Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

6 March 2025 *

(Reference for a preliminary ruling – Economic, social and territorial cohesion – Own resources of the European Union – Protection of the European Union's financial interests – Regulation (EU) No 1303/2013 – Article 2(10) – Concept of 'beneficiary' – Financial correction for breach of national public procurement legislation – Addressee of a financial correction decision – Determination of liability for that correction and contractual apportionment of that liability between the recipient of State aid and the manager of that aid – Participation in administrative and judicial proceedings relating to that decision – Articles 41 and 47 of the Charter of Fundamental Rights of the European Union)

In Joined Cases C-471/23 and C-477/23,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decisions of 13 July 2023, received at the Court on 25 July 2023, in the proceedings

Obshtina Veliko Tarnovo (C-471/23),

Obshtina Belovo (C-477/23)

v

Rakovoditel na Upravlyavashtia organ na Operativna programa 'Regioni v rastezh' 2014-2020 (C-471/23),

Rakovoditel na Upravlyavashtia organ na Operativna programa 'Okolna sreda' 2014-2020 (C-477/23),

intervening party:

Varhovna administrativna prokuratura,

THE COURT (Eighth Chamber),

composed of N. Jääskinen, President of the Ninth Chamber, acting as President of the Eighth Chamber, M. Gavalec (Rapporteur) and J. Passer, Judges,

Advocate General: T. Ćapeta,

* Language of the case: Bulgarian.

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Obshtina Belovo, by A.A. Kecheva,

– the Rakovoditel na Upravlyavashtia organ na Operativna programa ‘Okolna sreda’ 2014-2020, by G. Simeonova,

– the European Commission, by D. Drambozova, C. Ehrbar and J. Hradil, acting as Agents,

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

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 2(10), (36) and (37) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320, and corrigendum OJ 2016 L 200, p. 140), as amended by Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 (OJ 2018 L 193, p. 1) (‘Regulation No 1303/2013’), and of Articles 41 and 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The requests have been made in the context of two disputes, the first between Obshtina Veliko Tarnovo (municipality of Veliko Tarnovo, Bulgaria) and the Rakovoditel na Upravlyavashtia organ na Operativna programa ‘Regioni v rastezh’ 2014-2020 (head of the managing authority of the Operational Programme ‘Regions in Growth’ 2014-2020) (C-471/23), and the second between Obshtina Belovo (municipality of Belovo, Bulgaria) and the Rakovoditel na Upravlyavashtia organ na Operativna programa ‘Okolna sreda’ 2014-2020 (head of the managing authority of the Operational Programme ‘Environment’ 2014-2020) (C-477/23) concerning the arrangements for adopting financial correction decisions following irregularities found during the implementation of projects co-financed by EU funds.

Legal context

European Union law

Regulation (EC) No 1370/2007

3 Under recitals 5, 33 and 36 of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1):

‘(5) … If Member States, in accordance with this Regulation, choose to exclude certain general rules from its scope, the general regime for State aid should apply.

…

(33) In paragraphs 87 to 95 of its judgment of 24 July 2003 [*Altmark Trans and Regierungspräsidium Magdeburg* (C-280/00, EU:C:2003:415)], the Court of Justice of the European Communities ruled that compensation for public service does not constitute an advantage within the meaning of Article [107 TFEU], provided that four cumulative conditions are satisfied. Where those conditions are not satisfied and the general conditions for the application of Article [107(1) TFEU] are met, public service compensation constitutes State aid and is subject to Articles [93, 106, 107 and 108 TFEU].

…

(36) … Any compensation granted in relation to the provision of public passenger transport services other than those covered by this Regulation which risks involving State aid within the meaning of Article [107(1) TFEU] should comply with the provisions of Articles [93, 106, 107 and 108 TFEU], including any relevant interpretation by the Court of Justice of the European Communities and especially its ruling in [the judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg* (C-280/00, EU:C:2003:415)]. …’

Regulation No 1303/2013

4 Under recitals 65 and 66 of Regulation No 1303/2013:

‘(65) Member States should adopt adequate measures to guarantee the proper set up and functioning of their management and control systems to give assurance on the legal and regular use of the [European Structural and Investment (ESI)] Funds. …

(66) In accordance with the principles of shared management, Member States and the [European] Commission should be responsible for the management and control of programmes. Member States should have the primary responsibility, through their management and control systems, for the implementation and control of the operations in programmes. …’

5 Article 1 of that regulation, entitled 'Subject matter', is worded as follows:

'This Regulation lays down the common rules applicable to the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF), which operate under a common framework (the "European Structural and Investment" – "ESI Funds"). …

…'

6 Article 2 of the said regulation, entitled 'Definitions', provides:

'For the purposes of this Regulation, the following definitions apply;

