JUDGMENT OF THE COURT (First Chamber)

14 October 2010 *

In Case C-61/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Oberverwaltungsgericht Rheinland-Pfalz (Germany), made by decision of 28 January 2009, received at the Court on 11 February 2009, in the proceedings

Landkreis Bad Dürkheim,

v

Aufsichts- und Dienstleistungsdirektion

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J.-J.Kasel, A. Borg Barthet (Rapporteur), E. Levits and M. Safjan, Judges,

* Language of the case: German.

Advocate General: J. Mazák,
Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 4 February 2010,

after considering the observations submitted on behalf of:

— the Landkreis Bad Dürkheim, by A. Martin, acting as Agent,

— the Aufsichts- und Dienstleistungsdirektion, by M. Arnoldi, acting as Agent,

— Mrs Niedermair-Schiemann, by M. Winkelmüller and M. Rietdorf, Rechtsanwälte,

— the German Government, by M. Lumma and J. Möller, acting as Agents,

— the Polish Government, by B. Majczyna and M. Drwiecki, acting as Agents,

— the European Commission, by F. Clotuche-Duvieusart and G. von Rintelen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 May 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 44 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 Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 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 and corrigendum OJ 2004 L 94, p. 70), as amended by Council Regulation (EC) No 2013/2006 of 19 December 2006 (OJ 2006 L 384, p. 13) ('Regulation No 1782/2003').

2 The reference was made in proceedings between the Landkreis Bad Dürkheim (rural district authority of Bad Dürkheim) and the Aufsichts- und Dienstleistungsdirektion (administrative body with supervisory and advisory powers) ('the ADD') concerning the taking into account of certain areas ('the disputed areas') for the allocation

of payment entitlements to Mrs Niedermair-Schiemann in the context of the single payment scheme.

Legal framework

European Union legislation

Regulation No 1782/2003

3 Regulation No 1782/2003 establishes, inter alia, an income support scheme for farmers. That scheme is described, under the second indent of Article 1 of the regulation, as the 'single payment scheme'.

4 Recital 3 in the preamble to that regulation states:

'In order to avoid the abandonment of agricultural land and ensure that it is maintained in good agricultural and environmental condition, standards should be established which may or may not have a basis in provisions of the Member States. It is therefore appropriate to establish a Community framework within which Member States may adopt standards taking account of the specific characteristics of the areas

concerned, including soil and climatic conditions and existing farming systems (land use, crop rotation, farming practices) and farm structures.'

5 Recital 21 in the preamble to that regulation states:

'The support schemes under the common agricultural policy provide for direct income support in particular with a view to ensuring a fair standard of living for the agricultural community. This objective is closely related to the maintenance of rural areas. …'

6 Recital 24 in the preamble to that regulation states inter alia:

'… It is, therefore, appropriate to make the single farm payment conditional upon cross-compliance with environmental, food safety, animal health and welfare, as well as the maintenance of the farm in good agricultural and environmental condition.'

7 Under Article 2(b) and (c) of Regulation No 1782/2003:

'For the purposes of this Regulation, the following definitions shall apply:

(b) "holding" means all the production units managed by a farmer situated within the territory of the same Member State;

(c) "agricultural activity" means the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition as established under Article 5.'

8 Article 3 of Regulation No 1782/2003, entitled 'Main requirements', provides:

'1. A farmer receiving direct payments shall respect the statutory management requirements referred to in Annex III, according to the timetable fixed in that Annex, and the good agricultural and environmental condition established under Article 5.

2. The competent national authority shall provide the farmer with the list of statutory management requirements and good agricultural and environmental condition to be respected.'

9 Under Article 5(1) of that regulation:

'Member States shall ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition. Member States shall define, at national or regional level, minimum requirements for good agricultural and environmental condition on the basis of the framework set up in Annex IV, taking into account the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use, crop rotation, farming practices, and farm structures. This is without prejudice to the standards governing good agricultural practices as applied in the context of

Council Regulation (EC) No 1257/1999 and to agri-environment measures applied above the reference level of good agricultural practices.'

10 Article 36(1) of Regulation No 1782/2003 is worded as follows:

'Aid under the single payment scheme shall be paid in respect of payment entitlements as defined in Chapter 3, accompanied by an equal number of eligible hectares as defined in Article 44(2).'

