Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

4 July 2024*

(Reference for a preliminary ruling – Agriculture – Common Agricultural Policy – Regulation (EU) No 1307/2013 – Article 52 – Delegated Regulation (EU) No 639/2014 – Article 53(1) – Definition of eligibility criteria for coupled support measures – Competence of the Member States – Delegated Regulation (EU) No 640/2014 – Points 16 and 18 of the second subparagraph of Article 2(1) – Distinction between 'declared animals' and 'animals determined' – Article 30(3) – Support calculated on the basis of animals determined – Article 31(1) to (3) – Administrative penalties for non-compliance among declared animals – Application for coupled support linked to the keeping of suckler cows – Calving rate set in national regulations not reached by all declared animals – Rate achieved by a smaller number of those animals – National practice refusing support)

In Case C-538/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Törvényszék (Budapest High Court, Hungary), made by decision of 25 July 2022, received at the Court on 11 August 2022, in the proceedings

SB

v

Agrárminiszter,

THE COURT (Sixth Chamber),

composed of T. von Danwitz, President of the Chamber, P.G. Xuereb (Rapporteur) and I. Ziemele, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Hungarian Government, by Zs. Biró-Tóth and M.Z. Fehér, acting as Agents,

* Language of the case: Hungarian.

– the European Commission, by V. Bottka and A. Sauka, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 November 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of points 16 and 18 of the second subparagraph of Article 2(1), Article 30(3) and Article 31(1) to (3) of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ 2014 L 181, p. 48, and corrigendum OJ 2015 L 209, p. 48), as amended by Commission Delegated Regulation (EU) 2016/1393 of 4 May 2016 (OJ 2016 L 225, p. 41) ('Delegated Regulation No 640/2014').

2 The request has been made in proceedings between SB, a farmer, and the Agrárminiszter (Minister for Agriculture, Hungary) concerning the latter's refusal to grant SB support coupled to production for the keeping of suckler cows.

Legal context

European Union law

Regulation (EU) No 1306/2013

3 Entitled 'Undue payments and administrative penalties', Article 63 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1200/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549) provides, in paragraphs 1 and 2 thereof:

'1. Where it is found that a beneficiary does not comply with the eligibility criteria, commitments or other obligations relating to the conditions for the granting of the aid or support, as provided for in the sectoral agricultural legislation, the aid shall not be paid or shall be withdrawn in full or in part and, where relevant, the corresponding payment entitlements as referred to in Article 21 of Regulation (EU) No 1307/2013 [of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608)] shall not be allocated or shall be withdrawn.

…

2. Moreover, where sectoral agricultural legislation so provides, Member States shall also impose administrative penalties …'

Regulation No 1307/2013

4 Recital 4 of Regulation No 1307/2013, as amended by Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 (OJ 2017 L 350, p. 15) ('Regulation No 1307/2013') provides:

'It is necessary to clarify that [Regulation No 1306/2013] and the provisions adopted pursuant to it are to apply in relation to the measures set out in this Regulation. …'

5 Title IV of Regulation No 1307/2013 contains a Chapter 1, entitled 'Voluntary coupled support', which includes Article 52, entitled 'General rules'. Article 52 provides:

'1. Member States may grant coupled support to farmers under the conditions laid down in this Chapter (in this Chapter referred to as "coupled support").

…

6. Coupled support is a production-limiting scheme that shall take the form of an annual payment based on fixed areas and yields or on a fixed number of animals and shall respect financial ceilings to be determined by Member States for each measure and notified to the [European] Commission.

…

9. In order to ensure efficient and targeted use of [European] Union funds and to avoid double funding under other similar support instruments, the Commission shall be empowered to adopt delegated acts in accordance with Article 70 laying down:

(a) the conditions for granting coupled support;

(b) rules on consistency with other Union measures and on the cumulation of support.

…'

6 Entitled 'Financial provisions', Article 53 of that regulation lists the decisions on voluntary coupled support that Member States may adopt.

