretation of the second sentence of Article 29(3) of Regulation (EU) No 1305/2013 and Articles 36, 37 and 38 of Regulation (EC) No 889/2008

### Questions referred for a preliminary ruling

1. Must the second sentence of Article 29(3) of 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 ('Regulation [EU] No 1305/2013') be interpreted as precluding a national provision such as Article 11(5) (formerly Article 11(4)) of Naredba No<sup>4</sup> of 24.02.2015 za prilagane na myarka 11 'Biologichno zemedelie' ot Programata za razvitie na selskite rayoni za perioda 2014-2020 (Ordinance No 4 of 24 February 2015 on the application of measure 11 'Organic farming' of the Rural Development Programme for the period 2014-2020), under which the possibility of receiving financial support for organic production during conversion is limited to a period not exceeding the minimum conversion periods under Article 36(1), Article 37(1) and Article 38 of Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control?
2. If the first question is answered in the affirmative, must the second sentence of Article 29(3) of Regulation (EU) No 1305/2013 be interpreted as meaning that the Member States are authorised to lay down by statute a maximum period for the granting of support for conversion to organic farming on the sole basis of the type of production and not on the basis of the particularities of each individual case?
3. How must the phrase 'may determine a shorter initial period corresponding to the period of conversion' ([second] sentence of Article 29(3) of Regulation (EU) No 1305/2013) be interpreted? Are the terms 'initial period' and 'period of conversion' used interchangeably or do they have different meanings?
4. Must the phrase 'may determine a shorter initial period corresponding to the period of conversion' in the [second] sentence of Article 29(3) of Regulation (EU) No 1305/2013 be interpreted as meaning that the entire 'organic farming' measure applies to activities for 'conversion' to organic farming for a period shorter than that referred to in the first sentence of Article 29(3) of that regulation, or must that phrase be interpreted as meaning that, within the framework of the overall commitment to 'organic farming', there is an initial period for activities during the conversion to organic farming?

### Provisions of European Union law and case-law relied on

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 ('Regulation [EU] No 1305/2013'), second sentence of Article 29(3)

Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control ('Regulation [EC] No 889/2008'), Articles 36, 37 and 38

### **Provisions of national law relied on**

Naredba N°. 4 ot 24.02.2015 za prilagane na myarka 11 'Biologichno zemedelie' ot Programata za razvitie na selskite rayoni za perioda 2014 – 2020 (Ordinance No 4 of 24 February 2015 on the application of measure 11 'Organic farming' of the Rural Development Programme for the period 2014-2020) ('Ordinance No 4 of 24 February 2015'), Article 11(5) (formerly Article 11(4));

The version of Article 11 applicable to the case (published in Darzhaven vestnik [State Gazette; 'DV'] No 16 of 2015, in force since 27 February 2015) reads as follows:

'(1) The annual amount of payments for conversion to organic farming (conversion period) is set as follows:

.....

(4) Payments under paragraph 1 shall be granted to the supported persons for a period not exceeding the minimum periods for conversion to organic farming which are laid down in Articles 36(1), 37(1) and 38(1) of Commission Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ 2008 L 250).'

The currently applicable version of Article 11 of Ordinance No 4 of 24 February 2015 reads as follows:

'Article 11. (1) The annual amount of payments for conversion to organic farming (conversion period) is set as follows:

.....

(4) (Amendment – DV No 18 of 2018, in force since 27 February 2018; annulled by judgment No 8834 of 2019 of the Supreme Administrative Court of the Republic of Bulgaria, [published in DV] No 97 of 2019, in force since 10 December 2019).

(5) (New – DV No 38 of 2020, in force since 24 April 2020) The supported persons shall receive payments under paragraph 1 for a period not exceeding the minimum periods for conversion to organic farming which are laid down in

Articles 36(1), 37(1) and 38(1) of Commission Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ 2008 L 250).’

