OPINION OF ADVOCATE GENERAL MAZÁK
delivered on 8 July 2010[1]

1. The present reference for a preliminary ruling from the Verwaltungsgericht Schwerin (Administrative Court Schwerin) (Germany) seeks an interpretation of Article 40(5) of Council Regulation (EC) No 1782/2003.[2] In essence, in the case in the main proceedings, Mr Grootes is in dispute with the Amt für Landwirtschaft Parchim (Office for Agriculture in Parchim; 'the Amt') concerning the status to be granted a certain piece of land ('the land in question'), whether arable land or pastureland. That question is relevant for the purposes of calculating the amount of payment entitlements.[3]

I — Legal context

A — *European Union rules*

2. The Regulation provides for a form of income support for farmers called the single payment scheme ('the SPS'). Article 40 of the Regulation is entitled 'Hardship cases' and provides:

'1. By way of derogation from Article 37, a farmer whose production was adversely affected during the reference period by a case

1 — Original language: English.

2 — Regulation of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1), as amended by Council Regulation (EC) No 319/2006 (OJ 2006 L 58, p. 32) ('the Regulation'). It may be pointed out that that regulation has so far resulted in 10 references from national courts: see Case C-420/06 *Jager* [2008] ECR I-1315; Case C-428/07 *Horvath* [2009] ECR I-6355; Case C-449/08 *Elbertsen* [2009] ECR I-10241; Case C-470/08 *van Dijk* [2010] ECR I-603; Case C-434/08 *Harms* [2010] ECR I-4431, and the following pending cases: Case C-61/09 *Niedermair-Schiemann* (in which I delivered my Opinion on 11 May 2010); Case C-133/09 *Uzonyi*; Case C-153/09 *Agrargut Bäbelin*; Joined Cases C-230/09 and C-231/09 *Etling and Etling*; and Case C-536/09 *Omejc*.

3 — It would appear that in the Land Mecklenburg-Vorpommern the applicable area-based amount for arable land is EUR 308.50 per hectare, while it is only EUR 59.84 per hectare for permanent pasture.

of force majeure or exceptional circumstances occurring before or during that reference period shall be entitled to request that the reference amount be calculated on the basis of the calendar year or years in the reference period not affected by the case of force majeure or exceptional circumstances.

...

3. A case of force majeure or exceptional circumstances, with relevant evidence to the satisfaction of the competent authority, shall be notified by the farmer concerned in writing to the authority within a deadline to be fixed by each Member State.

4. Force majeure or exceptional circumstances shall be recognised by the competent authority in cases such as, for example:

(a) the death of the farmer;

(b) long-term professional incapacity of the farmer;

(c) a severe natural disaster gravely affecting the holding's agricultural land;

(d) the accidental destruction of livestock buildings on the holding;

(e) an epizootic affecting part or all of the farmer's livestock.

5. Paragraphs 1, 2 and 3 of this article shall apply, mutatis mutandis, to farmers who, during the reference period, were under agri-environmental commitments according to [Council] Regulations (EEC) No 2078/92 [OJ 1992 L 215, p. 85] and (EC) No 1257/1999 [OJ 1999 L 160, p. 80] ...

In the case where the commitments covered both the reference period and the period referred to in paragraph 2 of this article, Member States shall establish, according

to objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, a reference amount in accordance with the detailed rules to be laid down by the Commission in accordance with the procedure referred to in Article 144(2).'

3. Chapter 5, Section 1, of the Regulation, entitled 'Regional and optional implementation', permits the Member States to implement the SPS at regional level. According to Article 58(1) and (3) of the Regulation, a Member State may decide to apply the SPS provided for in Chapters 1 to 4 at regional level by subdividing the ceiling referred to in Article 41 between the regions according to objective criteria.

4. Article 59(1) of the Regulation provides that 'in duly justified cases and according to objective criteria the Member State may divide the total amount of the regional ceiling established under Article 58 or part of it between all the farmers whose holdings are located in the region concerned, including those who do not meet the eligibility criterion referred to in Article 33'. Article 59(3) provides for a calculation rule in order to calculate entitlements in case of partial division of the total amount of the regional ceiling.

