Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

15 April 2021 *

(Reference for a preliminary ruling – Agriculture – European agricultural fund for rural development (EAFRD) – Regulation (EC) No 1698/2005 – Regulation (EU) No 65/2011 – Third subparagraph of Article 16(5) – Regulation (EC) No 73/2009 – Articles 4 and 6 – Regulation (EC) No 1122/2009 – Support for rural development – Agri-environmental payments – Aid for the maintenance of grassland biodiversity – Non-compliance with the conditions for granting those payments – Early mowing – Reduction and exclusion of those payments – Mandatory standards – Statutory management requirements – Minimum requirements for good agricultural and environmental conditions – Commitments that exceed mandatory standards, minimum requirements and other appropriate mandatory requirements established by national legislation)

In Case C-736/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa (Senāts) (Supreme Court, Latvia), made by decision of 30 September 2019, received at the Court on 7 October 2019, in the proceedings

ZS 'Plaukti'

intervening party:

Lauku atbalsta dienests,

THE COURT (Sixth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, C. Toader and M. Safjan, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Latvian Government, initially by L. Juškeviča, V. Soņeca and K. Pommere, and subsequently by K. Pommere, acting as Agents,

* Language of the case: Latvian.

– the European Commission, by M. Kaduczak and A. Sauka, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the third subparagraph of Article 16(5) and Article 18(1)(a) of Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ 2011 L 25, p. 8, and corrigendum OJ 2011 L 201, p. 20), of Article 39(3) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1), and Articles 4 and 6 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16).

2 The request has been made in proceedings between ZS 'Plaukti' ('Plaukti'), an agricultural holding established in Latvia, and the Lauku atbalsta dienests (Rural Support Service, Latvia) concerning the latter's refusal to grant aid for the maintenance of grassland biodiversity ('aid for the maintenance of grassland biodiversity').

Legal context

EU law

Regulation No 1698/2005

3 Recital 35 of Regulation No 1698/2005 stated:

'Agri-environmental payments should continue to play a prominent role in supporting the sustainable development of rural areas and in responding to society's increasing demand for environmental services. They should further encourage farmers and other land managers to serve society as a whole by introducing or continuing to apply agricultural production methods compatible with the protection and improvement of the environment, the landscape and its features, natural resources, the soil and genetic diversity. …'

4 Article 36 of that regulation is contained in Title IV, Chapter I, Section 2, Axis 2, entitled 'Improving the environment and the countryside'. That article provided:

'Support under this section shall concern:

(a) measures targeting the sustainable use of agricultural land through:

…

(iv) agri-environment payments;

…’

5 Article 39(1) to (3) of the regulation provided:

‘1. Member States shall make available support provided for in Article 36(a)(iv) throughout their territories, in accordance with their specific needs.

2. Agri-environment payments shall be granted to farmers who make on a voluntary basis agri-environmental commitments. …

3. Agri-environment payments cover only those commitments going beyond the relevant mandatory standards established pursuant to Articles 4 and 5 of and Annexes III and IV to [Council] Regulation (EC) No 1782/2003 [of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2005 L 277, p. 1)] as well as minimum requirements for fertiliser and plant protection product use and other relevant mandatory requirements established by national legislation and identified in the programme.

These commitments shall be undertaken as a general rule for a period between five and seven years. Where necessary and justified, a longer period shall be determined according to the procedure referred to in Article 90(2) for particular types of commitments.’

Regulation No 65/2011

6 Article 6(2) of Regulation No 65/2011 provided:

‘For the purposes of this Title, the following definitions apply:

(a) “area-related measure” means measures or sub-measures for which support is based on the size of the area declared;

…

(c) “area determined” means the area of plots or parcels for which aid is claimed, as identified in accordance with Article 11 and Article 15(3), (4) and (5) of this Regulation.

…’

7 Article 16 of that regulation, entitled ‘Reductions and exclusions in relation to the size of area’, provided, in paragraph 2, the first and second subparagraph of paragraph 3 and the first, second and third subparagraphs of paragraph 5:

‘2. For the purpose of this Article, areas declared by a beneficiary which receive the same rate of aid under a certain area-related measure shall be considered as forming one crop group. …

3. If the area determined for a crop group is found to be greater than that declared in the payment claim, the area declared shall be used for the calculation of the aid.

