Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

17 December 2015*

(Reference for a preliminary ruling — Common agricultural policy — Rural development support measures — Agri-environmental payments — Regulation (EC) No 1122/2009 — Articles 23 and 58 — Regulation (EC) No 1698/2005 — Regulation (EC) No 1975/2006 — Aid in respect of the cultivation of a rare plant species — Application for payment — Contents — Certificate requirement — Penalties for non-presentation)

In Case C-330/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Gyulai közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Gyula) (Hungary), made by decision of 28 May 2014, received at the Court on 8 July 2014, in the proceedings

Gergely Szemerey

v

Miniszterelnökséget vezető miniszter, successor in law to Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve,

THE COURT (Fourth Chamber)

composed of M. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan, A. Prechal and K. Jürimäe (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: V. Tourrès, administrator,

having regard to the written procedure and further to the hearing on 24 June 2015,

after considering the observations submitted on behalf of:

— Mr Szemerey, by I. Boross et M. Honoré, ügyvédek,

— the Miniszterelnökséget vezető miniszter, by A. Ivanovits and P. Káldy, ügyvédek,

— the Hungarian Government, by M. Fehér et G. Koós, acting as Agents,

— the Greek Government, by I. Chalkias and O. Tsirkinidou and A. Vasilopoulu, acting as Agents,

— the European Commission, by G. von Rintelen and A. Sipos, acting as Agents,

* Language of the case: Hungarian

after hearing the Opinion of the Advocate General at the sitting on 16 September 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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 by 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), read in conjunction with 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), as amended by Council Regulation (EC) No 473/2009 of 25 May 2009 (OJ 2009 L 144 p. 3) ('Regulation No 1698/2005'), and Commission Regulation (EC) No 1975/2006 of 7 December 2006 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 2006 L 368, p. 74), as amended by Commission Regulation (EC) No 484/2009 of 9 June 2009 (OJ 2009 L 145, p. 25) ('Regulation No 1975/2006').

2 The request has been made in proceedings between Mr Szemerey and the Miniszterelnökséget vezető miniszter, successor in law to Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve (Chancellery of the Prime Minister, successor in law to the Central Office for Agriculture and Rural Development, 'the Office'), regarding the Office's decision rejecting an application for aid under the area aid scheme by Mr Szemerey and imposing a financial penalty on him for failure to comply with the requirements for submission of that application.

Legal context

EU law

Regulation No 1698/2005

3 Regulation No 1698/2005 lays down the general rules governing EU support for rural development financed by the European Agricultural Fund for Rural Development (EAFRD).

4 The rural development aid provided by that regulation is implemented by means of four axes set out in four separate sections which appear under Title IV of that regulation. Section 2 is headed 'Axis 2 — Improving the environment and the countryside'. Article 36(a)(iv) of the same regulation, which appears under Section 2, states that the support under that section is to concern, inter alia, measures targeting the sustainable use of agricultural land through agri-environmental payments.

5 Article 74(3) of Regulation No 1698/2005 provides:

'Member States shall ensure for each rural development programme that the relevant management and control system has been set up ensuring a clear allocation and separation of functions between the Managing Authority and other bodies. …'

Regulation No 1975/2006

6 Regulation No 1975/2006 lays down specific provisions concerning control procedures and cross-compliance in relation to the support measures laid down in Regulation No 1698/2005.

7 Article 4 of Regulation No 1975/2006 entitled ‘Applications for support and payment claims’, provides:

‘1. Without prejudice to specific provisions in this Regulation, the Member States shall provide for appropriate procedures for the submission of applications for support.

…

3. Applications for support and payment claims may be adjusted at any time after their submission in cases of obvious errors recognised by the competent authority.’

8 Article 5 of that regulation entitled ‘General principles of control’, provides:

‘1. Without prejudice to specific provisions in this Regulation, Member States shall ensure that all the eligibility criteria established by European Union or national legislation or by the rural development programmes can be controlled according to a set of verifiable indicators to be established by the Member States.

…

3. Without prejudice to specific provisions, no payment shall be made in favour of beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of the support scheme.’