5. According to Article 61 of the Regulation, which is entitled 'Grassland', 'in case of application of Article 59, Member States may also, according to objective criteria, fix, within the regional ceiling or part of it, different per unit values of entitlements to be allocated to farmers referred to in Article 59(1), for hectares under grassland at the date provided for the area aid applications for 2003 and for any other eligible hectare or alternatively for hectares under permanent pasture at the date provided for the area aid applications for 2003 and for any other eligible hectare'.

6. Chapter 6 of Commission Regulation (EC) No 795/2004 [4] contains Section 1, entitled 'Regional implementation'. In that section, Article 38(1) to (3) lays down a number of rules for the application of Article 59(1) and (2) of the Regulation. Article 38(4) of Regulation No 795/2004 provides that 'Article 40 of [the Regulation] and Article 16 of this regulation shall apply mutatis mutandis'.

4 — Regulation of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in [Regulation No 1782/2003] (OJ 2004 L 141, p. 1), as amended by Commission Regulation (EC) No 1974/2004 of 29 October 2004 (OJ 2004 L 345, p. 85) ('Regulation No 795/2004').

B — *National legislation*

7. Pursuant to Paragraph 2(1) of the Law implementing the SPS (Betriebsprämiendurchführungsgesetz (BetrPrämDurchfG), 'the Implementing Law'), the single payment is to be granted at regional level with effect from 1 January 2005 in accordance with the detailed rules laid down in the said law and the national regulation implementing the SPS.

8. Paragraph 5(1) of the Implementing Law provides that the reference amount of the single payment, pursuant to the provisions of Article 59(1) and (3) of the Regulation, read in conjunction with each other, consists, for each farmer, of an amount which is farm specific and an amount based on size.

9. Paragraph 5(3) of the Implementing Law provides that 'the amount based on size is for the financial year 2005 calculated on the following basis:

1. The sum of individual amounts defined in Paragraph 2 for each region shall be deducted from each corresponding regional ceiling defined in Paragraph 4(1).

2. The remaining part of the regional ceiling, obtained after deduction according to the rules defined in Paragraph 1, shall be divided in accordance with Article 59(3)(1) of [the Regulation], between areas which are mentioned therein on the basis of the number of hectares, provided that in every region there is respect for the proportion provided for in Annex 2 between the amount based on size per eligible hectare which, on 15 May 2003, was used as permanent pasture and the amount based on size per eligible hectare for other areas …'

10. Annex 2 to the Implementing Law contains a table with proportions that need to be respected between areas devoted to permanent pasture and those reserved for other uses, which, for the Land Mecklenburg-Vorpommern, provides for a ratio of 1 for other areas and 0.194 for permanent pasture.

11. Paragraph 13(2) of the Implementing Law states that, when determining the reference amount, a farm's individual amount and area-based amount are to be calculated on the basis of the calendar year preceding participation in the agri-environmental measure.

II — Facts and the questions referred

12. In 1994 the land in question, which had previously been arable land, was converted to pastureland so as to receive aid for pastureland usage benefiting nature conservation from the Staatliches Amt für Umwelt und Natur (State Office for the Environment and Nature) for Lübz ('the StAUN').

13. In 1999 a new management contract was concluded with the StAUN on the basis of Regulation No 2078/92, under which in the period from January 1999 to December 2003 the land in question was to be used as permanent pastureland. On 1 October 2002, Mr Grootes in partnership with his father took possession of the land in question and, under a supplementary agreement of 3 March 2003, the partnership took on the rights and obligations under the contract of 1999 with effect from 31 December 2002. Subsequently Mr Grootes ran the farm on his own.

14. The land in question was converted to arable land and in the spring of 2004 it was sown with silage maize. By a letter of 6 May 2005 Mr Grootes asked that payment entitlements relating to the land in question be based on arable land instead of pastureland. By a notice of 27 February 2006, the Amt treated the land in question as permanent pastureland. Mr Grootes challenged this by an objection which was ultimately unsuccessful. The competent authorities refused to recognise that the circumstances constituted a hardship case ('Härte' in German), because the pastureland usage of the land in question under the StAUN programme, 'pastureland usage benefiting nature conservation', was not an agri-environmental measure under Article 40(5) of the Regulation in conjunction with Paragraph 13 of the Implementing Law.