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 IW is registered in the Integrated Administration and Control System with an individual registration number. For the second consecutive year, he submitted an application for support under the sub-area ‘Organic beekeeping’ of measure 11 ‘Organic farming’ of the Rural Development Programme 2014-2020, declaring 150 bee colonies for that sub-area in accordance with Annex 1 to Ordinance No 4 of 24 February 2015, which sets out the conditions and procedure for the implementation of measure 11 ‘Organic farming’.
- 2 In annex to the application for support for the 2016 marketing year, IW submitted a standard contract for the inspection of organic agricultural production in accordance with Regulation (EC) No 834/2007 and the detailed rules for the implementation of Regulation (EC) No 889/2008, concluded between him and LAKON OOD and concerning the carrying out of inspections of inspection sites at the address of the hives in the village of Belitsa, Haskovo region, housing 150 bee colonies, as well as an annex to that standard contract.
- 3 In connection with the final judgment of the Administrativen sad Sliven (Administrative Court, Sliven), which annulled the refusal of financial support under measure 11 ‘Organic farming’ of the Rural Development Programme 2014-2020 for the marketing year 2016, contained in the letter of notification of the Deputy Executive Director of the State Fund for Agriculture, and which referred the case back to the administrative authority, as a case concerning an administrative act, in order for it to take a new decision taking into account the instructions of that court, the Deputy Executive Director of the State Fund for Agriculture, having examined IW’s resubmitted application for the 2016 marketing year, issued a letter of notification of the approval and payment of financial support under measure 11 ‘Organic farming’. That once again constituted a refusal of financial support under the abovementioned measure, as a grant of 0 leva (BGN) was approved in respect of IW. The latter letter of notification states that, with regard to the bee colonies specified in the application for support for 2016 under measure 11 ‘Organic farming’, sub-area ‘Organic beekeeping’, 2016 is already the second year since the last commitment entered into by the applicant in that sub-area. The administrative authority considered that, in the specific case, the condition that the minimum periods for conversion to organic farming which are laid down in Article 11(4) of Ordinance No 4 of 24 February 2015 are not to be exceeded had not been met.
- 4 IW brought an action against the letter of notification, which was referred to the competent Administrativen sad Haskovo (Administrative Court, Haskovo).

### **The essential arguments of the parties in the main proceedings**

- 5 By his action against the letter of notification, IW raises the following objections:
  - a) In its letter of notification, the administrative authority failed to take into account the fact that Article 11(4) of the relevant version of Ordinance No 4 of 24 February 2015, issued by the Ministar na Zemedelieto i hranite (Minister for Agriculture and Food) (DV No 16 of 27 February 2015), provides that payments under paragraph 1 are to be granted to the supported persons for a period not exceeding the minimum periods for conversion to organic production which are laid down in Articles 36(1), 37(1) and 38(1) of Regulation (EC) No 889/2008, whereby the applicable and now annulled part of Ordinance No 4 of 24 February 2015 is unlawful and contrary to Article 38(3) of the abovementioned Regulation (EC) No 889/2008. In the interpretation of that provision, the words 'at least' are clearly prominent; they mean that the minimum conversion period is one year, whereas no provision is made for a maximum conversion period. It follows that conversion is individual for each participant in measure 11 'Organic farming' and may take three years or more, since conversion is not limited by a maximum period.
  - b) There is a material procedural irregularity: before the contested letter of notification was issued, the applicant was not informed, in accordance with the applicable national law, that proceedings concerning the adoption of an administrative act refusing payment of a grant had been instituted against him.
  - c) The contested decision did not state the elements of fact and the basis for the refusal to grant the total amount approved. It states that the amount was calculated after mandatory administrative and/or on-the-spot checks had been carried out. However, it did not specify which requirements had not been met, what the infringements were, and their nature. Tables containing data were attached, but without any explanations of that data, with the result that there is neither a factual nor legal basis for the refusal of payment.
- 6 The Administrative Court, Haskovo annulled the letter of notification concerning the effected approval and payment of financial support under measure 11 'Organic farming' of the Rural Development Programme 2014-2020 for the 2016 marketing year, awarding IW a grant of 0 BGN, and referred the case back to the Deputy Executive Director of the State Fund for Agriculture for a new decision taking into account the instructions regarding the application of the law that were given in the grounds for the judgment. The Administrative Court, Haskovo reached that legal conclusion by finding that the competent authority had issued the contested administrative act in the written form prescribed by law and without any material breaches of rules of administrative procedure, but not in accordance with substantive law.
- 7 First, the Administrative Court, Haskovo stated that, in a table on page 2 of the letter of notification, the administrative authority proceeded on the assumption that the requirement under Article 11(4) of Ordinance No 4 of 24 February 2015 not to exceed the minimum conversion periods was not met. Article 11(4), in the version applicable at the time of the application for support, provided that payments for conversion to organic farming (conversion period) were to be made