9 Under the heading ‘Administration and control rules’, Part II of that regulation includes Title 1 headed ‘Rural development support for certain measures under Axis 2 and Axis 4’. Chapter II of that regulation, appearing under that heading and entitled ‘Controls, reductions and exclusions’, contains Article 10. That provision, headed ‘General Principles’, is worded as follows:

‘1. Applications for support and subsequent payment claims shall be checked in a manner which ensures effective verification of compliance with the conditions for granting support.

2. The Member States shall define suitable methods and means for verifying the conditions for granting support for each support measure.

…

4. Verification of the eligibility criteria shall consist of administrative and on-the-spot checks.

5. Respect of cross-compliance shall be verified through on-the-spot checks and where appropriate through administrative checks.

…’

10 Section 1 of Chapter II of Regulation No 1975/2006 has as its title ‘Respect of the eligibility criteria’. That section contains, inter alia, a subsection I, entitled ‘Controls’, under which appears Article 11 headed ‘Administrative checks’, which provides in paragraph 1:

‘Administrative checks shall be undertaken on all applications for support and payment claims, and shall cover all elements that it is possible and appropriate to control by administrative means. The procedures shall ensure the recording of control work undertaken, the results of the verification and the measures taken in respect of discrepancies.’

11 Subsection II of the above-mentioned section I is entitled ‘Reductions and exclusions’. It includes Article 18 which, under the heading ‘Reductions and exclusions in the case of non-respect of eligibility criteria’, provides:

‘1. In case any of the commitments attached to the granting of the aid, other than those related to the size of area or number of animals declared, are not respected, the aid claimed shall be reduced or refused.

2. The Member State shall determine the amount of the reduction of the aid, in particular, on the basis of the severity, extent and permanence of the non-respect found.

The severity of a non-respect shall depend, in particular, on the importance of the consequences of the non-respect taking into account the objectives pursued by the criteria which have not been respected.

The extent of a non-respect shall depend, in particular, on the effect of the non-respect on the operation as a whole.

Whether a non-compliance is of permanence shall depend, in particular, on the length of time for which the effect lasts or the potential for terminating those effects by reasonable means.

3. Where non-respect results from irregularities committed intentionally, the beneficiary shall be excluded from the measure in question both for the calendar year concerned and for the following calendar year.’

Regulation No 1122/2009

12 Regulation No 1122/2009 replaced Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18). In accordance with Article 87, Regulation No 1122/2009 is to apply to aid applications relating to marketing years or premium periods starting as of 1 January 2010.

13 Recitals 19, 28 and 29 of Regulation No 1122/2009 state:

‘(19) The punctual lodging of the application for increase of value or allocation of payment entitlements under the single payment scheme is crucial for an effective administration. Member States should therefore establish a deadline for the application, which should not be later than the 15 May. To simplify procedures Member States should be allowed to decide that the application may be submitted at the same time as the single application. ...

…

(28) Respect for the time limits for the submission of aid applications, for the amendment of area aid applications and for any supporting documents, contracts or declarations is indispensable to enable the national administrations to program and, subsequently, carry out effective controls on the correctness of the aid applications. Provision should, therefore, be made regarding the time limits within which late submissions are acceptable. Moreover, a reduction should be applied to encourage farmers to respect the time limits.

(29) The punctual submission of applications for payment entitlements by farmers is essential for the Member States with a view to the timely establishment of the payment entitlements. Late submissions of those applications should therefore only be permitted within the same additional time limit as for the late submission of any aid applications. A dissuasive reduction-rate should also be applied unless the delay is due to cases of force majeure or exceptional circumstances.'

14 Article 23(1) of that regulation, entitled 'Late submission', provides:

'Except in cases of force majeure and exceptional circumstances as referred to in Article 75, the submission of an aid application pursuant to this Regulation after the relevant time limit shall lead to a 1% reduction per working day in the amounts to which the farmer would have been entitled if the application had been submitted within the time limit.

Without prejudice to any particular measures to be taken by the Member States with regard to the need for the submission of any supporting documents in due time to allow effective controls to be scheduled and carried out, the first subparagraph shall also apply with regard to documents, contracts or declarations to be submitted to the competent authority in accordance with Articles 12 and 13 where such documents, contracts or declarations are constitutive for the eligibility for the aid in question. In that case, the reduction shall be applied on the amount payable for the aid concerned.

If the delay amounts to more than 25 calendar days the application shall be considered inadmissible.'