11 Article 43(1) of Regulation No 1782/2003, entitled 'Determination of the payment entitlements', provides in its first and second subparagraphs as follows:

'Without prejudice to Article 48, a farmer shall receive 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 right to direct payments listed in Annex VI.

The total number of payment entitlements shall be equal to the abovementioned average number of hectares.'

12 Article 44(1) to (3) of Regulation No 1782/2003, entitled 'Use of payment entitlements', state:

'1. Any payment entitlement accompanied by an eligible hectare shall give right to the payment of the amount fixed by the payment entitlement.

2. "Eligible hectare" shall mean any agricultural area of the holding taken up by arable land and permanent pasture except areas under permanent crops, forests or used for non-agricultural activities.

"Eligible hectare" shall also mean areas planted with hops or being under a temporary resting obligation or planted with bananas, or areas under olive trees.

3. The farmer shall declare the parcels corresponding to the eligible hectare accompanying any payment entitlement. Except in case of force majeure or exceptional circumstances, these parcels shall be at the farmer's disposal for a period of at least 10 months, starting from a date to be fixed by the Member State, but not earlier than 1 September of the calendar year preceding the year of lodging the application for participation in the single payment scheme.'

13 Section 1 of Chapter 5 of Regulation No 1782/2003, entitled 'Regional implementation', allows Member States to apply the single payment scheme at regional level.

14 Article 59(4) of that regulation, which is applicable in the context of the regional implementation of the single payment scheme, provides that the number of payment entitlements per farmer is to be equal to the number of hectares he declares in accordance with Article 44(2) for the first year of application of the single payment.

Regulation (EC) No 795/2004

15 Commission Regulation (EC) No 795/2004 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 394/2005 of 8 March 2005 (OJ 2005 L 63, p. 17) ('Regulation No 795/2004'), provides in Article 2(a) to (h):

'For the purposes of Title III of Regulation (EC) No 1782/2003 and of this Regulation, the following definitions shall apply:

(a) "agricultural area" shall mean the total area taken up by arable land, permanent pasture and permanent crops;

(b) "arable land" shall mean "arable land" within the meaning of Article 2 point (1) of Commission Regulation (EC) No [796/2004];

(c) "permanent crops" shall mean non-rotational crops other than permanent pasture that occupy the land for five years or longer and yield repeated harvests

including nurseries as defined in Annex I point (G/05) of Commission Decision 2000/115/EC …, with the exception of multiannual crops and the nurseries of such multiannual crops.

…

(e) "permanent pasture" shall mean "permanent pasture" within the meaning of Article 2 point (2) of Commission Regulation (EC) No [796/2004];

…

(h) "lease" shall mean lease or similar types of temporary transactions.'

Regulation (EC) No 796/2004

16 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 Council Regulation (EC) No 1782/2003 (OJ 2004 L 141, p. 18), as amended by Commission Regulation (EC) No 239/2005 of

11 February 2005 (OJ 2005 L 42, p. 3) ('Regulation No 796/2004'), provides in Article 2 points (1) and (2) as follows:

'For the purposes of this Regulation, the following definitions shall apply:

(1) "Arable land": shall mean land cultivated for crop production and land under set-aside, or maintained in good agricultural and environmental condition in accordance with Article 5 of Regulation (EC) No 1782/2003, irrespective of whether or not that land is under greenhouses or under fixed or mobile cover;

(2) "Permanent pasture": shall mean land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or longer, excluding land under set-aside schemes pursuant to Article 6 of Council Regulation (EC) No 1251/1999 …, land under set-aside schemes pursuant to Article 54(2) and Article 107 of Regulation (EC) No 1782/2003, areas set aside in accordance with Council Regulation (EEC) No 2078/92 … and areas set aside in accordance with Articles 22, 23 and 24 of Council Regulation (EC) No 1257/1999 …'

National legislation

17 Under Paragraph 2(1) of the Law on the application of the single payment scheme (Betriebsprämiendurchführungsgesetz, BGBl. 2006 I, p. 1298), the single payment is

granted at regional level from 1 January 2005 under the detailed provisions laid down by that law and by the implementing rules of the single payment scheme.