to supported persons for a period not exceeding the minimum periods for conversion to organic farming which were laid down in Articles 36(1), 37(1) and 38(1) of Regulation (EC) No 889/2008. The court stated that it is apparent from the abovementioned provisions that no conversion period is provided for in respect of bee colonies, with the result that the administrative authority erred in finding, contrary to substantive law, that the requirement not to exceed the minimum conversion periods had not been fulfilled, since the provisions referred to by the administrative authority do not lay down such minimum conversion periods. Article 38(3) of Regulation (EC) No 889/2008 provides that beekeeping products can be sold with references to the organic production method only when the organic production rules have been complied with for at least one year. At the time of application for the support, Article 11(4) of Ordinance No 4 of 24 February 2015, which was expressly referred to in the second letter of notification as the legal basis for the refusal of financial support, was not applicable with regard to the conversion periods for bee colonies under Article 38(3) of Regulation (EC) No 889/2008. Nevertheless, the administrative authority relied on that provision, which is not applicable in the present case, and unlawfully found that it follows therefrom that no financial support was to be granted for conversion to organic farming.

- 8 Second, following the annulment of Article 11(4) of Ordinance No 4 of 24 February 2015 by judgment of the Supreme Administrative Court, which was confirmed by the judgment of a five-judge panel of the Supreme Administrative Court, published in DV No 97 of 2019, the conditions for taking the annulment of that provision into account in pending proceedings are met, since there were no other substantive provisions with identical content at the time when the contested letter of notification was issued, with the result that the contested letter of notification was deprived of its legal basis following the annulment of Article 11(4) of Ordinance No 4 of 24 February 2015.
- 9 Third, the Administrative Court, Haskovo stated that it is necessary to take into account the fact that the administrative authority did not assert that the applicant had not fulfilled one of the basic requirements laid down by statute in Ordinance No 4 of 24 February 2015. Therefore, the reference to Article 11(4) of Ordinance No 4 of 24 February 2015 cannot be regarded as a proper legal basis for the refusal of support, since that provision does not cover, for the 2016 marketing year, the periods for conversion to organic beekeeping which were laid down in Article 38(3) of Regulation (EC) No 889/2008.
- 10 In conclusion, and in summary, the Administrative Court, Haskovo found that the reference to the Metodika za namalyavane i otkazvane na plashtania po myarka 11 'Biologichno Zemedelie' (Methodology for the reduction and refusal of payments under measure 11 'Organic Farming'), approved by order of the Minister for Agriculture and Food is unjustified, as the letter of notification did not specify any basic requirements for organic beekeeping which had not been fulfilled by the applicant. Moreover, the fact that the applicant did not fail to fulfil any basic conditions, together with the fact that he did fulfil other (management-related)

conditions, justifies the conclusion that the applicant should be granted payment of the claimed amount in accordance with his application for support under measure 11 'Organic farming' for the 2016 marketing year.

- 11 The judgment of the Administrative Court, Haskovo was challenged before the Supreme Administrative Court and is the subject of judicial review in cassation proceedings.
- 12 In the appeal in cassation, the Deputy Executive Director of the State Fund for Agriculture submits that the contested first-instance judgment is incorrect due to unfounded conclusions of the Administrative Court, Haskovo, a material breach of the rules of procedure and a breach of substantive law (grounds of cassation). He seeks to have the contested judgment set aside and costs awarded for both instances, namely [for the proceedings] before the Administrative Court, Haskovo and the Supreme Administrative Court, and, in the alternative, he raises an objection to the excessive fees of IW's lawyer.

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

- 13 The Supreme Administrative Court has heard several similar cases. The subject of the challenge in those cases was the refusal of financial support under measure 11 'Organic farming' of the Rural Development Programme for the period 2014-2020, contained in letters of notification specifying Article 11(5) (formerly Article 11(4)) of Ordinance No 4 of 24 February 2015, in conjunction with Articles 36, 37 and 38 of Regulation (EC) No 889/2008, as the legal basis for the refusal, following a finding that the applicants had exceeded the minimum periods for conversion to organic production. With respect to some applicants, there are further grounds for refusal. Doubts exist precisely in those cases in which the administrative authority cited an infringement of Article 11(5) (formerly Article 11(4)) of Ordinance No 4 of 24 February 2015 as a ground for refusal.
- 14 Despite the predominance of the case-law of the national court in which the contested letters of notification were annulled, the referring court has doubts as to the interpretation of Article 29 of Regulation (EU) No 1305/2013 and Articles 36, 37 and 38 of Regulation (EC) No 889/2008. It takes the view that an interpretation of those provisions is necessary for the decision to be given on the appeal in cassation before it, since secondary EU law requires a uniform interpretation of the applicable provisions, which is a matter for the Court of Justice of the European Union.
- 15 For the reasons set out above, the Supreme Administrative Court finds that it must stay the proceedings and submit a request for a preliminary ruling to the Court of Justice of the European Union.