If the area declared in the payment claim exceeds the area determined for that crop group, the aid shall be calculated on the basis of the area determined for that crop group. …

…

5. In the case referred to in the second subparagraph of paragraph 3, the aid shall be calculated on the basis of the area determined reduced by twice the difference found if that difference is more than either 3% or two hectares, but not more than 20% of the area determined.

If the difference is more than 20% of the area determined, no aid shall be granted for the crop group concerned.

If the difference is more than 50%, the beneficiary shall be excluded once again from receiving aid up to the difference between the area declared in the payment claim and the area determined.'

8 Article 18(1)(a) of that regulation stated:

'1. The aid claimed shall be reduced or refused where the following obligations and criteria are not met:

(a) for the measures referred to in Article 36(a)(iv) and (v) as well in (b)(v) of Regulation [No 1698/2005], the relevant mandatory standards as well as minimum requirements for fertiliser and plant protection product use, other relevant mandatory requirements as referred to in Articles 39(3), 40(2) and 47(1) of Regulation [No 1698/2005], and commitments that go beyond such standards and requirements'.

9 Article 22 of that regulation provided:

'Where several reductions are applicable; they shall be applied in the following order:

– first in accordance with Article 16(5) and (6) and with Article 17(4) and (5) of this Regulation,

– then in accordance with Article 18 of this Regulation,

…'

Regulation No 73/2009

10 Article 4(1) of Regulation No 73/2009 provided:

'A farmer receiving direct payments shall respect the statutory management requirements listed in Annex II and the good agricultural and environmental condition referred to in Article 6.

The obligations referred to in the first subparagraph shall apply only in so far as the agricultural activity of the farmer or the agricultural area of the holding is concerned.'

11 Article 6(1) of that regulation provided:

'Member States shall ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition. Member States shall define, at national or regional level, minimum requirements for good agricultural and environmental condition on the basis of the framework established in Annex III, taking into account the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use, crop rotation, farming practices, and farm structures. Member States shall not define minimum requirements which are not foreseen in that framework'

12 Annexes II and III to that regulation set out the regulatory requirements and the good agricultural and environmental condition referred to in Articles 5 and 6 of that regulation respectively.

Regulation (EC) No 1122/2009

13 Article 71(1) of Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ 2009 L 316, p. 65) provided:

'Without prejudice to Article 77, where a non-compliance determined results from the negligence of the farmer, a reduction shall be applied. That reduction shall, as a general rule, be 3% of the total amount as referred to in Article 70(8).

However, the paying agency may, on the basis of the assessment provided by the competent control authority in the evaluation part of the control report in accordance with Article 54(1)(c), decide either to reduce that percentage to 1% or to increase it to 5% of that total amount or, in the cases referred to in the second subparagraph of Article 54(1)(c), not to impose any reductions at all.'

Latvian law

Decree No 295

14 Article 1 of the Ministru kabineta noteikumi Nr. 295 'Noteikumi par valsts un Eiropas Savienības lauku attīstības atbalsta piešķiršanu, administrēšanu un uzraudzību vides un lauku ainavas uzlabošanai' (Council of Ministers Decree No 295 relating to the grant, administration and supervision of State and EU aid to rural development for the purposes of improving the environment and the countryside) of 23 March 2010 (Latvijas Vēstnesis, 2010, No 50), in the version applicable to the dispute in the main proceedings ('Decree No 295'), which was in force until 28 March 2015, provided:

'This decree lays down the provisions for the grant, administration and supervision of State and EU aid to rural development for the measures intended to improve the environment and the countryside, in accordance with Regulation No 1698/2005.'

15 Article 38 of Decree No 295 provided:

‘The applicant shall be entitled to receive aid for agricultural land under an eligible crop referred to in Annex 2 to this decree and designated as high natural value grassland, provided it complies with the following requirements:

…

38.3. to maintain effectively the high natural value grassland areas under pasture and mow them every calendar year, providing a given number of cattle which, expressed in livestock units of cattle, represents a density of livestock of between 0.4 and 0.9 units per hectare, or to mow those areas at least once during the period between 1 August and 15 September; to collect and remove the mown grass, or to chop it.’

16 Point 3 of Part 4.3 (‘Maintenance of grassland biodiversity’)of Annex 9 to that decree provided:

‘If the aid applicant has not mown the area declared between 1 August and 15 September, after the first infringement no payment will be made to the applicant for the area in question for the current year. If the infringement is repeated, all the commitments will be suspended and the applicant in question will repay to the Rural Support Service the full amount of the aid received up to that time in respect of the area in question.’

