Reports of Cases

OPINION OF ADVOCATE GENERAL
MEDINA
delivered on 24 February 2022 [1]

Case C-36/21

Sense Visuele Communicatie en Handel vof
v
Minister van Landbouw, Natuur en Voedselkwaliteit

(Request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands))

(Reference for a preliminary ruling – Common agricultural policy – Regulation No 1307/2013 – Direct payments – Allocation of payment entitlements – Article 30(6) – National reserve for young farmers – Article 50(2)(b) – Concept of 'young farmers' – Erroneous information – Legitimate expectations under national law – Action for damages – Compatibility with EU law)

Introduction

1. This request for a preliminary ruling concerns the principle of the protection of legitimate expectations under EU law and how it relates to that same principle under national law. It arises in the context of an action for damages brought against the national authority in charge of applying the EU agricultural rules in the Netherlands. In essence, the referring court wishes to know whether the principle of the protection of legitimate expectations recognised in the national legal order can be invoked to compensate alleged damage when the analogous principle under EU law cannot be relied upon.

2. The request has been made in proceedings between Sense Visuele Communicatie en Handel vof ('Sense Visuele') and the Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality; 'the Minister'). Those proceedings relate to the claim for compensation made by Sense Visuele for the damage that it allegedly suffered as a result of the erroneous information provided by the Netherlands authority concerning the concept of 'young farmers' set out in Article 50(2) of Regulation (EU) No 1307/2013. [2]

[1] Original language: English.

[2] Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608).

Legal framework

3. Regulation No 1307/2013 establishes common rules on payments granted directly to farmers under the support schemes listed in Annex I thereto.[3] It also sets out specific rules concerning those schemes, namely the basic payment for farmers ('the basic payment'), the payment for farmers observing agricultural practices beneficial for the climate and the environment ('the greening payment') and the payment for young farmers commencing their agricultural activity ('the payment for young farmers').[4]

4. In particular, the basic payment offers a minimum level of income support to farmers engaged in agricultural activities. The payment is made annually to farmers upon activation of the payment entitlements they hold and is calculated on the basis of the eligible hectares of land that they declare.[5]

5. The basic payment is to be topped up by other direct payments targeting specific issues or specific types of beneficiaries.[6] Holding payment entitlements under the basic payment scheme is thus a precondition for receiving support under the remainder of the schemes established by Regulation No 1307/2013, such as the greening payment and the payment for young farmers.[7]

6. Payment entitlements were initially allocated to active farmers[8] who applied for them in the first year of implementation of the basic payment scheme, that is 2015.[9] Since then, they may be obtained through the national or regional reserves established by Member States[10] and/or be transferred between farmers.[11]

7. For the purposes of the present case, it is important to bear in mind that Article 30 of Regulation No 1307/2013 provides, in paragraph 6 thereof, that Member States are to use their national or regional reserves to allocate payment entitlements, as a matter of priority, to young farmers and to farmers commencing their agricultural activity. That same article refers, in paragraph 11 thereof, to Article 50(2)(b) of Regulation No 1307/2013, which defines 'young farmers' as natural persons who, inter alia, 'are no more than 40 years of age in the year of submission of the application [under the basic payment scheme]'.

Facts, procedure and the question referred

8. Sense Visuele is a general partnership with two partners, A and B, which has operated a pig-fattening farm since 2017. On 21 January 2018, A turned 41.

3 Article 1(a) of Regulation No 1307/2013. Direct payments are made in full on the condition that farmers meet basic standards concerning the environment, climate change, good agricultural and environmental conditions of land, public health, animal health, plant health and animal welfare, known as 'cross-compliance'. Rules on 'cross-compliance' are laid down in Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).

4 Article 1(b) of Regulation No 1307/2013 and Annex I thereto.

5 Articles 32 and 33 of Regulation No 1307/2013.

6 Article 21 of Regulation No 1307/2013. See also European Commission, 'Direct payments. Basic payment scheme', March 2016, p. 1, available at https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/key_policies/documents/basic-payment-scheme_en.pdf.