15 In accordance with Article 7 of Regulation No 1975/2006, read in conjunction with the correlation table in Annex II to Regulation No 1122/2009, Article 23 of that regulation is to be applied *mutatis mutandis* to situations governed by Regulation No 1975/2006.

16 Article 58 of Regulation No 1122/2009, headed 'Reductions and exclusions in cases of over-declaration', states:

'If, in respect of a crop group, the area declared for the purposes of any area-related aid schemes, except those for starch potato and seed as provided for in Sections 2 and 5 of Chapter 1 of Title IV 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)] exceeds the area determined in accordance with Article 57 of this Regulation, 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 no more than 20% of the area determined.

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

If the difference is more than 50%, the farmer shall be excluded once again from receiving aid up to an amount equal to the amount which corresponds to the difference between the area declared and the area determined in accordance with Article 57 of this Regulation. That amount shall be off-set in accordance with Article 5b of Commission Regulation (EC) No 885/2006 [of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the

accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2006 L 171, p. 90)]. If the amount cannot be fully off-set in accordance with that article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.'

17 As provided in Article 75(1) of that regulation, entitled 'Force majeure and exceptional circumstances':

'If a farmer has been unable to comply with his obligations as a result of force majeure or exceptional circumstances as referred to in Article 31 of [Regulation No 73/2009] he shall retain his right to aid in respect of the area or animals eligible at the time when the case of force majeure or the exceptional circumstance occurred. In addition, when the non-compliance resulting from such force majeure or exceptional circumstances concerns cross-compliance, the corresponding reduction shall not be applied.'

Hungarian law

18 Paragraph 29(3) of the Regulation of the Ministry of Agriculture and Rural Development No 61/2009 (V.14) specifying the requirements for applying for agri-environmental aid made available through EAFRD (Az Európai Mezőgazdasági Vidékfejlesztési Alapból nyújtott agrár-környezetgazdálkodási támogatások igénybevételének részletes feltételeiről szóló 61/2009. (V.14.) FVM rendelet), as amended by Regulation No 31/2010 ('Regulation No 61/2009'), provides:

'As regards the targeted programmes defined in Paragraph 3(1)(a) at points (aa) to (ac), in the case of production of rare, endangered arable plants which are of particular genetic importance and of particular importance for the preservation of crops, within the meaning of Annex 12, or in the case of vegetable production, in accordance with Annex 13 thereto, the person eligible for aid has a right to the specific amount of aid referred to in Chapter II during the year in question and in respect of the agricultural plots concerned, provided that the competent authority certifies that the plant variety in question is a plant within the meaning of Annex 12 or 13.'

19 Paragraph 43(6) of that regulation states:

'In the case of the cultivation of a rare plant species, the document laid down on the basis of the provisions of Paragraph 29(3), concerning rare plant species, must be attached to the application for payment.'

20 As provided in Paragraph 55(4) of that regulation:

'If it is established during an on-the-spot check that the person eligible for aid is not in possession of the certificate referred to in Paragraph 29(3), the entire amount of aid for one marketing year shall not be paid to the person eligible for aid in respect of the plot concerned.'

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

21 During May 2010 the applicant in the main proceedings submitted a single 'area' aid application. That application related to the payment of aid for an area of 52.9 hectares under an organic farming and cultivable land programme, of which 29.69 hectares had to be devoted to the cultivation of a rare and endangered plant species of interest for historical, cultural or genetic reasons.

22 The year 2010 was marked by floods and other natural events which prevented the planting of that species. For that reason, the applicant in the main proceedings invoked *force majeure* for June, and then for July 2010. Following instructions from the Hungarian authorities, the applicant in the main proceedings amended the usage code for the land affected by his aid application and declared it 'set-aside land'.

23 In March 2011 the paying agency refused the application for payment made by the applicant in the main proceedings and imposed a financial penalty of HUF 2 483 953 (Hungarian forints) (approximately EUR 7 900) on him, spread over three years, which was to be offset from the area aid which he would normally be able to claim for those years. By that decision, that agency also confirmed the existence of the *force majeure* relied on by Mr Szemerey.