7 Entitled 'Notification', Article 54 of that regulation provides, in paragraph 1 thereof:

'Member States shall notify the Commission of the decisions referred to in Article 53 by the dates referred to in that Article. …'

Delegated Regulation No 639/2014

8 Entitled 'Conditions for granting the support', Article 53 of Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation (OJ 2014 L 181, p. 1), as amended by Commission Delegated Regulation (EU) 2018/1784 of 9 July 2018 (OJ 2018 L 293, p. 1) ('Delegated Regulation No 639/2014'), provides, in paragraph 1:

'Member States shall lay down eligibility criteria for coupled support measures in compliance with the framework set out in [Regulation No 1307/2013] and the conditions laid down in this Regulation.'

9 Entitled 'Notifications relating to the voluntary coupled support', Article 67 of Delegated Regulation No 639/2014 states, in paragraph 1 thereof:

'The notifications referred to in Article 54(1) of [Regulation No 1307/2013] shall include the items listed in Annex I to this Regulation.'

10 Under Annex I to Delegated Regulation No 639/2014, entitled 'Content of the information to be submitted to the Commission pursuant to Article 67(1)':

'This information shall include:

…

(3) a description of each support measure, including at least:

…

(f) the applicable eligibility conditions;

…'

Delegated Regulation No 640/2014

11 Recitals 1, 28 and 31 of Delegated Regulation No 640/2014 state:

'(1) … Regulation [No 1306/2013] empowers the Commission to adopt delegated and implementing acts. In order to ensure the smooth functioning of the system in the new legal framework, certain rules have to be adopted by means of such acts. …

…

(28) As far as aid applications under animal aid schemes or payment claims under animal-related support measures are concerned, non-compliances lead to the ineligibility of the animal concerned. Reductions should be provided for as from the first animal found with non-compliances but, irrespective of the level of the reduction, there should be a less

harsh administrative penalty where three animals or less are found with non-compliances. In all other cases the severity of the administrative penalty should depend on the percentage of animals found with non-compliances.

…

(31) Refusals and withdrawals of support and administrative penalties should be established for rural development support measures having regard to the principles of dissuasiveness and proportionality. Refusals and withdrawals of support should be graded on the basis of the severity, extent, duration and reoccurrence of the non-compliance found. Refusals and withdrawals of support and administrative penalties should, with regard to the eligibility criteria, commitments and other obligations, take into account the particularities of the various support measures. In the case of serious non-compliance or in the case the beneficiary provided false evidence for the purpose of receiving the support, the support should be refused and an administrative penalty should be imposed. Administrative penalties should go as far as the total exclusion from one or several support measures or types of operations for a specified period.'

12 Entitled 'Definitions', Article 2 of Delegated Regulation No 640/2014 provides, in paragraph 1 thereof:

'…

The following definitions shall also apply:

…

(2) "non-compliance" means:

(a) for eligibility criteria, commitments or other obligations relating to the conditions for the granting of the aid or support referred to in Article 67(2) of Regulation [No 1306/2013], any non-respect of those eligibility criteria, commitments or other obligations; …

…

(13) "animal aid scheme" means a voluntary coupled support measure provided for in Chapter 1 of Title IV of [Regulation No 1307/2013] where the annual payment to be granted within defined quantitative limits is based on a fixed number of animals;

…

(15) "livestock aid application" means the applications for the payment of aid where the annual payment to be granted within defined quantitative limits is based on a fixed number of animals under the voluntary coupled support provided for in Chapter 1 of Title IV of [Regulation No 1307/2013];

(16) "declared animals" means animals subject to a livestock aid application under the animal aid scheme or subject to a payment claim for an animal-related support measure;

…

(18) “animal determined”,

(a) for an animal aid scheme, an animal for which all conditions laid down in the rules for granting the aid have been met; or

(b) for an animal-related support measure, an animal identified by means of administrative or on-the-spot checks;

…’

13 Entitled ‘The integrated administration and control system’, Title II of Delegated Regulation No 640/2014 includes Chapter IV, entitled ‘Calculation of aid and administrative penalties relating to direct payment schemes and rural development measures in the scope of the integrated system’, which contains a Section 4, itself entitled ‘Voluntary coupled support based on livestock aid applications under animal aid schemes or rural development support based on payment claims under animal-related support measures’, which includes Article 30, entitled ‘Basis of calculation’. Article 30 provides, in paragraphs 1 to 3:

‘1. In no case aid or support shall be granted for a number of animals greater than that shown in the aid application or in the payment claim.

