

Case C-350/23**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:**

7 June 2023

Referring court:

Verwaltungsgerichtshof (Austria)

Date of the decision to refer:

1 June 2023

Appellant on a point of law:

Vorstand für den Geschäftsbereich II der Agrarmarkt Austria

Interested party:

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Subject matter of the main proceedings

Agriculture – Common agricultural policy – Direct payments – Livestock aid

Subject matter and legal basis of the request

Article 267 TFEU – Interpretation of European Union law

Questions referred for a preliminary ruling

1. In the case of a livestock aid application within the meaning of point 15 of Article 2(2) of Regulation (EU) No 640/2014, submitted for the year 2020 for the grant of coupled support, for which, for the purposes of Article 21(4) of Regulation (EU) No 809/2014, use is made of the information in the computerised database for bovine animals, is a notification that is made only after the expiry of the period of 15 days after the animals (bovine animals) have been moved to a mountain pasture pursuant to Article 2(2) and (4) of Commission Decision 2001/672/EC of 20 August 2001, in conjunction with Article 7(2) of Regulation (EC) No 1760/2000, an incorrect entry in the computerised database for bovine animals that, pursuant to Article 30(4)(c) of Regulation (EU) No 640/2014, is not

of relevance for the verification of the compliance with the eligibility conditions other than the condition referred to in Article 53(4) of Regulation (EU) No 639/2014 under the aid scheme or support measure concerned, with the result that the animals concerned are only to be considered not to be determined if such an incorrect entry is found during at least two checks within a period of 24 months?

2. If the first question is answered in the negative:

For the purposes of Article 15(1) and Article 34 of Regulation (EU) No 640/2014, do the administrative penalties provided for in Chapter IV of Regulation (EU) No 640/2014 apply to the application for coupled support referred to in the first question where the farmer makes a notification in writing to the competent authority in accordance with Article 2(2) and (4) of Commission Decision 2001/672/EC of 20 August 2001, in conjunction with Article 7(1) and (2) of Regulation (EC) No 1760/2000, concerning the movement of the animals to a mountain pasture, where it is evident from the notification that it is late with regard to the 15-day period laid down in those provisions, in so far as the competent authority has not previously informed the applicant of an intention to carry out an on-the-spot check and has also not already informed that applicant of any non-compliances in the aid application?

Provisions of European Union law relied on

- Regulation (EC) No 1760/2000 of the European Parliament and of the Council: Articles 2, 3, 5 and 7
- Commission Decision No 2001/672/EC of 20 August 2001: recital 3 and Articles 1 and 2
- Regulation (EU) No 1307/2013 of the European Parliament and of the Council: Articles 1 and 52 and Annex I
- Regulation (EU) No 1306/2013 of the European Parliament and of the Council: Articles 67, 68, 69 and 77
- Commission Implementing Regulation (EU) No 809/2014: Article 21(4)
- Commission Delegated Regulation (EU) No 639/2014: Article 53
- Commission Delegated Regulation (EU) No 640/2014: Articles 2, 15, 30, 31 and 34

Provisions of national law relied on

- Marktordnungsgesetz 2007 (Austrian Law on Market Organisation; ‘the MOG 2007’): Paragraph 8 (‘Direct payments’) and Paragraph 8f (‘Voluntary coupled support’)
- Direktzahlungs-Verordnung 2015 (Austrian Direct Payment Regulation; ‘the Direct Payment Regulation 2015’): Paragraph 13

‘Voluntary coupled support

Paragraph 13. (1) Voluntary coupled support may be granted only in respect of bovine, ovine and caprine animals moved to a mountain pasture that have been identified and registered in accordance with Regulation (EC) No 1760/2000 [...]. However, an animal is also deemed eligible for support if the information referred to in the second indent of Article 7(1) of Regulation (EC) No 1760/2000 has been communicated on the first day on which the respective animal has been moved to a mountain pasture.

(2) Farmers shall apply for voluntary coupled support by submitting the “multiple application: areas” and the list of animals moved to a mountain pasture in accordance with Paragraph 22(5) of the Horizontale GAP-Verordnung [(Austrian CAP Horizontal Regulation)] and, for bovine animals, in conjunction with the information from the computerised database for bovine animals as regards the mountain-pasture/grazing notifications pursuant to Article 2 of Commission Decision 2001/672/EC [...].

(3) The relevant number for the granting of voluntary coupled support shall be determined on the basis of the number of animals moved to a mountain pasture by the farmer concerned as at the reference date of 15 July.

(4) The animals must remain on the mountain pasture for a minimum of 60 days. The mountain-pasture period starts on the day the animals are moved to that pasture but no more than 15 days before making the mountain-pasture/grazing notification for bovine animals and/or submitting the list of animals moved to a mountain pasture. ...’