…

(10) "beneficiary" means a public or private body or a natural person, responsible for initiating or both initiating and implementing operations, and:
   (a) in the context of State aid, the body which receives the aid, except where the aid per undertaking is less than EUR 200 000, in which case the Member State concerned may decide that the beneficiary is the body granting the aid, without prejudice to Commission Regulations (EU) No 1407/2013 [of 18 December 2013 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid (OJ 2013 L 352, p. 1)], (EU) No 1408/2013 [of 18 December 2013, on the application of Articles 107 and 108 [TFEU] to *de minimis* aid in the agriculture sector (OJ 2013 L 352, p. 9)] and (EU) No 717/2014 [of 27 June 2014 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid in the fishery and aquaculture sector (OJ 2014 L 190, p. 45)]; and
   (b) in the context of financial instruments under Title IV of Part Two of this Regulation, the body that implements the financial instrument or the fund of funds as appropriate;

…

(36) "irregularity" means any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the ESI Funds, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union[;]

(37) "economic operator" means any natural or legal person or other entity taking part in the implementation of assistance from the ESI Funds, with the exception of a Member State exercising its prerogatives as a public authority;

…'

7 Article 143 of Regulation No 1303/2013, entitled 'Financial corrections by Member States', states:

'1. The Member States shall in the first instance be responsible for investigating irregularities and for making the financial corrections required and pursuing recoveries. In the case of a systemic irregularity, the Member State shall extend its investigation to cover all operations potentially affected.

2. Member States shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes. Financial corrections

shall consist of cancelling all or part of the public contribution to an operation or operational programme. The Member States shall take into account the nature and gravity of the irregularities and the financial loss to the Funds or the EMFF and shall apply a proportionate correction. Financial corrections shall be recorded in the accounts for the accounting year in which the cancellation is decided.

…'

Bulgarian law

The ZUSEFSU

8 Under Article 70 of the Zakon za upravlenie na sredstvata ot evropeyskite fondove pri spodeleno upravlenie (Law on the management of the resources of European funds under shared management, DV No 101 of 22 December 2015, whose title prior to the amendment published in DV No 51 of 2022, which entered into force on 1 July 2022, was worded as follows: Zakon za upravlenie na sredstvata ot evropeyskite strukturni i investitsionni fondove (Law on the management of the resources of the European Structural and Investment Funds – ZUSESIF)), in the version applicable to the dispute in the main proceedings ('the ZUSEFSU'):

'(1) Financial support from the ESI Funds may be cancelled in whole or in part by effecting a financial correction for the following reasons:

…

9. by reason of an irregularity constituting a breach of the rules for appointing a successful tenderer under Chapter 4, resulting from an act or omission of the beneficiary, which has or would have the effect of prejudicing the European Structural and Investment Funds;

…

(2) The cases of irregularity giving rise to financial corrections as referred to in paragraph 1, point 9 shall be indicated in a normative act of the Council of Ministers.'

9 Article 73(1) of the ZUSEFSU is worded as follows:

'The basis for and amount of the financial correction shall be determined by a reasoned decision of the head of the managing authority which approved the project.'

Law on public procurement

10 Pursuant to Article 2(2) of the Zakon za obshtestvenite porachki (Law on public procurement, DV No 13 of 16 February 2016), when awarding public contracts, contracting authorities are not permitted to restrict competition by including conditions or requirements which provide an unjustified advantage or unduly restrict the participation of economic operators in public contracts and which do not comply with the purpose, value, complexity, quantity or scope of the public contract.

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-471/23

11 Following an award procedure under the Operational Programme 'Regions in Growth' 2014-2020, forming part of the partnership agreement of the Republic of Bulgaria for the 2014-2020 programming period, the grant 'Implementation of integrated plans for urban regeneration and development 2014-2020' was awarded directly to the municipality of Veliko Tarnovo.

12 On 24 August 2018, that municipality concluded a partnership agreement with the 'Organizatsia na dvizhenieto, parkingi i garazhi' EOOD (Organisation for transport, car parks and garages EOOD; 'the municipal company'). That partnership agreement provides that that municipality and the municipal company are to be designated as 'lead partner' and 'partner', respectively, in the project 'Integrated urban transport for the city of Veliko Tarnovo' under that operational programme.

13 Under the terms of the said partnership agreement, the lead partner and the partner are required, if the project is approved, to conclude an administrative contract. The partner – the municipal company in this case – is obliged to conduct, in its capacity as contracting authority, a public procurement procedure, in accordance with the Law on public procurement, the purpose being the supply of rolling stock. The same agreement also stipulates that if, during that procedure, breaches warranting a financial correction are committed, the resources concerned by that correction are, up to the amount thereof, to be borne by the contracting authority, which is a party to the contract which gave rise to that correction.

14 On 19 July 2019, the municipality of Veliko Tarnovo, as beneficiary of the grant 'Implementation of integrated plans for urban regeneration and development 2014-2020', concluded an administrative contract with the managing authority of the Operational Programme 'Regions in Growth' 2014-2020 with a view to the implementation of the proposal for the said project, of a total value of 11 133 732.51 leva (BGN) (approximately EUR 5 700 000), including the said grant in the amount of BGN 10 409 573.31 (approximately EUR 5 300 000) and the beneficiary's own contribution of BGN 724 159.20 (approximately EUR 370 000).

15 That administrative contract stipulates that part of the amount of the grant at issue constitutes State aid to the public passenger transport service operator in the form of public service compensation, in accordance with Regulation No 1370/2007. The administrator of that aid is the municipality of Veliko Tarnovo, which is required to ensure that the applicable regime is implemented in compliance with the requirements arising from that regulation, including the establishment and application of adequate mechanisms for monitoring their compliance.