2. Animals present on the holding shall only be considered as determined if they are identified in the aid application or in the payment claim. Identified animals may be replaced without the loss of the right to payment of the aid or support, provided that the beneficiary has not yet been informed by the competent authority of a non-compliance in the application or claim or has not yet been given notice of the authority’s intention to carry out an on-the-spot check. Where a Member State does not make use of the possibility of having a claimless system, in accordance with the rules laid down by the Commission on the basis of Article 78(b) of Regulation [No 1306/2013], it shall ensure by any means that there are no doubts as to which animals are covered by the beneficiaries’ applications or claims.

3. Without prejudice to Article 31, if the number of animals declared in an aid application or payment claim exceeds that determined as a result of administrative checks or on-the-spot checks, the aid or support shall be calculated on the basis of the animals determined.’

14 Under Article 31 of Delegated Regulation No 640/2014, entitled ‘Administrative penalties in respect of declared animals under the animal aid schemes or animal-related support measures’:

‘1. Where, in respect of an aid application under an animal aid scheme or in respect of a payment claim under an animal-related support measure, a difference is found between the number of animals declared and that determined in accordance with Article 30(3), the total amount of aid or support to which the beneficiary is entitled under that aid scheme or support measure for the claim year concerned shall be reduced by the percentage to be established in accordance with paragraph 3 of this Article, if no more than three animals are found with non-compliances.

2. If more than three animals are found with non-compliances, the total amount of aid or support to which the beneficiary is entitled under the aid scheme or support measure or type of operation under such support measure referred to in paragraph 1 for the claim year concerned shall be reduced by:

(a) the percentage to be established in accordance with paragraph 3, if it is not more than 10%;

(b) twice the percentage to be established in accordance with paragraph 3, if it is more than 10% but not more than 20%.

If the percentage established in accordance with paragraph 3 is more than 20%, no aid or support to which the beneficiary would have been entitled pursuant to Article 30(3) shall be granted under the aid scheme or support measure or type of operation under such support measure for the claim year concerned.

If the percentage established in accordance with paragraph 3 is more than 50%, no aid or support to which the beneficiary would have been entitled pursuant to Article 30(3) shall be granted under the aid scheme or support measure or type of operation under such support measure for the claim year concerned. Moreover, the beneficiary shall be subject to an additional penalty of an amount equal to the amount corresponding to the difference between the number of animals declared and the number of animals determined in accordance with Article 30(3). If that amount cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of [Commission] Implementing Regulation (EU) No 908/2014 [of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (OJ 2014 L 255, p. 59)], the outstanding balance shall be cancelled.

For other species than those referred to in Article 30(4) and (5) of this Regulation, Member States may decide to determine a number of animals different from the threshold of three animals provided for in paragraphs 1 and 2 of this Article. When determining that number, Member States shall ensure that it is equivalent in substance to that threshold, by inter alia taking into account the livestock units and/or the amount of aid or support granted.

3. In order to establish the percentages referred to in paragraphs 1 and 2, the number of animals declared under an animal aid scheme or animal-related support measure or type of operation and found with non-compliances shall be divided by the number of animals determined for that animal aid scheme or support measure or type of operation under such support measure in respect of the aid application or payment claim or type of operation under such support measure for the claim year concerned.

…’

Implementing Regulation No 809/2014

15 Entitled ‘Amendments to the single application or payment claim and modifications following the preliminary checks’, Article 15 of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control

system, rural development measures and cross compliance (OJ 2014 L 227, p. 69), as amended by Commission Implementing Regulation (EU) 2015/2333 of 14 December 2015 (OJ 2015 L 329, p. 1) ('Implementing Regulation No 809/2014'), provides:

'1. After the final date of submission of the single application or payment claim, individual agricultural parcels or individual payment entitlements may be added or adjusted in the single application or payment claim provided that the requirements under the direct payment schemes or rural development measures concerned are respected.

…

3. Where the competent authority has already informed the beneficiary of any case of non-compliance in the single application or payment claim or where it has given notice to the beneficiary of its intention to carry out an on-the-spot check or where an on-the-spot check reveals any non-compliance, amendments in accordance with paragraph 1 shall not be authorised in respect of the agricultural parcels affected by the non-compliance.

