

**Case C-116/24**

**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:**

12 February 2024

**Referring court:**

Curtea de Apel Pitești (Romania)

**Date of the decision to refer:**

28 November 2023

**Appellant:**

Porcellino Grasso SRL

**Respondents:**

Ministerul Agriculturii și Dezvoltării Rurale

Agencia pentru Finanțarea Investițiilor Rurale

Agencia de Plăți și Intervenție în Agricultură

Agencia de Plăți și Intervenție în Agricultură – Centrul Județean Vâlcea

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**Subject matter of the main proceedings**

Action for annulment of an administrative act, brought by the appellant Porcellino Grasso SRL against the respondents Ministerul Agriculturii și Dezvoltării Rurale (Ministry of Agriculture and Rural Development, Romania, ‘MADR’), Agenția pentru Finanțarea Investițiilor Rurale (Agency for the Financing of Rural Investments, Romania, ‘AFIR’), Agenția de Plăți și Intervenție în Agricultură (Agency for Payments and Interventions in Agriculture, Romania, ‘APIA’), and Agenția de Plăți și Intervenție pentru Agricultură – Centrul Județean Vâlcea (Agency for Payments and Interventions in Agriculture – Vâlcea District Centre, Romania, ‘APIA Vâlcea’).

## Subject matter and legal basis of the request

On the basis of Article 267 TFEU, the referring court is seeking, first, an interpretation of Articles 288, 291 and 297 TFEU, Article 9(3) of Regulation (EC) No 1974/2006 and Articles 18 and 19 of Regulation (EC) No 1698/2005, and of the principle of Union law according to which a decision of the European Commission produces legal effects until it is annulled; second, guidance on the observance of a preliminary ruling in view of a judgment of the General Court on an action for annulment of a Commission decision in a similar case; and, third, guidance on the application of the principle of assumption of liability by the State.

## Questions referred for a preliminary ruling

a) Do the provisions of Articles 288, 291, and 297 TFEU, the principle of [EU] law according to which a decision of the European Commission produces legal effects until it is annulled – as that principle has been enshrined in the judgments [of the Court of Justice] in Cases C-245/92 P (*Chemie Linz v Commission*), C-475/01 (*Commission v Greece*), C-362/14 (*Schrems*), C-533/10 (*CIVAD*), 314/85 (*Foto-Frost v Hauptzollamt Lübeck-Ost*), C-644/17 (*Eurobolt*) and C-199/06 (*CELF and Ministre de la Culture et de la Communication*) – as well as Article 9(3) of Regulation (EC) No 1974/2006 and Articles 18 and 19 of Regulation (EC) No 1698/2005 preclude a practice of the Romanian national authorities involving the adoption of internal measures that are contrary to European Commission Implementing Decision C(2012) 3529 of 25 May 2012 correcting the Programul Național de Dezvoltare Rurală (PNDR), Romania’s rural development programme for the programming period 2007-2013, and thus disapplying that decision, as long as it has not been amended or annulled?

b) Having regard to the general obligation of the Member States to comply with EU law, where a national court finds itself in a situation where it is complying with an interpretative judgment delivered by the [Court of Justice] under Article 267 TFEU (namely, the judgment of 17 November 2022 in Case C-443/21), and that judgment does not contain assessments as to the validity and effects of the European Commission’s implementing decisions (Commission Decision C(2012) 3529 final of 25 May 2012 and Commission Decision 2018/873 of 13 June 2018) but rather only [assessments] on the recovery of funding in the absence of a decision of the European Commission to that effect, is the national court in question entitled to take into account, when ruling on the dispute before it, the effects of and reasoning (the considerations made) in a judgment of the General Court of the European Union, given in an action for annulment governed by Article 263 TFEU and annulling an implementing decision of the European Commission in a similar case (namely, the judgment of 18 January 2023, given in Case T-33/21)?

c) Does the principle of assumption of liability by the State require that, in a situation such as that in the present case, the Romanian State must pay the rates of

support to the beneficiaries of Measure 215, in the amount laid down in Commission Implementing Decision C(2012) 3529 of 25 May 2012, for the entire duration of their commitments?

