Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 3 June 2021 [1]

Case C-119/20

Līga Šenfelde
intervening party:
Lauku atbalsta dienests (Rural Support Service, Latvia)
(Business start-up aid in agriculture)

(Request for a preliminary ruling from the Augstākā tiesa (Senāts) (Supreme Court, Latvia))

(Common agricultural policy (CAP) – Support for rural development by the European Agricultural Fund for Rural Development (EAFRD) – Regulation (EU) No 1305/2013 – Article 19(1)(a) – Business start-up aid – Aid for the development of small farms – Aid for young farmers – Successive applications for both types of aid – Permissibility – Conditions)

I. Introduction

1. Can farmers receive support under the European Agricultural Fund for Rural Development (EAFRD) both for the development of small farms and as young farmers?

2. That is, in essence, the question raised by the Augstākā tiesa (Senāts) (Supreme Court, Latvia) in this request for a preliminary ruling. In answering that question, it will need to be borne in mind that both young farmers and the development of small farms are supported by 'business start-up aid'. This aid forms part of the farm development measure, which is of particular relevance to rural development.

[1] Original language: German.

II. Legal framework

A. EU law

1. Regulation No 1305/2013

3. The relevant legal framework for the business start-up aid at issue in this case is provided, first, by Regulation (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD). [2]

4. Recital 17 of Regulation No 1305/2013 states:

'For the development of rural areas, the creation and development of new economic activity in the form of new farms … are essential. … A farm and business development measure should facilitate the initial establishment of young farmers and the structural adjustment of their agricultural holding after the initial setting up. … The development of small farms, which are potentially economically viable should also be encouraged. In order to ensure the viability of new economic activities supported under that measure, support should be made conditional on the submission of a business plan. Support for a business start-up should cover only the initial period of the life of such a business and should not become an operating aid. Therefore, where Member States opt to grant aid in instalments, such instalments should be made over a period of no more than five years. …

In order to address problems of young farmers related to access to land Member States are also able to offer this support in combination with other forms of support, for example, through the use of financial instruments.'

5. Point (n) of the second subparagraph of Article 2(1) of Regulation No 1305/2013 defines 'young farmer' as:

'a person who is no more than 40 years of age at the moment of submitting the application, possesses adequate occupational skills and competence and is setting up for the first time in an agricultural holding as head of that holding'.

6. Article 5(1) of that regulation sets out the Union priorities for rural development:

'…

(2) enhancing farm viability and competitiveness of all types of agriculture in all regions … with a focus on the following areas:

(a) improving the economic performance of all farms and facilitating farm restructuring and modernisation, notably with a view to increasing market participation and orientation …;

[2] Regulation of the European Parliament and of the Council of 17 December 2013 (OJ 2013 L 347, p. 487), as amended by Commission Delegated Regulation (EU) 2016/142 of 2 December 2015 (OJ 2016 L 28, p. 8). Regulation No 1305/2013 has been further amended several times since then, most recently by Commission Delegated Regulation (EU) 2021/399 of 19 January 2021 (OJ 2021 L 79, p. 1). The amendments that are relevant to the present case are examined below (see points 11 et seq. and 58 et seq. of this Opinion).

(b) facilitating the entry of adequately skilled farmers into the agricultural sector and, in particular, generational renewal.

…

(6) promoting … economic development in rural areas, with a focus on the following areas:

(a) facilitating … creation and development of small enterprises …'

7. According to the first sentence of Article 6(1) of Regulation No 1305/2013, the EAFRD is to act in the Member States through rural development programmes.

8. Article 19 of Regulation No 1305/2013 concerns farm development:

'1. Support under this measure shall cover

(a) business start-up aid for

(i) young farmers;

(ii) non-agricultural activities in rural areas;

(iii) the development of small farms;

…

2. Support under point (a)(i) of paragraph 1 shall be granted to young farmers.

…

Support under point (a)(iii) of paragraph 1 shall be granted to small farms as defined by Member States.

…

4. Support under point (a) of paragraph 1 shall be conditional on the submission of a business plan. Implementation of the business plan must start within nine months from the date of the decision granting the aid.

For young farmers receiving support under point (a)(i) of paragraph 1, the business plan shall provide that the young farmer complies with Article 9 of Regulation (EU) No 1307/2013, regarding active farmers within 18 months from the date of setting up.

Member States shall define upper and lower thresholds for allowing agricultural holdings access to support under points (a)(i) and (a)(iii) of paragraph 1. The lower threshold for support under point (a)(i) of paragraph 1 shall be higher than the upper threshold for support under point (a)(iii) of paragraph 1. Support shall be limited to holdings coming under the definition of micro and small enterprises.

5. Support under point (a) of paragraph 1 shall be paid in at least two instalments over a period of maximum five years. Instalments may be degressive. The payment of the last instalment, under points (a)(i) and (a)(ii) of paragraph 1 shall be conditional upon the correct implementation of the business plan.

6. The maximum amount of support under point (a) of paragraph 1 is laid down in Annex II. Member States shall define the amount of support under points (a)(i) and (a)(ii) of paragraph 1 also taking into account the socio-economic situation of the programme area.

…'

9. In accordance with Annex II to Regulation No 1305/2013, the maximum amount of support under Article 19(1)(a)(i) is EUR 70 000 per young farmer [3] and the maximum amount of support under Article 19(1)(a)(iii) is EUR 15 000 per small farm.

10. According to the indicative list in Annex VI to that regulation, farm development under Article 19 is among the measures of particular relevance to several Union priorities for rural development.