…'

16 Article 21 of that implementing regulation, entitled 'Requirements pertaining to livestock aid application and to payment claims under animal-related support measures', provides, in paragraph 1 thereof:

'A livestock aid application as defined in point (15) of the second subparagraph of Article 2(1) of [Delegated Regulation No 640/2014] or payment claim under animal-related support measures as defined in point (14) of the second subparagraph of Article 2(1) of that regulation shall contain all information necessary to establish eligibility for the aid and/or support, and in particular:

(a) the identity of the beneficiary;

(b) a reference to the single application if it has already been submitted;

(c) the number of animals of each type in respect of which a livestock aid application or a payment claim is being submitted and, for bovines, the identification code of the animals;

…'

Hungarian law

17 Paragraph 4 of the *A termeléshez kötött közvetlen támogatások igénybevételének szabályairól szóló 9/2015. FM rendelet* (Decree No 9 of the Minister for Agriculture and Rural Development on the scheme for direct coupled support) of 13 March 2015 ('Ministerial Decree No 9/2015') states as follows:

'…

2. The Public Treasury shall adopt the aid decision after performing the checks established in … Commission Delegated Regulation (EU) No 640/2014 … and having regard to the rules on reductions and other penalties provided for therein.

…

4. In the event of non-compliance with the conditions for granting the aid, including the conditions of cross-compliance found during checks, it is appropriate, when determining the amount of aid, to apply the legal consequences provided for in Articles 13, 15, 30 to 32, 34 and 37 to 41 of Commission Delegated Regulation (EU) No 640/2014 as regards the aid provided for in Chapter II …

…'

18 Under Paragraph 7(3) of that decree:

'Having regard to the condition imposed by Paragraph 2(2) of Decree No 8 of the Ministry for Agriculture and Rural Development of 13 March 2015 laying down detailed rules for recourse to direct aid to agricultural producers, the minimum number of animals for which aid may be granted is an individual.'

19 Paragraph 11(1)(e) of that decree provides:

'Farmers are entitled to receive the suckler cow premium … where more than 50% of the herd declared for the purposes of the aid comprises calves intended for meat production and at least 30% of the animals included in the aid application have calved during the year in question; calves born to mothers included in the aid application during the retention period must be held in the same herd as their mothers for at least one month from the date of their birth, …'

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

20 On 9 May 2019, SB submitted an application to the competent agricultural aid authority for the grant of support coupled to production for keeping 11 suckler cows.

21 By decision of 25 June 2020, that authority rejected SB's application on the ground that, for the period covered by that application, only three of the 11 cows covered by the application had calved, which corresponded to a calving rate of 27%. Thus, the requirement of a minimum calving rate of 30% of the animals covered by such an application, laid down in Article 11(1)(e) of Ministerial Decree No 9/2015, was not met. It therefore took the view that the aid could not be granted in respect of any of the animals declared in that application and that Article 31 of Delegated Regulation No 640/2014 was not applicable.

22 By decision of 16 November 2020, the Minister of Agriculture confirmed the decision of 25 June 2020.

23 SB brought an action against the decision of 16 November 2020 before the Fővárosi Törvényszék (Budapest High Court, Hungary), which is the referring court, claiming that the Minister for Agriculture had erred in law, first, by failing to apply the legal consequences, penalties and reductions provided for in Articles 30 and 31 of Delegated Regulation No 640/2014, to which Article 4(1) to (3) of Ministerial Decree No 9/2015 refers, and, secondly, by failing to take account of the number of animals determined, within the meaning of point 18 of the second subparagraph of Article 2(1) of that delegated regulation, or of the number of non-compliant animals, but only of the number of declared animals, within the meaning of point 16 of the

second subparagraph of Article 2(1) of that delegated regulation. According to the wording of Article 30(3) of the same delegated regulation, the support must be calculated on the basis of the animals determined.

24 SB also submits, before the referring court, that Delegated Regulation No 640/2014 does not require the applicant for aid to comply with the conditions for the grant of that aid in respect of all the declared animals. That delegated regulation provides, in the event of minor deficiencies, for a reduction in that aid. SB takes the view that, in the present case, ten of his animals should have been regarded as 'determined', that is to say, as complying with the conditions for granting the aid, within the meaning of point 18 of the second subparagraph of Article 2(1) of that delegated regulation. Since three of those animals had calved, the required calving rate of 30% was reached in respect of 10 of his cows.

