

**Case C-620/23****Summary of the request for a preliminary ruling under Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

6 October 2023

**Referring court:**

Administrativen sad Sofia-oblast (Administrative Court of the Sofia Region, Bulgaria)

**Date of the decision to refer:**

21 September 2023

**Applicant:**

NOV ZHIVOT 1919 NCh

**Defendant:**

Rakovoditel na Upravlyavashtia organ na programata za transgranichno satrudnichestvo INTERREG-IPP Bulgaria-Serbia 2014-2020 i direktor na direksia 'Upravlenie na teritorialното satrudnichestvo' v Ministerstvo na regionalното razvitie i blagoustroystvoto

**Subject matter of the main proceedings**

The proceedings originated in an action brought by Narodno chitalishte 'NOV ZHIVOT 1919' (New Life 1919 community centre) against the decision of the Rakovoditel na Upravlyavashtia organ na programata za transgranichno satrudnichestvo INTERREG-IPP Bulgaria-Serbia 2014-2020 (head of the managing authority for the Interreg-IPA Cross-border Cooperation Bulgaria-Serbia Programme, 2014-2020) imposing a financial correction.

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

Interpretation of EU law: first paragraph, point (b) of Article 267 TFEU

## Questions referred for a preliminary ruling

1. Does Article 40 of Commission Implementing Regulation (EU) No 447/2014 of 2 May 2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession Assistance (IPA II) not, in situations of cross-border cooperation between a Member State and a beneficiary of the Instrument for Pre-accession Assistance (IPA-II) for the 2014-2020 period, preclude the imposition of a financial correction on an economic operator which is alleged to have engaged in unlawful conduct constituting an irregularity but which is not the lead beneficiary and therefore not the party which has assumed responsibility for the implementation of the entire project?
2. If the first question is answered in the affirmative, do Articles 41 and 47 of the Charter of Fundamental Rights of the European Union, in such situations of cross-border cooperation, guarantee the right of the lead beneficiary to participate in the procedure to decide on the imposition of a financial correction and in the judicial proceedings challenging that administrative act, irrespective of its location in relation to the authority responsible under the relevant cross-border cooperation programme for imposing the financial correction, and do the provisions cited permit limitations such as those provided for by the case-law of the national courts in the main proceedings, which curtail those options for participation?

## Provisions of EU law cited

Charter of Fundamental Rights of the European Union ('the Charter') – Articles 41, 47 and 51(1)

Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II)

Commission Implementing Regulation (EU) No 447/2014 of 2 May 2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession Assistance (IPA II) – Articles 2(a) and (h), 26, 33 and 40

Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 – Article 2(10), (36) and (37)

Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 – Article 61

### **Provisions of national legislation and the case-law cited**

Zakon za upravljenie na sredstvata ot Evropeyskite fondove pri spodeleno upravljenie (Law on the management of resources from European Funds with shared management; ‘the ZUSEFSU’), in force since 1 July 2022, and its previous version entitled Zakon za upravljenie na sredstvata ot Evropeyskite strukturni i investitsionni fondove (Law on the management of resources from the European Structural and Investment Funds; ‘the ZUSESIF’) – Articles 70(1)(1) and 73(1)

Naredba za posochvane na nerednosti, predstavlyavashti osnovania za izvarshvane na finansovi korektsii, i protsentnite pokazateli za opredelyane razlicna finansovite korektsii po reda na Zakona za upravljenie na sredstvata ot Evropeyskite strukturni i investitsionni fondove (Regulation on the determination of irregularities which constitute grounds for making financial corrections and on the percentage indicators for determining the amount of financial corrections under the Law on the management of resources from the European Structural and Investment Funds – ‘the Regulation on the determination of irregularities’) – Article 2(3) and point 1 of Annex 2 to Article 2(3)

Memorandum between the Governments of the Republic of Bulgaria and the Republic of Serbia on the implementation of the Interreg-IPA Cross-border Cooperation Bulgaria-Serbia Programme CCI 2014TC16I5CB007, ratified by the Law of 7 September 2017 (which entered into force on 19 December 2017) – Articles 3(2) to (6), 4, 20 and 25

Judgments of the Varhoven administrativen sad na Republika Bulgaria (Supreme Administrative Court of the Republic of Bulgaria) in administrative cases No 11552/2021, No 11446/2021 and No 9806/2019

### **Succinct presentation of the facts and procedure**

- 1 The Interreg-IPA Cross-border Cooperation Bulgaria-Serbia Programme (‘the Programme’) was adopted by the European Commission in Decision C(2015) 5444 of 30 July 2015, most recently amended by Decisions C(2016) 2853 of 4 May 2016, C(2016) 8643 of 13 December 2016, C(2017) 5681 of 14 August 2017 and C(2018) 7410 of 7 November 2018.
- 2 The managing authority for the Programme and Opština Babušnica (municipality of Babušnica, Serbia) concluded Agreement No RD-02-29-188 of 4 November

2020 on the award of a grant for the implementation of the Cross-border Cultural Network for a Shared Future project; that project constitutes an ‘operation’ within the meaning of the decision of the Joint Monitoring Committee.