15. Mr Grootes appealed that decision and now claims that the Amt should recognise his payment entitlements as based on arable land. The referring court notes that, on the basis of Article 61 of the Regulation in conjunction with Paragraph 5(3)(2) of the Implementing Law, the question whether payment entitlements for agricultural areas are to be decided on the basis of arable land or pastureland is determined in Germany according to the corresponding usage on 15 May 2003. However, on that date the land in question constituted pastureland. Therefore, acknowledgement of payment entitlements based on arable land would not be a possibility unless there were

'hardship' within the meaning of Article 40 of the Regulation.

16. Therefore, considering that the resolution of the case in the main proceedings depends on the interpretation of Community law, the referring court considers it necessary to refer the following questions to the Court for a preliminary ruling:

'(1) Can hardship under Article 40(5) of [the Regulation] be recognised in relation to an area-based amount even where an agri-environmental measure ongoing on 15 May 2003 constitutes just retention of (permanent) use as pastureland, but it is connected seamlessly in time (or at any rate "promptly") with a measure under which conversion from arable land to permanent pastureland has taken place?

(2) If the first question should be answered in the affirmative:

Can hardship under Article 40(5) of [the Regulation] be recognised in relation to an area-based amount only where there has been a change of use of the area from arable land to pastureland on the basis of (and precisely because of) participation in an agri-environmental measure as referred to in the aforementioned provision?

(3) Is recognition of hardship under Article 40(5) of [the Regulation] contingent on the farmer making the application being the person who made the change of use, or can a farmer who later "joins in on" the agri-environmental measure also successfully claim hardship under that provision?'

III — Assessment

A — *Principal arguments of the parties*

17. The Commission submits essentially that, in view of the aim and scheme of Article 40(5) of the Regulation, the two contracts at issue should be deemed to constitute one unit. As regards the second question, the Commission contends in essence that it is only the presence of a causal link between the change of use of the land in question and the participation in an agri-environmental measure which makes it possible, in calculating the amount of payment entitlements, not to take account of the fact that on the reference date provided for in Article 61 of the Regulation that land was effectively still used as permanent pasture. As regards the third question, the Commission effectively maintains that for the purposes of Article 40(5) of the Regulation in conjunction with Article 61 the identity of the farmer holding the land during the period concerned (whose use was changed due to exceptional circumstances) and the identity of the farmer who originally changed the use of that land are of little relevance.

18. Mr Grootes essentially submits that, if Germany had chosen to implement the historical model of the SPS, then Article 40(5) of the Regulation would have been directly applicable to him. Relying on the spirit and purpose of that provision, he infers that the implementation of a regime envisaged by that provision in the context of the regional model should not lead to a different result. In his argument, Mr Grootes comes to the conclusion that for the purposes of the present case it is not relevant whether what is at issue is the first agri-environmental measure or a measure which is a continuation of it. With regard to the second question, Mr Grootes submits in essence that the only decisive factor is the fact that, on account of his participation in the agri-environmental measure, the person concerned was incapable of using the land otherwise than as pasture. As regards the third question, Mr Grootes contends effectively that for the purposes of the present case it is of no relevance that other farmers

previously farmed the land in question in connection with an agri-environmental measure.

predecessor and that he will find himself in the same legal position as that predecessor.