2. Regulation 2017/2393

11. Recital 1 of Regulation 2017/2393, [4] by which Regulation No 1305/2013 in particular was amended after the material period for the present case, is worded as follows:

'In order to ensure legal certainty and harmonised and non-discriminatory implementation of support to young farmers, it is necessary to provide that in the context of rural development the "date of setting up", referred to in Regulation No 1305/2013 … means the date when the applicant performs or completes an action related to the setting up for the first time and that the application for support is to be submitted at the latest 24 months after that date. …'

12. Article 1(1)(b) of Regulation 2017/2393 inserted a new point (s) into the second subparagraph of Article 2(1) of Regulation No 1305/2013, under which '"date of setting up" means the date when the applicant performs or completes (an) action(s) related to the setting up referred to in point (n)'.

13. Under a fourth subparagraph, which was also newly added to Article 19(4) of Regulation No 1305/2013 by Article 1(7)(a) of Regulation 2017/2393, Member States are to define the action(s) referred to in point (s) of the second subparagraph of Article 2(1) in the rural development programmes.

[3] Regulation (EU) 2020/2220 of the European Parliament and of the Council of 23 December 2020 (OJ 2020 L 437, p. 1) inserted a further paragraph here: 'That amount may be increased by an additional maximum of EUR 30 000 in the case of financing operations from funds referred to in Article 58a(1).' Those funds serve to finance measures aimed at addressing the impact of the COVID-19 crisis.

[4] Regulation of the European Parliament and of the Council of 13 December 2017 amending Regulations No 1305/2013, (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (OJ 2017 L 350, p. 15).

14. In addition, Article 1(7)(a) of Regulation 2017/2393 inserted a new first subparagraph in Article 19(4) of Regulation No 1305/2013, which provides that 'the application for support under point (a)(i) of paragraph 1 shall be submitted at the latest 24 months after the date of setting up'.

3. Regulation No 1307/2013

15. Under the third subparagraph of Article 9(2) of Regulation (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy,[5] 'a person or group of persons … shall … be regarded as an active farmer if it provides verifiable evidence … which demonstrates any of the following:

(a) that the annual amount of direct payments is at least 5% of the total receipts that it obtained from non-agricultural activities in the most recent fiscal year for which such evidence is available;

(b) that its agricultural activities are not insignificant;

(c) that its principal business or company objects consist of exercising an agricultural activity'.

4. 2014-2020 Agriculture Guidelines

16. The European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 ('2014-2020 Agriculture Guidelines')[6] set out, according to point 4 thereof, the conditions and criteria under which the Member States' aid for the agricultural and forestry sectors and for rural areas will be considered to be compatible with the internal market.

17. According to point 23(a) of the 2014-2020 Agriculture Guidelines, their scope covers in particular aid for measures in the agricultural sector falling outside the framework of a rural development programme under Article 6 of Regulation No 1305/2013.[7]

18. Points 99 to 107 of the 2014-2020 Agriculture Guidelines, which are headed 'Cumulation of aid', include the following provisions:

'(99) Aid may be granted concurrently under several schemes or cumulated with ad hoc aid, provided that the total amount of State aid for an activity or project does not exceed the aid ceilings laid down in these Guidelines.

…

(107) … Start-up aid for young farmers and start-up aid for the development of small farms as referred to in Section 1.1.2 should not be cumulated with business start-up aid for young farmers or the development of small farms as referred to in Article 19(1)(a)(i) and (iii) of Regulation (EU) No 1305/2013 if such cumulation would result in an aid amount exceeding those laid down in these Guidelines.'

[5] Regulation of the European Parliament and of the Council of 17 December 2013 (OJ 2013 L 347, p. 608). The subsequent amendments to that regulation are not relevant to the cited provision.

[6] 2014/C 204/01 (OJ 2014 C 204, p. 1), as amended by the Commission notice amending the Guidelines (2015/C 390/05) (OJ 2015 C 390, p. 4).

[7] See above, point 7 of this Opinion.

19. Section 1.1.2 of Part II of the 2014-2020 Agriculture Guidelines concerns start-up aid for young farmers and for the development of small farms. Points 174, 177 and 184 in particular are relevant to this case:

'(174) The Commission will consider start-up aid for young farmers and start-up aid for the development of small farms compatible with the internal market under Article 107(3)(c) of the Treaty if it complies with the common assessment principles of these Guidelines and with the following conditions.

…

(177) Member States must define the upper and lower thresholds … for access to start-up aid for young farmers and the development of small farms. The lower threshold for access to start-up aid for young farmers must be higher than the upper threshold for access to aid for the development of small farms.

…

(184) The maximum aid must be limited to EUR 70 000 per young farmer and EUR 15 000 per small farm. Member States must define the amount of aid for young farmers also taking into account the socio-economic situation of the area concerned.'

B. Latvian law

20. The Republic of Latvia transposed the European Union rules by Decree No 292 on the development of small farms [8] and Decree No 323 on young farmers. [9]

21. Point 1 of Decree No 292 provides that support for the development of small farms is to be granted 'in the form of a single payment'.

22. Under point 20 of that Decree, within a programming period an applicant may receive the support referred to in those provisions only once.

23. Point 1 of Decree No 323 stipulates that support for young farmers is also to be granted 'in the form of a single payment'.

III. Facts and request for a preliminary ruling

24. On 15 September 2015, Līga Šenfelde was registered as a trader with the Latvian tax authorities.

[8] Decree of 9 June 2015 on provisions relating to the procedure for granting national and European Union support under the sub-measure entitled 'Business start-up support through the development of small agricultural holdings', which forms part of the measure entitled 'Farm and business development', *Latvijas Vēstnesis* 2015, No 126.

[9] Decree of 16 June 2015 on provisions relating to the procedure for granting national and European Union support for the sub-measure entitled 'Business start-up aid for young farmers', which forms part of the measure entitled 'Farm and business development', *Latvijas Vēstnesis* 2015, No 127.