16 In accordance with the general conditions of that administrative contract, the beneficiary is liable, vis-à-vis the managing authority of the Operational Programme 'Regions in Growth' 2014-2020, for the actions of partners and external contractors in the implementation of the project concerned and assumes 'on its own behalf all risks, including unjustified expenditure and financial corrections charged to the grant of the project budget'.

17 After having launched a public procurement procedure in its capacity as operator of a service of general economic interest and as a person identified as one who receives State aid from the resources of the ESI Funds, the municipal company, on 31 March 2020, concluded with the successful tenderer 'Excelor-Alfa' DZZD a public contract for the supply of three electric buses.

18 Following a report of irregularity, on 11 May 2022, the managing authority of the Operational Programme 'Regions in Growth' 2014-2020 adopted a financial correction decision in respect of the municipality of Veliko Tarnovo ('the financial correction decision of 11 May 2022') on account of an irregularity, within the meaning of Article 70(1)(9) of the ZUSEFSU, committed by the municipal company. That financial correction amounted to 25% of the resources eligible for funding by the ESI Funds under that public contract.

19 The municipality of Veliko Tarnovo brought an action against that decision before the Administrativen sad Veliko Tarnovo (Administrative Court, Veliko Tarnovo, Bulgaria).

20 By a judgment of 1 November 2022, that court dismissed that action on the ground that that municipality was the sole beneficiary of the grant at issue in so far as it was a party to the administrative contract referred to in paragraph 14 of the present judgment and that, as a party to that contract, that municipality could legitimately be deemed to be the addressee of the administrative act fixing the financial correction concerned. That court also noted that the fact that that municipality, as the beneficiary of that grant, concluded partnership agreements for certain activities does not absolve it of its liability as a party to that contract with a direct relationship with the managing authority of the Operational Programme 'Regions in Growth' 2014-2020. Lastly, the same court found that the clause relating to liability for breaches and risks, including for financial corrections, was remedial in nature in that it was aimed at determining, in internal relations between partners, who would be liable for such corrections.

21 The municipality of Veliko Tarnovo brought an appeal on a point of law against that judgment before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), which is the referring court.

22 According to that court, first of all, in order to answer the question whether the municipality of Veliko Tarnovo is the sole beneficiary of the grant at issue and whether it committed, in that capacity, a breach of Bulgarian law which gave rise to a financial correction, it is necessary to interpret the concept of 'beneficiary' within the meaning of Article 2(10) of Regulation No 1303/2013.

23 Next, the question arises as to whether the municipality of Veliko Tarnovo may be regarded as the addressee of the financial correction decision of 11 May 2022 on account of an irregularity, within the meaning of Article 2(36) of Regulation No 1303/2013, committed by the municipal company, and as thus having to assume liability for breaches committed during the public procurement procedure initiated by that company, even though that municipality does not use the resources originating from the ESI Funds under the public contract concluded following that procedure.

24 Last, if it were established that the municipal company is the beneficiary of the grant which was the subject of that financial correction, in its capacity as the person who received that grant and as the public body responsible for initiating and implementing the specific operation of acquiring rolling stock, the question would also arise as to why the right to participate in the procedure for determining that financial correction was not guaranteed to it and whether it should have been able to intervene as a party to the proceedings for annulment of that correction before the Administrativen sad Veliko Tarnovo (Administrative Court, Veliko Tarnovo).

25 In those circumstances, the Varhoven administrativen sad (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the manager of State aid in the form of resources from [ESI Funds,] who is not the recipient of the aid[,] fall into the category of a "beneficiary" of aid in the context of State aid within the meaning of Article 2(10) of Regulation [No 1303/2013]?

(2) Can the manager of State aid in the form of resources from ESI Funds[,] who is not the person using the aid on the basis of a public contract[,] be the right addressee of a decision determining a financial correction to be imposed on account of a breach of national or EU law committed in connection with the awarding of the public contract?

(3) With regard to the person who is the addressee of the administrative measure comprising a financial correction on account of an irregularity within the meaning of Article 2(36) of Regulation No 1303/2013, in the case of State aid in the form of resources from ESI Funds, must two cumulative conditions be satisfied, namely that the person is the recipient of the grant from the resources which are affected by the irregularity and is also the person who used the resources in question?

(4) Can liability for breaches of the law in the use of State aid in the form of resources from ESI Funds be regulated or reassigned by a contract between the beneficiary and the aid manager, or does liability lie with the beneficiary of the aid who uses it unlawfully?

(5) Is there joint and several liability of the aid beneficiary and the aid manager, and must such liability be prescribed in the contract awarding the aid?

(6) Do Articles 41 and 47 of the [Charter] preclude a national administrative practice and case-law in a case such as that in the main proceedings, whereby a "public service operator", such as the [municipal company], which is alleged to have been found in breach, in the procedure implemented by it, of the [Law on public procurement] in connection with the award of a public contract in the procedure for the use of resources from ESI Funds (which constitute State aid), is granted neither the right to participate in the procedure for determining a financial correction in respect of a contract which it has concluded nor the right to participate in the judicial proceedings challenging that administrative act, on the ground that the said operator, as a partner of the municipality, bears civil liability for redress under the partnership agreement?'

