Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

13 December 2012*

(Common agricultural policy — Integrated administration and control system — Reduction of or exclusion from payments in the event of non-compliance with cross-compliance rules — Vicarious liability)

In Case C-11/12,

REFERENCE for a preliminary ruling under Article 267 TFEU from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 12 October 2011, received at the Court on 4 January 2012, in the proceedings

Maatschap L.A. en D.A.B. Langestraat en P. Langestraat-Troost

v

Staatssecretaris van Economische Zaken, Landbouw en Innovatie,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, E. Levits, J.-J. Kasel and M. Safjan (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Netherlands Government, by C.S. Schillemans and C. Wissels, acting as Agents,

— the European Commission, by B. Burggraaf and H. Tserepa-Lacombe, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Dutch.

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 23(1) of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16).

2 The reference has been made in the context of proceedings between the Maatschap L.A. en D.A.B. Langestraat en P. Langestraat-Troost ('the Maatschap') and the Staatssecretaris van Economische Zaken, Landbouw en Innovatie ('the Staatssecretaris') with regard to the reduction of the aid granted to it under the common agricultural policy.

Legal context

Regulation (EC) No 1782/2003

3 Article 6(1) of 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) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, (OJ 2003 L 270, p. 1) in its original version, provided:

'Where the statutory management requirements or good agricultural and environmental conditions are not complied with, as a result of an action or omission directly attributable to the individual farmer, the total amount of direct payments to be granted in the calendar year in which the non-compliance occurs, and after application of Articles 10 and 11, shall be reduced or cancelled in accordance with the detailed rules laid down under Article 7.'

4 Article 6(1) of Regulation (EC) 1782/2003, as amended by Council Regulation (EC) No 146/2008 of 14 February 2008 (OJ 2008 L 46, p. 1), was worded as follows from 1 April 2008:

'Where the statutory management requirements or good agricultural and environmental conditions are not complied with at any time in a given calendar year (hereinafter 'the calendar year concerned'), and the non-compliance in question is the result of an act or omission directly attributable to the farmer who submitted the aid application in the calendar year concerned, the total amount of direct payments to be granted … to that farmer, shall be reduced or cancelled in accordance with the detailed rules laid down under Article 7.

The first subparagraph shall also apply where the non-compliance in question is the result of an act or omission directly attributable to the person to whom or from whom the agricultural land was transferred.

...

For the purpose of this paragraph "transfer" means any type of transaction whereby the agricultural land ceases to be at the disposal of the transferor.'

5 Regulation No 1782/2003 was repealed as from 1 January 2009 by Regulation No 73/2009.

Regulation No 146/2008

6 Recitals 2 and 3 of Regulation No 146/2008 read as follows:

'(2) Article 44(3) of [Regulation No 1782/2003] provides that farmers must keep the parcels corresponding to the eligible hectare at their disposal for a period of at least 10 months. Experience has shown that this condition risks constraining the functioning of the land market and creates significant administrative work for the farmers and administrative services involved. Nonetheless, in order to ensure that double claims are not made for the same land, a date should be fixed on which the parcels should be at the farmer's disposal. It would be appropriate for Member States to determine that date which should be no later than the date fixed for amendment of the aid application. The same rule should also be applied for the Member States applying the single area payment scheme.

(3) As a consequence of the reduction of the period during which the farmer shall keep at his disposal the parcels corresponding to the eligible hectare to a single day for both the single payment scheme and the single area payment scheme, the rules on liability under cross-compliance, in particular in the case of transfer of land during the calendar year concerned, should be clarified. It should therefore be made clear that the farmer who submits an aid application should be held liable towards the competent authority with regard to any failure to fulfil the cross-compliance requirements in the calendar year concerned for all agricultural land declared in the aid application. This should not preclude private law arrangements between the farmer concerned and the person to whom or from whom the agricultural land was transferred.'

Regulation (EC) No 796/2004

7 Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Regulation No 1782/2003 and laying down detailed rules for the implementation of the cross-compliance provided for in Council Regulation (EC) No 479/2008 (OJ 2008 L 141. p. 18) as amended by Commission Regulation (EC) No 1266/2008 of 16 December 2008 (OJ 2008 L 338, p. 34), lays down detailed rules for the implementation of sanctions in the event of non-respect of rules related to cross-compliance.

8 According to recitals 56 and 57 of that regulation:

'(56) The system of reductions and exclusions envisaged in Regulation (EC) No 1782/2003 with regard to cross-compliance obligations however targets at a different aim, namely to set an incentive for farmers to respect the, already existing, legislation in the different fields of cross-compliance.