B — *Appraisal*

19. The German Government submits that the appropriate reference date is 15 May 2003. It follows that the first question should be answered to the effect that the existence of exceptional circumstances should be presumed where a farmer's production was affected by an agri-environmental measure during the reference period, that is on 15 May 2003, including in circumstances such as those in the main proceedings. With regard to the second question, the German Government contends that the fact that even before the agri-environmental measure became operational the permanent pasture already belonged to the holding and that maintaining it as pasture was supported by the agri-environmental measure is not sufficient to justify recognition of a hardship case under Article 40(5). It is also insufficient in that regard that the farmer converted the land to permanent pasture with the aim of subsequently participating in an agri-environmental measure intended to maintain permanent pasture. As regards the third question, the German Government submits that where land is transferred to a farmer who agrees to take over obligations assumed in connection with an agri-environmental measure the farmer may expect that he will not be treated less favourably than his

1. First question

20. By its first question, the referring court essentially asks whether, in circumstances such as those of the main proceedings — where land is used as pasture in connection with an agri-environmental measure which was ongoing on the reference date envisaged in Article 61 of the Regulation and which constitutes just retention of (permanent) use as pastureland, but is connected seamlessly in time with an agri-environmental measure under which conversion from arable land to permanent pastureland has taken place — Article 40 of that regulation should be interpreted on the basis of an overall assessment of the previous agri-environmental measure and of the one that succeeded it.

21. As a matter of principle, it is clear from Article 40(5) of the Regulation that paragraphs 1, 2 and 3 of Article 40 apply, mutatis mutandis, to farmers who, during the reference period, were under agri-environmental commitments according to Regulations No 2078/92 and No 1257/1999.

22. As the German Government pointed out, in view of the first question referred we should deem the existence of such commitments to have been established. Moreover, there is nothing in Article 40(5) to suggest that it must be an agri-environmental measure taken for the first time or that a measure 'connected seamlessly in time … with a measure under which conversion from arable land to permanent pastureland has taken place' should be excluded. [5]

23. First of all, Article 37 of the Regulation provides a general rule for calculation of the reference amount, which is essentially to be the three-year average of the total amounts of payments that a farmer was granted under the support schemes referred to in Annex VI to the Regulation, calculated and adjusted according to Annex VII, in each calendar year of the reference period comprising the calendar years 2000, 2001 and 2002 [6] (the 'historical model' of the SPS). A farmer receives a payment entitlement per hectare which is calculated by dividing the reference amount by the three-year average number of all hectares which in the reference period gave a right to the direct payments listed in Annex VI.

24. However, Germany has opted for the 'regional model' of the SPS. [7] Essentially, the question whether payment entitlements for agricultural areas are to be decided on the basis of arable land or pastureland is determined according to the corresponding usage on 15 May 2003. [8]

25. As the referring court pointed out, on that date the land in question constituted

5 — Interestingly, the German Government noted that in the legislation of the Länder, which are free to adapt the agri-environmental measures they offer, one can find both measures supporting conversion of arable land to permanent pasture and measures encouraging maintaining permanent pasture already in existence, which could lawfully be used otherwise.

6 — See Article 38 of the Regulation.

7 — In this case, based on Article 59(3) of the Regulation. On the regional versus historical models see Norer, R., *Rechtsfragen der Reform der Gemeinsamen Agrarpolitik 2003, Einheitliche Betriebsprämie und Cross Compliance in europa-, verfassungs-, verwaltungs- und zivilrechtlicher Analyse*, NWV, Wien — Graz, 2007, inter alia pp. 78-89.

8 — See Article 61 of the Regulation in conjunction with Paragraph 5(3)(2) of the Implementing Law. In view of the questions referred, only the so-called area-based amount under the first subparagraph of Article 59(3) of the Regulation is relevant here.

pastureland. [9] Therefore, the payment entitlements based on arable land sought by Mr Grootes could not be acknowledged unless there were hardship or exceptional circumstances within the meaning of Article 40 of the Regulation. [10]

26. The Commission rightly points out that Article 61 of the Regulation makes no reference to Article 40. [11] Article 61 of the Regulation, in Section 1 'Regional implementation' of Chapter 5 in Title III on the SPS, provides detailed rules for setting the reference date to be taken into account and does not leave any discretion to the Member States when they determine the reference period. It follows that the Community legislature neither established formal rules for the application of Article 40(5) of the Regulation relating to direct support schemes in the framework of Article 61 nor empowered the Member States to provide for its application under national law.