Case C-477/23

26 Case C-477/23 concerns the use of ESI Funds for the period 2014-2020 under a 'combined procedure for the design and construction of composting facilities and facilities for the pre-treatment of household waste', the objective of which is to reduce the quantity of waste sent to landfill by providing additional capacity for the pretreatment of undifferentiated waste and for the separate collection and recycling by composting of green and/or biodegradable waste.

27 In the context of the procedure for obtaining a direct grant, for the region of Pazardzhik (Bulgaria), several municipalities, including those of Pazardzhik and Belovo, prepared a joint project proposal for the award of such a grant. The municipalities concerned were required to

sign an administrative contract relating to the award of a grant under the Operational Programme 'Environment' 2014-2020. The contract stipulates that the municipalities that are parties to it are to designate the municipality of Pazardzhik as 'lead municipality'. In addition, that contract provides that all of the municipalities to which it refers are beneficiaries, notwithstanding the fact that, alongside the name of each of those municipalities, their status as 'partner' is also recorded.

28 It is apparent from the arrangements for implementing the project approved under that procedure, which form an integral part of the administrative contract referred to in the preceding paragraph, that the municipality of Pazardzhik, as 'lead municipality', is responsible for the management of that project and has the power to receive into its bank account the funds referred to and to distribute them to partner municipalities, with the latter municipalities participating jointly with the lead municipality in the preparation and technical and financial implementation of the said project. In that context, the municipality of Belovo was required to conduct and award the public contract for the design, author supervision, construction, delivery and completion of a composting plant for separately collected green and/or biodegradable waste, with a capacity of 2 000 tonnes per annum.

29 In the procurement procedure for that public contract, the municipality of Belovo, in its capacity as contracting authority, concluded a public contract with 'Delchev Engineering' EOOD.

30 By a decision of 21 March 2022, the managing authority for the Operational Programme 'Environment' 2014-2020 imposed on the municipality of Pazardzhik a financial correction of 10% of the expenditure eligible for funding by the ESI Funds under that public contract ('the financial correction decision of 21 March 2022'). That financial correction was imposed on account of an irregularity, within the meaning of Article 70(1)(9) of the ZUSEFSU, committed by the municipality of Belovo.

31 The municipality of Belovo, which is not the addressee of the financial correction decision of 21 March 2022, brought an action against that decision before the Administrativen sad Pazardzhik (Administrative Court, Pazardzhik, Bulgaria). By a judgment of 26 October 2022, that court dismissed that action, holding that, even though that decision had indicated only the municipality of Pazardzhik as the addressee of it, the municipality of Belovo, as the contracting authority, had signed the public contract and had a legal interest in bringing the said action. However, that court concluded that that decision had been adopted in accordance with Bulgarian law.

32 The municipality of Belovo brought an appeal on a point of law against that judgment before the Varhoven administrativen sad (Supreme Administrative Court), which is the referring court.

33 According to that court, there is a divergence in the national case-law relating to factual situations analogous to that at issue in the present case, concerning the same procedure for funding by ESI Funds.

34 First, it is apparent, in its view, from certain national decisions that only the lead municipality of the project concerned holds the status of 'beneficiary', within the meaning of Article 2(10) of Regulation No 1303/2013, and that it is the addressee of the financial correction decision, the other partner municipalities not holding that status. Thus, in the cases which gave rise to those national decisions, the partner municipalities other than the lead municipality had not been admitted as parties either to the procedure for determining the financial correction at issue or to

the judicial proceedings seeking annulment of the act making that correction, even where those partner municipalities were behind the irregularity which had given rise to that financial correction.

35 Second, certain national courts take the view that, in the event of breach of the public procurement rules committed by a municipality spending sums originating from ESI Funds, that municipality should be regarded as the addressee of the financial correction at issue and as having the right to participate in the procedure for determining the financial correction concerned and to defend itself before a court.

36 Furthermore, the referring court expresses doubts as to how liability for financial corrections arising from the commission of breaches of public procurement rules in the context of the use of ESI Funds should be determined.

37 In those circumstances, the Varhoven administrativen sad (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the interpretation of Article 2(10), (36) and (37) of Regulation No 1303/2013 preclude national legislation, or an interpretation and application practice in respect of that legislation, whereby in a case such as that in the main proceedings only one of the partner municipalities (parties to the [Administrative agreement on the awarding of a financial grant]), namely the one which signed the administrative agreement on the financial grant as the lead partner, is to be regarded as the beneficiary of the grant awarded from the [ESI Funds]? What conditions must an organisation fulfil to be classed as a beneficiary within the meaning of Article 2(10) of Regulation No 1303/2013 in a case such as the present one?

(2) Does the interpretation of Article 2(10), (36) and (37) of Regulation No 1303/2013 preclude national legislation, or an interpretation and application practice in respect of that legislation, whereby in a case such as that in the main proceedings the financial correction is imposed on account of a breach by an economic operator of the public procurement provisions by means of a decision addressed to another economic operator which has not committed any breach but which is indicated as the lead partner in the contract concerning the financial grant?