Decree No 139

17 Article 1 of the Ministru kabineta noteikumi Nr. 139 ‘Kārtība, kādā tiek piešķirts valsts un Eiropas Savienības atbalsts lauksaimniecībai tiešā atbalsta shēmu ietvaros’ (Council of Ministers Decree No 139 concerning the procedure for granting State and EU aid for agriculture within the framework of direct aid schemes) of 12 March 2013 (Latvijas Vēstnesis, 2013, No 65), in the version applicable to the dispute in the main proceedings (‘Decree No 139’), provided:

‘This decree lays down the provisions governing the grant of State and EU aid for agriculture in the context of the direct support schemes in accordance with Regulation No 73/2009.’

18 Article 18 of Decree No 139 provided:

‘If a farmer simultaneously, for a particular area, claims payment of aid under Article 2.1 of this decree (single area payment) and under the “Agri-environment payments” support measure in accordance with the provisions for the grant, administration and supervision of State and EU aid to rural development for the measures intended to improve the environment and the countryside:

…

18.2. Without prejudice to the requirements laid down in Article 15.4 of this decree, where the farmer applies for aid under the “Maintenance of grassland biodiversity” sub-measure or the “Establishment of buffer strips’ sub-measure”:

18.2.1. it will be necessary, in relation to grassland and permanent pasture, as well as arable land, at least once a year, to mow and either collect or chop the grass (in the period between 1 August and 15 September of the current calendar year), or that grassland and pasture must be grazed or mown.’

19 Article 19 of that decree stated:

'Where the farmer fails to comply with any of the good agricultural and environmental condition requirements referred to in Articles 15 and 18 of this decree the amount of the aid referred to in Article 2 of this decree (with the exception of Article 2.6) will be reduced in accordance with Articles 70 to 72 of Regulation No 1122/2009.'

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

20 On 13 May 2014, Plaukti submitted to the Rural Support Service, for 2014, a single area payment claim and an agri-environmental payment claim in respect of aid for the maintenance of grassland biodiversity for two fields with a total area of 18.26 ha.

21 Following a partial on-the-spot check carried out by the Rural Support Service on 31 July 2014, that service found that the fields concerned had been mown before 1 August 2014, which infringed the rules for granting aid for the maintenance of grassland biodiversity.

22 Consequently, by decision of 27 June 2015, the Rural Support Service refused to grant that aid for Plaukti for 2014 in its entirety in respect of the 18.26 ha concerned. That service excluded Plaukti from receiving that aid, up to an amount of EUR 2 245.98, and ordered that that amount be set off against any payment to be received during the next three calendar years. Moreover, a reduction of 1% in the amount of that aid was applied for breach of good agricultural and environmental condition requirements.

23 Plaukti challenged that decision before the administratīvā rajona tiesa (District Administrative Court, Latvia) and then before the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia).

24 Following the dismissal of its action at first instance and on appeal, Plaukti brought an appeal on a point of law before the Augstākā tiesa (Senāts) (Supreme Court, Latvia).

25 The referring court submits that, since it is common ground that the fields concerned were mown before 1 August, the national provision according to which, for the current year, no aid for the maintenance of grassland biodiversity is to be paid in respect of the corresponding areas must be applied in accordance with Article 18(1)(a) of Regulation No 65/2011.

26 However, that court questions the proportionality of the other penalties imposed by the Rural Support Service, in particular, first, the exclusion of the applicant in the main proceedings from receiving the aid for the maintenance of grassland biodiversity, up to an amount corresponding to the difference between the area declared in the payment claim and the area determined, that is to say, an obligation to make reparation for three calendar years, in accordance with the third subparagraph of Article 16(5) of Regulation No 65/2011 and, second, reducing all the aid payments to that applicant by 1%, in accordance with Article 71(1) of Regulation No 1122/2009 for failure to comply with the good agricultural and environmental condition requirements, in so far as no change in the crop group has been found. In particular, that court asks whether the third subparagraph of Article 16(5) of Regulation No 65/2011 is applicable in so far as, in the present case, although Plaukti did not fulfil the conditions for the grant of aid for the maintenance of grassland biodiversity, no change in the crop group has been found.

27 Similarly, the referring court asks whether, if it is found that the area of the crop group declared in the payment claim does not correspond to the area determined, namely the cultivated area, established during the on-the-spot check, the penalty provided for in Article 18(1)(a) of Regulation No 65/2011 and that provided for in the third subparagraph of Article 16(5) of that regulation should be imposed simultaneously. In that regard, that court submits that imposing two penalties for a single infringement may breach the principle of proportionality.