- CAP Horizontal Regulation: Subparagraphs (1) and (2) of Paragraph 21 (‘Submission’) and subparagraphs (1) and (5) of Paragraph 22 (‘Single application’)

Succinct presentation of the facts and procedure in the main proceedings

- 1 The interested party submitted a single application (‘multiple application: areas’) for 2020, in which he applied, inter alia, for the granting of coupled support for bovine animals moved to a mountain pasture (grazing land).

- 2 Two cows and two other bovine animals belonging to the interested party were moved to a mountain pasture (grazing land) on 28 May 2020. To that end, on 1 June 2020 the interested party made a notification to Agrarmarkt Austria as the competent authority within the 15-day period applicable under national law. A notification of a calf (other bovine animal) born on 1 July 2020 was also made in time.
- 3 By contrast, for 12 other bovine animals that had already been moved on 9 May 2020, the notification was only made on 15 June 2020, i.e. after the expiry of that 15-day period.
- 4 By decision of 11 January 2021, the Vorstand für den Geschäftsbereich II der Agrarmarkt Austria (the board of directors for business division II of Agrarmarkt Austria) approved direct payments to the interested party in the amount of EUR 17 086.71. That amount consisted of a basic payment, a greening payment, and coupled support (amounting to EUR 119.44).
- 5 In the grounds for that decision, Agrarmarkt Austria stated that the conditions for granting coupled support had not been met with regard to the 12 bovine animals moved on 9 May 2020 as the notification for them had not been made in time. Accordingly, pursuant to Article 31 of Delegated Regulation No 640/2014, the 12 animals in respect of which there had been irregularities were to be compared with the bovine animals in respect of which the conditions for granting aid were met. That resulted in a 100% reduction, which meant that no coupled support could be granted in 2020.
- 6 At the same time, it decided that (as a further penalty under the third subparagraph of Article 31(3) of Delegated Regulation No 640/2014) an amount of EUR 235.60 would be withheld in order to be offset against the payments of the following three calendar years.
- 7 In his appeal against that decision, the interested party objected to the refusal to pay coupled support. He referred to the fact that a third party had forwarded the notification about the bovine animals' movement to a mountain pasture late without his knowledge.
- 8 The Bundesverwaltungsgericht (Federal Administrative Court, Austria) upheld the appeal and ordered the 'cancellation' of both the 100% deduction from the coupled support and the imposition of a further penalty. That decision is the subject of an appeal on a point of law lodged by the board of directors for business division II of Agrarmarkt Austria ('Agrarmarkt Austria') on which the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) – the referring court – has to rule.

The essential arguments of the parties in the main proceedings

- 9 The Federal Administrative Court gave the following reasons for its decision: Pursuant to Paragraph 8f(1) of the MOG 2007, there is an entitlement to coupled support in Austria for the movement of bovine animals to a mountain pasture. A simplified application procedure applies, in which the animals eligible for the payment are determined directly on the basis of the mountain-pasture/grazing notification recorded in the database for bovine animals. Compliance with the provisions for the identification of bovine animals is a prerequisite for support. No timely notification was made with regard to 12 bovine animals that had been moved to a mountain pasture on 9 May 2020. While it is true that those non-compliances with notification requirements lead to a reduction of the support and a penalty for the purposes of Article 31 of Delegated Regulation No 640/2014, Article 15 of the regulation, according to which no administrative penalty is to be imposed if the beneficiary informs the competent authority in writing that the aid application or payment claim is incorrect or has become incorrect, has to be taken into account. However, that is the case here. It should be noted that the application for coupled support under Paragraph 13(2) of the Direct Payment Regulation 2015 for bovine animals is made by way of a ‘multiple application: areas’ and subsequently by way of the list of animals moved to a mountain pasture and the notification pursuant to Paragraph 8 of the Rinderkennzeichnungs-Verordnung 2008 (Austrian Cattle Identification Regulation 2008). Against that background, a late notification pursuant to the Cattle Identification Regulation 2008 also constitutes notification in writing of the fact that the application is incorrect for the purposes of Article 15 of Delegated Regulation No 640/2014. That interpretation is also supported by the principle that penalties must be proportionate.
- 10 Agrarmarkt Austria contends that a late notification of the movement of the bovine animals means that no payment is to be granted for the bovine animals in question and, in addition, that a penalty within the meaning of Article 31 of Delegated Regulation No 640/2014 is to be imposed.