(3) Does Regulation No 1303/2013 preclude national legislation, or an interpretation and application practice in respect of that legislation, whereby liability for a financial correction may be contractually reassigned between project partners, or can or must each economic operator bear liability for financial corrections imposed in connection with breaches committed by it in the use of resources from ESI Funds under the contracts to which it is a party?

(4) Do Articles 41 and 47 of the [Charter], in a case such as that in the main proceedings, preclude national administrative practice and case-law according to which the municipality which is alleged to have breached the [Law on public procurement] in awarding the public contract in the procedure for the use of resources from ESI Funds is granted neither the right to participate in the procedure for determining a financial correction relating to the contract it has concluded nor the right to take part in the judicial proceedings challenging that administrative act, on the grounds that civil proceedings are open to it by virtue of its partnership agreement with the lead partner?’

Consideration of the questions referred

The first question in Case C-471/23 and the first question in Case C-477/23

38 By its first question in Case C-471/23 and its first question in Case C-477/23, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2(10) of Regulation No 1303/2013 must be interpreted as meaning that a body which is responsible for initiating or both initiating and implementing the operations concerned, but which does not receive State aid as referred to in that Article 2(10)(a), and a body which has not signed an administrative grant contract as 'lead partner' may fall within the concept of 'beneficiary', within the meaning of that provision.

39 Article 2(10) of that regulation defines, first, the concept of 'beneficiary' as a public or private body or a natural person, responsible for initiating or both initiating and implementing operations. Second, that provision states, in subparagraphs (a) and (b) thereof, that that body is, respectively, in the context of State aid, the body which receives the aid, except where the aid per undertaking is less than EUR 200 000, in which case the Member State concerned may decide that the beneficiary is the body granting the aid, without prejudice to Commission Regulations No 1407/2013, No 1408/2013 and No 717/2014, and, in the context of financial instruments under Title IV of Part Two of Regulation No 1303/2013, the body that implements the financial instrument or the fund of funds as appropriate.

40 It is apparent from the wording of the first part of the definition of that concept provided for in that Article 2(10) that the Member States have a certain margin of discretion in determining whether the beneficiary, in its capacity as a public or private body or a natural person, is responsible solely for initiating the operations concerned or for both initiating and implementing them.

41 So far as concerns the second part of that provision, it lays down rules for determining the beneficiary in cases involving State aid and financial instruments under Title IV of Part Two of Regulation No 1303/2013.

42 In that regard, it should be noted that the conditions provided for in the first part of Article 2(10) of that regulation and those provided for in Article 2(10)(a) and (b) are separated by the conjunction 'and'. However, the use of that conjunction does not mean that those conditions are cumulative in nature. On the contrary, the provisions featured in Part One lay down a general rule, while those set out in Article 2(10)(a) and (b) constitute supplementary rules relating to specific situations.

43 Thus, it must be held that the wording of Article 2(10) of Regulation No 1303/2013 in no way precludes the existence of several beneficiaries for the same operation.

44 In that regard, it should be noted that, as is apparent from recital 66 of that regulation, responsibility for implementing operations in programmes lies primarily with the Member States, which are thus free to determine, inter alia, the body responsible for initiating the operations concerned or for both initiating and implementing them, as well as the body receiving the aid at issue.

45 A contrary interpretation could give rise to situations in which no body could be classified as a beneficiary, within the meaning of Article 2(10) of Regulation No 1303/2013, in so far as it would not be able to satisfy the two conditions provided for in the first part of Article 2(10) and point 10(a) or (b).

46 Furthermore, as the Commission has noted, in essence, in its written observations, with regard to the specific situation provided for in Article 2(10)(a) of Regulation No 1303/2013, since a grant may include various forms some of which constitute State aid, such an interpretation would require, for the parts of an operation concerned by aid, that the body receiving that aid be the beneficiary, within the meaning of that Article 2(10)(a), whereas, for the other parts of the same operation, the body responsible for initiating or both initiating and implementing it would have to be the beneficiary, within the meaning of the first part of that Article 2(10). That interpretation could, however, come up against practical difficulties linked to the often interdependent nature of grants and to the identification of those among them which can take the form of State aid.

47 In the case at hand, it is apparent from the file before the Court, that, in Case C-471/23, under the administrative contract concluded with the managing authority of the Operational Programme 'Regions in Growth' 2014-2020 with a view to the implementation of the project proposal at issue in that case, the municipality of Veliko Tarnovo was designated as being responsible for implementing that project, whereas the municipal company was identified as a person receiving State aid. In that regard, part of the grant under that project constitutes State aid, but the referring court does not specify whether the amount of that aid is less than EUR 200 000. In Case C-477/23, the municipality of Pazardzhik, as 'lead' municipality responsible for managing the project at issue in that case, participates jointly with other municipalities, including that of Belovo, in the preparation and technical and financial implementation of the latter project.

