

Case C-286/23**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:**

3 May 2023

Referring court:

Curtea de Apel Braşov (Romania)

Date of the decision to refer:

10 April 2023

Applicant:

Asociația Crescătorilor de Vaci ‘Bălțată Românească’ Tip Simmental

Defendants:

Genetica din Transilvania Cooperativă Agricolă

Agenția Națională pentru Zootehnie ‘Prof. dr. G.K. Constantinescu’

Subject matter of the main proceedings

Action for annulment of the decision recognising the defendant Genetica din Transilvania Cooperativă Agricolă (‘Genetica’) as a breed society and of the decision approving its breeding programme for ‘Bălțată Românească’ cattle – decisions adopted by the defendant Agenția Națională pentru Zootehnie ‘Prof. dr. G.K. Constantinescu’ (‘the ANZ’) on the basis of Regulation (EU) 2016/1012

Subject matter and legal basis of the request

Interpretation is sought, pursuant to Article 267 TFEU, of several provisions of Regulation (EU) 2016/1012, namely: recitals 21 and 24, Article 4(3)(b) and Articles 8, 10 and 13 thereof, as well as point A(4) and point B(2)(a) of Part 1 of Annex I thereto.

Questions referred for a preliminary ruling

1. Should Article 4(3)(b) of Regulation (EU) 2016/1012, read in conjunction with point A(4) of Part 1 of Annex I to that regulation, as well as recital 24 thereof, be interpreted as meaning that a breed society may be recognised even if its intention is merely to attract breeders who are already entered in another approved breeding programme of another society, by signing applications or undertakings to that effect, or is it necessary that, on the date that the application for recognition is submitted, those breeders actually form part of the portfolio of the society requesting recognition?
2. Should Article 13 of Regulation (EU) 2016/1012 and point B(2)(a) of Part 1 of Annex I to [that regulation], read in conjunction with recital 24 thereof, be interpreted as meaning that breeders are free to choose the programmes for the improvement of the breed in which to enter their purebred breeding animals and, if so, may that freedom be restricted by the need to avoid prejudicing or compromising a breeding programme in which those breeders are already participating, as a result of those breeders transferring or undertaking to transfer to another breeding programme which is yet to be approved?
3. Should Article 10(1) of Regulation (EU) 2016/1012, read in conjunction with recital 21 thereof, be interpreted as meaning that, when one of the conditions described in points (a) to (c) of Article 10(1) of that regulation is satisfied, the competent authority which has recognised the breed society is obliged to refuse to approve a breeding programme that would compromise another breeding programme as regards the aspects referred to in [that article], or does the use of the expression ‘... may refuse ...’ mean that the authority is afforded a margin of discretion in that regard?
4. Should Articles 8 and 10 of Regulation (EU) 2016/1012, read in conjunction with recital 21 thereof, be interpreted as meaning that, where a breeding programme whose main objective is the improvement of the breed is already being implemented in a Member State, it is permissible for a new breeding programme to be approved in the same State (the same geographical area) for the same breed, the main objective of which is also the improvement of the breed, as part of which breeding animals participating in the breeding programme already being implemented may be selected?

Provisions of European Union law relied on

Regulation (EU) 2016/1012 of the European Parliament and of the Council of 8 June 2016 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof and amending Regulation (EU) No 652/2014, Council Directives 89/608/EEC and 90/425/EEC and repealing certain acts in the area of animal breeding (‘Animal Breeding Regulation’); recitals 21 and 24,

Article 4(3)(b) and Articles 8, 10 and 13 thereof, as well as point A(4) and point B(2)(a) of Part 1 of Annex I thereto

Provisions of national law relied on

The provisions of national law relied on are similar to the provisions of Regulation 2016/1012 in respect of which interpretation is sought by the referring court.

Legea zootehniei nr. 32/2019 (Zootechnical Law No 32/2019):

- Paragraph 1 of Article 24 provides that the competent State zootechnical authority is to recognise breed societies or breeding operations. That authority is to evaluate and approve the breeding programmes put forward by a breed society or by a breeding operation, if the conditions set out in paragraph 2 of that article (a paragraph which, for the most part, reproduces the wording of Article 8(3) of Regulation (EU) 2016/1012) are satisfied. Paragraph 3 of Article 24 provides that the competent State zootechnical authority which has recognised a breed society may refuse to approve a breeding programme if the breeding programme put forward by the society concerned would compromise a breeding programme carried out by another [breed] society for the same breed, which has already been approved, as regards one of the elements referred to in points (a) to (c) of that paragraph, corresponding to points (a) to (c) of Article 10(1) of Regulation (EU) 2016/1012. Paragraph 4 of Article 24 provides that, when making a decision under paragraph 3 of that article, the competent authority is to take into account the number of breeding programmes already approved for that breed and the size of the breeding populations covered by those breeding programmes.

