

Case C-636/21**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:**

15 October 2021

Referring court:

Consiglio di Stato (Italy)

Date of the decision to refer:

13 October 2021

Applicant and appellant:

NN

Defendant and respondent:

Regione Lombardia

Subject matter of the main proceedings

Appeal before the Consiglio di Stato (Council of State, Italy) against the judgment of the Tribunale amministrativo regionale per la Lombardia (Regional Administrative Court, Lombardy, Italy) dismissing the action brought by a farmer to contest an order issued by Regione Lombardia (Lombardy Regional Authority) denying him aid intended as market support for the eggs and poultrymeat sectors in Italy following an avian influenza epidemic.

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

The reference for a preliminary ruling concerns the compatibility with the rules laid down in Article 220 of Regulation (EU) No 1308/2013 and Commission Implementing Regulation (EU) 2019/1323 of national legislation interpreted and applied so that aid to compensate the damage caused by avian influenza is granted only to undertakings in business on the date of submission of the application.

Article 267 TFEU

Question referred for a preliminary ruling

Does Article 220 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council and Commission Implementing Regulation (EU) 2019/1323 of 2 August 2019 preclude national legislation (such as the Ministerial Decree of 15 January 2020 enacted by the Italian Minister for Agriculture, Food and Forestry Policies) which is interpreted and applied so as to limit access to compensation for damage caused by avian influenza only to undertakings that have not ceased operating on the date of submission of the application?

Provisions of European Union law relied on

Article 107 TFEU

Article 42 TFEU

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, in particular Article 220.

Commission Implementing Regulation (EU) 2019/1323 of 2 August 2019 on exceptional market support measures for the eggs and poultrymeat sectors in Italy, in particular Article 2.

European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, in particular points 66, 75(f) and 365.

Provisions of national law relied on

Decreto del Ministero delle Politiche agricole, alimentari e forestali del 15 gennaio 2020 (Decree of the Italian Ministry of Agricultural, Food and Forestry Policies of 15 January 2020) – Rules for the implementation of Commission Implementing Regulation (EU) 2019/1323 on exceptional market support measures for the eggs and poultrymeat sectors in Italy, in particular Articles 3 and 4(2).

Succinct presentation of the facts and procedure in the main proceedings

- 1 NN, a farmer, owned three poultry farms. Due to public health restrictions caused by an avian influenza epidemic, he was forced to suspend operations on those farms several times between October and December 2017. In November 2019, NN sold the farms to his children.
- 2 On 15 January 2020, the Italian Ministry of Agricultural, Food and Forestry Policies adopted decreto ministeriale n. 383/2020 (Ministerial Decree

No 383/2020) laying down the rules for the implementation of Commission Implementing Regulation (EU) 2019/1323 on exceptional market support measures for the eggs and poultrymeat sectors in Italy. The ministerial decree provided for aid to compensate the damage caused by the avian influenza epidemic. In accordance with Article 3 in particular, the following were eligible to apply for aid: (a) egg producers; (b) hatcheries; (c) pullet, layer and poultrymeat producers; (d) egg packing centres. In addition, under Article 4(2) of the same decree, in order to be eligible for aid, the applicant had to prove that damage was caused by the implementation of the public health measures put in place to contain the avian influenza epidemic between 1 October 2017 and 30 June 2018.

- 3 On 10 April 2020, NN submitted an aid application to Lombardy Regional Authority pursuant to Ministerial Decree No 383/2020. Lombardy Regional Authority rejected the application on the grounds that, when it was submitted, NN did not own any poultry farms and so did not meet the requirement laid down in Article 3 of said ministerial decree. Specifically, that article limited access to aid to undertakings operating in the poultry sector. The fact that NN's business had been taken over by his children was deemed irrelevant.
- 4 NN brought an action against the decision of Lombardy Regional Authority before the Regional Administrative Court. However, the Regional Administrative Court dismissed the action on the grounds that the objective of Commission Implementing Regulation (EU) 2019/1323 was to help farmers who were still in business by compensating them for the damage suffered – although not to compensate the farmer, but to support the market, and therefore active businesses. Moreover, according to the Regional Administrative Court, the farm sold to NN's children may have been eligible for the aid, but the application should have been made by the new owners rather than their father, who was no longer a farmer.
- 5 By appeal lodged on 19 March 2020, NN appealed the judgment of the Regional Administrative Court before the Council of State. In that appeal, NN expressly requested that the question of the correct interpretation of Article 220 of Regulation (EU) No 1308/2013 and Commission Implementing Regulation (EU) 2019/1323 – in other words, the provisions of EU law implemented by Ministerial Decree No 383/2020 of 15 January 2020 – be referred to the Court of Justice under Article 267 TFEU.

