Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

20 December 2017*

(Reference for a preliminary ruling — Agriculture — Common organisation of the markets — Operational programme in the fruit and vegetables sector — Regulation (EC) No 1234/2007, as amended by Regulation (EC) No 361/2008 — Articles 103b, 103d and 103g — EU financial aid — Regulation (EU) No 543/2011 — Article 60 and point 23 of Annex IX — Investments on the holdings and/or premises of the producer organisations — Concept — Legitimate expectations — Legal certainty)

In Case C-516/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Austria), made by decision of 27 September 2016, received at the Court on 3 October 2016, in the proceedings

Erzeugerorganisation Tiefkühlgemüse eGen

v

Agrarmarkt Austria,

THE COURT (Seventh Chamber),

composed of A. Rosas, President of the Chamber, A. Prechal and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

– Erzeugerorganisation Tiefkühlgemüse eGen, by G. Burgstaller, Rechtsanwalt,

– Agrarmarkt Austria, by R. Leutner, acting as Agent,

– the Austrian Government, by C. Pesendorfer, acting as Agent,

– the European Commission, by B. Eggers and K. Skelly and by A. Lewis, acting as Agents,

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

* Language of the case: German.

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of Article 103c, 103d(2) and of Parts IX and X of Annex I to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1), as amended by Council Regulation (EC) No 361/2008 of 14 April 2008 (OJ 2008 L 121, p. 1) ('Regulation No 1234/2007'), of Articles 65, 66 and 69 of Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector (OJ 2007 L 350, p. 1), of Article 51(7) and of Articles 64, 65, and 68 to 70 of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Regulation No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1), as well as of the principles of legal certainty and the protection of legitimate expectations. It also concerns the interpretation and validity of point 23 of Annex IX to Implementing Regulation No 543/2011, the validity of Article 21(1)(i) and of Article 52(6)(a) of Regulation No 1580/2007, and of the validity of Article 50(3)(d) and of Article 60(7) of Implementing Regulation No 543/2011.

2 The request has been made in proceedings between Erzeugerorganisation Tiefkühlgemüse eGen ('ETG') and Agrarmarkt Austria ('AMA'), a legal person governed by public law which acts, in particular, as a paying agency, concerning a decision whereby AMA declared the non-admissibility of the EU financial aid of an investment made by ETG and, consequently, refused to pay that aid for 2014, in so far as it had been asked for that investment, and AMA required repayment of the aid already received for that investment.

European Union law

Regulation No 1234/2007

3 Title I of Part II of Regulation No 1234/2007 relates to intervention on the market. Chapter IV of that title concerns aid schemes and, in that chapter, Section IVa, introduced in Regulation No 1234/2007 by Regulation No 361/2008, concerns aid in the fruit and vegetables sector. Subsection II of Section IVa is entitled 'Operational funds and operational programmes'. It contains Articles 103b to 103g of Regulation No 1234/2007.

4 Article 103b of that regulation, entitled 'Operational funds', provides:

'1. Producer organisations in the fruit and vegetables sector may set up an operational fund. The fund shall be financed by:

(a) financial contributions of members or of the producer organisation itself;

(b) [EU] financial assistance which may be granted to producer organisations.

2. Operational funds shall be used only to finance operational programmes approved by Member States in accordance with Article 103g.'

5 Article 103c of Regulation No 1234/2007, entitled 'Operational programmes', provides in paragraph 1:

'Operational programmes in the fruit and vegetables sector shall have two or more of the objectives referred to in Article 122(c) or of the following objectives:

(a) planning of production;

(b) improvement of product quality;

(c) boosting products' commercial value;

(d) promotion of the products, whether in a fresh or processed form;

(e) environmental measures and methods of production respecting the environment, including organic farming;

…'

6 Article 103d of that regulation, entitled '[EU] financial assistance', provides:

'1. The [EU] financial assistance shall be equal to the amount of the financial contributions referred to in Article 103b(1)(a) as actually paid but limited to 50% of the actual expenditure incurred.

2. The [EU] financial assistance shall be capped at 4.1% of the value of the marketed production of each producer organisation.

However, that percentage may be increased to 4.6% … provided that the amount in excess of 4.1% … is used solely for crisis prevention and management measures.

…'

7 Article 103g of that regulation relates to the approval of operational programmes. It states:

'1. Draft operational programmes shall be submitted to the competent national authorities, who shall approve or reject them or request their modification in line with the provisions of this subsection.

2. Producer organisations shall communicate to the Member State the estimated amount of the operational fund for each year and shall submit appropriate reasons therefore based on operational programme estimates, expenditure for the current year and possibly expenditure for previous years and, if necessary, on estimated production quantities for the next year.

3. The Member State shall notify the producer organisation or association of producer organisations of the estimated amount of [EU] financial assistance in line with the limits set out in Article 103d.

4. [EU] financial assistance payments shall be made on the basis of expenditure incurred for the schemes covered by the operational programme. Advances may be made in respect of the same schemes subject to the provision of a guarantee or security.