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

18 The dispute in the main proceedings concerns the taking into account of the disputed areas for the allocation of payment entitlements to Mrs Niedermair-Schiemann in the context of the single payment scheme.

19 Mrs Niedermair-Schiemann has an agricultural holding comprising sheep farming. She farms the disputed areas on the basis of two contracts.

20 Under the first of those contracts, concluded on 12 November 1998 with the Land of Rhineland-Palatinate, Mrs Niedermair-Schiemann is permitted to use certain areas as hay pasture and meadow. Certain restrictions are imposed on her in that regard. In particular, no cutting is permitted on those areas during the period from 1 November to 15 June each year and the cutting may not be carried out with suction or rotary mowers. Instead of a second cut, the grazing of sheep and goats, in the form of rotational grazing or grazing in open areas, is possible, in which case the grazing period is to be agreed with the Land authority, which is in charge of the maintenance of those areas. The land is made available free of charge, subject to the party concerned taking over the contributions to the trade association. The parcels in question were let to the Land by their owners.

21 Under the second contract, concluded on 1 May 2000 with the Landkreis Bad Dürkheim, Mrs Niedermair-Schiemann, whom the contract describes as 'the party performing the contract', is obliged to maintain and manage certain areas while complying with nature conservation rules. To that end, she receives a fixed amount of annual remuneration. She is also subject to specific contractual obligations and has to follow further instructions from the nature conservation authority, governing such matters as intensity of grazing. That authority also provides her with material support in the form of maintenance measures, such as preliminary cutting of sections of land and regular removal of bushes and grubbing carried out by third parties. Part of the disputed areas is owned by the Land of Rhineland-Palatinate. As to the remainder, the owners have permitted grazing for the purpose of nature conservation and have, in certain cases, been obliged by general orders to accept maintenance measures implemented by Mrs Niedermair-Schiemann.

22 In the context of the single payment scheme, Mrs Niedermair-Schiemann registered the disputed areas as permanent pasture belonging to her holding. By decision of 20 February 2006, she was allocated payment entitlements for arable land and for land under pasture, including the disputed areas.

23 On ministerial instructions, that decision was amended by a decision of 14 May 2007 ('the amending decision') on the ground that the disputed areas were not eligible for aid.

24 Mrs Niedermair-Schiemann lodged an objection to the amending decision.

25 Considering that the initial decision of 20 February 2006 had been adopted in compliance with the legislation in force, the legal affairs committee of the Landkreis Bad Dürkheim allowed Mrs Niedermair-Schiemann's objection and, by decision of 22 October 2007, annulled the amending decision.

26 Upon appeal by the ADD, the Verwaltungsgericht Neustadt an der Weinstraße (Administrative Court, Neustadt an der Weinstraße) by judgment of 2 July 2008, set aside the decision of 22 October 2007 and reinstated the amending decision.

27 That Verwaltungsgericht considered first that, since the holding is used both for nature conservation purposes and extensive agricultural activity, reference must be made to the underlying right of use. It then observed that the purpose of the single payment scheme is not to provide income support for nature conservation tasks allocated to the farmer by the State authorities. The Verwaltungsgericht also held that there could be no agricultural use unless a right to farm the land had been given to the farmer under a lease or similar transaction. It also considered that, in the context of the case in the main proceedings, the areas concerned were not placed at Mrs Niedermair-Schiemann's disposal for agricultural reasons but for nature conservation purposes. Lastly, it held that, in order to be eligible for aid, the areas concerned must form part of the holding which receives that aid and the farmer must have the right to use the land for agricultural purposes, which was not so in the present case.

28 The Landkreis Bad Dürkheim and Mrs Niedermair-Schiemann appealed against that judgment to the referring court.

29 According to that court, the outcome of the action in the main proceedings depends on whether the disputed areas falls within the concept of 'eligible hectare' within the meaning of Article 44(2) of Regulation No 1782/2003.

30 In those circumstances, the Oberverwaltungsgericht Rheinland-Pfalz (Higher Administrative Court, Rhineland-Palatinate) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is there also an "agricultural area" in the sense of Article 44(2) of Regulation (EC) No 1782/2003 if that area is admittedly also used for agricultural purposes (grazing for sheep farming purposes) but the overriding objective is to achieve the aims of landscape management and nature conservation?