25. Following an application submitted by Ms Šenfelde on 5 October 2015, the Lauku atbalsta dienests (Rural Support Service, Latvia) approved aid for the development of a small farm on 15 January 2016.

26. On 27 July 2016, Ms Šenfelde acquired the 'Purenes' farm,[10] which had previously been operated by her parents.

27. For the purposes of the acquisition and development of the farm, on 23 August 2016 she also applied for business start-up aid for young farmers. In the meantime she continued to pursue the activities in respect of which the first aid grant was made.

28. By decision of 6 January 2017, the Lauku atbalsta dienests (Rural Support Service) refused the second application. As grounds, the authority stated that farms in receipt of support fall into different categories under Regulation No 1305/2013 and that there must be no overlap of support measures. In addition, under Latvian law as well an applicant may solely receive either aid for the development of a small farm or aid for young farmers.

29. The appeals lodged by Ms Šenfelde with the Administratīvā rajona tiesa (District Administrative Court, Latvia) and the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia), seeking the adoption of the second approval, were unsuccessful.

30. In her appeal on a point of law, Ms Šenfelde maintains that beneficiaries of aid for the development of small farms may also be granted support as young farmers.

31. By order of 24 February 2020, which was received at the Court on 28 February 2020, the Augstākā tiesa (Senāts) (Supreme Court) therefore stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Must Article 19(1)(a) of Regulation No 1305/2013, in conjunction with other provisions of the aforementioned regulation and the 2014-2020 Agriculture Guidelines, be interpreted as meaning that:

1. a farmer loses his or her "young farmer" status solely by virtue of having received small farm development aid, as provided for in Article 19(1)(a)(iii) of Regulation No 1305/2013, two years previously;

2. those provisions authorise Member States to enact legislation to the effect that a farmer is not to be paid the aid provided for in Article 19(1)(a)(i) of Regulation No 1305/2013 if he or she has already been granted the aid provided for in Article 19(1)(a)(iii);

3. a Member State has the power to refuse to cumulate aid for a farmer in the case where the cumulation sequence laid down in the rural development programme agreed with the European Commission has not been complied with?'

32. In the proceedings before the Court, Ms Šenfelde, the Republic of Latvia and the European Commission submitted written observations.

[10] Evidently named after the marsh marigold (*Caltha palustris*), which is *purva purene* in Latvian.

IV. Legal assessment

33. The common agricultural policy (CAP) is based on two pillars. Measures under the first pillar are, for example, direct payments. The second pillar of the CAP, the rural development policy, is governed by Regulation No 1305/2013. Rural development measures are delivered within a strategic framework and implemented via programmes meeting the Union's priorities for rural development. [11] The priorities mentioned in Regulation No 1305/2013 include, in particular, entry of skilled farmers into the agricultural sector, generational renewal and creation and development of small enterprises. [12]

34. One measure of particular relevance to those priorities [13] is farm development under Article 19 of Regulation No 1305/2013. In accordance with Article 19(1)(a), support under that measure covers in particular business start-up aid for young farmers (point (i)), for non-agricultural activities in rural areas (point (ii)) and for the development of small farms (point (iii)).

35. In the present case, the Latvian authorities refused to grant Ms Šenfelde support as a young farmer because she had already received aid for a small farm.

36. The question thus arises whether support for young farmers under Article 19(1)(a)(i) of Regulation No 1305/2013 is precluded under the relevant EU legislation if aid for the development of a small farm has already been received pursuant to point (iii) of that provision (first part of the question referred, see A). It must then be examined, in a second step, what latitude Member States still enjoy in this regard (second and third parts of the question referred, see B).

A. Possibility under EU law of successive applications for business start-up aid under Article 19(1)(a) of Regulation No 1305/2013 for the development of small farms, on the one hand, and for young farmers, on the other (first part of the question referred)

37. By the first part of its question, the referring court wishes to know whether Article 19(1)(a) of Regulation No 1305/2013 must be interpreted as meaning that a farmer loses his or her young farmer status by virtue of having already received small farm development aid.

38. This must be understood to mean that it is to be ascertained whether business start-up aid for young farmers can still be applied for even if a farmer has already received aid for the development of a small farm. In order to answer this question, it is necessary to examine the respective conditions for receiving these two types of aid.

39. In doing so, it will become clear, first, that the conditions for receiving aid for young farmers, on the one hand, and for the development of small farms, on the other, each prescribe different sizes of farm, with the result that those conditions cannot be satisfied concurrently (see 1). Following on from this, however, the question arises whether, and if so to what extent, successive applications for both types of aid may be permissible if, as in the present case, the different conditions relating to the size of the farm are satisfied over a staggered period of time because the farm was able to grow, through the first type of aid, to the size necessary for applying for the second type of aid (see 2).

11 See Article 6(1) of Regulation No 1305/2013 (see above, point 7 of this Opinion) and point 7 of the 2014-2020 Agriculture Guidelines.

12 See Article 5(1) of Regulation No 1305/2013 (see above, point 6 of this Opinion).

13 See the indicative list in Annex VI to Regulation No 1305/2013 (see above, point 10 of this Opinion).

1. Conditions for receiving business start-up aid for young farmers, on the one hand, and for the development of small farms, on the other

40. Support under Article 19(1)(a)(i) of Regulation No 1305/2013 is to be granted to 'young farmers' pursuant to the first subparagraph of Article 19(2). In accordance with point (n) of the second subparagraph of Article 2(1) of that regulation, these are persons who are no more than 40 years of age at the moment of submitting the application, possess adequate occupational skills and competence and are setting up for the first time in an agricultural holding as head of that holding. According to Annex II to Regulation No 1305/2013, the maximum amount of support pursuant to Article 19(1)(a)(i) is EUR 70 000 per young farmer.