25 Thus, SB was entitled to aid for 10 cows, under Article 30(3) and point 18 of the second subparagraph of Article 2(1) of Delegated Regulation No 640/2014, even though, under Article 31(1) and (3) of that delegated regulation, the amount of aid should, in that case, have been reduced by taking into account the number of non-compliant animals.

26 The Minister for Agriculture submits, before the referring court, that Article 31 of Delegated Regulation No 640/2014 is inapplicable. According to that minister, the fact that the calving rate does not comply with that laid down in Article 11(1)(e) of Ministerial Decree No 9/2015 affects all the declared animals for which an application for payment of the aid has been submitted. The Minister for Agriculture also claims that Article 31 of that delegated regulation lays down the rules to be applied in the event of non-compliance of certain animals, whereas, in the present case, SB himself did not comply with the conditions for granting the aid since the minimum calving rate required had not been reached by his cattle. Finally, relying on Article 53(1) of Delegated Regulation No 639/2014, the Minister for Agriculture states that the determination of the eligibility criteria for applications for support falls within the competence of the Member States.

27 The referring court asks, in the first place, whether Article 30(3) and Article 31(3) of Delegated Regulation No 640/2014 preclude a Member State's practice of rejecting, in its entirety, an application for payment of coupled support linked to the keeping of suckler cows where the calving rate required by the legislation of that Member State is not reached by the declared animals, even if that rate is reached for a smaller number of those animals.

28 In that regard, the referring court considers, like SB, that the intention of the EU legislature, which is reflected in recitals 28 and 31 of Delegated Regulation No 640/2014, was that partial compliance with the conditions for granting aid does not lead to non-payment of the aid but to the payment of reduced aid.

29 The referring court also notes that it appears from point 18 of the second subparagraph of Article 2(1) of Delegated Regulation No 640/2014 that the latter draws a distinction between the category of animals declared by the applicant for aid and that of the animals determined, given that, under the definition set out in that provision, an animal determined is an animal for which all conditions laid down in the rules for granting the aid have been met.

30 It follows from that definition in that provision, from the basis for the calculation of the aid, which is determined in accordance with Article 30 of Delegated Regulation No 640/2014, and from the amount of the penalty for non-compliance of certain declared animals, which is determined in accordance with Article 31 of that delegated regulation, that the EU legislature gave its preference to an examination of the compliance of animals considered individually.

31 According to the referring court, the national practice at issue does not make it possible to distinguish the animals declared from the animals determined, which is contrary to the provisions of Delegated Regulation No 640/2014, based on the principles of grading and proportionality, which penalise, for the purpose of deterrence, failures by a reduction of the aid and, only in the event of serious non-compliance, by the rejection of the application.

32 In the second place, the referring court asks what method should be used to determine the quotient that makes it possible to establish the reduction of the aid, in accordance with Article 31(3) of Delegated Regulation No 640/2014.

33 In the third place, the referring court asks, in essence, whether that quotient must be multiplied by 100.

34 In those circumstances, the Fővárosi Törvényszék (Budapest High Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is the practice of a Member State compliant with Article 30(3) of [Delegated Regulation No 640/2014], having regard to recitals 28 and 31, points 16 and 18 of Article 2(1) and Article 31(1) to (3) thereof, if that practice establishes that where, under the aid eligibility criterion introduced by the Member State, the calving rate achieved for the number of declared animals is less than the rate required and stipulated for declared animals, the application for payment of coupled support for suckler cows must be refused in its entirety, even where the required calving rate is met by a smaller number of declared animals, because where the calving percentage is less than that required by the national legislation, the result is that none of the declared animals is eligible?

(2) If the response to the previous question is in the negative, in the present case, where the calving percentage achieved is less than that required by the national legislation, having regard to the requirements for a graded and proportionate approach established in recitals 28 and 31 of [Delegated Regulation No 640/2014] and the articles of EU law cited in the first question referred for a preliminary ruling, must the number of eligible animals within the meaning of point 18 of [the second subparagraph of] Article 2(1) and Article 30(3) of [that] regulation be determined:
   (a) by classing as eligible animals only those which have calved; or
   (b) by classing as eligible animals those animals from among the declared animals which comprise the group in which the calving rate stipulated in the national legislation is reached?