2. If Question 1 is to be answered in the affirmative:

Is an area used for non-agricultural activities in the sense of Article 44(2) of Regulation No 1782/2003 if the overriding purpose of the activity is nature conservation or in any case if the farmer is subject to the instructions of the nature conservation authority when fulfilling nature conservation objectives?

3. If there is an agricultural area (Question 1), which is also used for an agricultural activity (Question 2):

Does the allocation of an agricultural area to a holding (agricultural area of the holding in the sense of Article 44(2) of Regulation (EC) No 1782/2003) require:

(a) that it be at the disposal of the holding against payment on the basis of a lease or another similar temporary transaction?

(b) If (a) is to be answered in the negative: is it without prejudice to the allocation to the holding if occupation of the areas is allowed, without charge or in return only for taking over the contributions to the trade association, for use of a specific nature and for a limited period of time in accordance with the objectives of nature conservation?

(c) If (a) is to be answered in the affirmative: is it without prejudice to the allocation to the holding if the holding is obliged to carry out certain tasks on the land in return for payment?'

Questions referred for a preliminary ruling

The first and second questions

31 By its first two questions, which should be examined together, the referring court asks essentially whether Article 44(2) of Regulation No 1782/2003 must be interpreted as precluding an area from being eligible where, while it is admittedly also used for agricultural purposes, the overriding objective is landscape management and nature conservation, in particular where the farmer is subject to the instructions of the nature conservation authority when fulfilling nature conservation objectives.

32 Under Article 44(2) of Regulation No 1782/2003, an 'eligible hectare' is any agricultural area of the holding taken up by arable land and permanent pasture, except areas under permanent crops or forests or used for non-agricultural activities.

33 In that context, the referring court asks, first, whether an area can be regarded as agricultural where, although used for agricultural purposes, the overriding objective is landscape management and nature conservation.

34 The expression agricultural area is defined in Article 2(a) of Regulation No 795/2004 as the total area taken up by arable land, permanent pasture and permanent crops.

35 Under Article 2(b) of that same regulation, read in conjunction with Article 2 point (1) of Regulation No 796/2004, arable land is land cultivated for crop production and land under set-aside, or maintained in good agricultural and environmental condition in accordance with Article 5 of Regulation No 1782/2003.

36 According to Article 2(e) of Regulation No 795/2004, read in conjunction with Article 2 point (2) of Regulation No 796/2004, permanent pasture is land used to grow grasses or other herbaceous forage that has not been included in the crop rotation of the holding for five years or longer.

37 It follows from the provisions referred to in paragraphs 32 to 36 of the present judgment that classification as 'arable land' or 'permanent pasture' and, consequently, as 'agricultural area', depends on the actual use of the land in question. Thus, an area must be classified as agricultural where is it used as arable land or permanent pasture within the meaning of Article 2 points (1) and (2) of Regulation No 796/2004.

38 It follows that the fact that parcels of land which are actually used as arable land or as permanent pasture have the overriding purpose of nature and landscape conservation cannot preclude those parcels from being classified as agricultural land within the meaning of Article 2 points (1) and (2) of Regulation No 796/2004.

39 For the sake of completeness, it must be noted that, as recitals 3, 21 and 24 in the preamble to Regulation No 1782/2003 make clear, environmental protection forms part of the objectives of the single payment scheme. The Court has also held that environmental protection, one of the essential objectives of the European Union, must be regarded as forming part of the common agricultural policy (Case C-428/07 *Horvath* [2009] ECR I-6355, paragraph 29). Moreover, Article 2 point (1) of Regulation No 796/2004 expressly provides that arable land, and consequently agricultural areas pursuant to Article 2(a) of Regulation No 795/2004, is land maintained in good agricultural and environmental condition within the meaning of Article 5 of Regulation No 1782/2003.

40 Seen in that light, it would be illogical if an agricultural area ceased to be eligible for support where it is used for nature and landscape conservation.

41 It follows from the preceding considerations that the fact that an area has an overriding nature and landscape conservation objective does not deprive it of its agricultural character for the purposes of Article 44(2) of Regulation No 1782/2003 where, as in the present case, the land is actually being used as arable land or pasture.

42 Second, the referring court asks whether an agricultural area may be eligible for aid if an activity is carried out on it which has the overriding purpose of landscape management and nature conservation.