7 Article 43 and Article 50(1) of Regulation No 1307/2013.

8 Article 9 of Regulation No 1307/2013.

9 See recital 21 of Regulation No 1307/2013 and Article 21(1)(a) and Article 24 thereof.

10 Article 30(1) and (2) of Regulation No 1307/2013.

11 Article 34 of Regulation No 1307/2013.

9. On 15 March and 5 April 2018, Sense Visuele addressed several requests for information to the Rijksdienst voor Ondernemend Nederland (Netherlands Enterprise Agency; 'the RVO'), the executive agency entrusted with the implementation of the EU common agricultural policy in the Netherlands. In essence, as Sense Visuele did not have payment entitlements for 2018, it wished to know whether, and how, it could obtain them from the Nationale reserve voor Jonge landbouwers (National reserve for young farmers, Netherlands; 'the national reserve').

10. The RVO indicated to Sense Visuele that it would be eligible for payment entitlements from the national reserve since A had been under 41 years of age at some point in 2018. After all, according to the information provided by the RVO's website at that time, in order to qualify as a 'young farmer' for the purposes of Regulation No 1307/2013, the person had to be under 41 years of age in the claim year. The RVO subsequently confirmed that information by email to Sense Visuele.

11. On 5 April 2018, Sense Visuele submitted applications for the allocation of payment entitlements from the national reserve, on the ground that A was a young farmer, as well as for the basic payment, the greening payment and the payment for young farmers. By contrast, it did not seek to acquire those entitlements via transfer from a third holder.

12. By decisions of 2 and 4 January 2019, later confirmed by decision of 22 March 2019, the Minister dismissed Sense Visuele's applications. The Minister stated that, according to Article 50(2)(b) of Regulation No 1307/2013, a young farmer is a person who, in the year of submission of his or her application, is no more than 40 years of age. Given that A was 41 years of age in 2018, she did not fulfil the age requirement laid down in that provision and, therefore, Sense Visuele could not qualify for the allocation of payment entitlements from the national reserve. Moreover, as Sense Visuele had not obtained any payment entitlements for 2018, its applications for the basic payment and the greening payment had to be dismissed. Last, the Minister declared that Sense Visuele could not rely on the principle of the protection of legitimate expectations under EU law regardless of whether it was in good faith. In that regard, the Minister noted that, in the light of the case-law of the Court of Justice, the principle of the protection of legitimate expectations cannot be invoked in relation to an unambiguous provision of EU law, such as Article 50(2)(b) of Regulation No 1307/2013.

13. Sense Visuele has brought an action before the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands) seeking annulment of the decision of 22 March 2019 and compensation from the Minister for the financial loss it claims to have suffered due to the erroneous assurances given by the RVO.

14. According to the referring court, the subject matter of the dispute in the main proceedings is not the allocation of payment entitlements from the national reserve to Sense Visuele. It rather concerns whether, in not offering to compensate Sense Visuele for the damage it has allegedly suffered, the Minister acted in breach of the principle of the protection of legitimate expectations. In that regard, that same court observes that it follows from the settled case-law of the Court of Justice that the principle of the protection of legitimate expectations under EU law cannot be relied upon when it concerns an unambiguous provision of that law, as is the case with Article 50(2)(b) of Regulation No 1307/2013. However, it is in doubt as to whether EU law precludes Sense Visuele from obtaining compensation in an action for damages on the basis of the principle of the protection of legitimate expectations under Netherlands law.

15. It is in those circumstances that the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry) has decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does EU law preclude an assessment, on the basis of the principle of the protection of legitimate expectations under national law, of whether a national administrative body has created expectations contrary to a provision of EU law and has thus acted unlawfully under national law in failing to compensate the injured party for the damage suffered as a result, where the injured party cannot successfully invoke the principle of the protection of legitimate expectations under EU law because it involves an unambiguous provision of EU law?'

