Case C-625/23

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:

12 October 2023

Referring court:

Corte suprema di cassazione (Italy)

Date of the decision to refer:

17 July 2023

Applicant:

Società agricola Circe di OL società semplice

Defendants:

ST, in his own name and as owner of the sole proprietorship Agricola Case Rosse di ST

Agenzia per le Erogazioni in Agricoltura (AGEA)

Subject matter of the main proceedings

Appeal before the Corte di Cassazione (Supreme Court of Cassation, Italy), by the Società Agricola Circe, against the judgment by which the Corte d'appello di Roma (Court of Appeal, Rome, Italy) confirmed the allocation to the sole proprietorship Agricola Case Rosse di ST of several CAP (common agricultural policy) certificates previously assigned on a provisional basis to the company Circe, on the basis of a broad interpretation of the term 'scission' contained in the second subparagraph of Article 33(3) of Regulation No 1782/2003.

Subject matter and legal basis of the request

The reference for a preliminary ruling concerns, in the first place, the admissibility of a broad interpretation of the term 'scission' used in Article 33(3) of Regulation No 1782/2003 and Article 15 of Regulation No 795/2004, so as to include, in addition to the specific legal construct of 'scission' in company law, any

contractual legal event that results in agricultural land, originally cultivated by one holding, being allocated to two separate farmers.

In the second place, the reference for a preliminary ruling concerns the question of whether, in the event that the scope of the term 'scission' must be limited to the specific legal construct in company law, EU law regards as being relevant, for the purpose of the final allocation of CAP certificates, other legal events that lead to a reduction in the area originally cultivated and the moment at which that reduction occurred.

Article 267 TFEU

Questions referred for a preliminary ruling

1. Must the term 'scission' contained in Article 33(3) of Regulation (EC) No 1782/2003 and Article 15 of Regulation (EC) No 795/2004 be understood as referring to the legal construct in company law, thus entailing a change in the company resulting in the original property and areas under cultivation of one company being split into two separate properties belonging to different legal entities, or can it be interpreted broadly and thus apply to any contractual legal event that results in the original property and areas under cultivation of the original 'agricultural' company being allocated to two different entities, including through the transfer of quotas and the sale of land?

2. According to the correct interpretation to be given to the provisions of Regulation No 1782/2003 (Articles 2, 23, 24, 33, 34, 36, 38, 43 and 44) for the final allocation of CAP certificates, when the single payment is first applied, is it relevant that the area under cultivation and the eligible hectares were reduced in 2002, after the submission of the application by the 'farmer' and the provisional allocation of the certificates, if that reduction occurred as a result of the sale of a portion of the land in question in 2002, and the reduction can be applied automatically during the final allocation?

Provisions of European Union law relied on

Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, in particular Article 33(3) and Articles 2, 23, 24, 33, 34, 36, 38, 43, 44, 45 and 46

Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct

support schemes under the common agricultural policy and establishing certain support schemes for farmers, in particular Article 15

Succinct presentation of the facts and procedure in the main proceedings

1 Prior to the contractual events set out in paragraph 2 below, the Società Agricola Circe ('Circe'), which was then owned by two brothers, OL and ST, had submitted an application for CAP certificates, following which 130 CAP certificates were provisionally allocated on the basis of the area under cultivation.

2 Following the provisional allocation, Circe was involved in a series of related contractual events. Specifically, by deed of 1 August 2002, ST and his wife TZ sold their share of 50% of the share capital of Circe to OL and his wife MU, as a result of which Circe changed its name to Società Agricola Circe di OL. By another deed dated 1 August 2002, MU sold ST some land she owned in the municipality of Sezze. As a result of that sale, Circe ceased to own a portion of the land based on which the quota of 130 CAP certificates had been provisionally allocated.

3 Following the said contractual events, Circe was finally allocated only 71 CAP certificates, instead of the 130 CAP certificates provisionally assigned.

4 By application of 5 June 2006, Circe brought an action before the Tribunale di Roma (District Court, Rome, Italy) against AGEA, ST and the sole proprietorship Agricola Case Rosse di ST ('Case Rosse'), seeking, in particular, to assert its right to receive 130 CAP certificates, as per the provisional allocation. By judgment of 27 June 2011, the District Court of Rome rejected Circe's application.

5 The Court of Appeal of Rome subsequently ruled on the matter by judgment No 2632/2017 of 21 April 2017. The Court of Appeal allocated pro rata to Case Rosse several CAP certificates already provisionally assigned to Circe, on the ground that as of September 2002, the land located in the municipality of Sezze was no longer cultivated by Circe, but by ST and Case Rosse. The Court of Appeal based its decision on a particularly broad interpretation of the final paragraph of Article 33 of Regulation No 1782/2003 and the term 'scission' used therein, holding that that term refers to all cases in which one farmer takes over from another, since CAP subsidies must be linked to the area under cultivation.

6 By appeal No 18175/2017, Circe brought an appeal on a point of law against that judgment before the Court of Appeal of Rome.

The essential arguments of the parties in the main proceedings

7 In its appeal on a point of law, Circe alleges, in particular, infringement of Article 15 of Regulation No 795/2004 and Article 2(a) and Articles 33, 38, 45 and

46 of Regulation No 1782/2003, as well as the ministerial decrees by which the Italian State implemented the EU legislation.

8 According to the applicant, AGEA erroneously proceeded with the final allocation of the CAP certificates assuming that a scission of Circe had occurred, although it had not been documented and was, in fact, non-existent, since what had actually happened was simply a transfer of the share capital.