43 In that regard, it should be recalled that, under the first subparagraph of Article 44(2) of Regulation No 1782/2003, areas used for non-agricultural activities are not eligible for aid.

44 Article 2(c) of that regulation defines agriculture as the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition, as established under Article 5 of that regulation.

45 In that context, the referring court raises the question whether an agricultural area which is used both for agricultural and non-agricultural activities within the meaning of the first subparagraph of Article 44(2) is eligible for aid.

46 In the present case it must however be held that, as is clear from the order for reference, the disputed areas were used for an agricultural activity.

47 Provided that an agricultural area is used for an agricultural activity within the meaning of Article 2(c) of Regulation No 1782/2003, it is irrelevant, for the purposes of Article 44(2), whether the activity has an essentially agricultural or nature conservation objective.

48 Equally, the fact that instructions were given to the farmer by the competent national authority is irrelevant, in the light of the definition of agricultural activity in that provision. That is all the more true since, under Article 3 of Regulation No 1782/2003 itself, not only is a farmer receiving direct payments bound to comply with the statutory management requirements referred to in Annex III to that regulation, and the good agricultural and environmental condition established under Article 5 of that regulation, but also the national competent authority must provide the farmer with the list of statutory management requirements and good agricultural and environmental condition to be observed.

49 It follows from the above considerations that Article 44(2) of Regulation No 1782/2003 must be interpreted as not precluding an area from being eligible for aid where, while it is admittedly also used for agricultural purposes, the overriding objective is landscape management and nature conservation. In addition, the fact that the farmer is subject to the instructions of the nature conservation authority does not deprive an activity which meets the definition referred to in Article 2(c) of that regulation of its agricultural character.

Third question

50 The third question seeks to establish the conditions under which an agricultural area may be considered as allocated to a holding for the purposes of Article 44(2) of Regulation No 1782/2003.

51 In particular, the referring court inquires first whether it is necessary, in order for an agricultural area to be considered as allocated to the farmer's holding, that the farmer have the area at his disposal under a lease or another similar type of contract to let concluded against payment. That court then asks whether an area is allocated to a holding where it is put at the disposal of the farmer for a specific use for a limited period of time in accordance with the objectives of nature conservation. Lastly, the referring court asks whether an agricultural area may be considered as allocated to the holding where the farmer is obliged to carry out certain tasks on the land in return for payment.

52 First, it should be recalled that under Article 44(2) of Regulation No 1782/2003 any agricultural area of the holding is eligible for aid. Holding is defined in Article 2(b) of the regulation as all the production units managed by a farmer situated within the territory of the same Member State.

53 Article 44(3) of that regulation provides that the parcels corresponding to the eligible hectare accompanying any payment entitlement are to be at the farmer's disposal for a period of at least 10 months.

54 Thus, it must be concluded that neither Article 44(2) nor Article 44(3) of Regulation No 1782/2003 specify the nature of the legal relationship on the basis of which the area concerned is used by the farmer. Therefore, it cannot be inferred from those provisions that the parcels in question must be at the farmer's disposal pursuant to a lease or other similar transaction.

55 Under the principle of freedom of contract, the parties are therefore free to arrange the legal relationship on which use of the area in question is based. In the absence of a provision to the contrary, they are also free to provide that those parcels are made available without monetary consideration.

56 Equally, they may legitimately provide that, in return for making the land available, the farmer is obliged to take over the contributions due to the trade association.

57 Second, the national court wishes to know whether an area may be considered as allocated to the holding where, as is the case under the contract concluded by Mrs Niedermair-Schiemann on 12 November 1998 with the Land Rhineland-Palatinate, certain restrictions are imposed on the farmer concerning the duration and nature of the activities permitted on that area.

58 In that regard, it should be borne in mind that, as indicated in paragraph 52 of this judgment, an area is allocated to a farmer's holding where he has the power to manage that holding for the purposes of an agricultural activity.

59 There is nothing in Regulation No 1782/2003 or Regulations Nos 795/2004 and 796/2004 which would clarify the precise meaning of the phrase 'production units managed by a farmer' which appears in Article 2(b) of Regulation No 1782/2003.

60 According to the Court's settled case-law, the meaning and scope of terms for which European Union law provides no definition must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part (Case C-336/03 *easyCar* [2005] ECR I-1947, paragraph 21 and the case-law cited).