24 Mr Szemerey made a complaint against that decision to the Office which, by decision of 13 January 2012, rejected that complaint on the basis that, when lodging his 'area' aid application, the applicant in the main proceedings did not lodge the certificate relating to the rare plant species prescribed by the Hungarian agricultural services office which was required in order for him to be eligible for the aid applied for ('the certificate at issue').

25 It is apparent from the order for reference that the rules concerning certificates required by Regulation No 61/2009 for rare plant species, had been amended by the Hungarian legislature with effect from 30 March 2010. Since that amendment came into force, the applicant for aid is required to lodge that certificate at the same time as the single 'area' aid application, that is to say, in the present case, before 15 May 2010, whereas before that legislative amendment the certificate had to be presented only during an on-the-spot check.

26 As Mr Szemerey had not lodged the certificate at issue at the same time as the application for 'area' aid, the Office took the view that the plots of land concerned by the rare species in question could not be taken into account in the determination of the amount of aid. The Office considered that the applicant's application in the main proceedings showed a difference of more than 50% between the area declared and the area determined. Consequently, the Office took the view that Mr Szemerey's aid application was an 'over-declaration', within the meaning of Regulation No 1122/2009, and decided to apply the penalties laid down in Article 58 of that regulation. In addition, in its decision the Office considered that, as that rare species was usually planted in spring, Mr Szemerey was in a position to know at the time of lodging his aid application that he could not obtain the certificate in question by 15 May 2010, so that, from that date, he could have amended his application for other non-rare plant species.

27 The applicant in the main proceedings brought an action against the Office's decision before the Gyulai közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Gyula) contesting the legality of that decision.

28 Against that background, the Gyulai közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Gyula) stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'(1) Must the principle of flexibility and the possibility of amendment, as provided for in recitals 20 and 27 in the preamble to Regulation No 796/2004 or recitals 18, 23 and 26 in the preamble to Regulation No 1122/2009, be interpreted as precluding a national provision, under which, in the case of the cultivation of a rare plant species, the certificate relating to the rare plant must be attached to the application for payment, having regard to the administrative practice, in accordance with which it was possible to apply for the certificate only before applying for payment between 2 and 15 April 2010, and it was possible to attach it only at the same time as the presentation of the single application, and that the provision did not make it possible to remedy the defect in the application constituted by the failure to produce a certificate?

(2) Is this provision consistent with the obligation of Member States not to undermine the objectives of the Common Agriculture Policy, or can it be said that the effective exercise of the right to aid under EU law by farmers who grow rare plants became impossible or excessively difficult and unpredictable in 2010 when the legislation was amended?

(3) Do recital 57 in the preamble to Regulation No 796/2004 or recital 75 in the preamble to Regulation No 1122/2009 and, in particular, the principle of proportionality preclude an administrative practice which, in the event that there is no certificate relating to the rare plant, and without taking into consideration intention, negligence or the circumstances of the case, imposes a penalty for over-declaration in respect of the entire application, when the application for payment, in respect of the entire plot of land, otherwise complies with the requirements for granting the aid, and the farmer grows the declared plant in the area declared?

(4) Are the grounds for exemption contained in recitals 67 or 71 in the preamble to Regulation No 796/2004 or in recital 75 in the preamble to Regulation No 1122/2009 applicable in the event that the farmer claims that a prejudicial or inappropriate administrative practice amounts to exceptional circumstances and seeks to demonstrate that the practice of the administrative body was wholly or partly the cause of his error?

(5) Can the accepted declaration of *force majeure* submitted by the farmer in relation to the total loss of the crop (sowing) be regarded as correct information for the purposes of recital 67 in the preamble to Regulation No 796/2004 or recital 93 in the preamble to Regulation No 1122/2009, which would exonerate the farmer in respect of the failure to submit the certificate relating to the rare plant and thereby entail exemption from the penalties relating to the entire application?'

Consideration of the questions referred

Admissibility

29 The Hungarian Government submits that the questions referred for a preliminary ruling are inadmissible on the ground that they do not relate to legislative provisions contained in the relevant EU legislation but only to the recitals of Regulations Nos 796/2004 and 1122/2009.

30 In that regard, it must be recalled that in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts (judgment in *Fuß*, C-243/09, EU:C:2010:609, paragraph 39 and the case-law cited).