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

- 11 On the first question: Having regard to the judgment of the Court of Justice of 24 May 2007, *Maatschap Schonewille-Prins*, C-45/05 (ECLI:EU:C:2007:296), the Supreme Administrative Court has no doubt that the failure to comply with the period for the notification of the movement to a mountain pasture or grazing land pursuant to Article 2(2) and (4) of Commission Decision 2001/672/EC, in conjunction with Article 7(1) and (2) of Regulation (EC) No 1760/2000, constitutes a failure to comply with the identification and registration requirements pursuant to Regulation No 1760/2000, with the result that, within the meaning of Article 53(4) of Delegated Regulation No 639/2014 and – in the transposition of that provision in Austria – pursuant to Paragraph 13(1) of the Direct Payment Regulation 2015, a condition for coupled support is not met and

the animals are not considered to be determined within the meaning of point 18(a) of Article 2(2) of Delegated Regulation No 640/2014.

- 12 However, Article 30(4)(c) of Delegated Regulation No 640/2014 restricts the legal effects of non-compliances due to incorrect entries in the register, the animal passports or the computerised database for animals to the extent that the animals are only to be considered not to be determined if such errors are found during at least two checks within a period of 24 months, in so far as the entries are not of relevance for the verification of the compliance with the eligibility conditions other than the condition referred to in Article 53(4) of Delegated Regulation No 639/2014, i.e. the requirement to identify and register bovine animals provided for in Regulation No 1760/2000.
- 13 Article 53(4) of Delegated Regulation No 639/2014 was given its wording by Regulation (EU) No 2016/1393. In recital 11 of that regulation it was stated that it was thereby clarified that ‘incorrect entries in the register, the animal passports and/or the computerised database for bovine animals of elements such as for instance gender, breed, colour or date should be considered as non-compliances after the first finding’ if the information concerned is ‘essential’ for the assessment of the animals’ eligibility under the aid scheme or support measure concerned. Otherwise, the animal concerned should be considered not to be determined if such incorrect entries are found on at least two checks within a period of 24 months.
- 14 Since the national databases – which in Austria are maintained by Agrarmarkt Austria – are populated by the notifications made by the animal keepers, it appears obvious that the term ‘incorrect entries’ should be understood to mean errors caused by incorrect notifications or failures to notify.
- 15 The purpose of the notification of the movement of animals is – among other things – the entry into the national computerised database for animals (the database for bovine animals) and constitutes part of the claim for coupled support. In the case at hand, the notification made on 15 June 2020 about the movement to a mountain pasture of 12 bovine animals of the interested party on 9 May 2020 was correct in terms of its content. However, the notification was incorrect because it was made late, which constitutes a failure to comply with the identification and registration requirements under Regulation No 1760/2000. Nevertheless, apart from the condition pursuant to Article 53(4) of Delegated Regulation No 639/2014, that non-compliance does not seem to have affected other conditions for the granting of coupled support and thus the review of the application. If a late notification were to be classified as an incorrect entry in the computerised database for animals that is not of relevance for the (other) eligibility conditions for the purposes of Article 30(4)(c) of Delegated Regulation No 640/2014, the animals would thus be considered to have been determined.
- 16 This could therefore be a case as envisaged in Article 30(4)(c) of Delegated Regulation No 640/2014. The interpretation of the provision – in particular of the

term ‘incorrect entry in the computerised database for animals’ and the phrase ‘not of relevance for [...] the respect of the eligibility conditions’ – does not appear to be sufficiently clear.

- 17 On the second question: If the first question is answered in the negative and no coupled support is payable for the 12 bovine animals of the interested party that were moved to a mountain pasture on 9 May 2020, the follow-up question is whether the administrative penalties provided for in Chapter IV (Articles 15 to 34) of Delegated Regulation No 640/2014 are to be imposed in addition.
- 18 Article 15 of Delegated Regulation No 640/2014 refers only to an error in the aid application itself, but not to a failure to comply with the identification and registration requirements regarding the animals. To that extent, the provision does not seem to cover the non-compliance on the part of the interested party. However, Article 34 of Delegated Regulation No 640/2014 extends the application of Article 15 also to errors and omissions in relation to the entry in the computerised database.
- 19 By means of a notification that the animals have been moved to a mountain pasture an entry is subsequently made in the national database that thus remedies the omission. With that in mind, Article 34 in conjunction with Article 15 of Delegated Regulation No 640/2014 might be applicable. That could also be borne out by the fact that the provisions seem to aim at favouring the animal keeper who, without being forced to do so, remedies misconduct, thereby avoiding administrative penalties. There does not seem to be a reason why, in that respect, a late notification such as the one made in the present case should entail more severe consequences than any other incorrect notification or failure to notify leading to an incorrect or incomplete entry in the national database. Furthermore, the principle of proportionality of penalties, as provided in Article 77(5) of Regulation No 1306/2013, could suggest that Article 34 of Delegated Regulation No 640/2014 is applicable in a case such as the one at hand.