48 In that regard, it will be for the referring court – which alone has jurisdiction to assess the facts of the dispute in the main proceedings and to interpret the national legislation concerned – to determine whether, in Case C-471/23, the municipality of Veliko Tarnovo and, in Case C-477/23, the municipalities of Pazardzhik and Belovo are responsible for initiating or for both initiating and implementing the operations concerned, within the meaning of the first part of Article 2(10) of Regulation No 1303/2013, if the aid received by the municipal company in Case C-471/23 falls within the concept of 'State aid' within the meaning of Article 2(10)(a) of that regulation and, if so, the amount of that aid.

49 In that regard, it should be recalled, as the Commission does, that it is apparent from recitals 5, 33 and 36 of Regulation No 1370/2007 and from the settled case-law of the Court that public service compensation granted in compliance with all the conditions laid down in that regulation does not constitute State aid.

50 Moreover, as is apparent from paragraph 43 of the present judgment, although, under Article 2(10)(a) of Regulation No 1303/2013, in the context of State aid, the body which receives the aid must be regarded as the beneficiary, within the meaning of that provision, there is nothing to preclude a body which satisfies the conditions provided for in the first part of that Article 2(10) from also being regarded as the beneficiary, within the meaning of the latter provision.

51 So far as concerns the referring court's question, in Case C-477/23, as to whether only a public body which has signed an administrative grant contract as 'leader' must be regarded as the beneficiary of the grant concerned, it should be pointed out that Article 2(10) of Regulation No 1303/2013 does not provide for specific categories of potential beneficiaries.

52 Accordingly, to the extent that a body is responsible for initiating or both initiating and implementing operations, that body may be regarded as the 'beneficiary', within the meaning of that provision, irrespective of whether such a body has been designated as 'leader'.

53 It is apparent from the foregoing that the answer to the first question in Case C-471/23 and to the first question in Case C-477/23 is that Article 2(10) of Regulation No 1303/2013 must be interpreted as meaning that a body which is responsible for initiating or both initiating and implementing the operations concerned, but which does not receive State aid as referred to in that Article 2(10)(a), and a body which has not signed an administrative grant contract as 'lead partner' may fall within the concept of 'beneficiary', within the meaning of that provision.

The second to fifth questions in Case C-471/23 and the second and third questions in Case C-477/23

54 By its second to fifth questions in Case C-471/23 and by its second and third questions in Case C-477/23, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2(36) and (37) of Regulation No 1303/2013 must be interpreted as precluding, first, national legislation under which a financial correction decision for breach of the public procurement rules may be addressed to an economic operator other than the one which committed that breach and, second, liability for that financial correction from being joint and several or that liability from being contractually apportioned between that economic operator and the person who committed that breach or the said liability from being assumed by the latter.

55 As a preliminary point, it should be recalled that, by virtue of Article 2(36) of Regulation No 1303/2013, an irregularity is any breach of EU law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of ESI Funds, which has, or would have, the effect of prejudicing the EU budget by charging an unjustified item of expenditure to it.

56 In addition, Article 143(1) of that regulation provides, inter alia, that the Member States are in the first instance to be responsible for investigating irregularities and for making the financial corrections required and pursuing recoveries. To that end, as paragraph 2 of that article states, Member States are to make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes.

57 However, no provision of the said regulation lays down rules relating to the definition of the addressees of a financial correction act.

58 In that regard, it should be recalled that the obligation to give back an advantage improperly received by means of an irregularity is not a penalty, but simply the consequence of a finding that the conditions required to obtain the advantage derived from EU rules have not been observed, with the result that that advantage becomes an advantage wrongly received (judgment of 1 October 2020, *Elme Messer Metalurgs*, C-743/18, EU:C:2020:767, paragraph 64 and the case-law cited).

59 It follows that restitution of an advantage wrongly received by means of an irregularity, within the meaning of Article 2(36) of Regulation No 1303/2013, need not necessarily be claimed from the body which committed such an irregularity.

60 In the case at hand, it is apparent from the documents before the Court that, in Case C-471/23, the municipality of Veliko Tarnovo signed the administrative grant contract concerned with the managing authority of the Operational Programme 'Regions in Growth' 2014-2020 and was the addressee of the financial correction decision of 11 May 2022, notwithstanding the fact that the municipal company allegedly committed the irregularity at issue. In Case C-477/23, the municipalities concerned – including that of Belovo, which allegedly committed the irregularity at issue, and that of Pazardzhik, as 'lead municipality' – all signed the administrative grant contract concerned and the latter municipality was the addressee of the financial correction decision of 21 March 2022.

61 It must be pointed out however that, as is apparent from paragraph 59 of the present judgment, bodies governed by public law such as the municipalities at issue in the main proceedings may be the addressees of a financial correction act, notwithstanding the fact that they have not committed an irregularity, within the meaning of Article 2(36) of Regulation No 1303/2013.

62 As regards the question of liability for financial corrections resulting from the commission of breaches of public procurement rules in the context of the use of ESI Funds, it should be remembered that, in the absence of EU provisions, disputes relating to the recovery of amounts unduly paid under EU law must be decided by the national courts in accordance with their national law, subject to the limits imposed by EU law (judgment of 17 November 2022, *Avicarvil Farms*, C-443/21, EU:C:2022:899, paragraph 37 and the case-law cited).

63 Thus, in the absence of any provision concerning that liability in Regulation No 1303/2013, it is determined by national law and the contractual commitments of the participants in a given operation.