31 Consequently, even if, formally, the referring court has limited its questions to the interpretation of the recitals of Regulations Nos 796/2004 and 1122/2009, that does not prevent the Court from providing the referring court with a ruling on the interpretation of EU law which may be of assistance to the referring court in adjudicating in the case pending before it, whether or not the referring court has referred to them in the wording of its questions. It is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision to make the reference, the points of EU law which require interpretation in view of the subject-matter of the dispute (see, by analogy, judgment in *Fuß*, C-243/09, EU:C:2010:609, paragraph 40 and the case-law cited).

32 In that regard, it is not disputed that the aid application, which was the subject-matter of the main proceedings, was brought by the applicant in respect of the agri-environmental payments referred to in Article 36(a)(iv) of Regulation No 1698/2005 in respect of which Regulation No 1975/2006 lays down detailed rules for the implementation, in particular, in relation to control and cross-compliance procedures. In addition, it is apparent from Article 7 of Regulation No 1975/2006 that certain provisions of Regulation No 796/2004 replaced by Regulation No 1122/2009 and, in particular, Article 23 of the latter regulation apply *mutatis mutandis* to aid applications of the sort at issue in the main proceedings. Furthermore, it is common ground that the third paragraph of Article 58 of Regulation No 1122/2009 has been applied in the circumstances of the case in the main proceedings.

33 Consequently, it must be understood that by its questions, the national court seeks essentially to determine whether EU law and, in particular, the provisions of that law concerning agri-environmental payments, referred to in the previous paragraph of the present judgment, precludes a national law, such as that at issue in the main proceedings, first, which requires as one of the conditions of admissibility of an application for agri-environmental aid that the applicant supply to the paying authority, at the latest at the same time as his aid application, a document such as the certificate at issue and, secondly, which provides that, in the situation where that document is not submitted within the prescribed time-limits, that applicant be penalised by the rejection of his application in its entirety and also by a reduction in the aid paid for the previous three years.

34 It follows that the questions referred for a preliminary ruling are admissible.

First and second questions

35 By its first and second questions which should be examined together, the referring court asks, in essence, whether Article 23 of Regulation No 1122/2009, read in conjunction with Regulations Nos 1698/2005 and 1975/2006, precludes national legislation such as that at issue in the main proceedings from requiring that the applicant for agri-environmental aid provide the paying authority, at the same time as its aid application, with a certificate relating to the rare plant species which entitles the applicant to aid.

36 It must be stated at the outset that none of those regulations, referred to in the paragraph above, expressly imposes a provision which precludes such national legislation.

37 In relation to rural development programmes, Article 74 of Regulation No 1698/2005 provides that Member States are required to set up, for each of those programmes, a system ensuring their effective control.

38 In particular, Article 5(1) of Regulation No 1975/2006 requires Member States to ensure that all the eligibility criteria established by EU or national legislation or by the rural development programmes may be controlled according to a set of verifiable indicators to be established by the Member States. Under paragraph 3 of that article, those indicators must, in particular, enable it to be verified that nobody may wrongfully benefit from payments and obtain an advantage contrary to the objectives of the support scheme.

39 In that regard, the general principles governing controls relating to applications for support and subsequent payment claims, referred to in Article 10 of Regulation No 1975/2006, leave Member States free to define suitable methods and means for verifying the conditions for the grant of support for each support measure. Paragraph 4 of that article states that the eligibility criteria are to be verified by means of administrative and on-the-spot checks. Concerning administrative checks, Article 11 of Regulation No 1975/2006 provides that those checks are to be undertaken on all applications for support and payment claims, and are to cover all elements that it is possible and appropriate to control by administrative means.

40 In this case, the Office and the Hungarian Government argue that the production of the certificate at issue is a condition for admissibility of the application for support laid down by national law, which it is for the national court to establish and which is intended to allow the competent authorities to carry out an ex ante check on the eligibility of the applicant for a specific aid scheme in order to bolster the effectiveness of control. In that regard, the requirement that such a certificate be submitted with the application for support ensures that payments are not made before the checks are completed and, by the same token, ensures that those checks have a preventative effect in accordance with the intention of the EU legislature expressed at recital 4 of Regulation No 1975/2006.