Hotărârea Guvernului nr. 1188/2014 privind organizarea și funcționarea Agenției Naționale pentru Zootehnie 'Prof. dr. G.K. Constantinescu' (Government Decision No 1188/2014 on the organisation and operation of the National Zootechnical Agency 'Prof. dr. G.K. Constantinescu'):

- Article 1(1) provides that the ANZ is a specialised body of the central public administration, with legal personality, accountable to the Ministerul Agriculturii și Dezvoltării Rurale (Ministry of Agriculture and Rural Development);
- Article 5(a), (e) and (i) provides that the ANZ is the State authority responsible for the recognition of breed societies and breeding operations, the approval of the breeding programmes for breeding animals carried out by those societies and operations, and the authorisation, in accordance with Article 27(3) of Regulation (EU) 2016/1012, of third parties designated by the breed societies or breeding operations to carry out performance testing and genetic evaluation;

- Article 5¹ provides that the recognition, authorisation and approval procedures referred to in Article 5(a) to (e) and (i) are to be developed by the ANZ and approved by an order from the Minister for Agriculture and Rural Development.

Succinct presentation of the facts and procedure in the main proceedings

- 1 By Decision No 726 of the ANZ of 24 November 2020, the defendant Genetica was recognised as a breed society for the purpose of implementing a breeding programme with purebred breeding animals entered in the breeding book kept by that society.
- 2 By Decision No 779 of the ANZ of 2 December 2020, the defendant Genetica obtained approval for the breeding programme for ‘Bălțată Românească’ cattle.
- 3 Those decisions were adopted on the basis of Regulation (EU) 2016/1012 and the corresponding provisions of national law regulating the requirements for recognition of breed societies and breeding operations and approval of their breeding programmes.
- 4 The applicant Asociația Crescătorilor de Vaci ‘Bălțată Românească’ Tip Simmental (Association of breeders of ‘Bălțată Românească’ Simmental cattle) is a breed society that was previously recognised by the ANZ and whose breeding programme, approved by the ANZ in 2011 and currently in progress, concerns the same breed of cattle – Bălțată Românească – covered by the defendant Genetica’s approved breeding programme.
- 5 In those circumstances, the applicant has brought an action before the referring court for annulment of the two decisions mentioned above [(collectively, ‘the contested decisions’)], challenging the lawfulness of the recognition of the defendant Genetica as a breed society and of the approval of its breeding programme.

The essential arguments of the parties in the main proceedings

- 6 In support of its action for annulment, the applicant relies, in the first place, on grounds of a procedural nature which have a bearing on the lawfulness of the contested decisions. Thus, the applicant argues that the ANZ failed to comply with internal procedures, inasmuch as the contested decisions were adopted regardless of the proposal made by internal departments of the ANZ to reject Genetica’s application for recognition as a breed society. The applicant also claims that the procedure for recognising breed societies and approving breeding programmes is unlawful as a whole, on the ground that it was not adopted by an order of the Minister for Agriculture and Rural Development, thereby infringing Article 5¹ of Government Decision No 1188/2014.

- 7 In the second place, the applicant claims that the approval of the defendant Genetica's breeding programme adversely affects the applicant's breeding programme, that has already been approved, on the following grounds: the contested breeding programme covers the same geographical territory and the same breed of cattle, and Genetica works with animal breeders entered in the applicant's breeding programme; approval of the new breeding programme causes significant financial loss as a result of the withdrawal of 34 000 head of cattle from the applicant's programme, the loss of the investments made in setting up a purebred animal sperm bank and the loss of the investments made in creating software adapted to the applicant's objectives. The risk of compromising the applicant's breeding programme would therefore render Article 10(1) of Regulation (EU) 2016/1012, recital 21 thereof and Article 24(3) of Zootechnical Law No 32/2019 applicable.
- 8 In the third place, the applicant alleges infringement of Article 4(3)(b) of Regulation (EU) 2016/1012, inasmuch as the defendant Genetica did not demonstrate, on the date on which it was recognised, that it had a sufficiently large population of purebred breeding animals for the implementation of the breeding programme, since the animal breeders on which its breeding programme was based had not yet entered that programme, but were to come from the applicant's breeding programme. Nor did the defendant Genetica provide proof of registration of an application for approval of a breeding programme at the same time as the application for recognition as a breed society was made, which would result in infringement of Article 4(3)(d) of Regulation (EU) 2016/1012.
- 9 In its defence, the defendant Genetica contends that the alleged failure to comply with the internal procedures of the ANZ is irrelevant to the addressees of the administrative acts and that, since the contested decisions comply with the provisions of Regulation (EU) 2016/1012, their lawfulness is not affected by any infringement of the internal procedural rules on the recognition of breed societies and the approval of their breeding programmes.
- 10 Nor, according to Genetica, can the risk of compromising the applicant's breeding programme constitute a ground for the illegality of the contested decisions, since, in accordance with the provisions of Regulation (EU) 2016/1012, the recognition of a breed society does not exclude *beyond argument* the recognition of other breed societies and the approval of breeding programmes for the same breed; the financial loss resulting from the withdrawal of a number of animal breeders from the applicant's programme arose after they terminated the contracts concluded by the applicant and not as a result of the contested decisions.
- 11 Lastly, as regards the failure to meet the requirements for recognition as a breed society, Genetica contests the applicant's arguments concerning the lack of evidence of the animal population and contends that Regulation (EU) 2016/1012 provides that, at the time when the application for approval as a breed society is submitted, only a draft version of the breeding programme is to be submitted and not the breeding programme in its definitive form.