- 3 Under that grant agreement, the municipality of Babušnica is the lead project partner which receives the funding and assumes responsibility for implementing the operation, while the applicant is merely a project partner. The lead project partner is responsible to the managing authority for all irregularities, even if they are committed by project partners. The managing authority is authorised to impose financial corrections where the lead project partner and/or other project partners have not complied with the relevant public procurement provisions.
- 4 On 27 April 2021, the applicant concluded a service contract with Tsentar za profesionalno obuchenie i orientirane EOOD (Centre for Vocational Training and Career Guidance one-person limited liability company) for the implementation of the project.
- 5 The managing authority received notice that an irregularity was suspected in connection with that service contract. After examining the contract documents and taking into account the objections raised by the applicant, the managing authority found that a conflict of interest within the meaning of Article 61 of Regulation 2018/1046 existed in connection with the contract, between the person named by the applicant as the project coordinator and a person associated with the contractor Tsentar za profesionalno obuchenie i orientirane EOOD.
- 6 Since the managing authority classified the conflict of interest found as an irregularity within the meaning of Article 2(36) of Regulation No 1303/2013, the head of the managing authority for the Programme, by Decision No RD-02-14-02-489 of 20 April 2023, imposed a financial correction amounting to 100% of the eligible contract expenditure financed from the European Structural and Investment Funds.
- 7 The present case arises from an action brought by the applicant against that decision by the head of the managing authority.

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

- 8 In its application, the applicant alleges that there is in fact no conflict of interests.
- 9 At the hearing, the adjudicating chamber, which is required under the national rules of administrative procedure to examine of its own motion whether the contested act was issued without procedural irregularities, informed the parties of its intention to refer in that context to the Court of Justice of the European Union for a preliminary ruling concerning the provisions of EU law governing the authorisation of the managing authority to impose financial corrections on the lead beneficiary and the project partners of grant agreements within the framework of the Instrument for Pre-accession Assistance.

- 10 The head of the managing authority considers that no request for a preliminary ruling is necessary, since the managing authority is authorised to find irregularities and consequently to impose financial corrections on the beneficiaries and/or project partners, its competence in this regard being subject exclusively to territorial limitations. He submits that, since all the organisations participating in the Instrument for Pre-accession Assistance are actually beneficiaries, the managing authority was authorised to impose financial corrections on those organisations located in the territory of the Republic of Bulgaria.

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

- 11 The referring court found that the signed grant agreement stipulates that the lead project partner receives the contractually agreed funding and is responsible for the implementation of the operation, representing all other project partners involved in the operation and ensuring that it and all its project partners fulfil the legal requirements for the implementation of the project.
- 12 Moreover, the lead project partner is answerable to the managing authority for all irregularities, even if they were committed by the project partners.
- 13 In the event of an irregularity, the managing authority may take all necessary measures vis-à-vis the lead project partner to remedy or mitigate the consequences of the irregularity, and it has been expressly agreed that the lead project partner is liable for repayment of the total amount involved, even if the irregularity was committed by one of the project partners.
- 14 Under Article 70(1)(1) of the ZUSEFSU, a financial correction may cancel all or part of the financial support from the European Structural and Investment Funds in the event of a conflict of interest in connection with the beneficiary within the meaning of Article 61 of Regulation 2018/1046.
- 15 Where there are two or more beneficiaries and one of them has been designated as the main or lead beneficiary, it is not legally specified to which the act establishing a financial correction should be addressed: the lead beneficiary, which is responsible for the implementation of the entire operation, or its partner which committed the irregularity.
- 16 In the context of disputes concerning the lawfulness of expenditure in situations of cross-border cooperation between a Member State and a beneficiary of an Instrument for Pre-accession Assistance and concerning the lawfulness of financial corrections for irregularities within the meaning of Article 2(36) of Regulation No 1303/2013, the national courts apply the terms ‘beneficiary’ within the meaning of Article 26(1)(b) of Implementing Regulation No 447/2014 and ‘lead beneficiary’ within the meaning of Article 40 of the same regulation.
- 17 It is clear from the national case-law analysed that the courts have ruled in similar cases (see judgments of the Varhoven administrativen sad [Supreme

Administrative Court] of the Republic of Bulgaria in administrative cases No 11552/2021, No 11446/2021 and No 9806/2019) that the head of the managing authority is authorised to find an irregularity committed by beneficiaries in the territory of the Republic of Bulgaria and is consequently authorised to impose a financial correction, as was done in the present case. That authorisation applies both in cases where a lead beneficiary/project partner committed the irregularity and in cases where another beneficiary/project partner committed the irregularity. The competence of the head of the managing authority to impose the correction is subject to territorial limitations: it is necessary that the person who committed the irregularity be located in the territory of the Republic of Bulgaria.

- 18 In alignment with the aforementioned national case-law on similar cases, the lead beneficiary in the present case was involved neither in the administrative procedure nor in the judicial proceedings, as it is located in the Republic of Serbia.
- 19 The referring court was unable to identify any preliminary ruling by the Court of Justice of the European Union on the interpretation of the terms ‘beneficiary’ and ‘lead beneficiary’ within the meaning of Implementing Regulation No 447/2014 in the case-law examined. However, the referring court noted that the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria) had submitted a request for a preliminary ruling to the Court of Justice in Case C-477/23 in a similar context.
- 20 The right to good administration is a fundamental right conferred on individuals by Article 41 of the Charter. The right to good administration comprises 1. the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; 2. the right of every person to have access to his or her file; 3. the obligation of the administration to give reasons for its decisions. Under its Article 51, the Charter applies to the Member States when they are implementing Union law. The award of a grant is made in direct application of Union law; this circumstance obliges the national authorities within whose competence the application of the law falls to comply with Article 41 of the Charter.
- 21 Since the lead beneficiary has assumed responsibility for the implementation of the entire operation, including responsibility for the irregularities committed by the project partners, it is directly concerned by the act with which the managing authority imposed a financial correction. For the present dispute to be resolved correctly, it is therefore necessary to clarify whether the lead beneficiary should have been the addressee of the act with which the managing authority imposed the financial correction and, if so, whether the lead beneficiary should have been granted the right to participate in the administrative procedure which led to the issuing of that act.