41 It follows that national legislation such as that at issue in the main proceedings which requires as one of the conditions of admissibility of an application for agri-environmental aid that the applicant for that aid submit to the paying authority, at the latest with that application, a certificate such as that at issue falls within the discretion conferred on the Member States pursuant to Articles 5, 10 and 11 of Regulation No 1975/2006 and furthers the objective of those provisions which is to ensure the effectiveness of the controls.

42 However, the measures taken by Member States within their discretion cannot adversely affect the practical effect of the provisions of Regulations Nos 1698/2005, 1975/2006 and 1122/2009 and the general principles of EU law, in particular, the principle of proportionality (see, by analogy, judgment in *Bonn Fleisch*, C-1/06, EU:C:2007:396, paragraph 40) and that of legal certainty (see, by analogy, judgment in *Dél-Zempléni Nektár Leader Nonprofit*, C-24/13, EU:C:2014:40, paragraphs 31 and 32).

43 In the first place, the applicant in the main proceedings argues in his written submissions that that legislation is disproportionate since it lays down a deadline on the expiry of which any rectification of the aid application is not possible when the certificate at issue could not be annexed within that time-limit.

44 In that regard, it must be noted that, as is stated in recitals 19 and 28 of Regulation No 1122/2009, the fixing by Member States of time-limits for the submission of aid applications, and the supporting documents accompanying those applications, is indispensable in the attainment of the objective of effective administration and control pursued by EU law concerning agricultural aid.

45 That said, Article 23 of Regulation No 1122/2009 expressly provides that an additional period of 25 days, beyond the deadline prescribed by the Member States, must be provided in relation to the procedure for submitting those applications and supporting documents, for the purpose of authorising, subject to the imposition of the penalty laid down in that provision, the late submission of those applications and documents.

46 The Office confirmed at the hearing before the Court that the national legislation at issue in the main proceedings allowed, in accordance with Article 23(1) of Regulation No 1122/2009, an additional period of 25 days for the late submission of the certificate at issue, which is a matter for the referring court to determine.

47 In the second place, as regards the alleged infringement of the principle of legal certainty, put forward by the applicant in the main proceedings, resulting from the amendment during 2010 of the detailed rules for the submission of documents such as the certificate at issue, it should be borne in mind that that principle requires that rules involving negative consequences for individuals should be clear and precise and their application predictable for those subject to them (order in *Dél-Zempléni Nektár Leader Nonprofit*, C-24/13, EU:C:2014:40, paragraph 32 and the case-law cited).

48 The Court has already ruled that an individual cannot place reliance on there being no legislative amendment whatever, but can only call into question the arrangements for the implementation of such an amendment. In this regard, the principle of legal certainty requires, in particular, that the

legislature take account of the special situations of operators and provide, where appropriate, adaptations to the application of the new legal rules (order in *Dél-Zempléni Nektár Leader Nonprofit*, C-24/13, EU:C:2014:40, paragraph 33 and the case-law cited).

49 In the circumstances of this case, it is for the national court to determine whether the detailed rules for the entry into force of the new national legislation at issue in the main proceedings allowed the operators concerned to comply under reasonable conditions with the requirements of that legislation and, in particular, allowed the applicant in the main proceedings to request, obtain and submit the certificate at issue within the time-limit set by that national legislation, as amended.

50 In that regard, the national court will, inter alia, have to determine whether, as is contended on behalf of the Office, the requirement of a certificate for rare plant species is not new and whether the new legislation did not lay down a mandatory time-limit for requesting the certificate from the competent authorities and, where appropriate, take those factors into account during its determination.

51 Having regard to all of the foregoing considerations, the answer to the first and second questions referred is that Article 23 of Regulation No 1122/2009, read in conjunction with Regulations Nos 1698/2005 and 1975/2006, must be interpreted as not precluding national legislation such as that at issue in the main proceedings from requiring that an applicant for agri-environmental aid supply to the paying authority, at the same time as the aid application, a certificate in relation to the rare plant species which gives the applicant the right to payment of that aid, on the condition that that legislation permits the operators concerned to comply under reasonable conditions with the requirements of that legislation, a matter which it is for the referring court to determine.

The third to fifth questions

52 By its third to fifth questions which should be examined together, the referring court asks, in essence, whether Article 58, third paragraph, of Regulation No 1122/2009 must be interpreted as meaning that the penalty imposed in that provision applies to an applicant for agri-environmental aid who does not attach a document such as the certificate at issue to his aid application.