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

- Articles 288, 291, 297 and 310 TFEU
- Articles 18, 19 and 40 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)
- Article 9(3) and Article 27(2) to (13) of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)
- Article 143 of 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, 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 33(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
- Article 58 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 65/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008
- Commission Implementing Decision C(2012) 3529 final of 25 May 2012 correcting the Programul Național de Dezvoltare Rurală (PNDR), Romania’s rural development programme for the programming period 2007-2013 (‘the PNDR 2007-2013’)
- *the principle of the protection of legitimate expectations*, with the following references to case-law: judgments of the Court of the Justice of 12 July 1957, *Algera and Others v Common Assembly*, C-7/56 and C-3/57 to C-7/57, EU:C:1957:7, paragraph 14; of 11 July 1991, *Crispoltoni v Fattoria Autonoma Tabacchi di Città di Castello*, C-368/89, EU:C:1991:307, paragraph 17; of

14 September 2006, *Elmeka*, C-181/04-C-183/04, EU:C:2006:563, paragraphs 31 and 32; and of 7 August 2018, *Ministru kabinetu*, C-120/17, EU: C:2018:638, paragraphs 48 and 51, along with the judgments of the General Court of 11 July 1996, *Ortega Urretavizcaya v Commission*, T-587/93, EU:T:1996:100, paragraph 57; of 16 October 1996, *Efisol v Commission*, T-336/94, EU:T:1996:148, paragraph 31; and of 23 February 2006, *Karatzoglou v AER*, T-471/04, EU:T:2006:66, paragraphs 33 and 34

– *the principle of legal certainty*, with the following references to case-law: judgments of the Court of Justice of 15 December 1987, *Ireland v Commission*, C-325/85, EU:C:1987:546, paragraph 18; of 21 June 1988, *Commission v Italy*, C-257/86, EU:C:1988:324, paragraph 12; and of 13 March 1990, *Commission v France*, C30/89, EU:C:1990:114, paragraph 23

– *the principle according to which a decision of the European Commission produces legal effects until it is annulled*, with the following references to case-law: judgments of the Court of Justice of 22 October 1987, *Foto-Frost v Hauptzollamt Lübeck-Ost*, C-314/85, EU:C:1987:452; of 8 July 1999, *Chemie Linz v Commission*, C-245/92 P, EU:C: 1999:363; of 5 October 2004, *Commission v Greece*, C-475/01, EU:C:2004:585; of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79; of 14 June 2012, *CIVAD*, C-533/10, EU:C:2012:347; of 6 October 2015, *Schrems*, C-362/14, EU:C:2015:650; and of 3 July 2019, *Eurobolt*, C-644/17, EU:C:2019:555

– *the principle of foreseeability of administrative behaviour*, with reference to the order of the President of the Court of Justice of 10 June 1988, Case C-152/88, *Sofrimport v Commission*, EU:C:1988:296, paragraph 22

– *the principle of State liability for damage caused to individuals by breaches of Union law*, with reference to the judgment of the Court of Justice of 5 March 1996, *Brasserie du pêcheur v Bundesrepublik Deutschland*, C-46/93 and C-48/93, EU:C:1996:79, operative part

– and, in relation to the second question referred, judgments of the Court of Justice of 17 November 2022, *Avicarvil Farms*, C-443/21, EU:C:2022:899, operative part, and of the General Court of 18 January 2023, *Romania v Commission*, T-33/21, EU:T:2023:5, paragraphs 85, 86, 91 to 94, 103, 110, 112 and 113.

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

*Ordinele ministrului agriculturii și dezvoltării rurale [MADR] nr. 149/2012, nr. 6/2013, nr. 704/2014, nr. 43/2015 și nr. 826/2016* (Decrees of the Minister for Agriculture and Rural Development ('MADR') No 149/2012, No 6/2013, No 704/2014, No 43/2015 and No 826/2016) ('the MADR Decrees') approving the aid application model for Measure 215 – Animal Welfare Payments. The aid

amounts for sub-packages 3a and 5a, respectively EUR 4.80/livestock unit [LU]/year and EUR 16.80 LU/year – identical in the first four decrees – were reduced by Decree No 826/2016 to EUR 1.43/LU/year (for sub-package 3a) and to EUR 14.18/LU/year (for sub-package 5a).