27. However, it would appear that it is appropriate for Article 40(5) of the Regulation to be applied in the framework of Article 61 by analogy. [12]

28. In that connection, it is important to note that the aim of the hardship or exceptional circumstances provision in Article 40(5) of the Regulation is to ensure that farmers who participated in EU environmental measures in the agricultural sector from 2000 to 2002 are not adversely affected by their commitments to carry out extensification. Such an adverse effect may occur if production during the period relevant to calculation of a reference amount was adversely affected because of participation in the agri-environmental measure. It is also possible — as in this case — that as a result of converting arable land into pastureland in pursuance of a commitment in connection with agri-environmental measures, the farmer is afforded a smaller area-based amount of payment entitlements

9 — The management contract of 1999, including the supplementary agreement of 3 March 2003, came to an end on 31 December 2003.

10 — As regards the numerous problems in the context of changes in holdings and hardship cases, see Krämer, S., *Die Berücksichtigung von Betriebsübergaben und Härtefällen im Rahmen der Agrarreform 2003*, Agrar- und Umweltrecht, 35. Jahrg. (2005), Heft 12, pp. 381-387.

11 — Contrary to Articles 59 and 60 of the Regulation. In addition, Article 58 provides that Member States may apply the SPS provided in Chapters 1 to 4 at regional level 'under the conditions laid down in this Section'.

12 — See Case C-248/04 *Koninklijke Coöperatie Cosun* [2006] ECR I-10211, paragraphs 48 to 52, citing Case 165/84 *Krohn* [1985] ECR 3997, paragraph 14. In *Krohn*, the Court held that 'traders are entitled to rely on an application by analogy of a regulation which would not normally be applicable to them if they can show that the rules applicable to their case: … [i] are very similar to those which it is sought to have applied by analogy; and … [ii] contain an omission which is incompatible with a general principle of Community law and which can be remedied by application by analogy of those other rules'.

than would have been the case without that conversion.

29. So while those concerns have been explicitly raised in connection with the historical model of the SPS, the fact remains that it is possible that the use of the land in question as permanent pasture on the date envisaged by Article 61 of the Regulation (in the regional model) is based on the same kind of commitments. Therefore, for the purposes of the present case, the two legal regimes may be considered to be very similar.

30. Indeed, the German Government rightly pointed out that the objective underlying Article 40(5) is to give farmers protection of their legitimate expectations as well as, it should be added, legal certainty.

31. The Court held in *Nijemeisland*,[13] a case relating to Regulations No 795/2004 and No 1782/2003, that 'the principle of legal certainty, a general principle of Community law, requires that Community rules binding on individuals must be clear and precise so that they may know without ambiguity what are their rights and obligations and may take steps accordingly … In the main proceedings, Mr Nijemeisland accepted, without challenge and without admission of guilt, the penalty concerning the loss of the premium for one calendar year, imposed in accordance with the rules in force at the time. At that time, it was impossible for him to foresee that his decision might have consequences on future direct payments under rules adopted in 2003. Before the entry into force of [the Regulation], [Mr Nijemeisland] could not foresee that his exclusion from receiving the premium would play a role in regard to the amount of the single payment and could therefore cause financial consequences unfavourable to him for several years.'

32. In *von Deetzen*,[14] for instance, the Court held that 'where … a producer, as in the present case, has been encouraged by a Community measure to suspend marketing [of milk and milk products] for a limited period in the general interest and against payment of a premium he may legitimately expect not to be subject, upon the expiry of his undertaking, to restrictions which specifically affect him precisely because he availed himself of the possibilities offered by the Community provisions.'

13 — Case C-170/08 [2009] ECR I-5127, paragraphs 44 and 45. In the former paragraph the Court cites, in particular, Case 169/80 *Gondrand and Garancini* [1981] ECR 1931, paragraph 17.

14 — Case 170/86 [1988] ECR 2355, paragraph 13. See also Case 120/86 *Mulder* [1988] ECR 2321, paragraph 24.

33. Finally, I would point out that the Community legislature provided in Article 38(4) of Regulation No 795/2004 that in the context of the regional model Article 40 of the Regulation is to apply mutatis mutandis.