64 Accordingly, and depending on the content of those contractual commitments, although each economic operator concerned may, vis-à-vis the competent national authority, be held jointly and severally liable for the same operation, such financial responsibility may also be apportioned between the economic operators concerned or assumed by the sole economic operator which committed the irregularity in question.

65 However, the Court has also held that the principle of legal certainty requires, on the one hand, that the rules of law be clear and precise and, on the other, that their application be foreseeable for those subject to the law, in particular, where they may have adverse consequences. That principle requires, inter alia, that legislation must enable those concerned to know precisely the extent of the obligations imposed on them, and those persons must be able to ascertain unequivocally their rights and obligations and take steps accordingly (judgment of 4 October 2024, *Lithuania and Others* v *Parliament and Council (Mobility package)*, C-541/20 to C-555/20, EU:C:2024:818, paragraph 158 and the case-law cited).

66 Furthermore, the imperative of legal certainty must be observed all the more strictly in the case of rules liable to have financial consequences (see, to that effect, judgment of 29 April 2021, *Banco de Portugal and Others*, C-504/19, EU:C:2021:335, paragraph 52 and the case-law cited).

67 In the case at hand, it is apparent from the orders for reference that, in Case C-471/23, the municipality of Veliko Tarnovo assumes on its own behalf all risks, including, in particular, the financial corrections charged to the grant of the budget of the project at issue, whereas the municipal company does not appear to have any such financial liability to the managing authority of the Operational Programme 'Regions in Growth' 2014-2020. By contrast, in Case C-477/23, the municipalities concerned participate together, inter alia, in the financial implementation of the project at issue and the municipality of Pazardzhik, as 'lead municipality', has the power to receive into its bank account the funds in question and to distribute them to partner municipalities.

68 In that regard, it will be for the referring court to verify, first, which economic operators assume financial liability towards the managing authorities concerned in accordance with national law and the terms of the contracts at issue and, second, whether those financially liable economic operators were in a position to know that, in the event of irregularity in the implementation of the project concerned, they would be liable – whether alone, jointly and severally or in some other way – for the financial correction to those managing authorities.

69 It follows from the foregoing that the answer to the second to fifth questions in Case C-471/23 and to the second and third questions in Case C-477/23 is that Article 2(36) and (37) of Regulation No 1303/2013 must be interpreted meaning that it does not preclude either national legislation under which a financial correction decision for breach of the public procurement rules may be addressed to an economic operator other than the one which committed that breach, liability for that financial correction from being joint and several, that liability from being apportioned contractually between that economic operator and the person who committed that breach or the said liability from being assumed by the latter, provided that the financially liable economic operators are in a position to know that, in the event of an irregularity in the implementation of the project at issue, they would thus be liable for the said financial correction to the managing authority concerned.

The sixth question in Case C-471/23 and the fourth question in Case C-477/23

70 By its sixth question in Case C-471/23 and by its fourth question in Case C-477/23, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 41 and 47 of the Charter must be interpreted as precluding a national practice whereby an economic operator which has committed an irregularity, within the meaning of Article 2(36) of Regulation No 1303/2013, which has given rise to a financial correction, does not have the right to participate either in the procedure determining that financial correction or in the judicial proceedings seeking annulment of it, on the ground that that economic operator has available to it a civil remedy under a partnership agreement.

71 As a preliminary point, it should be noted that, as is apparent from recital 65 of that regulation, Member States should adopt adequate measures to guarantee the proper set up and functioning of their management and control systems to give assurance on the legal and regular use of the ESI Funds, and that, in accordance with Article 143(1) of that regulation, the Member States are in the first instance to be responsible for, inter alia, investigating irregularities for making the financial corrections required.

72 In adopting such measures implementing EU law, Member States are required to respect the general principles of that law and the provisions of the Charter (judgment of 30 January 2024, *Agentsia 'Patna infrastruktura' (European funding of road infrastructure)*, C-471/22, EU:C:2024:99, paragraph 40 and the case-law cited).

73 Since, in that regard, the referring court makes reference, in particular, to Article 41 of the Charter regarding the right to good administration, it is important to point out that that article is addressed to the institutions, bodies, offices or agencies of the European Union and not to the institutions, bodies, offices or agencies of the Member States, with the result that an individual may not rely directly on that article in respect of national authorities. However, where a Member State implements EU law, the requirements pertaining to the right to good administration, as a general principle of EU law, including the right of any person to have his or her affairs handled impartially and within a reasonable period of time, are applicable in a procedure conducted by the competent national authority (judgment of 30 January 2024, *Agentsia 'Patna infrastruktura' (European funding of road infrastructure)*, C-471/22, EU:C:2024:99, paragraph 41 and the case-law cited).

74 Since the referring court also makes reference to the right to participate in the procedure, it is necessary to state that such a right, in as much as it makes it possible to exercise the right to be heard, is an integral part of the rights of the defence, the observance of which constitutes a general principle of EU law. The right to be heard guarantees every person the opportunity to make known his or her views usefully and effectively during an administrative procedure and before the adoption of any decision liable to affect his or her interests adversely, including where such a formality is not provided for by the applicable legislation. The purpose of the rule that the addressee of a decision affecting him or her adversely must be placed in a position to submit his or her observations before that decision is adopted is to enable the competent authority effectively to take into account all relevant information (judgment of 30 January 2024, *Agentsia 'Patna infrastruktura' (European funding of road infrastructure)*, C-471/22, EU:C:2024:99, paragraph 42 and the case-law cited).