41. Support under Article 19(1)(a)(iii) of Regulation No 1305/2013 is to be granted for the development of small farms, it being for Member States to define 'small farms' pursuant to the third subparagraph of Article 19(2). As a result, in determining eligibility in the context of Article 19(1)(a)(iii), they can take into account their respective agricultural structures. In accordance with Annex II to Regulation No 1305/2013, the maximum amount of support pursuant to that provision is EUR 15 000 per small farm.

42. The first sentence of the third subparagraph of Article 19(4) of Regulation No 1305/2013 provides that Member States are to define upper and lower thresholds [14] for allowing agricultural holdings access to support under points (a)(i) and (a)(iii) of paragraph 1. Those thresholds are to be defined in terms of production potential of the agricultural holding, measured in 'standard output' or an equivalent. [15] Given that it is a matter of production *potential*, it is possible that an applicant is not required to demonstrate any such production at the moment of submitting the application. As the Commission explains in its guidance on Article 19 of Regulation No 1305/2013, in such cases applicants must show that they have the potential (in relation to factors of production such as land, animals, and so forth) to achieve a certain level of production. [16]

43. Under the second sentence of the third subparagraph of Article 19(4) of Regulation No 1305/2013, in defining upper and lower thresholds for allowing agricultural holdings access to support under points (a)(i) and (a)(iii) of paragraph 1, the lower threshold for support of young farmers under point (i) must be higher than the upper threshold for support for development of small farms under point (iii).

44. As the Commission explains in its guidance on Article 19 of Regulation No 1305/2013 [17] and as both the Commission and the Republic of Latvia assert in these proceedings, this means, in other words, that the entry threshold for a young farmer, that is to say, the minimum output of his farm, for receiving support under Article 19(1)(a)(i) must be higher than the maximum output of a small farm applying for support under point (iii) of that provision. According to the parties in these

[14] The additional phrase 'per beneficiary or holding' has now been inserted by Article 1(7)(a) of Regulation 2017/2393 (see above, footnote 4 of this Opinion).

[15] See recital 5 and Article 5(2) of Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 and introducing transitional provisions (OJ 2014 L 227, p. 1), as amended by Delegated Regulation (EU) 2015/1367 (OJ 2015 L 211, p. 7).

[16] See sections 4.3.1. and 4.3.3. (pp. 10 and 12) of *Measure fiche Farm and business development, Measure 6, Article 19 of Regulation 1305/2013*, Version November 2014, available to the Member States in the CIRCABC database.

[17] See sections 4.3.1. and 4.3.3. (pp. 10 and 11) of *Measure fiche Farm and business development, Measure 6, Article 19 of Regulation 1305/2013* (see above, footnote 16 of this Opinion). See also Opinion of Advocate General Campos Sánchez-Bordona in *Région wallonne (Aid for young farmers)* (C-830/19, EU:C:2021:100, point 67 et seq.).

preliminary ruling proceedings, the production potential of a small farm under the Latvian rules must therefore lie between EUR 2 000 and EUR 15 000, while the production potential of a young farmer must be between EUR 15 000 and EUR 70 000.

45. Since the lower threshold for access to support for young farmers is therefore in any case higher than the upper threshold for access to support for the development of small farms, the conditions for the two types of business start-up aid cannot be satisfied concurrently. If a farm falls below the upper threshold for access to support for the development of small farms, it must also lie below the lower threshold for access to support for young farmers. Conversely, a farm whose size exceeds that lower threshold, necessarily also lies above the upper threshold for access to support for small farms.

46. These reciprocal exclusion criteria for business start-up aid under Article 19(1)(a) of Regulation No 1305/2013 for young farmers, on the one hand, and for the development of small farms, on the other, can be explained by the fact that both these support measures are intended, in differing and complementary ways, to pursue the common objective of that provision, namely farm development through business start-up aid.

47. Thus, through business start-up aid for young farmers under Article 19(1)(a)(i) of Regulation No 1305/2013, which supports young farmers setting up for the first time as owners of a farm, it is intended to facilitate the entry of adequately skilled farmers into the agricultural sector and, in particular, generational renewal, which is one of the Union priorities for rural development.[18] This is also confirmed by the other obligations connected with support for young farmers under that provision. It stipulates that persons receiving that support must operate as active farmers[19] and effective heads of a holding, that is to say, they must exercise effective control over their farms.[20] This ensures that they genuinely set up as the head of the holding and their farming activities correspond to their principal activity or are at least on a substantial scale. It is irrelevant whether they set up for the first time by creating a new farm or by acquiring an already existing farm.

48. By contrast, business start-up aid for the development of small farms under Article 19(1)(a)(iii) of Regulation No 1305/2013 is intended to support development, that is, the structural improvement of the situation of existing small farms. It is thus a matter of maintaining and improving existing rural agricultural structures. According to recital 17 of Regulation No 1305/2013, only farms that are potentially economically viable are eligible for support.[21] Through the support, owners of such structures are to be given incentives to continue to operate and develop their farms, even if they are very small farms the revenue from which does not necessarily form the bulk of the farmer's receipts or are semi-subsistence operations. In particular, the maintenance of such structures will preserve rural vibrancy and counter rural depopulation and the disappearance of rural structures.

49. Aid for young farmers, on the one hand, and for the development of small farms, on the other, is thus directed at two different groups of beneficiaries, which each contribute in their own way to rural conservation and development. As the Commission explains in its guidance on Article 19 of

[18] See Article 5(1)(2)(b) of Regulation No 1305/2013 (see above, point 6 of this Opinion).

[19] See the second subparagraph of Article 19(4) of Regulation No 1305/2013 in conjunction with the third subparagraph of Article 9(2) of Regulation (EU) No 1307/2013 (see above, points 8 and 15 of this Opinion).