(3) Having regard to Article 30(3) and Article 31(1) and (2) of [Delegated Regulation No 640/2014] and the requirement for proportionality established in recital 31 thereof, must Article 31(3) of that regulation be interpreted as meaning that the penalty is to be determined on the basis of the ratio of the non-compliant to compliant animals, or on the basis of the ratio of the declared animals to the compliant animals, and also that the quotient thus obtained must still be multiplied by 100, in a percentage calculation?’

Consideration of the questions referred

The first question

35 By its first question, the referring court asks, in essence, whether Article 30(3) of Delegated Regulation No 640/2014, read in the light of recitals 28 and 31, points 16 and 18 of the second subparagraph of Article 2(1) and Article 31(1) to (3) of that delegated regulation, must be interpreted as precluding a Member State's practice of rejecting, in its entirety, an application for coupled support, where a condition for the grant of that support laid down by the national legislation, namely the requirement that a calving rate of 30% be reached by the animals declared in the application for that support, is not met, instead of merely reducing the amount of the support by applying the administrative penalties provided for in Article 31(1) to (3) of that delegated regulation.

36 As a preliminary point, it should be noted that, in its written observations, the Hungarian Government submits that the national practice at issue is contrary to Article 11(1)(e) of Ministerial Decree No 9/2015, which provides that a minimum calving rate of 30% must be reached for animals for which coupled support was requested, on the ground that the intention of the national legislature was not to lay down that rate as a condition for the grant of that support but to make it a method of calculation.

37 In that regard, it should be recalled that, as far as the interpretation of provisions of national law is concerned, the Court is in principle required to rely on the description given in the order for reference. According to settled case-law, the Court does not have jurisdiction to interpret the internal law of a Member State (judgment of 5 December 2023, *Deutsche Wohnen*, C-807/21, EU:C:2023:950, paragraph 36 and the case-law cited).

38 It is apparent from the order for reference that, under the administrative practice at issue, the total number of animals declared must reach a minimum calving rate of 30% for the claim year. That rate, which is laid down in Article 11(1)(e) of Ministerial Decree No 9/2015, is considered to be a condition for the grant of coupled support, so that, if that condition is not met by the animals declared in the application for that support, the application is rejected in its entirety. It is therefore appropriate to start from the premiss that the minimum calving rate of 30% laid down by that decree is a condition for the grant of coupled support which is linked to the number of animals declared in the application for the grant of support.

39 Since the interpretation advocated by the referring court and by SB could be regarded as calling into question the possibility for the Member States to define the conditions for granting coupled support which must be met by all the animals declared, it should be noted that Delegated Regulation No 639/2014, which was adopted on the basis of Article 52(9) of Regulation No 1307/2013, provides, in Article 53(1) thereof, which is specifically entitled 'Conditions for granting the support', that the Member States are to define the eligibility criteria for coupled support measures in accordance with the framework established by Regulation No 1307/2013 and the conditions laid down in that delegated regulation.

40 Member States which take a decision to grant voluntary coupled support or review that decision are required, under Article 54 of Regulation No 1307/2013, read in conjunction with Article 53(6) of that regulation and Article 67(1) of Delegated Regulation No 639/2014, to notify the decisions

adopted in that regard to the Commission. In accordance with point 3(f) of Annex I to Delegated Regulation No 639/2014, they must specify, in the notifications submitted to the Commission, the eligibility conditions for each support measure.

41 It follows from the provisions mentioned in the two preceding paragraphs of the present judgment that the Member States have, subject to compliance with the framework established by Regulation No 1307/2013 and the conditions set out in Delegated Regulation No 639/2014, discretion to define the eligibility criteria or eligibility conditions for the benefit of coupled support, as the Advocate General noted, in essence, in point 28 of her Opinion.

42 Although a Member State, in the exercise of its discretion, defines as an 'eligibility criterion', within the meaning of Article 53(1) of Delegated Regulation No 639/2014, a criterion which must be satisfied by all the animals declared, such as that at issue, and if that criterion is not met, no animal declared can, in principle, be regarded as an 'animal determined' within the meaning of point 18 of the second subparagraph of Article 2(1) of that delegated regulation.