61 With regard to the single payment scheme, the concept of management does not imply, contrary to what is maintained by the ADD in its written observations, that the farmer has unlimited power over the area in question when using it for agricultural purposes.

62 However, the farmer must enjoy a degree of autonomy with regard to that area sufficient for the carrying-out of his agricultural activity, that being a matter for the referring court to assess, taking into account all the circumstances of the case.

63 In circumstances such as those at issue in the main proceedings, it is important in particular that the farmer is not fully subject to the instructions of the national competent authority. Notwithstanding that authority's instructions, the farmer must therefore be able to exercise a certain degree of decision-making power when using the area concerned.

64 Under Article 44(3) of Regulation 1782/2003, the areas eligible for aid must also be at the farmer's disposal for a period of at least 10 months.

65 During that period, the farmer must be able to use the area in question with a degree of autonomy sufficient for his agricultural activities, including the maintenance of the land in good agricultural and environmental condition within the meaning of Article 5 of Regulation No 1782/2003.

66 In addition, it is essential that no third party carry out any agricultural activity on the disputed areas during that period. In order to avoid the situation where a number of farmers claim allocation of the parcels concerned to their holding, those areas may not, during that period, be considered as allocated to other farmers' holdings for the purposes of the single payment scheme.

67 Third, the referring court asks whether an agricultural area can be considered as allocated to a holding where the farmer is bound to carry out certain tasks in return for payment.

68 In that regard, it should be borne in mind that, under Article 44(2) of Regulation No 1782/2003, an agricultural holding is taken up by arable land and permanent pasture which are used for an agricultural activity which is carried out by the farmer with a certain degree of autonomy.

69 It must also be pointed out that the agricultural activity must be carried out on the land concerned in the farmer's name and on his behalf, that being a matter for the referring court to determine.

70 The fact that the farmer is also bound to carry out certain tasks for a third party in return for payment is irrelevant in that regard.

71 Consequently, the answer to the third question is that Article 44(2) of Regulation No 1782/2003 must be interpreted as meaning that:

— it is not necessary, for an agricultural area to be considered as allocated to the farmer's holding, that it be at his disposal against payment on the basis of a lease or another similar type of contract to let;

— the allocation of an agricultural area to a holding is not precluded by the fact that the area is placed at the farmer's disposal free of charge, the farmer being obliged only to take over the contributions to a trade association, for a specific use and for a limited period of time in accordance with the objectives of nature conservation, on condition that the farmer is able to use that area with a degree of autonomy sufficient for his agricultural activities for a period of at least 10 months; and that

— it is without prejudice to the allocation of the area in question to the farmer's holding that the farmer is obliged to carry out certain tasks for a third party in

return for payment, provided that the area is also used by the farmer for his own agricultural activities in his name and on his own behalf.

Costs

72 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 (First Chamber) hereby rules:

1. **Article 44(2) of Council Regulation (EC) 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, as amended by Council Regulation (EC) No 2013/2006 of 19 December 2006, must be interpreted as not precluding an area from being eligible for aid where, while it is admittedly also used for agricultural purposes, the overriding objective is landscape management and nature conservation. In addition, the fact that the farmer is subject to the instructions of**

the nature conservation authority does not deprive an activity which meets the definition referred to in Article 2(c) of that regulation of its agricultural character.

2. Article 44(2) of Regulation No 1782/2003, as amended, must be interpreted as meaning that:

— it is not necessary, for an agricultural area to be considered as allocated to the farmer's holding, that it be at his disposal against payment on the basis of a lease or another similar type of contract to let;

— the allocation of an agricultural area to a holding is not precluded by the fact that the area is placed at the farmer's disposal free of charge, the farmer being obliged only to take over the contributions to a trade association, for a specific use and for a limited period of time in accordance with the objectives of nature conservation, on condition that the farmer is able to use that area with a degree of autonomy sufficient for his agricultural activities for a period of at least 10 months; and that

— it is without prejudice to the allocation of the area in question to the farmer's holding that the farmer is obliged to carry out certain tasks for a third party in return for payment, provided that the area is also used by

the farmer for his own agricultural activities in his name and on his own behalf.

[Signatures]