[20] See Article 2 of Regulation No 807/2014 (see above, footnote 15 of this Opinion) and Opinion of Advocate General Campos Sánchez-Bordona in *Région wallonne (Aid for young farmers)* (C-830/19, EU:C:2021:100, point 84 et seq.).

[21] See above, point 4 of this Opinion.

Regulation No 1305/2013, the fact that these two types of aid are granted to different beneficiaries is also intended to concentrate the limited support resources and avoid 'deadweight'. [22] This occurs where aid is awarded for the implementation of measures which the beneficiaries would have implemented anyway, even without receiving the aid. The avoidance of deadweight is consistent with the general principle governing support from EU resources that each individual grant of aid is intended to pursue a specific incentive effect.

50. The business start-up aid regime under Article 19(1)(a) of Regulation No 1305/2013 is thus designed to avoid a situation where young farmers whose planned activities must be on a substantial scale, as was explained above, simply take as 'deadweight' the comparatively minimal aid of at most EUR 15 000 [23] for the development of a small farm, even though receiving that aid is by no means crucial to their decision to set up as a young farmer.

51. But what is the situation in a case like the present one, where within a relatively short period of time the respective size of farm prescribed for receiving aid for the development of small farms, on the one hand, and for young farmers, on the other, is achieved successively, specifically because the beneficiary was able to increase his or her production potential accordingly by virtue of receiving the first aid grant and perhaps for that reason alone was placed in a position to consider setting up as a young farmer? Is applying for both types of aid to be precluded in such a case, as the Republic of Latvia and the Commission assert, even though the beneficiary attains one of the main objectives of Regulation No 1305/2013, that is, the acquisition of a farm by a young farmer?

2. Application for aid for young farmers after receiving aid for the development of a small farm where the farm size criteria are successively met – fundamental permissibility and conditions

52. The view that farmers who have already received aid for the development of a small farm can no longer receive aid for young farmers even though their farms have in the meantime attained the necessary size is asserted in the present case both by the Republic of Latvia and by the Commission, but each for different reasons.

53. The Republic of Latvia bases its view on an argument that has already been advanced by the Latvian authorities in the main proceedings, according to which farmers who have previously received aid for the development of a small farm no longer satisfy the conditions for receiving aid for young farmers. Even if the production potential of their farms has now attained the necessary scale, they are no longer a 'young farmer' within the meaning of point (n) of the second subparagraph of Article 2(1) of Regulation No 1305/2013. They cannot be considered to be 'setting up for the first time in an agricultural holding as head of that holding', as is required by that provision, because they have necessarily already set up as a head of a holding previously, at the latest when they received aid for the development of a small farm.

54. The Commission, on the other hand, takes the view that a farmer does not lose his or her young farmer status solely by virtue of having already received aid for the development of a small farm because Regulation No 1305/2013, as amended by Regulation 2017/2393, [24] which can also be

[22] See section 4.3.1. (p. 10) of *Measure fiche Farm and business development, Measure 6, Article 19 of Regulation 1305/2013* (see above, footnote 16 of this Opinion).

[23] See above, points 9 and 41 of this Opinion.

[24] See above, footnote 4 of this Opinion.

relied on in order to interpret the relevant legal position in this case,[25] provides that aid for young farmers must be applied for at the latest 24 months from the date of setting up. The condition of 'setting up for the first time', which is necessary in order to apply for aid for young farmers, can thus be considered to be satisfied within a period of two years from the date of setting up, even if a young farmer first applied for aid for the development of a small farm in that period and his or her farm grew to the size necessary for aid for young farmers only after then.

55. Nevertheless, in the Commission's view, the spirit and purpose of the rules on support for young farmers, on the one hand, and for the development of small farms, on the other, also precludes a second support grant in this case, as the two types of aid are simply envisaged for different groups of beneficiaries and cannot therefore be cumulated.

56. The Commission is correct in its analysis in so far as a farmer does not in fact lose his or her young farmer status by virtue of having received aid for the development of a small farm within a period of 24 months of submitting the application for aid for young farmers (see a). With regard to the possibility of successively receiving both types of aid, however, the Commission's analysis should be nuanced. It is true that both types of aid may not be cumulated in full. Nevertheless, it is possible to apply for and receive both types of aid if the amount received for the first aid grant is deducted from the amount to be received for the second aid grant (see b). This approach is consistent both with the reality of young farmers and with the objectives of supporting them under Regulation No 1305/2013 (see c).

(a) Time limit for submitting an application for aid for young farmers and satisfaction of the necessary conditions

57. As has already been explained, a 'young farmer' within the meaning of point (n) of the second subparagraph of Article 2(1) of Regulation No 1305/2013 is a person who is setting up for the first time in an agricultural holding as head of that holding.[26]

58. In the version of Regulation No 1305/2013 relevant in this case, the notion of 'setting up for the first time' was not defined more precisely. This has evidently raised subsequent problems as, on the one hand, it was clear from the very beginning that setting up is a continuing process over a period of time and not a precisely definable date.[27] On the other hand, it is necessary to determine a precise date from which certain time limits run, above all the time limit for submitting an application for aid for young farmers.[28] In this regard, it cannot be inferred from the wording of Regulation No 1305/2013 in the version in force at the material time that the application for support as a young farmer should be submitted before setting up has been completed. It nevertheless remains unclear how much time a young farmer has after setting up to submit that application.

[25] See immediately below, point 59 et seq. of this Opinion.

[26] See above, points 5 and 40 of this Opinion.

[27] See section 4.3.1. (p. 9) of *Measure fiche Farm and business development, Measure 6, Article 19 of Regulation 1305/2013* (see above, footnote 16 of this Opinion).