(57) Reductions and exclusions should be established having regard to the principle of proportionality and, in the case of eligibility criteria, the special problems linked to cases of force majeure as well as exceptional and natural circumstances. In the case of cross-compliance obligations reductions and exclusions may only be applied where the farmer acted negligently or intentionally. Reductions and exclusions should be graded according to the gravity of the irregularity committed and should go as far as the total exclusion from one or several aid schemes for a specified period. They should, with regard to the eligibility criteria, take into account the particularities of the various aid schemes.'

Regulation No 73/2009

9 Recital 3 of Regulation No 73/2009 states:

'Regulation (EC) No 1782/2003 established the principle that farmers who do not comply with certain requirements in the areas of public, animal and plant health, environment and animal welfare are subject to reductions of or exclusion from direct support. This "cross-compliance" system forms an integral part of Community support under direct payments and should therefore be maintained. However, experience has shown that a number of the requirements within the scope of cross-compliance are not sufficiently relevant to farming activity or farm land or concern national authorities rather than farmers. It is therefore appropriate to adjust the scope of cross-compliance.'

10 Article 23(1) of Regulation No 73/2009, which is entitled 'Reduction of or exclusion from payments in the event of non-compliance with cross-compliance rules', reads as follows:

'Where the statutory management requirements or good agricultural and environmental conditions are not complied with at any time in a given calendar year (hereinafter referred to as "the calendar year concerned"), and the non-compliance in question is the result of an act or omission directly attributable to the farmer who submitted the aid application in the calendar year concerned, the total amount of direct payments granted or to be granted … shall be reduced or excluded in accordance with the detailed rules laid down in Article 24.

The first subparagraph shall also apply where the non-compliance in question is the result of an act or omission directly attributable to the person to whom or from whom the agricultural land was transferred.

For the purpose of this paragraph, "transfer" shall mean any type of transaction whereby the agricultural land ceases to be at the disposal of the transferor.

By way of derogation from the second subparagraph, from 2010, where the person to whom the act or omission is directly attributable has submitted an aid application in the calendar year concerned, the reduction or exclusion shall be applied to the total amounts of direct payments granted or to be granted to that person.'

11 Article 24 of that regulation, which is entitled 'Detailed rules on reductions and exclusions in the event of non-compliance with cross-compliance rules', provides:

'1. Detailed rules for the reductions and exclusions referred to in Article 23 shall be laid down in accordance with the procedure referred to in Article 141(2). In this context, account shall be taken of the severity, extent, permanence and repetition of the non-compliance found as well as of the criteria set out in paragraphs 2, 3 and 4 of this Article.

2. In the case of negligence, the percentage of reduction shall not exceed 5% and, in the case of repeated non-compliance, 15%.

...

3. In the case of intentional non-compliance, the percentage of reduction shall not in principle be less than 20% and may go as far as total exclusion from one or several aid schemes and apply for one or more calendar years.

...'

The main proceedings and the question referred for a preliminary ruling

12 The partnership (maatschap) L. Oosthoek en J.P. Groen ('Oosthoek/Groen') leased a parcel of arable land to the Maatschap so that the latter could cultivate onions there. The lease was subject to the condition that the partnership Oosthoek/Groen would still plough that parcel and spread a few loads of manure on it. The parties agreed that the lease would take effect on 1 January 2009 but that the actual taking into use of the ground by the lessee, the Maatschap, would follow only after the ploughing.

13 Oosthoek/Groen spread manure on the parcel in question, but the ploughing was not carried out in a manner compatible with the national legislation providing for the application of near-emission-free fertiliser. For that reason Oosthoek/Groen was fined.

14 The Maatschap, which took possession of the parcel at the beginning of March 2009, submitted an application for direct payments for the year 2009, inter alia for the parcel in question. According to the order for reference, it was notified of the infringement committed by Oosthoek/Groen only by a letter from the Staatssecretaris (State Secretary) of 23 November 2009, announcing a possible reduction in the direct payments because of an infringement of national legislation due to failure to apply manure in a manner that was near-emission-free.

15 By decision of 3 March 2010, the Staatssecretaris applied to the Maatschap a reduction of 20% of the direct payments for breach of the regulatory requirements concerning agriculture because of that infringement. By letter of 8 March 2010, the Maatschap lodged an objection against that decision. By decision of 1 April 2010, the Staatssecretaris declared that objection to be unfounded. The Maatschap then brought an action against that decision before the national court.

16 The national court considers that Oosthoek/Groen must be regarded as the person from whom the agricultural land was transferred within the meaning of the second subparagraph of Article 23(1) of Regulation (EC) No 73/2009. Consequently, the direct payments to be paid to the Maatschap should be reduced or excluded because of the non-compliance with the regulatory requirements concerning agriculture constituted by the actions of Oosthoek/Groen. That court found that the declarations made by the executives of that partnership to the General Inspection Service justify the conclusion that the partnership had deliberately failed to satisfy those requirements.