16. The request for a preliminary ruling was lodged at the Court Registry on 22 January 2020. Written observations have been submitted by Sense Visuele, the Netherlands and Spanish Governments and the European Commission. No hearing has been held in the case.

Analysis

17. By its question, the referring court seeks to ascertain whether EU law precludes the principle of the protection of legitimate expectations as established in national law from being invoked in order for a claimant to obtain compensation from the national authority in charge of applying EU rules, when that same principle, as recognised in the EU legal order, cannot be relied upon since it involves an unambiguous provision of EU law.

18. As a preliminary point, I must recall that the principle of the protection of legitimate expectations is among the fundamental principles of the European Union.[12] It confers rights on individuals,[13] which extend to any person in a situation in which an administrative authority has caused that person to entertain expectations which are justified by precise assurances provided to him or her.[14] In that regard, it requires a determination of whether the conduct of the relevant administrative authority has given rise to a reasonable expectation and, if it has, whether that expectation is legitimate.[15]

19. The principle of the protection of legitimate expectations under EU law is binding not only on EU institutions and bodies; Member States are also required to observe the principle where they adopt measures by which they implement EU norms.[16] In the domain of the common agricultural policy, the Court has repeatedly ruled that the principle of the protection of legitimate expectations must be observed by every national authority entrusted with the application of EU law.[17]

[12] Judgment of 14 March 2013, *Agrargenossenschaft Neuzelle* (C-545/11, EU:C:2013:169, paragraph 23 and the case-law cited).

[13] See, to that effect, judgment of 19 May 1992, *Mulder and Others* v *Council and Commission* (C-104/89 and C-37/90, EU:C:1992:217, paragraph 15).

[14] Judgment of 7 August 2018, *Administratīvā rajona tiesa* (C-120/17, EU:C:2018:638, paragraph 50 and the case-law cited).

[15] Judgment of 7 August 2018, *Administratīvā rajona tiesa* (C-120/17, EU:C:2018:638, paragraph 51 and the case-law cited).

[16] Judgment of 7 August 2018, *Administratīvā rajona tiesa* (C-120/17, EU:C:2018:638, paragraph 48 and the case-law cited).

[17] See judgments of 26 April 1988, *Krücken* (316/86, EU:C:1988:201, paragraph 22), and of 1 April 1993, *Lageder and Others* (C-31/91 to C-44/91, EU:C:1993:132, paragraph 33).

20. Yet, according to the Court's case-law, the principle of the protection of legitimate expectations must be applied in accordance with the rules of EU law.[18] That principle cannot be relied upon against an unambiguous EU law provision. Nor can the conduct of a national authority responsible for applying EU law, acting in breach of that law, give rise to a legitimate expectation on the part of a person of beneficial treatment that is contrary to EU law.[19]

21. In the present case, it is apparent from the order for reference, first, that, according to the referring court, the erroneous information provided by the RVO, which should be understood as an expression of the Minister's view, caused Sense Visuele to request the allocation of payment entitlements from the national reserve instead of acquiring them from a third holder via transfer. In that context, the referring court is of the opinion that Sense Visuele may have suffered damage on account of the legitimate expectation created by the RVO, which prevented it from obtaining payment entitlements for 2018 and, in consequence, the basic payment and the greening payment. According to that court, the damage suffered by Sense Visuele would consist in the loss of the payments that the Minister refused to allocate to it, after deduction of the cost of the entitlements that it would have had to purchase from a third holder as a precondition for obtaining both payments.