[28] But also the time limit for the start of implementation of the business plan (first subparagraph of Article 19(4) of Regulation No 1305/2013 and second subparagraph of Article 19(4) of Regulation No 1305/2013, as amended by Regulation 2017/2393), the time limit for complying with the conditions regarding active farmers (second subparagraph of Article 19(4) of Regulation No 1305/2013 and third subparagraph of Article 19(4) of Regulation No 1305/2013, as amended by Regulation 2017/2393) or the time limit for the acquisition of the necessary occupational skills (Article 2(3) of Regulation No 807/2014 (see above, footnote 15 of this Opinion)). The start of these time limits is now generally considered to be the date of the decision granting the aid.

59. Along these lines, it was an objective of Regulation 2017/2393, according to recital 1, to ensure legal certainty and harmonised and non-discriminatory implementation of support to young farmers. To that end, it should be clarified that the date of setting up is the date when the applicant performs or completes (an) action(s) related to the setting up for the first time, it being for Member States to define the actions in question, and that the application for support is to be submitted at the latest 24 months after that date.[29] Regulation No 1305/2013 was supplemented and adapted accordingly.[30]

60. It is true that successor provisions cannot automatically be used to interpret predecessor provisions, as they may be understood not only as clarifications, but also as substantive changes to the previous legal position.[31] However, because the changes at issue are expressly clarifications, the provisions of Regulation No 1305/2013 thus amended, although not directly applicable, may also be relied on in order to interpret the relevant legal position in the main proceedings.

61. Accordingly, as the Commission asserts, it must also be considered, in view of this legal position, that the condition of 'setting up for the first time' is satisfied provided the application for aid for young farmers is submitted within 24 months of the date of setting up and irrespective of whether aid for the development of a small farm has already been received within that period.

62. On this basis, in the main proceedings, at the moment of submitting her application for aid for young farmers under Article 19(1)(a)(i) of Regulation No 1305/2013, Ms Šenfelde was still to be considered a 'young farmer' within the meaning of point (n) of the second subparagraph of Article 2(1) of that regulation. According to the referring court, the registration of Ms Šenfelde as a trader only took place less than a year before her application for support as a young farmer. The aid for the development of small farms was even approved just seven months before that application for support.[32] It is therefore immaterial in this case whether the registration of Ms Šenfelde as a trader or the receipt of aid for the development of a small farm is to be regarded as the 'date of setting up',[33] as in any case there was less than 24 months between those events and the application for aid for young farmers.[34]

63. However, the argument put forward by the Republic of Latvia raises the further question whether the conditions for receiving aid for young farmers, particularly with regard to size, must be satisfied on the date of setting up or whether it is sufficient if the necessary size of farm is attained in the course of the period within which the application for aid is to be submitted.

[29] See above, point 11 of this Opinion.

[30] See point (s) of the second subparagraph of Article 2(1) and the first and fourth subparagraphs of Article 19(4) of Regulation No 1305/2013, as amended by Regulation 2017/2393 (see above, point 12 et seq. of this Opinion).

[31] See also my Opinion in *Greece* v *Commission* (C-341/17 P, EU:C:2018:981, point 53).

[32] See above, point 24 et seq. of this Opinion.

[33] Within the meaning of point (s) of the second subparagraph of Article 2(1) of Regulation No 1305/2013, as amended by Regulation 2017/2393 (see above, point 12 of this Opinion).

[34] In accordance with the fourth subparagraph of Article 19(4) of Regulation No 1305/2013, as amended by Regulation 2017/2393 (see above, point 13 of this Opinion), Member States must define in their rural development programmes which actions are considered as 'action(s) related to … setting up' under point (s) of the second subparagraph of Article 2(1) of that regulation and thus as the 'date of setting up'. If Member States opt in that regard for an action related to the application for aid for the development of a small farm, this would probably have to be the date of approval (and not the moment of submitting the application) of that aid. Otherwise the length of the period of time still remaining thereafter to submit the application for aid for young farmers would depend on the length of time taken by the authorities to process the first application. Consequently, the time limits available to beneficiaries of aid for young farmers to satisfy the different requirements to be met also always run from the date of the decision granting the aid (see above, footnote 28 of this Opinion).

64. It should be noted in this regard that Regulation No 1305/2013 does not offer any suggestion of a reading whereby all the conditions for receiving aid for young farmers have to be satisfied on the date of setting up. Rather, the regulation includes various rules providing that some conditions (such as the necessary occupational skills and competence or compliance with the rules on active farmers) are to be satisfied within a certain time limit after approval of the aid for young farmers. [35] This takes into account the abovementioned fact that a young farmer's setting up for the first time is a continuing process over a period of time.

65. It is true that Regulation No 1305/2013 does not give any indication regarding the date when the necessary farm size for receiving aid for young farmers must be attained. It seems reasonable to assume, however, that this condition does not have to be satisfied on the date of setting up but that it is sufficient if it is satisfied at the moment of submitting the application because that is the moment when the competent authority assesses whether the conditions for receiving the aid are satisfied, with the exception of the conditions that are to be satisfied subsequently, as mentioned in the preceding point.

66. Article 19(1)(a)(i) of Regulation No 1305/2013 therefore permits a young farmer to apply for aid for young farmers in the first 24 months from the date of setting up irrespective of whether he or she has already received aid for the development of a small farm under point (iii) in that period.

67. At first sight, this interpretation contradicts the objectives of the support scheme as described above, which are apparent in particular from the various thresholds for the farm's production potential. [36] This contradiction no longer arises, however, if the amount which a beneficiary has received as aid for the development of a small farm is deducted from the amount subsequently received as aid for young farmers.

(b) Deduction of the amount which has already been received as aid for the development of small farms

68. As the Commission and, in essence, the Republic of Latvia also correctly explain, a cumulation of aid for the development of small farms and for young farmers such that the envisaged maximum support rates for each type of aid are fully exhausted and the amounts received simply added would run counter to the idea of those types of aid being for different groups of beneficiaries and to the principles of resource efficiency and fair and targeted allocation of EU support funds.