28 The referring court also has doubts as to whether the requirement laid down in Article 18.2.1 of Decree No 139 complies with the requirements laid down in the combined provisions of Articles 4 and 6 of Regulation No 73/2009 with regard to good agricultural and environmental condition and Article 39(3) of Regulation No 1698/2005 concerning agri-environmental commitments.

29 In those circumstances, the Augstākā tiesa (Senāts) (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Does the third subparagraph of Article 16(5) of [Regulation No 65/2011] apply to a situation in which the applicant has failed to comply with the requirements relating to mowing the area for which the maintenance of grassland biodiversity payments were claimed (a requirement which goes beyond the mandatory minimum requirements under Article 39(3) of Regulation No 1698/2005) but where no change in the crop group has been found?

(2) Can both the penalty established in the third subparagraph of Article 16(5) of [Regulation No 65/2011] and the penalty laid down in Article 18(1)(a) of Regulation No 65/2011 be imposed simultaneously for a single infringement?

(3) Do Articles 4 and 6 of [Regulation No 73/2009], in conjunction with Article 39(3) of [Regulation No 1698/2005] preclude national legislation according to which the same requirement can simultaneously be a mandatory minimum requirement and impose requirements greater than the minimum mandatory requirements (requirement for an agri-environment payment)?’

Consideration of the questions referred

The first question

30 By its first question, the referring court asks, in essence, whether the third subparagraph of Article 16(5) of Regulation No 65/2011 must be interpreted as meaning that it is applicable where an aid applicant has not complied with the agri-environmental commitments relating to mowing requirements, where no change in the crop group has been found.

31 In that regard, it should be noted that, in accordance with Article 36(a)(iv) of Regulation No 1698/2005, the aid provided for in Title IV, Chapter I, Section 2, Axis 2, of that regulation, entitled ‘Improving the environment and the countryside’, concerns measures focusing on the sustainable use of agricultural land through ‘agri-environmental payments’.

32 In addition, it is apparent from Article 39(1) and (2) of that regulation that Member States are to grant the aid provided for in Article 36(a)(iv) throughout their territories in accordance with their specific needs. Agri-environment payments are to be granted to farmers who make on a voluntary basis agri-environmental commitments.

33 Article 18(1)(a) of Regulation No 65/2011 provides that the aid applied for is to be reduced or refused where, in particular for the measures referred to in Article 36(a)(iv) of Regulation No 1698/2005, obligations and criteria such as appropriate mandatory standards, other appropriate mandatory requirements referred to in Article 39(3) of that regulation and commitments which go beyond those standards and requirements are not met.

34 It follows that failure to meet agri-environment commitments results in the reduction or refusal of agri-environment payments.

35 By contrast, Article 16 of Regulation No 65/2011 concerns reductions and exclusions relating to the size of agricultural areas. It should be recalled in this respect that, in accordance with Article 16(2) of that Regulation, areas declared by a beneficiary which receive the same rate of aid under a certain 'area-related' measure are to be considered as forming one crop group. Under the second subparagraph of Article 16(3) of that regulation, if the area declared in the payment claim exceeds the area determined for the crop group concerned, the aid is to be calculated on the basis of the area determined for that crop group. Under the third subparagraph of Article 16(5) of that regulation, if the difference between the area declared in the payment claim and the area determined during the on-the-spot check is more than 50%, the beneficiary is to be excluded once again from receiving aid up to an amount corresponding to that difference.

36 In the present case, it is apparent from the order for reference that, because of early mowing, one of the criteria for granting aid for the maintenance of grassland biodiversity had not been met. The Rural Support Service therefore found that the conditions for granting that aid had not been complied with in respect of the entire area declared and that it had to be concluded that the difference between the area declared in the payment claim and the area determined during the on-the-spot check was 100%. Thus, that service estimated that the area declared exceeded the area determined by 100%, which, according to that service, justified the exclusion of Plaukti from receiving the aid concerned.

37 As stated by the referring court, the only infringement found by the Rural Support Service in respect of the reference period is early mowing, without any change in the crop group having been found. Accordingly, it must be held that the fact that Plaukti mowed the area concerned before the date laid down for that purpose does not mean that the crop group declared has been changed in such a way as to justify the exclusion of the person concerned from receiving the aid, pursuant to the third subparagraph of Article 16(5) of Regulation No 65/2011.