9 EU legislation defines the concept of 'scission' solely by reference to the situation in which two new separate farmers are formed from an original farmer. The transfer of land is irrelevant.

10 For the purpose of the final allocation of the CAP certificates, the applicant also considers irrelevant the reduction in the area under cultivation during the reference period, that is, in the present case, during the period from 2000 to 2002. In that regard, Circe notes that the CAP certificates may, under certain conditions, be separate from the land, since they may be transferred against consideration.

11 By contrast, in the opinion of ST and Case Rosse, AGEA was obliged to correct the provisional allocation of CAP certificates automatically on the basis of the area actually under cultivation and the eligible hectares.

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

12 According to the Supreme Court of Cassation, in order to rule on the dispute, it is necessary, in the first place, to interpret Article 15 of Regulation No 795/2004 and Article 33(3) of Regulation No 1782/2003, with particular reference to the concept of 'scission' of the agricultural holding, and, in the second place, Article 2(a) and Articles 23, 24, 33, 34, 36, 38, 43, 44, 45 and 46 of Regulation No 1782/2003.

13 The interpretation of Article 33(3) of Regulation No 1782/2003 and Article 15 of Regulation No 795/2004 is relevant specifically for the purposes of the first question referred for a preliminary ruling.

14 The second subparagraph of Article 33(3) of Regulation No 1782/2003 provides, in particular, that the farmers managing the holdings following the scission are to have access, pro rata, to the single payment scheme under the same conditions as the farmer managing the original holding. Article 15 of Regulation No 795/2004 provides that, for the purposes of the second subparagraph of Article 33(3) of Regulation No 1782/2003, 'scission' means the scission of one farmer into at least two new separate farmers, of which at least one remains controlled, in terms of management, benefits and financial risks, by at least one of the legal or natural persons originally managing the holding, or the scission of one farmer into at least one new separate farmer, the other one remaining controlled, in terms of management, benefits and financial risks, by the farmer originally managing the holding. Article 15 of Regulation No 795/2004 also adds that the number and value of the payment entitlements are to be established on the basis of the

reference amount and number of hectares relating to the transferred production units of the original holding.

15 In the light of those provisions, it is necessary to clarify whether the interpretation of Article 33 of Regulation No 2003/1782 adopted by the courts adjudicating on the substance, which is extensive and contrary to the literal wording of that provision, is correct. According to that interpretation, the term 'scission' used therein refers not only to the specific legal construct in company law, but covers any situation in which one farmer takes over from another. Therefore, any change in the area originally cultivated by a particular holding is relevant.

16 In the opinion of the Supreme Court of Cassation, the term 'scission' – which is a term of art in company law, used by several European legislative acts in a corporate context – could be interpreted broadly, taking into account the flexibility of Regulation No 1782/2003 regarding the legal forms in which agricultural activity may be carried out. Nevertheless, such an interpretation, by significantly expanding the technical and legal meaning normally attributed to the concept of scission, requires the confirmation of the Court of Justice. Indeed, in the present case, there is neither an *acte clair*, which excludes the obligation for the reference for a preliminary ruling if there is no reasonable doubt as to the meaning of the provision to be applied, nor an *acte éclairé*, which excludes that obligation if the EU legislation has already been interpreted by the courts of the European Union.

17 By contrast, the interpretation of Article 2(a) and Articles 23, 24, 33, 34, 36, 38, 43, 44, 45 and 46 of Regulation No 1782/2003 is relevant for the purposes of the second question referred for a preliminary ruling. According to the referring court, where the answer to the first question referred for a preliminary ruling is to limit the scope of the term 'scission' to the specific legal construct in company law, it is necessary to determine whether and to what extent the reduction in the area under cultivation in terms of eligible hectares – which occurred after the submission of the application and the provisional allocation of the CAP certificates, but still in 2002 and before the final allocation – is relevant for the final allocation of CAP certificates to an agricultural holding when the single payment is first applied.

18 The Supreme Court of Cassation notes, first of all, that Articles 34, 43 and 44 of Regulation No 1782/2003 seem to link CAP certificates to the area under cultivation, since each payment entitlement is linked to an 'eligible hectare' – that is to say, a hectare of any agricultural area of the holding, except areas under forests or used for non-agricultural activities.

19 The referring court also points out that in the present case, the reduction in the original area under cultivation took place during the reference period identified in Article 38 of Regulation No 1782/2003 – that is to say, during the period from 2000 to 2002, even though that was after Circe had submitted the aid application. However, it would appear contrary to Articles 23 and 24 of Regulation No 1782/2003 in particular to consider the reduction in the area under cultivation during the reference period as irrelevant. Indeed, Articles 23 and 24 of Regulation

No 1782/2003 provide specifically that Member States must carry out administrative checks on aid applications, by verifying, inter alia, the eligible area, and that, where it is found that the farmer does not comply with the eligibility conditions, the payment is subject to reductions and exclusions.

20 Lastly, the Supreme Court of Cassation notes that the fact that, under certain conditions, CAP certificates may be in circulation and may be traded in no way implies that their initial allocation is not correct and based on the availability of a particular area of cultivated land.

21 Accordingly, in the opinion of the referring court, it could be concluded that, in accordance with Article 36 of Regulation No 1782/2003, the aid must be paid in respect of payment entitlements as defined in Chapter 3 of that regulation, accompanied by an equal number of eligible hectares as defined in Article 44(2) of that regulation.