53 It should be stated at the outset that the parties to the main proceedings are in dispute as to why the certificate at issue was not submitted by the applicant in the main proceedings within the time-limit fixed by the national legislation. The applicant submits that that situation is the result of *force majeure* which prevented him from planting the plant species in question and also from obtaining the certificate in time. The Office, for its part, contends that the certificate could have been obtained before the planting of that species and, therefore, submitted within the time-limit.

54 It is, however, not disputed that the omission of the applicant in the main proceedings was penalised on the basis of Article 58, third paragraph, of Regulation No 1122/2009, concerning reductions and exclusions in cases of 'over-declaration' issued in relation to aid applications under the 'area' aid scheme. However, in that regard it must be noted that the failure to fulfil obligations of which the applicant in the main proceedings is accused does not concern a commitment in relation to the size of the declared area in the aid application but the requirement to submit the certificate at issue, showing that the admissibility conditions for aid were fulfilled, within the time-limit.

55 Clearly, therefore, that failure to fulfil obligations is not covered by Article 58 of Regulation No 1122/2009 but by the second and third paragraphs of Article 23(1) of that regulation, since, as has been observed at paragraph 45 of the present judgment, that regulation provides specific penalties for such infringements.

56 As set out in the provision referred to in the paragraph above, except in cases of *force majeure* and exceptional circumstances, as referred to in Article 75, the submission of such a document after the relevant time-limit is to lead to a 1% reduction per working day in the amounts payable in respect of the aid claimed. Moreover, that regulation also provides that if the delay amounts to more than 25 calendar days the application is to be considered inadmissible.

57 It follows that, in a situation such as that at issue in the main proceedings, where the aid applicant has not presented the certificate at issue, either within the time- limit prescribed for the submission of the aid application, or within the additional time-limit of 25 days laid down for the late submission of such an application and the supporting documents accompanying that application, Article 23(1), third paragraph, of Regulation No 1122/2009 provides, as the only penalty, that the application for payment must be declared inadmissible.

58 As the question whether the failure to fulfil obligations alleged against the applicant in the main proceedings is caused by *force majeure*, and whether, therefore, the applicant could avoid the penalty laid down in the third paragraph of Article 23(1) of Regulation No 1122/2009 entails an assessment of facts, it is for the referring court to determine whether that failure to fulfil obligations is the result of abnormal and unforeseeable circumstances, outside the control of the operator concerned, the consequences of which, in spite of the exercise of all due care, could not have been avoided (see, to that effect, judgment in *Parras Medina*, C-208/01, EU:C:2002:593, paragraph 19 and the case-law cited).

59 It follows from the foregoing that the answer to the third to fifth questions is that Article 58, third paragraph, of Regulation No 1122/2009 must be interpreted as meaning that the penalty imposed by that regulation does not apply to an applicant for agri-environmental aid who does not attach a document such as the certificate at issue to his aid application. Article 23(1), third paragraph, of that regulation must be interpreted as meaning that such an omission leads, in principle, to the inadmissibility of the application for payment of agri-environmental aid.

Costs

60 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 (Fourth Chamber) hereby rules:

1. **Article 23 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 by 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, read in conjunction with Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), as amended by Council Regulation (EC) No 473/2009 of 25 May 2009 and Commission Regulation (EC) No 1975/2006 of 7 December 2006 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, as amended by Commission Regulation (EC) No 484/2009 of 9 June 2009, must be interpreted as not precluding national legislation such as that at issue in the main proceedings from requiring that the applicant for agri-environmental aid supply to the paying authority, at the same time as its aid application, a certificate in relation to the rare**

plant species which gives the applicant the right to payment of that aid, on the condition that that legislation permits the operators concerned to comply under reasonable conditions with the requirements of that legislation, a matter which it is for the referring court to determine.

2. **Article 58, third paragraph, of Regulation No 1122/2009 must be interpreted as meaning that the penalty imposed in that provision does not apply to an applicant for agri-environmental aid who does not attach a document such as the certificate at issue in the main proceedings to his aid application. Article 23(1), third paragraph, of that regulation must be interpreted as meaning that such an omission leads, in principle, to the inadmissibility of the application for payment of agri-environmental aid.**

[Signatures]