38 That interpretation of the third subparagraph of Article 16(5) of Regulation No 65/2011 is consistent with the objective of agri-environmental payments, which, as is apparent from recital 35 of Regulation No 1698/2005, should continue to play a prominent role in supporting the sustainable development of rural areas and in responding to society's increasing demand for environmental services.

39 In the light of all the foregoing considerations, the answer to the first question referred is that the third subparagraph of Article 16(5) of Regulation No 65/2011 must be interpreted as meaning that it is not applicable where an aid applicant has not complied with the agri-environmental commitments relating to mowing requirements, where no change in the crop group has been found.

The second question

40 Having regard to the reply given to the first question, there is no need to reply to the second question referred.

The third question

41 By its third question, the referring court asks, in essence, whether Articles 4 and 6 of Regulation No 73/2009, read in conjunction with Article 39(3) of Regulation No 1698/2005, must be interpreted as precluding national legislation under which the same requirement can be both a minimum requirement for good agricultural and environmental condition and a requirement going beyond those minimum requirements, namely a requirement for the grant of agri-environmental payments.

42 It should be noted, first of all, that, under Article 4 of Regulation No 73/2009, farmers receiving direct payments are required to comply with certain statutory management requirements and with the good agricultural and environmental condition referred to in Article 6 of that regulation.

43 That article requires Member States to ensure that all agricultural land is maintained in good agricultural and environmental condition. In that regard, the Member States must lay down minimum requirements for good agricultural and environmental condition on the basis of the framework established in Annex III to that regulation and cannot define minimum requirements which are not provided for within that framework.

44 Under Article 39(3) of Regulation No 1698/2005, agri-environmental payments cover only those commitments going beyond the relevant mandatory standards established pursuant to Articles 4 and 5 of and Annexes III and IV to Regulation No 1782/2003, incorporated in Articles 4 and 6 and Annexes II and III to Regulation No 73/2009. Article 39(3) of Regulation No 1698/2005 thus seeks to ensure that the payments concerned are granted only for activities and practices that meet higher environmental objectives than mandatory standards such as the minimum requirements for good agricultural and environmental condition.

45 Next, it should be noted that, as is apparent from the order for reference, Article 38.3 of Decree No 295 implements, inter alia, the requirements relating to agri-environmental payments. That article provides, in particular, that an aid applicant may obtain aid for high natural value grassland areas provided that the grassland has been mown at least once during the period from 1 August to 15 September.

46 According to the information provided by the referring court, the rules on mowing laid down in Latvian law constitute both minimum requirements and requirements which exceed the minimum requirements, in accordance with Articles 4 and 6 of Regulation No 73/2009.

47 First, the commitments to the agri-environment pursuant to Article 39 of Regulation No 1698/2005 must go beyond the minimum requirements for good agricultural and environmental conditions described in Articles 4 and 6 of Regulation No 73/2009. Second, as recalled in paragraph 43 of the present judgment, the Member States are not to define minimum requirements which are not provided for within the framework of Annex III to the latter regulation.

48 Thus, for the purposes of assessing compliance with the minimum requirements for good agricultural and environmental condition resulting from Articles 4 and 6 of Regulation No 73/2009, it is necessary to ensure that those requirements have been validly defined on the basis of the framework established in Annex III to that regulation. If that is the case, failure to comply with such a requirement may give rise to reductions under Article 71(1) of Regulation No 1122/2009.

49 In the light of all the foregoing considerations, the answer to the third question referred is that Articles 4 and 6 of Regulation No 73/2009, read in conjunction with Article 39(3) of Regulation No 1698/2005, must be interpreted as precluding national legislation under which the same requirement can be both a minimum requirement for good agricultural and environmental condition and a requirement going beyond those minimum requirements, namely a requirement for the grant of agri-environmental payments.

Costs

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

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

1. **The third subparagraph of Article 16(5) of Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures must be interpreted as meaning that it is not applicable where an aid applicant has not complied with the agri-environmental commitments relating to mowing requirements, where no change in the crop group has been found.**

2. **Articles 4 and 6 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003, read in conjunction with Article 39(3) of Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), must be interpreted as precluding national legislation under which the same requirement can be both a minimum requirement for good agricultural and environmental condition and a requirement going beyond those minimum requirements, namely a requirement for the grant of agri-environmental payments.**

[Signatures]