43 Furthermore, a minimum calving rate of 30%, which is intended, as is apparent from the observations of the Hungarian Government, to encourage farmers to keep their herd on a long-term basis, or even to increase it, appears appropriate for securing the attainment of the objective pursued.

44 As regards Article 30(3) of Delegated Regulation No 640/2014 referred to in the first question referred for a preliminary ruling, that provision provides that, without prejudice to Article 31 of that delegated regulation, if the number of animals declared in an aid application or payment application exceeds the number of animals determined as a result of administrative checks or on-the-spot checks, the aid or support is to be calculated on the basis of the number of animals determined.

45 It follows from the wording of that provision that, where the number of animals determined is less than the number of animals declared in the application, the amount of the support must be calculated on the basis of the number of animals determined. Therefore, the aid applied for may be granted for a smaller number of animals than that declared in the aid application.

46 However, Article 30(3) of Delegated Regulation No 640/2014 does not apply where, as in the present case, there is no animal determined. In particular, that provision does not lay down the conditions for the grant of coupled support, since the determination of such support falls, in accordance with what has been stated in paragraphs 39 to 41 of the present judgment, within the competence of the Member States. As the Advocate General observed in point 30 of her Opinion, Article 30(3) merely determines the criteria which must be taken into account for the purposes of calculating coupled support. That interpretation is confirmed by the title of Article 30, namely 'Basis of calculation'.

47 Article 30(3) of Delegated Regulation No 640/2014 cannot therefore be interpreted as imposing an obligation to apply a condition for the grant of support, which covers all the animals declared in the application, to a smaller number of those animals.

48 As regards the second subparagraph of Article 2(1) of Delegated Regulation No 640/2014 referred to in the first question referred for a preliminary ruling, that provision merely defines, in point 16 thereof, the category of 'declared animals' as being those animals subject to an aid application and, in point 18 thereof, the category of animals determined. Under subparagraph (a) of point 18 of the

second subparagraph of Article 2(1) of that delegated regulation, an 'animal determined' is, for an animal aid scheme, an animal for which all conditions laid down in the rules for granting the aid have been met and, under subparagraph (b) of point 18 of the second subparagraph of Article 2(1) of that delegated regulation, for an animal-related support measure, an animal identified by means of administrative or on-the-spot checks. That provision does not, however, impose an obligation to apply a condition for granting support which must be satisfied by all the animals declared, such as the minimum level of calving at issue, to a smaller number of animals, so that certain animals declared are determined.

49 As regards Article 31 of Delegated Regulation No 640/2014, to which the first question refers, that article is entitled 'Administrative penalties in respect of declared animals under the animal aid schemes or animal-related support measures', and provides, in paragraphs 1 to 3 thereof, that the amount of aid is to be reduced where a difference is found between the declared animals and the animals determined in accordance with Article 30(3) of that delegated regulation in an aid application.

50 It is apparent from the wording of Article 31(1) of that delegated regulation that the reductions provided for in Article 31 are intended to be applied only in the situation referred to in Article 30(3) of that delegated regulation. Furthermore, as its title confirms, Article 31 is intended to govern the penalties applicable in the event of non-conformity of an aid application. In particular, the application of the reductions provided for in that article presupposes that entitlement to the aid exists and therefore that the eligibility criteria are, as the Advocate General observed in points 44 and 46 of her Opinion, in principle met and is therefore not, like Article 30(3) of Delegated Regulation No 640/2014, intended to govern the conditions for the grant of the support themselves.

51 It follows that neither Article 30(3) of Delegated Regulation No 640/2014 nor Article 31 of that regulation precludes the administrative practice at issue referred to in paragraph 38 of the present judgment.

52 Recitals 28 and 31 of Delegated Regulation No 640/2014, to which the first question refers, do not call that interpretation into question.

53 On the one hand, although it is apparent from recital 28 of that delegated regulation that non-compliances result only in the animal concerned being ineligible, the use of the term 'animal concerned' in the singular, in some language versions, cannot be interpreted as requiring the application of a condition for granting support, which covers all the animals declared in the application, to a smaller number of those animals. That generic term must be understood as 'the animal(s) concerned', the number of animals concerned depending on the eligibility criteria and the animals declared in the support applications at issue.