69. It is not therefore permissible for a single farmer to receive up to EUR 15 000 as aid for the development of small farms and up to EUR 70 000 as aid for young farmers, that is to say, a total of up to EUR 85 000. [37] This is further confirmed by the provisions on aid contained in the 2014-2020 Agriculture Guidelines, according to which even national aid for young farmers, on

[35] See above, point 58, in particular footnote 28 of this Opinion.

[36] See above, point 46 et seq. of this Opinion.

[37] These are the upper thresholds under Article 19(6) in conjunction with Annex II to Regulation No 1305/2013 (see above, point 8 et seq. of this Opinion) up to which Member States may lay down the respective amounts of support. In defining the amount of support for young farmers, the socio-economic situation of the programme area should also be taken into account. According to the referring court, in Latvia the maximum amount of support for young farmers was set at EUR 40 000 and the maximum amount of support for the development of small farms at EUR 15 000.

the one hand, and for the development of small farms, on the other, can be combined with aid for these groups of beneficiaries under Regulation No 1305/2013 only in so far as the respective maximum support amounts of EUR 15 000 or EUR 70 000 are not exceeded. [38]

70. Consequently, in a situation like the one at issue, where aid under Article 19(1)(a)(i) of Regulation No 1305/2013 is applied for by a young farmer who has already received aid for the development of a small farm under point (iii) of that provision, the amount received as such aid must be deducted from the amount to be approved as aid for young farmers.

71. This ensures that the maximum amount of support under that aid, EUR 70 000, is not exceeded. Consequently, if a farmer has already received EUR 15 000 for the development of a small farm, he or she can now receive further support of only up to EUR 55 000 as a young farmer.

72. Under EU law, Ms Šenfelde can therefore receive aid as a young farmer in this case if, in the award of that aid, the amount which she has already received as aid for the development of a small farm is deducted.

(c) Spirit and purpose of aid for young farmers

73. This approach, which is also proposed by the referring court, takes account of the objection that a single farm or a single development project cannot be supported by both types of aid because they are designed for different groups of beneficiaries.

74. The proposed approach seeks precisely to avoid such duplicated support as it leads to a situation essentially similar to a situation where aid for young farmers is not paid in a single step, but progressively. The option of such payment in instalments is expressly provided for in Regulation No 1305/2013. [39] Thus, a young farmer who applies first for aid for the development of a small farm and then for aid for young farmers is, in essence, placed in neither a more favourable nor a less favourable position than a young farmer who immediately applies for the aid for young farmers as a first step.

75. Allowing a young farmer, even after receiving aid for the development of a small farm, still to apply for aid for young farmers, from which the amount received is deducted, also takes into account the reality of young farmers and is consistent with the spirit and purpose of the support offered to them under Regulation No 1305/2013.

76. Indeed, the criterion of setting up for the first time in connection with aid for young farmers does not necessarily require this to be done in a new farm which previously did not exist. Rather, as the Commission also explains, it is possible and commonplace for a young farmer, like Ms Šenfelde in the main proceedings, to acquire an existing farm when setting up for the first time.

[38] See above, point 18 et seq. of this Opinion.

[39] See recital 17 and Article 19(5) of Regulation No 1305/2013 (see above, points 4 and 8 of this Opinion). It is not entirely clear from the wording of those provisions whether payment in instalments is an obligation or an option. Furthermore, there is no need in the present case to address the question whether the Latvian rules under which aid for young farmers and for the development of small farms is to be distributed in the form of a single payment (see above, points 21 and 23 of this Opinion) are consistent in this regard with Regulation No 1305/2013. In any event, those national provisions may not be interpreted or applied in such a way that they prevent the payment of aid for young farmers in a case like the present one merely because the farmer has previously received aid for the development of a small farm (see immediately below, point 83 et seq. of this Opinion).

77. As the Commission and Ms Šenfelde further assert, and as the facts of the present case demonstrate, it is also natural in this situation for a young farmer subsequently to develop and enlarge the acquired farm, as it is in keeping with the objectives of development of enterprises that a larger enterprise is able to grow from a smaller one.

78. It is evident in this connection that it was only through the support for the development of a small farm that Ms Šenfelde was placed in a position to increase her production potential sufficiently to satisfy the size criterion for applying for aid for young farmers. [40] According to the referring court and the parties, moreover, Ms Šenfelde explained in her business plan for aid for young farmers that she intended to press ahead with the project initiated by virtue of the development aid and the objective pursued by that project (in particular expanding her livestock).

79. To refuse a young farmer aid for young farmers in this kind of situation on the ground that he or she has previously received aid for the development of a small farm in respect of the same farm and the same project would run entirely counter to the objectives of Regulation No 1305/2013 and the Union priorities for rural support. Indeed, under Article 5(1)(2)(a) of Regulation No 1305/2013, 'improving the economic performance of all farms and facilitating farm restructuring and modernisation, notably with a view to increasing market participation and orientation' is expressly mentioned as a Union priority for rural development.

80. Consequently, young farmers in the setting-up phase should be encouraged to enlarge and develop their farms and to adapt their original business plans accordingly, all the more so since a young farmer who further enlarges his or her farm after receiving aid for the development of a small farm and satisfies the criteria for aid for young farmers (ownership of the farm, being an active farmer, agriculture as a substantial part of receipts [41]) thereby contributes even further to realising the objectives of the viability and competitiveness of agriculture and generational renewal.