The essential arguments of the parties in the main proceedings

- 6 According to the interpretation of Lombardy Regional Authority, upheld by the Regional Administrative Court, Article 3 of Ministerial Decree No 383/2020 limits access to aid to undertakings still operating in the egg and poultrymeat sector in Italy at the time of submission of the application. However, undertakings that suffered damage from the avian influenza epidemic and subsequently ceased operating are excluded from the scope of beneficiaries.

- 7 That interpretation is inferred from the subject of Ministerial Decree No 383/2020, which is described as market support for the poultrymeat sector in Italy. The ‘market support’ economic measure, although determined by a harmful event that necessarily occurs in the past, is forward-looking since it benefits farms that, at the time of the application, are still operating and form an integral part of the market. The market is defined as all farmers operating in it at any given time, and not those who operated in it before the provision of the aid.
- 8 NN contests the interpretation of Ministerial Decree No 383/2020 endorsed by Lombardy Regional Authority. According to NN, the aid provided for in that decree is compensation for damage suffered and, as such, should be granted to those farmers operating at the time of the harmful event, even if they later ceased operating.
- 9 NN further submits that the interpretation of Lombardy Regional Authority is unfair, since it deprives of the possibility of accessing aid the undertakings most severely affected by the avian influenza epidemic – in other words, those forced to cease operating before compensation was granted due to their accumulated debts.
- 10 Lastly, NN points out that granting compensation to all undertakings operating at the time of the harmful event might encourage compliance with public health measures, since operators would be able to count on being compensated for the damage suffered.

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

- 11 First, the Council of State notes that the outcome of the dispute depends on the interpretation of Article 220 of Regulation (EU) No 1308/2013 and Commission Implementing Regulation (EU) 2019/1323, which are the EU provisions implemented by Ministerial Decree No 383/2020 of 15 January 2020.
- 12 The Council of State also points out that the literal interpretation of EU State aid rules in the agricultural sector neither confirms nor rules out that poultry farms must be operating on the date of the application and/or payment of the benefit. Therefore, it would seem that the correct interpretation of those rules must be inferred from the objective pursued by the legislation.
- 13 According to the referring court, the purpose of EU State aid rules in the agricultural sector is to support the market and to act as an incentive – in other words, to encourage the creation or development of initiatives in that sector. In the opinion of the Council of State, that objective appears to exclude from the scope of beneficiaries undertakings that ceased operating before submitting their application and are therefore no longer part of the market that the legislation is designed to support. If the farm has been sold, the new owners should be considered eligible beneficiaries, since they help to form the market to be supported.

- 14 Moreover, in the view of the referring court, the principle of market support cannot be overlooked even in exceptional circumstances, such as epidemics of infectious animal diseases. According to the Council of State, even in exceptional circumstances the provisions at issue reasonably assume that there is a functional link between the aid granted to undertakings that are still operating and the objective of providing market support.
- 15 However, the Council of State notes that the EU rules do not seem to require an investment plan to be submitted so as to provide an assurance that the aid will be pumped back into the reference market, thereby supporting it in the future.
- 16 Lastly, the referring court points out that, even if the aid in question were treated as a form of reparation and could be granted to all farmers who suffered damage, irrespective of their operational status at the time of the application, that characterisation could fulfil, albeit indirectly, the objective of providing market support. The provision of compensation as a means of reparation encourages farmers to comply with public health regulations, and therefore increases consumer confidence in the measures taken to tackle epidemics.

WORKING DOCUMENT