- 12 The ANZ indicates that it exercises its powers of recognition of breed societies and approval of breeding programmes on the basis of Regulation (EU) 2016/1012, which is directly applicable.
- 13 As regards the lawfulness of the recognition of the defendant Genetica as a breed society and the alleged risk of compromising the applicant's breeding programme, the ANZ points out that Genetica filed the lists of the animal breeders and the number of animals in respect of which entry into the breeding programme was requested, that, under Regulation (EU) 2016/1012 and in keeping with the principle of contractual freedom, animal breeders are free to choose the breeding programmes in which to enter their animals and that approval of a breeding programme post-dates recognition as a breed society.

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

- 14 The first question referred for a preliminary ruling raises the issue of whether a breed society may be recognised when it has signed only undertakings to enter the programme in respect of some or all of the animal breeders, without those animal breeders already being included in the society's portfolio.
- 15 That question has been raised in order to resolve the issue of the lawfulness of the decision to recognise the defendant Genetica as a breed society in the light of the applicant's argument that the animal breeders interested in Genetica's breeding programme had not yet entered that programme, but were to come from the applicant's breeding programme, in breach of the relevant provisions of Regulation (EU) 2016/1012.
- 16 In accordance with Article 4(3)(b) of Regulation (EU) 2016/1012, read in conjunction with point A(4) of Part I of Annex I to that regulation, a society seeking recognition as a breed society must demonstrate in its application that, in respect of each breeding programme, it has a sufficiently large population of breeding animals within the geographical territories to be covered by that programme.
- 17 Furthermore, it is apparent from the third sentence of recital 21 of that regulation that purebred breeding animals may be selected from another breeding programme. According to that recital, the protection of the economic activity of a recognised breed society 'should not justify the refusal ... [to approve] a further breeding programme or [to approve] the geographical extension of an existing breeding programme, which is carried out on the same breed, or on breeding animals of the same breed that can be recruited from the breeding population of a breed society that is already carrying out a breeding programme on that breed'.
- 18 The second question referred for a preliminary ruling calls into question the right or freedom of animal breeders to choose the breeding programmes in which to participate, abandoning a programme in which they are already participating and entering another programme which is yet to be approved. In this regard,

interpretation is sought of the following provisions of Regulation (EU) 2016/1012: Article 13(1) thereof, which provides for the right of animal breeders to participate in an approved breeding programme and the right to join that breed society; point B(2)(a) of Part 1 of Annex I thereto and recital 24 thereof, which provide that breeders have free choice in the selection and breeding of their breeding animals.

- 19 The referring court takes the view that it is necessary to determine the extent to which the freedom of those breeders to choose between a number of breeding programmes may be restricted by the need to avoid prejudicing or compromising a breeding programme in which those breeders are already participating, as a result of them transferring or undertaking to transfer to another breeding programme which is yet to be approved (in the present case those breeders actually transferred to that programme after it had been approved).
- 20 By the third question referred for a preliminary ruling, the referring court requests an analysis of the issue of whether there is an obligation or merely a possibility, on the part of the competent national authority, to refuse to approve a breeding programme where the conditions laid down in Article 10 of Regulation (EU) 2016/1012 are satisfied.
- 21 More specifically, that court wishes to clarify whether the use of the expression 'may refuse' in Article 10 of Regulation (EU) 2016/1012 means that the competent national authority is recognised as having a margin of discretion or whether that authority is required to refuse to approve a breeding programme where that programme would compromise a breeding programme carried out by another breed society in respect of the same breed, which has already been approved in the Member State concerned, as regards at least one of the elements referred to in Article 10(1) of that regulation.
- 22 The referring court states that, at this stage of the proceedings, it cannot yet rule on the prevalence of the proposal put forward by the internal department of the ANZ to reject the defendant's breeding programme.
- 23 As regards the fourth question referred for a preliminary ruling, the referring court states that it calls into question the possible coexistence of two or more breeding programmes, with similar objectives, for the same breed, in the same geographical area, in a situation in which the new breeding programme, which is yet to be approved, is based on selecting breeding animals originating from a breeding programme that is already being implemented.
- 24 In this context, interpretation is sought of Articles 8 and 10 of Regulation (EU) 2016/1012 relating to the conditions for approval of breeding programmes, which are directly relevant to the case brought before the referring court.