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

- 1 The appellant, the company Porcellino Grasso SRL, has requested the annulment of the payment decision of 6 February 2018, issued for the period 1 January – 31 December 2017, in the amount of 10 083 115.36 Romanian lei (RON), by the respondent APIA Vâlcea ('contested payment decision'), the annulment of the document rejecting the complaint of 30 March 2018, issued by that respondent, and the annulment of the administrative act of 26 March 2018, issued by the respondent APIA, by which that party ruled in relation to the appellant's complaint, failing to issue a favourable measure, as well as an order for the respondents to issue all necessary administrative acts and to carry out all necessary administrative operations to compensate for the damage amounting to RON 619 995.08 suffered by the appellant as a result of the issuance of the contested payment decision and the act rejecting its complaint. This amount represents the difference between the sum of RON 11 936 300, to which the appellant claims to be entitled, and the amounts awarded in the contested payment decision and the rectification decision of 21 April 2018 (RON 11 316 304.92).
- 2 The appellant stated that, on 13 August 2012, it had lodged with APIA Vâlcea the initial aid application through which it assumed the obligation to ensure and maintain the welfare conditions of the pigs and to comply with the specific requirements of the sub-packages for which it had applied, for a minimum period of five years, in return for non-repayable financial support, in the amounts and under the conditions set out in the aid application, in the Applicant's Guide, in the PNDR 2007-2013 and in MADR Decree No 149/2012.
- 3 On 14 August 2015, the appellant filed a payment application with APIA Vâlcea in respect of the fourth year of the commitment, in accordance with the provisions of MADR Decree No 43/2015. In response, the respondent APIA Vâlcea informed the appellant that errors affecting commitments under Measure 215 had been found for all categories of eligible animals for sub-packages 3a and 5a. Accordingly, the abovementioned respondent advised that the non-repayable financial support related to sub-packages 3a and 5a was to be reduced.
- 4 Subsequently, with the entry into force of MADR Decree No 826/2016, the reduction in the amount of non-repayable financial support relating to sub-packages 3a and 5a under Measure 215 became definitive, and thus, after the entry into force of that decree, the new reduced amounts for the period from 16 July 2015 to 31 December 2015 apply, depending on which payment decisions were subsequently issued for this period. The appellant lodged administrative appeals

against the payment decisions for the periods at issue, which are currently pending.

- 5 Subsequently, on 31 January 2017, the appellant submitted the payment application in respect of the sixth year of commitment, corresponding to the period from 1 January to 31 December 2017, and on 6 February 2018, APIA Vâlcea issued the contested payment decision, calculating the amounts by reference to the reduced amounts of support, in accordance with MADR Decree No 826/2016. On 21 April 2018, APIA Vâlcea issued a rectification decision establishing a payment in favour of the appellant in the additional amount of RON 1 233 189.56. Consequently, the appellant is claiming payment of the difference of RON 619 995.08 resulting from the application of the rate of support for sub-package 3a, amounting to EUR 4.80/LU/year, and for sub-package 5a, amounting to EUR 16.80/LU/year.

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

- 6 *The appellant* submits that the contested administrative acts infringe the provisions of the PNDR 2007-2013, approved by European Commission Decision C(2008) 3831 of 16 July 2008, as amended, which thus becomes binding on the Romanian State.
- 7 The National Rural Development Programme 2007-2013 can only be revised if the deadlines and the procedure laid down in Article 7 of Regulation (EC) No 1974/2006 are respected.
- 8 The most recent version of the PNDR 2007-2013 dates from September 2015 and provides for the same amounts for the sums payable to beneficiaries for sub-packages 3a and 5a under Measure 215 as in the previous versions, not reduced, and the preliminary findings of the European Court of Auditors were received by the Romanian authorities on 10 September 2015.
- 9 The appellant points out that the rates of non-repayable financial support for Measure 215 were set by the Romanian State, in accordance with Article 40 of Regulation (EC) No 1698/2005 and Article 27(2) to (13) of Regulation (EC) No 1974/2006, and became compulsory for that State once the PNDR 2007-2013 was approved by the Commission.
- 10 The reduction in the amount of the support relating to sub-packages (3b) and (4b) is the result of an error by the respondent MADR in the calculation methodology and, therefore, the issuance of the contested administrative acts infringes the principles of legal certainty and protection of legitimate expectations, since the appellant made commitments for a period of five years on the basis of the initial amount of the subsidies valid on the date on which the application for aid was submitted.