81. Furthermore, allowing a young farmer in such a case still to apply for aid for young farmers after receiving aid for the development of a small farm, from which the amount received as development aid is then deducted, is also consistent with the fact that business start-up aid for young farmers can be combined with numerous other measures, such as financial instruments, which facilitate access for young farmers to land and means of production and their setting up. [42]

[40] Furthermore, in their written pleadings in this case both Ms Šenfelde and the Commission indicate that at a certain time the Latvian authorities issued a kind of call for tenders for the submission of applications for aid for young farmers and that it was not absolutely clear in advance when that call for tenders would take place. Ms Šenfelde in particular seems to claim that at the moment of applying for aid for the development of a small farm she was not able to foresee at all whether or when she would subsequently be able to apply for aid for young farmers. Should this be true, which it is for the referring court to examine, there would be even less justification for reproaching Ms Šenfelde, at the moment of applying for that aid, for having previously applied for aid for the development of a small farm.

[41] See above, point 47 of this Opinion.

[42] See the second paragraph of recital 17 of Regulation No 1305/2013 (see above, point 4 of this Opinion) and recital 8, Article 8(2) and point 5(b) of Part 1 of Annex I to Commission Implementing Regulation No 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 (OJ 2014 L 227, p. 18). See also section 4.2.1. (p. 4 et seq.) of *Measure fiche Farm and business development, Measure 6, Article 19 of Regulation 1305/2013* (see above, footnote 16 of this Opinion): 'It is possible to combine some of the different support options under Article 19 within one supported project (i.e. integrated approach).' Lastly, the 2014-2020 Agriculture Guidelines also contain a specific section concerning the conditions under which a cumulation of aid, like that at issue in this case, can be considered compatible with the internal market (see paragraph 99 et seq. of the 2014-2020 Agriculture Guidelines (see above, point 18 of this Opinion)).

3. Conclusion on the first part of the question referred

82. It follows that Article 19(1)(a) of Regulation No 1305/2013 must be interpreted as meaning that a farmer may be granted support both through business start-up aid for the development of a small farm under point (iii) and through business start-up aid for young farmers under point (i). Both the first and the second application for support must be submitted within a period of no more than 24 months from the date of setting up. Support received in connection with the first type of aid must be deducted from support to be received in connection with the second type of aid such that the maximum amount of support per young farmer under Article 19(6) and Annex II to Regulation No 1305/2013 is not exceeded.

B. Latitude enjoyed by Member States (second and third parts of the question referred)

83. By the second and third parts of its question, the referring court wishes to know, in essence, [43] whether the Member States may provide that a young farmer who has already received aid for the development of a small farm under Article 19(1)(a)(iii) of Regulation No 1305/2013 can no longer receive aid for young farmers under point (i) of that provision.

84. That question must be answered in the negative.

85. According to case-law, Member States may adopt measures for the implementation of a regulation. However, in doing so they must not thereby obstruct its direct applicability or conceal its nature as an act of EU law and they must remain within the limits of the discretion conferred on them by that regulation. [44]

86. In this instance, Regulation No 1305/2013 allows Member States various degrees of latitude in arranging their rural support programmes and in implementing the requirements laid down by that regulation. These degrees of latitude, with regard to the size of eligible farms or the amount of aid for example, [45] are intended to permit Member States to take account of their respective socio-economic conditions. However, those degrees of latitude are each expressly provided for in Regulation No 1305/2013 and do not relate to the fundamental criteria governing the eligibility of young farmers under Article 19(1)(a)(i). In contrast, those criteria are definitively laid down by the regulation itself. [46]

87. Member States may not therefore refuse to grant support to a young farmer who satisfies the conditions for support under Article 19(1)(a)(i) of Regulation No 1305/2013. [47] In line with the answer to the first part of the question referred, however, in granting that support they must deduct the amount received as aid under point (iii) of that provision.

[43] By the third part of its question, the referring court wishes to know whether a Member State may refuse to cumulate aid in the case where the cumulation sequence laid down in the national support programme has not been complied with. It is not entirely clear what the referring court is seeking to establish by this question, as it is not explained what cumulation sequence is laid down in the Latvian programme. In essence, however, this third part also asks whether Member States still enjoy latitude in arranging the conditions for receiving aid for young farmers.

[44] Judgments of 7 July 2016, *Občina Gorje* (C-111/15, EU:C:2016:532, paragraph 35 et seq.); of 30 March 2017, *Lingurár* (C-315/16, EU:C:2017:244, paragraph 18 et seq.); and of 7 August 2018, *Ministru kabinets* (C-120/17, EU:C:2018:638, paragraph 31 et seq.).

[45] See, with regard to the notion of small farms, the third subparagraph of Article 19(2) of Regulation No 1305/2013, with regard to the definition of upper and lower thresholds for allowing access to support, the third subparagraph of Article 19(4) and, with regard to the amount of aid, Article 19(6) (see above, point 8 of this Opinion).

[46] See above, point 40 et seq. of this Opinion.

[47] See also, to that effect, judgment of 25 October 2012, *Ketelä* (C-592/11, EU:C:2012:673, paragraph 41 et seq.).

V. Conclusion

88. In the light of the foregoing, I propose that the Court should rule as follows:

(1) Article 19(1)(a) 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 must be interpreted as meaning that a farmer may be granted support both through business start-up aid for the development of a small farm under point (iii) and through business start-up aid for young farmers under point (i). Both the first and the second application for support must be submitted within a period of no more than 24 months from the date of setting up. Support received in connection with the first type of aid must be deducted from support to be received in connection with the second type of aid such that the maximum amount of support per young farmer under Article 19(6) and Annex II to Regulation No 1305/2013 is not exceeded.

(2) If a young farmer satisfies all the conditions for receiving the business start-up aid for young farmers provided for in Article 19(1)(a)(i) of Regulation No 1305/2013 within a period of 24 months of setting up, Member States may not refuse to grant him or her approval for that aid on the ground of having already received business start-up aid for the development of a small farm under point (iii) of that provision within the same period.