34. All the foregoing considerations militate in favour of applying Article 40(5) of the Regulation by analogy in the framework of Article 61.

35. Turning specifically to the first question, the referring court states that there is doubt in cases where it is not an agri-environmental measure ongoing on 15 May 2003 that has led to the ploughing up and conversion of arable land to pastureland but the relevant measure is a continuation ('retention') of another agri-environmental measure — likewise a measure according to Regulations No 2078/92 or No 1257/1999 — that led to the conversion of arable land to pastureland. [15] The referring court states that it is aware that the management contract of 1999, which was still ongoing on 15 May 2003 and which, according to the contract, had been concluded 'pursuant to Regulation No 2078/92', was concluded following a previous contract, also covering a five year period. In 1994, when the previous contract began, the area in question is said to have been ploughed up and converted from arable land to (permanent) pastureland.

36. I agree with the Commission that, in view of the aim [16] and the scheme of Article 40(5) of the Regulation, the two contracts at issue should be considered to constitute one unit, to the extent that both refer to a commitment in favour of measures for the purposes of the first subparagraph of Article 40(5) of the Regulation and both are connected seamlessly in time. Indeed, as pointed out by the German Government, in that connection the primary condition is that the original agri-environmental measure fulfils all the conditions under Article 40(5) of the Regulation.

37. It follows that in circumstances such as those of the main proceedings, that is where land is used as pasture in connection with an agri-environmental measure which was ongoing on the reference date envisaged in Article 61 of the Regulation and which constitutes

15 — In that connection, in the event of the 'prompt connection' of a follow-up measure to the agri-environmental measure which leads to the ploughing up, a paper published by the Bundesministerium für Verbraucherschutz, Ernährung und Landwirtschaft (Federal Ministry for Consumer Protection, Food and Agriculture) in Germany ('Meilensteine der Agrarpolitik', 2006, paragraph 100) states that it would be possible to recognise 'hardship'.

16 — As I stated above, its aim is to ensure that farmers who have participated in environmental measures during the reference period concerned do not find themselves penalised for having done so.

just retention of (permanent) use as pastureland, but is connected seamlessly in time with an agri-environmental measure under which conversion from arable land to permanent pastureland has taken place, Article 40 of that regulation should be interpreted on the basis of an overall assessment of the previous agri-environmental measure and of the one that succeeded it.

39. Essentially, the referring court notes that it is unclear in the context of Community law whether — as the StAUN appears to consider — hardship or exceptional circumstances can be recognised only where it is established that a change of use from arable land to pastureland has taken place exclusively in connection with participation in an agri-environmental measure. The referring court states further that circumstances are also conceivable in which — as if in two separate acts — a farmer puts an area down to pasture and only then decides to use it in such a way that he falls within the ambit of the possibilities of aid afforded by the agri-environmental measure. If he then participates in such a measure, this means that he too is adversely affected by commitments to carry out extensification.

2. Second question

38. If the first question is answered in the affirmative, as it has been, in its second question the referring court asks essentially whether Article 40(5) in conjunction with Article 61 of the Regulation should be interpreted as meaning that only the existence of a causal link between the change of use of the land and the participation in an agri-environmental measure permits — in the context of calculating the area-based amount of payment entitlements — account not to be taken of the fact that that land was still used as permanent pasture on the reference date envisaged by Article 61 of the Regulation.

40. The Commission is right when it submits that it would appear from the wording of Article 40(5) of the Regulation that proof of the existence of a strict causal link between the change of use of the land in question and the agri-environmental commitments is not

required.[17] The fact remains, however, that, as follows from the considerations set out above, in the case in the main proceedings Article 40(5) of the Regulation in conjunction with Article 61 is applicable by analogy on the basis of the consideration that the person concerned uses the land in question in one way rather than another — precisely — because of the commitments taken on in connection with implementation of agri-environmental measures. As the German Government and the Commission essentially submitted, if the person concerned was already using the land in question as pasture before taking on, and independently of, his commitment to carry out agri-environmental measures then, for the purposes of calculating the reference amount, the land in question should be considered to be devoted to pasture.