75 That rule is applicable to an administrative procedure for determining a financial correction conducted by the national authorities on account of the commission of an irregularity, within the meaning of Article 2(36) of Regulation No 1303/2013.

76 Moreover, the right to effective judicial protection guaranteed under Article 47 of the Charter comprises various elements, including the rights of the defence, the principle of equality of arms, the right of access to a tribunal and the right to be advised, defended and represented (judgment of 30 January 2024, *Agentsia 'Patna infrastruktura' (European funding of road infrastructure)*, C-471/22, EU:C:2024:99, paragraph 46 and the case-law cited).

77 In the case at hand, as has been noted in paragraph 67 of the present judgment, and subject to verification by the referring court, in Case C-471/23, the municipal company which allegedly committed the irregularity had no contractual relationship with the managing authority of the Operational Programme 'Regions in Growth' 2014-2020 and does not appear to be financially liable, to that authority, for the implementation of the project at issue. As far as Case C-477/23 is concerned, that court does not state which of the municipalities concerned assumes such financial liability.

78 In that regard, it should be noted that, in so far as that court reaches the conclusion that the economic operator which committed the irregularity is not financially liable, to the managing authority concerned, for the implementation of the project at issue, the general principles of EU law of sound administration and respect for the rights of the defence and Article 47 of the Charter do not preclude that economic operator from having the right to participate either in the procedure determining the financial correction or in the judicial proceedings seeking annulment of it.

79 In such a scenario, in which a decision imposing a financial correction would directly affect the interests not of the said economic operator but of the one which is financially liable, to the managing authority concerned, for the implementation of that project, it is the latter operator which must be granted the right to participate in the procedure for determining that financial correction and in the judicial proceedings seeking annulment of it.

80 On the other hand, in so far as the referring court points out that the economic operator which committed the irregularity is financially liable, to the managing authority concerned, for the implementation of the project at issue and that its interests are therefore directly affected by the financial correction decision resulting from the finding of that irregularity, the general principles of EU law of sound administration and respect for the rights of the defence and Article 47 of the Charter prevent that economic operator from being unable either to put forward its point of view in the procedure for determining that financial correction or to have access to a court in order to challenge it.

81 In that regard, the circumstance mentioned by that court according to which that economic operator bears remedial civil liability and may have rights in separate civil proceedings against the lead beneficiary under the partnership agreement with the lead partner does not appear to be relevant, in so far as such a civil remedy does not allow that same economic operator to challenge the very adoption of such a financial correction decision adversely affecting it.

82 It follows from the foregoing that the answer to the sixth question in Case C-471/23 and to the fourth question in Case C-477/23 is that the general principles of EU law of sound administration and respect for the rights of the defence and Article 47 of the Charter must be interpreted as meaning that it precludes a national practice whereby an economic operator which has committed an irregularity, within the meaning of Article 2(36) of Regulation No 1303/2013, which has given rise to a financial correction, does not have the right to participate either in the procedure determining that financial correction or in the judicial proceedings seeking annulment of it, on the ground that that economic operator has available to it a civil remedy under a partnership agreement, in so far as that economic operator is financially liable, to the managing authority concerned, for the implementation of the project at issue.

Costs

83 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Eighth Chamber) hereby rules:

1. **Article 2(10) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, as amended by Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018,**

   must be interpreted as meaning that a body which is responsible for initiating or both initiating and implementing the operations concerned, but which does not receive State aid as referred to in that Article 2(10)(a), and a body which has not signed an administrative grant contract as 'lead partner' may fall within the concept of 'beneficiary', within the meaning of that provision.

2. **Article 2(36) and (37) of Regulation No 1303/2013, as amended by Regulation 2018/1046,**

   must be interpreted as meaning that it does not preclude either national legislation under which a financial correction decision for breach of the public procurement rules may be addressed to an economic operator other than the one which committed that breach, liability for that financial correction from being joint and several, that liability from being apportioned contractually between that economic operator and the person who committed that breach or the said liability from being assumed by the latter, provided that the financially liable economic operators are in a position to know that, in the event of an irregularity in the implementation of the project at issue, they would thus be liable for the financial correction to the managing authority concerned.

3. **The general principles of EU law of sound administration and respect for the rights of the defence and Article 47 of the Charter of Fundamental Rights of the European Union**

   must be interpreted as meaning that they preclude a national practice whereby an economic operator which has committed an irregularity, within the meaning of Article 2(36) of Regulation No 1303/2013, as amended by Regulation 2018/1046, which has given rise to a financial correction, does not have the right to participate either in the procedure determining that financial correction or in the judicial proceedings seeking annulment of it, on the ground that that economic operator has available to it a civil remedy under a partnership agreement, in so far as that economic operator is financially liable, to the managing authority concerned, for the implementation of the project at issue.

[Signatures]