22. Second, the referring court does not question that the principle of the protection of legitimate expectations under EU law was binding on the Minister when she adopted the decision of 22 March 2019. In the order for reference, that court indeed explains that it is in the context of applying the EU agricultural rules in the Netherlands, in particular of the direct payment schemes set out in Regulation No 1307/2013,[20] that the Minister refused the allocation of payment entitlements to Sense Visuele and its applications for the basic payment, the greening payment and the payment for young farmers. That said, the referring court considers Article 50(2)(b) of Regulation No 1307/2013 to be an unambiguous provision of EU law.[21] It follows that, for that court, Sense Visuele clearly cannot rely on the principle of the protection of legitimate expectations under EU law in order to claim payment entitlements from the national reserve.

23. The referring court nevertheless wishes to know whether there is scope for Sense Visuele to invoke, in a domestic action for damages against the Minister, the principle of the protection of legitimate expectations as established in the national legal order for the purpose of obtaining compensation for the loss suffered.

24. For the sake of clarity, I would highlight that the question referred does not relate to an action for damages in which a claimant is invoking the principle of State liability for breach of EU law.[22] After all, the present case refers to a situation where the Netherlands authority duly refused to allocate payment entitlements to Sense Visuele on the ground that neither of its partners fulfilled the age requirement provided for in Article 50(2)(b) of Regulation No 1307/2013 and that, according to the Court's case-law, the principle of the protection of legitimate expectations under EU law could not be relied upon against such a provision.

[18] Judgments of 13 March 2008, *Vereniging Nationaal Overlegorgaan Sociale Werkvoorziening and Others* (C-383/06 to C-385/06, EU:C:2008:165, paragraph 53), and of 20 June 2013, *Agroferm* (C-568/11, EU:C:2013:407, paragraph 51 and the case-law cited). See also Opinion of Advocate General Kokott in *Agroferm* (C-568/11, EU:C:2013:35, point 55).

[19] Judgment of 7 August 2018, *Administratīvā rajona tiesa* (C-120/17, EU:C:2018:638, paragraph 52 and the case-law cited).

[20] See, to that effect, Article 2(1)(2) of the Uitvoeringsregeling rechtstreekse betalingen GLB (Ministerial regulation implementing the common agricultural policy direct payments schemes).

[21] The referring court, the parties to the main proceedings and the interested parties that have submitted observations before the Court agree that Article 50(2)(b) of Regulation No 1307/2013 constitutes an unambiguous provision of EU law regarding the age condition set.

[22] See, to that effect, judgment of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428).

25. It is also important to note that the question asked by the referring court does not concern the application of the principle of the protection of legitimate expectations under national law as a legal basis for asserting rights to payment entitlements under Regulation No 1307/2013.

26. Indeed, as the Commission points out on its written observations, that possibility must be ruled out, first and foremost, on the basis of the case-law of the Court which states that the principle of the protection of legitimate expectations cannot be applied against rules of EU law, namely those that are precise and unambiguous, as has already been mentioned in point 20 above.[23] That implies that, in a case such as that in the main proceedings, the principle of the protection of legitimate expectations under national law cannot supplant that same principle under EU law with a view to obtaining the rights and benefits provided for by Regulation No 1307/2013. Otherwise, from a formal perspective, the principle of the protection of legitimate expectations under national law would set itself up as the standard dictating the applicability of that regulation, the result being that national law would override EU law and, as a consequence, that the principle of primacy of that law would be breached.

27. Moreover, I must recall that, by virtue of the principle of the primacy of EU law, rules or principles of national law cannot be allowed to undermine the effectiveness and unity of EU law on the territory of a Member State.[24]

28. In circumstances such as those of the present case, first, the full effectiveness of EU law requires that the principle of the protection of legitimate expectations under national law not be employed to circumvent the requirements that must be fulfilled by farmers in order to obtain payment entitlements under Regulation No 1307/2013. Otherwise, that national law principle would serve to allocate entitlements to farmers who are not eligible for them and, subsequently, to finance measures which are not implemented in accordance with the applicable sector-specific rules. As was stated by Advocate General Kokott in her Opinion in the *Agroferm* case,[25] that would ultimately affect the financial interests of the European Union's budget, which is one of the main outcomes that the EU legal framework applicable to shared management policy areas, such as the common agricultural policy, seeks to avoid.[26]