41. Therefore the second question should be answered in the affirmative, that is, to the effect that, in the context of applicable procedural rules, proof of a causal link between an agri-environmental measure and the change of use should indeed be established. However, it should be borne in mind that the case-law of the Court contains numerous statements to the effect that Member States should not lay down procedural rules which render impossible in practice or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness).[18]

42. It follows that Article 40(5) of the Regulation in conjunction with Article 61 should be interpreted as meaning that the presence of a causal link between the change of use of land and participation in an agri-environmental measure alone is sufficient, in the context of calculating the amount of payment entitlements, for account not to be taken of the fact that at the time of the reference date envisaged in Article 61 of that regulation that land was effectively still used as permanent pasture.

3. Third question

43. Finally, the referring court raises the question whethe r, under Community law, it is necessary for the farmer who has ploughed up the arable land to be the person claiming

17 — The first subparagraph of Article 40(5) merely requires that during the reference period farmers are under agri-environmental commitments. Its second subparagraph requires that the commitments at issue cover the reference periods mentioned therein.

18 — See, inter alia, Joined Cases C-430/93 and C-431/93 *van Schijndel and van Veen* [1995] ECR I-4705, paragraph 17; Case C-129/00 *Commission* v *Italy* [2003] ECR I-14637, paragraph 25; Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 43; and Joined Cases C-222/05 to C-225/05 *van der Weerd and Others* [2007] ECR I-4233.

hardship or exceptional circumstances under Article 40(5). In the present case the farm from which Mr Grootes's farm came into being became a party to the management contract of 1999 (under the supplementary agreement of 3 March 2003) only with effect from 31 December 2002 — that is to say, solely for the final year of its term.

44. However, the referring court rightly considers that even in such cases it is possible to take into account the avoidance of adverse effects on those farmers who have participated in an EU environmental measure in the agricultural sector resulting in commitments to carry out extensification. Indeed, where a contract does not have long to run, in particular, an area that is subject to an agri-environmental measure (and its associated restrictions on use) is probably often taken on with the idea of using it as arable land again in the future. In the present case this other use had occurred by 2004, when silage maize was grown.

45. As the German Government submitted, where land is transferred to a farmer who agrees to take over obligations undertaken in connection with an agri-environmental measure, that farmer may expect that he will not be treated less favourably than his predecessor and that he will find himself in the same legal position as that predecessor. Provided that all other conditions have been fulfilled, he should be able successfully to claim hardship or exceptional circumstances under Article 40(5) of the Regulation in conjunction with Article 61.

46. It follows that Article 40(5) of the Regulation in conjunction with Article 61 should be interpreted as meaning that it is not decisive whether the farmer who submitted a request for payment entitlements is the same farmer who undertook the change of use of the land.

IV — Conclusion

47. In view of the foregoing considerations, I suggest that the Court give the following answers to the questions referred by the Verwaltungsgericht Schwerin:

'(1) In circumstances such as those of the main proceedings, that is where land is used as pasture in connection with an agri-environmental measure which was ongoing on the reference date envisaged in Article 61 of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and amending Regulation (EEC) No 2019/93 and various other regulations and which constitutes just retention of (permanent) use as pastureland, but is connected seamlessly in time with an agri-environmental measure under which conversion from arable land to permanent pastureland has taken place, Article 40 of that regulation should be interpreted on the basis of an overall assessment of the previous agri-environmental measure and of the one that succeeded it.

(2) Article 40(5) of Regulation No 1782/2003 in conjunction with Article 61 should be interpreted as meaning that the presence of a causal link between the change of use of land and participation in an agri-environmental measure alone is sufficient, in the context of calculating the amount of payment entitlements, for account not to be taken of the fact that at the time of the reference date envisaged

in Article 61 of that regulation that land was effectively still used as permanent pasture.

(3) Article 40(5) of Regulation No 1782/2003 in conjunction with Article 61 should be interpreted as meaning that it is not decisive whether the farmer who submitted a request for payment entitlements is the same farmer who undertook the change of use of the land.'