17 As it has not discerned any intent on the part of the Maatschap in the infringement committed by Oosthoek/Groen, the national court harbours doubts, however, as to whether the reduction of direct payments for intentional failure to satisfy the regulatory requirements concerning agriculture may be applied to the Maatschap, the actions of which did not cause the infringement.

18 It notes, inter alia, that, according to recitals 56 and 57 of Regulation No 796/2004, the system of reductions and exclusions has the aim of setting an incentive for farmers to observe the legislation in force in the various fields of cross-compliance and that that system has been established having regard to the principle of proportionality. Accordingly, first, reductions and exclusions may be applied only where the farmer acted negligently or intentionally and, second, they must be graded according to the gravity of the irregularity committed.

19 According to the national court, there are two possible interpretations of Article 23 of Regulation No 73/2009, namely either the intent of Oosthoek/Groen must be directly attributed to the Maatschap or only the actual failure to meet the regulatory requirements concerning agriculture committed must be attributed to it.

20 In those circumstances, the College van Beroep voor het bedrijfsleven decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 23(1) of [Regulation No 73/2009] be interpreted as imposing a reduction or an exclusion on the farmer who has submitted an aid application, such as that which would be imposed, in respect of established non-compliance, on the actual offender, to whom or by whom the land was transferred, if that offender had himself submitted the application? Or does the provision mean solely that the established non-compliance is to be attributed to the person submitting the aid application, but that, in the determination of the (level of the) reduction or exclusion, it is still necessary to establish the extent to which there has been negligence, fault or intent on the part of the farmer himself?'

The question referred for a preliminary ruling

21 By its question, the national court is asking, in essence, whether Article 23(1) of Regulation No 73/2009 is to be interpreted as meaning that non-compliance with cross-compliance rules by the person to whom or from whom the agricultural land was transferred, involving reduction of the total amount of direct payments or exclusion from direct support, must be fully attributed to the farmer submitting the aid application.

22 It should first be noted that Article 23(1), first subparagraph of Regulation No 73/2009 provides for a reduction of the total amount of direct payments granted or to be granted to a farmer who has submitted an aid application where the statutory management requirements or good agricultural and environmental conditions are not complied with during the calendar year in which the aid application was submitted.

23 Under Article 23(1), second subparagraph of that regulation, the reduction of the total amount of the direct payments also applies where the non-compliance in question is the result of an act or omission directly attributable to the person to whom or from whom the agricultural land was transferred.

24 The wording of that provision is clear in relation to the attribution to a farmer who has submitted an aid application in a case of non-compliance with cross-compliance rules by the person to whom or from whom the agricultural land was transferred. However, Regulation No 73/2009 does not specify whether the consequences of a finding that there is an intentional element, attributable to the person to whom or from whom the transfer was made, must also be attributed to that farmer.

25 In that regard, Regulation No 796/2004 states that the rate of reduction applicable in the case of negligence of the farmer is between 1% and 15%. However, where the reduction is imposed as a result of an intentional act of the farmer, that rate is, in principle, between 20% and 100%.

26 In that context, it should be noted that the wording of Article 23(1) of Regulation No 73/2009 does not, by itself, provide an answer to the question referred by the national court.

27 According to the case-law of the Court, in interpreting a provision of European Union law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (Case C-150/10 *Beneo-Orafti* [2011] ECR I-6843, paragraph 41 and case-law cited).

28 First, it should be pointed out that the '10-month rule' contained in Article 44(3) of Regulation No 1782/2003, that, in order to be able to submit an aid application, the farmers were obliged to keep at their disposal the parcels of land corresponding to their eligible hectare for a period of at least ten months, was reduced to a single day by Regulation No 146/2008. Therefore, it suffices that the farmer has a land parcel at his disposal on the reference date in order to obtain the direct payment for the year during which the aid application was submitted.

29 As is apparent from recital 2 of Regulation No 146/2008, that simplification of the eligibility rules was intended to alleviate the administrative burden both for the farmers and for the administrative services involved.

30 It also follows from that regulation that a given parcel may easily be the subject of several transfers during one calendar year, which may have the consequence of increasing the probability that the farmer who submitted an aid application did not himself plough the land.

31 Secondly, the abandonment of the '10-month rule' led to an amendment of Article 6(1) of Regulation No 1782/2003 by Regulation No 146/2008, that provision having been adopted in Article 23(1) of Regulation No 73/2009, which enshrines the liability of the farmer in the case of non-compliance with the cross-compliance rules, adding that a farmer who submits an aid application with regard to a parcel remains liable for it, in the event of transfer of that parcel, for the whole year during which the aid application was submitted.