29. Second, it is worth noting, in line with Advocate General Kokott in the same Opinion, to which I subscribe, that, if it were possible to rely on the national law principle of the protection of legitimate expectations for the purpose of obtaining benefits and rights arising from EU legislation – such as, for instance, Regulation No 1307/2013 – it could ultimately result in divergences in the application of that legislation in the various Member States.[27] Here lays a consideration that is concerned with the unity of EU law and its uniform application within the territory of the European Union. In fact, given that the scope afforded to the principle of the protection of legitimate expectations in each national legal order can vary, some Member States

[23] See, by way of illustration, judgment of 20 December 2017, *Erzeugerorganisation Tiefkühlgemüse* (C-516/16, EU:C:2017:1011, paragraphs 69 to 74).

[24] Judgment of 21 December 2021, *Randstad Italia* (C-497/20, EU:C:2021:1037, paragraph 52 and the case-law cited).

[25] Opinion of Advocate General Kokott in *Agroferm* (C-568/11, EU:C:2013:35, points 46 to 50).

[26] See, to that effect, recital 39 of Regulation No 1306/2013. See also Article 63(1) and (2)(a) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1).

[27] Opinion of Advocate General Kokott in *Agroferm* (C-568/11, EU:C:2013:35, point 48).

being more favourable than others regarding that protection within their own jurisdictions,[28] individuals and undertakings could receive a different treatment upon the application of Regulation No 1307/2013. That could lead to simultaneous distortions of competition in the Member States due to advantages being awarded to certain individuals and undertakings vis-à-vis others.

30. It follows that, for reasons concerning the primacy of EU law, as well as its effectiveness and unity, where a national authority has created an expectation contrary to an unambiguous EU law provision, an individual cannot seek to benefit from the rights conferred by that provision on the basis of the principle of the protection of legitimate expectations under national law.

31. The question remains as to whether those same considerations preclude reliance on the principle of the protection of legitimate expectations under national law in order to obtain compensation for the damage caused by the false assurances provided by a national authority.

32. In that regard, the referring court rightly notes that, in his Opinion in the *Krücken* case,[29] Advocate General Mancini concluded that, even though an aggrieved party may not be able to rely on the principle of the protection of legitimate expectations in order to assert rights contrary to EU law, that same party must not be deprived of the 'possibility of bringing an action before the national court for compensation to be paid by the authorities responsible for the error which, in its view, caused it damage'. Advocate General Tizzano later endorsed that same approach in the joined cases *Flemmer and Others*.[30] Neither Advocate General expressly referred to the legal basis on which that action can be founded. However, their statements may be read only as an invitation to act in accordance with national law and, in particular, with the principle of the protection of legitimate expectations as recognised in that legal order.[31]

33. Subsequently, in the *Belovo* case,[32] concerning the erroneous licences provided by a national authority to an importer of farm products from non-Member States, the Court declared that the applicable EU regulation did not 'preclude [that importer] from bringing an action for damages against the issuing agency, in accordance with national law, where it [was] agreed that those licences should not have been issued'. The Court added that, in the course of that action, regard should be had inter alia to the importer's legitimate expectations in respect of those licences.

34. That finding of the Court is formulated by specific reference to the legislation applicable to that case, which established a system of import and export licences and advance fixing certificates for agricultural products. In my view, however, the judgment in the *Belovo* case illustrates that the Court recognises that a claim for compensation under national law may arise out of an unlawful behaviour of a national authority even when acting within the framework of EU law,[33] especially where false assurances are provided upon the application of that law.