- 11 The appellant also alleges infringement of the provisions of the Applicant's Guide relating to Measure 215, because, both at the time when it submitted its application for aid and at the time when it submitted its application for payment – including the application for the sixth year of commitment, in respect of which the contested payment decision was issued – the Applicant's Guide for Measure 215 (package (a) pigs) stated that the non-repayable aid granted to beneficiaries that had entered into commitments under sub-packages 3a and 5a was to be EUR 4.80/LU and EUR 16.80/LU respectively.
- 12 The appellant also alleges infringement of the provisions of MADR Decree No 149/2012, as this decree is still in force today without having been amended or repealed.
- 13 According to the appellant, which provides arguments to that effect drawn from case-law, the conduct of the respondent institutions – MADR, AFIR and APIA – is contrary to several principles enshrined in European Union law, and thus infringes the principles of the assumption of liability by the State, legal certainty, protection of legitimate expectations and foreseeability. The appellant argues that the abovementioned principles prevail over the interest of the State authorities in correcting calculation errors not attributable to it or any other beneficiary of Measure 215.
- 14 The appellant also invokes the Commission's implementing decision C(2012) 3529 final, a decision which has not only not been annulled but, moreover, could no longer be amended on the date on which the calculation errors were discovered. However, the Romanian State has made payments other than those approved by that decision, although the purpose of the decision under discussion was to confer rights on the beneficiaries of Measure 215, for a duration of five years of their commitments.
- 15 According to the appellant, there is a need to bring the case before the Court of Justice in light of the fact that there are inconsistencies in the grounds of some of the judgments rendered by the Courts of the Union. Indeed, the considerations expressed by the Court of Justice in Case C-443/21 contradict those of the General Court in Case T-33/21 as regards the applicability of the principles of protection of legitimate expectations and legal certainty, although the facts examined are identical in both cases. The appellant considers the General Court's conclusion to be contrary to that of the Court of Justice.
- 16 *The respondents* MADR, AFIR and APIA are relying, as grounds for the issuance of the contested administrative acts, on the results of the audit carried out by representatives of the European Court of Auditors for the 2015 financial year, which concluded with the identification of certain errors in the methodology for calculation of the compensatory payments for Measure 215, sub-packages 1a, 3a and 5a. The respondents submit that the issuance of the contested administrative acts was required because of the need to protect the financial interests of the

Union, as provided for in Regulations (EC) No 1305/2013 and (EC) No 1306/2013.

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

- 17 The referring court states that the question raised in the present case is the interpretation of Articles 288, 291 and 297 TFEU, of the principle of European Union law according to which a decision of the European Commission has effect until it is annulled, and of Articles 18 and 19 of Regulation (EC) No 1698/2005 and Article 9(3) of Regulation (EC) No 1974/2006, in relation to the principle of the protection of legitimate expectations and the principle of legal certainty.
- 18 At the same time, the questions raised also call for the interpretation of the abovementioned articles from the point of view of European Union case-law, more specifically in the light of the two decisions adopted by the Courts of the European Union that are closely connected with the pending case, namely the judgment of the Court of Justice of 17 November 2022 in Case C-443/21 (*Avicarvil Farms* judgment) and the judgment of the General Court of 18 January 2023 in Case T-33/21 (*Romania v Commission* judgment).
- 19 In the *Avicarvil farms* judgment, the Court of Justice held that Article 40(3) of Regulation (EC) No 1698/2005 and Article 58(1) of Regulation (EC) No 1306/2013, read in conjunction with Article 310(5) TFEU, and the principles of the protection of legitimate expectations and legal certainty must be interpreted as not precluding the national authorities involved in the implementation of a non-repayable financial support measure from adopting, on account of a calculation error found by the Court of Auditors, acts ordering a reduction in the amount of financial aid granted under Romania's Rural Development Programme within the European Agricultural Fund for Rural Development (EAFRD) for the programming period 2007-2013, as approved by the European Commission, without waiting for the Commission to adopt a decision excluding the amounts resulting from that calculation error from EU financing.
- 20 Following the *Avicarvil Farms* judgment, the national court referring the question for a preliminary ruling in that case, which is the same court as the referring court in the present case – the Curtea de Apel Pitești (Pitești Court of Appeal) – dismissed the action brought by the applicant SC Avicarvil Farms SRL.
- 21 Shortly after the *Avicarvil Farms* judgment was given, the General Court delivered its *Romania v Commission* judgment, by which it ordered the annulment of Commission Implementing Decision (EU) 2020/1734 of 18 November 2020 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) in so far as it excludes certain expenditure incurred by Romania under the EAFRD for the financial years 2017 to 2019, amounting to EUR 18 717 475.08.

- 22 However, even if, as the Court of Justice held in Case C-443/21, the principles of the protection of legitimate expectations and of legal certainty must be interpreted as not precluding the national authorities from adopting, following a calculation error established by the European Court of Auditors, acts that impose a reduction in the amount of financial assistance granted by the PNDR, as approved by the European Commission, without awaiting the adoption by the European Commission of a decision excluding the sums resulting from that calculation error from European Union financing, that does not, however, exclude the possibility that other European Union rules might preclude a reduction, by the Romanian authorities, of the amount of financial assistance granted by the PNDR, so long as that amount was set by a decision of the European Commission that has not been revoked, has not been annulled and could no longer be amended at the date on which the calculation errors were detected.
- 23 In conclusion, the referring court finds that it is necessary to refer the matter to the Court of Justice, because it considers that the questions raised in the present case are not identical to those that were the subject of the interpretation given by the Court of Justice in Case C-443/21 and that the correct application of European Union law, in the light of the two judgments analysed above, does not stand out so clearly as to leave no room for reasonable doubt.

WORKING DOCUMENT