54 On the other hand, while it is clear from recital 31 of Delegated Regulation No 640/2014 that refusals to grant rural development support measures must be applied taking into account the principles of dissuasiveness and proportionality, the exclusion from coupled support cannot be regarded as disproportionate since it is not a penalty but the mere consequence of failure to comply with the eligibility criteria for the grant of support (see, to that effect, judgments of 24 May 2007, *Maatschap Schonewille-Prins*, C-45/05, EU:C:2007:296, paragraph 58, and of 29 February 2024, *Eesti Vabariik (Põllumajanduse Registrite ja Informatsiooni Amet)*, C-437/22, EU:C:2024:176, paragraph 56 and the case-law cited).

55 Furthermore, the interpretation of Article 30(3) of Delegated Regulation No 640/2014 put forward by the referring court and by SB, according to which SB should be entitled to support for ten cows, could be regarded, as the Advocate General stated, in essence, in point 34 of her Opinion, as allowing the applicant to reduce subsequently the number of animals declared in the application for support.

56 In that regard, it should be noted that it is apparent from the documents before the Court that Hungary applies, as regards support linked to the keeping of suckler cows, the scheme based on applications, referred to in Article 21(1) of Implementing Regulation No 809/2014. Consequently, the applicant must indicate, pursuant to point (c) of that provision, the number of animals declared and, as regards bovine animals, the exact identification code of each of them. Given that he has the initiative of the application, that applicant may not declare in the application all the animals he keeps, but only those which meet the eligibility criteria. However, once the animals declared have been indicated in that application, as the Advocate General observed in point 36 of her Opinion, the combined provisions of Article 15(3) and Article 21(1)(c) of Implementing Regulation No 809/2014 prohibit the amendment of the payment claim, including the number of animals declared therein, where the competent authority has already informed the beneficiary of the non-compliance contained in that application. Under point 2(a) of the second subparagraph of Article 2(1) of Delegated Regulation No 640/2014, non-compliance results from any non-respect of the eligibility criteria.

57 In the present case, the competent authority informed SB of non-compliance on 25 June 2020 when it rejected the application for support, stating that the calving rate of 30% had not been reached. In such a case, it is not possible, in accordance with the foregoing considerations, to reduce subsequently the number of animals declared in the application.

58 The interpretation of Article 30(3) of Delegated Regulation No 640/2014 advocated by the referring court and SB would therefore be contrary to Article 15(3) of Implementing Regulation No 809/2014, read in conjunction with Article 21(1)(c) of that implementing regulation.

59 It follows from the foregoing that the answer to the first question is that Article 30(3) of Delegated Regulation No 640/2014, read in the light of recitals 28 and 31, points 16 and 18 of the second subparagraph of Article 2(1) and Article 31(1) to (3) of that delegated regulation, must be interpreted as not precluding a Member State's practice of rejecting, in its entirety, an application for coupled support, where a condition for the grant of that support laid down by the national legislation, namely the requirement that a calving rate of 30% be reached by the animals declared in the application for that support, is not met, instead of merely reducing the amount of the support by applying the administrative penalties provided for in Article 31(1) to (3) of that delegated regulation.

The second and third questions

60 Given that the second and third questions are raised by the referring court only if, in essence, Article 30(3) of Delegated Regulation No 640/2014 precludes the national practice at issue, there is no need to answer those questions, having regard to the answer given to the first question.

Costs

61 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:

Article 30(3) of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance, as amended by Commission Delegated Regulation (EU) 2016/1393 of 4 May 2016, read in the light of recitals 28 and 31, points 16 and 18 of the second subparagraph of Article 2(1), and Article 31(1) to (3) of Delegated Regulation No 640/2014, as amended by Delegated Regulation 2016/1393,

must be interpreted as not precluding a Member State's practice of rejecting, in its entirety, an application for coupled support, where a condition for the grant of that support laid down by the national legislation, namely the requirement that a calving rate of 30% be reached by the animals declared in the application for that support, is not met, instead of merely reducing the amount of the support by applying the administrative penalties provided for in Article 31(1) to (3) of that delegated regulation, as amended.

[Signatures]