[28] See, to that regard, Supreme Administrative Court of Lithuania and ACA-Europe, *General Report. The Protection of Legitimate Expectations in Administrative Law and EU Law*, 2016, page 2 et seq., available at https://www.aca-europe.eu/seminars/2016_Vilnius/VIL_GeneralReport_en.pdf, which reveals considerable differences in the application of the principle of the protection of legitimate expectations between the Member States.

[29] Opinion of Advocate General Mancini in *Krücken* (316/86, not published, EU:C:1988:78, p. 2231).

[30] Opinion of Advocate General Tizzano in Joined Cases *Flemmer and Others* (C-80/99 to C-82/99, EU:C:2001:57, point 53).

[31] I should mention, in that regard, that the Opinions of Advocates General Mancini and Tizzano were adopted as an answer to be given to referred questions specifically concerning the application of the principle of the protection of legitimate expectations.

[32] Judgment of 16 July 1992, *Belovo* (C-187/91, EU:C:1992:333, operative part).

[33] See, to that effect, judgment of 27 September 1988, *Asteris and Others* (106/87 to 120/87, EU:C:1988:457, paragraphs 18 and 19). See also Prechal, S. and Widdershoven, R.J.G.M., *Inleiding tot het Europees bestuursrecht*, 4th edition, Ars Aequi Libri, 2017, p. 227, also cited by the referring court.

35. In accordance with the above considerations, and in line with the positions stated by the Netherlands Government and the Commission in the present case, I am therefore of the opinion that EU law does not preclude a natural or legal person from bringing a domestic action for compensation for the damage suffered as a consequence of the provision of a false assurance contrary to an unambiguous provision of EU law. Nor does it preclude reliance on the principle of the protection of legitimate expectations as established in national law for that same purpose, provided that, as I have noted in point 30 of the present Opinion, the primacy, effectiveness and unity of EU law are not jeopardised.

36. In that regard, first of all, it must be stated that, in order to avoid undermining the primacy of EU law, the action brought before the national court on the basis of the national law principle of the protection of legitimate expectations must seek compensation exclusively for the damage resulting from the false assurances provided by the national authority. As has already been explained in point 26 of the present Opinion, that action must not attempt to assert rights contrary to the EU provision concerned, since that would lead to a scenario where national law stands as the formal basis for awarding the claimant the benefits which EU law bars him or her from obtaining.

37. To my mind, that requirement would appear to be satisfied in an action of the kind described by the referring court in the order for reference whereby the claimant is not seeking the allocation of payment entitlements pursuant to Regulation No 1307/2013. Rather, it is claiming compensation for the erroneous information provided by the national authority entrusted with the application of EU agricultural rules, which, in the claimant's view, encouraged it to request the allocation of payment entitlements, instead of acquiring them from a third holder, and ultimately motivated the refusal of its request for the basic payment and the greening payment.

38. Secondly, provided that the action under the national law principle of the protection of legitimate expectations is brought for the purpose of compensating damage and not to assert rights contrary to an unambiguous EU law provision, there is no risk of the effectiveness of EU law being undermined.

39. As regards the main proceedings, it is apparent from the information provided by the referring court that, under its national law, the action for damages brought before it cannot lead to the allocation of payment entitlements under Regulation No 1307/2013, nor to the grant of any payment pursuant to that same regulation. The claimant under that action thus cannot benefit from undeserved rights by virtue of that regulation. That being so, the EU budget is not in jeopardy of being used in violation of the applicable EU rules of the common agricultural policy. Furthermore, as the Netherlands Government and the Commission emphasise, any action for damages brought under national law and based on the unlawful conduct of a national authority would be compensated exclusively from the national budget. Consequently, such an action could not have a detrimental effect on the funds arising from the European Union's budget or affect its financial interests.

40. I might add, in connection with the condition regarding the effectiveness of EU law, that the exercise of an action for damages against a national authority, in circumstances such as those of the present case, is capable, in my opinion, of contributing to improving the regime of shared administration between the Member States and the European Union in policy areas involving the expenditure of EU funds. Indeed, it may have the effect of encouraging national authorities to

provide reliable information when requested by individuals and undertakings [34] and, ultimately, lead to a more effective application of EU rules and public spending.