32 It should therefore be noted that Article 23(1) of Regulation No 73/2009 makes no distinction between cases of non-compliance with the cross-compliance rules due, on the one hand, to negligence and, on the other, to the intentional act of the person to whom or from whom the agricultural land was transferred. The attribution of the consequences of an act, committed by the person to whom or from whom the agricultural land was transferred, to a farmer who has submitted an aid application cannot, therefore, be excluded.

33 Having regard to the above, Article 23(1) of Regulation No 73/2009 must be interpreted taking into account the developments in the legislation referred to above.

34 It is apparent from recital 2 of Regulation No 146/2008 that the simplification of access to direct payments allows farmers to have easier access to agricultural aid. Furthermore, recital 3 of Regulation No 73/2009 points out that the granting of aid is subject to the requirement that the beneficiary thereof comply with the cross-compliance rules.

35 Consequently, the penalty applicable in the event of non-compliance with those rules constitutes a specific administrative instrument forming an integral part of the scheme of agricultural aid and intended to promote compliance with those rules.

36 In that regard, the Court has repeatedly stressed that the rules breached are aimed solely at economic operators who have freely chosen to take advantage of an agricultural aid scheme (Case 137/85 *Maizena and Others* [1987] ECR 4587, paragraph 13; Case C-240/90 *Germany* v *Commission* [1992] ECR I-5383, paragraph 26; Case C-210/00 *Käserei Champignon Hofmeister* [2002] ECR I-6453, paragraph 41 and Case C-489/10 *Bonda* [2012] ECR, paragraph 30).

37 It follows that the farmer who receives the aid, even if he does not actually enjoy possession of the parcel for which he has applied for the direct payment during the whole calendar year, must bear the risk of the attribution of a case of non-compliance with the cross-compliance rules on that parcel due either to the negligence or the intentional act of the person to whom or from whom the transfer of that parcel was made, which may result in a reduction of the total amount of direct payments or exclusion from direct support. That farmer may, therefore, be held liable for an infringement committed by the person to whom or from whom the agricultural land in question was transferred, including for the consequences of intentional acts.

38 However, recital 57 of Regulation No 796/2004 states that the reductions of the total amount of the direct payments and the exclusions from direct support must be established having regard to the principle of proportionality. It is therefore appropriate to verify whether the solution adopted in the preceding paragraph observes that principle.

39 In that regard, it should be noted that the principle of proportionality, which is one of the general principles of European Union law, requires measures implemented through provisions of European Union law to be appropriate for attaining the objective pursued and not to go beyond what is necessary to achieve it (Case C-59/11 *Association Kokopelli* [2012] ECR, paragraph 38 and case-law cited).

40 It follows from paragraphs 34 to 37 of the present judgment that the liability of a farmer who submits an aid application, arising from a case of non-compliance with the cross-compliance rules due either to the negligence or the intentional act of the person to whom or from whom the agricultural land was transferred, serves to attain the aim underlying the system of reductions of the total amount of direct payments and exclusion from direct support, as noted in recital 3 of Regulation No 73/2009, namely, the incorporation, in the common market organisations, of basic standards for the environment, food safety, animal health and welfare and good agricultural and environmental conditions.

41 With regard to the question whether such liability of a farmer who has submitted an aid application goes beyond what is necessary to achieve that objective, it should be noted that a farmer who receives aid remains solely answerable to the authorities. However, as the Netherlands Government and the European Commission rightly point out, there is nothing to prevent the parties to a contract to transfer agricultural land from agreeing on more precise provisions regarding the financial risks of such a contract, including the risk of a possible reduction or exclusion from agricultural subsidies. Furthermore, even if there is no such stipulation, the use of civil law mechanisms to protect the interests of farmers who have submitted an aid application cannot be excluded from the outset.

42 Therefore, the full attribution of an infringement, committed by the person to whom or from whom the agricultural land was transferred, to the farmer who submitted an aid application for the parcel on which the non-compliance with the cross-compliance rules was found, does not go beyond what is necessary to achieve the intended objective.

43 Furthermore, it should be observed that if the farmer who committed the infringement, or the farmer who was in possession of the parcel in question on the reference date, does not submit an aid application, no penalty will be imposed. The system of reductions of the total amount of direct payments and of exclusions from direct support constitutes an administrative measure linked to the incentives in the form of direct payments.

44 Consequently, the answer to the question referred is that Article 23(1) of Regulation No 73/2009 is to be interpreted as meaning that non-compliance with cross-compliance rules by the person to whom or from whom the agricultural land was transferred, involving reduction of the total amount of direct payments or exclusion from direct support, must be attributed in full to the farmer submitting the aid application.

Costs

45 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 23(1) of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003, is to be interpreted as meaning that non-compliance with cross-compliance rules by the person to whom

or from whom the agricultural land was transferred, involving reduction of the total amount of direct payments or exclusion from direct support, must be attributed in full to the farmer submitting the aid application.

[Signatures]