41. Thirdly, in the context of an action for damages based on the principle of the protection of legitimate expectations under national law, it does not appear to me that the unity and the uniform application of EU law can be undermined, or give rise to a distortion of competition in the Member States, in the sense mentioned in point 29 of the present Opinion.

42. In that respect, the present case illustrates, on the one hand, that, in an action for damages based on the national law principle of the protection of legitimate expectations, a claimant is not supposed to acquire any right conferred by EU law to the detriment of comparable individuals in other Member States. In particular, as the Commission highlights, such a claimant would not receive payment entitlements from a mechanism analogous to the national reserve inasmuch as farmers engaged in agricultural activities in other Member States who did not satisfy the age requirement laid down in Article 50(2)(b) of Regulation No 1307/2013 would not obtain such entitlements or payments either.

43. On the other hand, if the claimant's action for damages were upheld, the compensation it received would cover only the damage suffered due to the false assurances provided by the national authority. Therefore, contrary to the position taken by the Spanish Government, the claimant would not be granted any advantage over other undertakings in the same sector. It might be useful to recall in that regard that, according to the case-law of the Court, [35] damages which the national authorities may be ordered to pay to individuals or undertakings in compensation for loss which they have caused them have a fundamentally different legal nature from the public aid favouring certain undertakings. It follows that, where a measure, as in the action concerned by the present case, grants compensation to an individual or an undertaking only for damage suffered, as a result of a false assurance, that individual or undertaking will not be considered to obtain an advantage, meaning that a risk of distortion of competition between Member States can also be excluded.

44. In the light of the foregoing, I must conclude that EU law does not preclude the application of the principle of the protection of legitimate expectations as established in national law to compensate the damage alleged by a claimant against the national authority in charge of applying EU rules when that same principle, as recognised in the EU legal order, cannot be relied upon since it involves an unambiguous provision of EU law. Nevertheless, in order for that to be so, the following conditions must be fulfilled:

– first, the action brought by the claimant must seek compensation exclusively for the damage resulting from the false assurances provided by the national authority, and not to assert rights under EU rules;

– second, any compensation for damage resulting from that action is to be granted only from the national budget; and

[34] See, in that regard, Article 12 et seq. of Regulation No 1306/2013 establishing the 'farm advisory system', which must be compulsorily implemented by Member States in order to give advice to farmers, namely on the 'cross-compliance' rules applicable to the common agricultural policy. The RVO, concerned by the main proceedings, is currently the executive agency entrusted with the FAS obligations in the Netherlands.

[35] Judgment of 27 September 1988, *Asteris and Others* (106/87 to 120/87, EU:C:1988:457, paragraph 23). See also Opinion of Advocate General Wahl in *Achema and Others* (C-706/17, EU:C:2019:38, point 52).

– third, the compensation resulting from the action must cover only the damage suffered and not confer any economic advantage to the claimant contrary to EU law.

45. Those three conditions, together with the elements giving rise to a claim for compensation according to the principle of the protection of legitimate expectations under national law, are to be assessed by the national court.

Conclusion

46. On the basis of the analysis set out above, I propose that the Court answer the question referred by the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands) as follows:

EU law does not preclude the application of the principle of the protection of legitimate expectations as established in national law to compensate the damage alleged by a claimant against the national authority in charge of applying EU rules when that same principle, as recognised in the EU legal order, cannot be relied upon since it involves an unambiguous provision of EU law, on condition that:

– the action brought by the claimant seeks compensation exclusively for the damage resulting from the false assurances provided by the national authority, and not to assert rights under EU rules;

– any compensation for damage resulting from that action is granted only from the national budget; and

– the compensation resulting from the action covers only the damage suffered and does not confer any economic advantage to the claimant contrary to EU law.