5. The producer organisation shall notify the Member State of the final amount of expenditure for the previous year, accompanied by the necessary supporting documents, so that it may receive the balance of the [EU] financial assistance.

…'

8 Under Title II of Part II of Regulation No 1234/2007, on the 'rules concerning marketing and production', Chapter II covers 'producer organisations, interbranch organisations, operator organisations'. In that chapter, Article 122 of that regulation, entitled 'Producer organisations', states:

'Member States shall recognise producer organisations, which:

…

(c) pursue a specific aim which may in particular, or as regards the fruit and vegetables sector shall, include one or more of the following objectives:
   (i) ensuring that production is planned and adjusted to demand, particularly in terms of quality and quantity;
   (ii) concentration of supply and the placing on the market of the products produced by its members;
   (iii) optimising production costs and stabilising producer prices.'

9 Annex I of Regulation No 1234/2007 is entitled 'List of products referred to in Article 1(1)'. It specifies, in Part IX, relating to fruit and vegetables, that that regulation covers inter alia those falling within CN code ex 0709, designated as '[ot]her vegetables, fresh or chilled, excluding [certain categories of peppers, olives and corn]'. In Part X, relating to processed fruit and vegetable products, that annex states that that regulation covers inter alia those falling within CN code ex 0710 designated as 'vegetables (uncooked or cooked by steaming or boiling in water) frozen, excluding [certain categories of peppers, olives and corn]'.

10 Regulation No 1234/2007 was repealed, with effect from 1 January 2014, by Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671). However, according to Article 231(2) of Regulation No 1308/2013, all multiannual programmes adopted before 1 January 2014 must continue to be governed by the relevant provisions of Regulation No 1234/2007 until those programmes come to an end.

Regulation No 1580/2007

11 Article 21 of Regulation No 1580/2007 contains definitions. Article 21(1) provides:

'For the purposes of this Title: [III, relating to producer organisations]:

…

(i) "first-stage processing" means processing of a fruit or vegetable product into another product listed in Annex I to the Treaty [FEU]. Cleaning, cutting, trimming, drying and packaging of fresh products with a view to marketing shall not be considered as first-stage processing;

…'

12 Chapter II of Title III is entitled 'Operational funds and operational programmes'. Section I of Chapter II, which contains Articles 52 and 53 of that regulation relates to the 'value of marketed production'. Article 52, entitled 'Basis for calculation', provides:

'1. For the purposes of this Chapter, the value of marketed production for a producer organisation shall be calculated on the basis of the production of members of producer organisations, for which the producer organisation is recognised.

…

6. The marketed production shall be invoiced at the "ex-producer organisation" stage:

(a) where applicable, as product which is packaged, prepared, or has undergone first-stage processing;

…'

13 Article 52 of Regulation No 1580/2007 was amended by Commission Regulation (EU) No 687/2010 of 30 July 2010 (OJ 2010 L 199, p. 12), entered into force on 7 August 2010, which introduced a new system to calculate the value of marketed production. That new calculation system was set out in Article 50 of Implementing Regulation No 543/2011.

14 Section 3 of Chapter II of Regulation No 1580/2007, which contains Articles 57 to 68 thereof, covers operational programmes. Article 61 of that regulation, entitled 'Contents of operational programmes and eligible expenditure', provides, in the third subparagraph of paragraph 3, that 'investments or actions may be implemented on individual holdings of members of the producer organisation, provided that they contribute to the objectives of the operational programme[, that i]f the member leaves the producer organisation, Member States shall ensure that the investment or its residual value is recovered, unless the Member State provides otherwise' and, in paragraph 4, that 'operational programmes shall not include actions or expenditure referred to in the list set out in Annex VIII'. Annex VIII, point 22, covers 'investments or similar types of actions not on the holdings of the producer organisation, association of producer organisations, subsidiary …'.

15 Articles 65 and 66 of Regulation No 1580/2007 are entitled, respectively, 'Decision' and 'Amendments to operational programmes for subsequent years'. The provisions of those articles were set out, without amendment of their substance, in Articles 64 and 65 of Implementing Regulation No 543/2011.

1716 Section 4 of Chapter II of Regulation No 1580/2007, entitled 'Aid', includes Articles 69 to 73. Article 69 of that regulation, relating to the approved amount of aid, and Article 70 thereof, entitled 'Applications', were set out, without amendment of their substance, in Articles 68 and 69 of Implementing Regulation No 543/2011.

17 Regulation No 1580/2007 was repealed by Implementing Regulation No 543/2011, entered into force on 22 June 2011, references made to the repealed regulation are to be understood as being made to Implementing Regulation No 543/2011.

Implementing Regulation No 543/2011

18 Recital 42 of Implementing Regulation No 543/2011 states:

'In the case of investments on individual holdings, so as to prevent the unjustified enrichment of a private party who has severed links with the organisation during the useful life of the investment, provisions should be laid down to allow the organisation to recover the residual value of the investment, whether such an investment is owned by a member or by the organisation.'

19 Chapter II of Title III of Implementing Regulation No 543/2011 relates to operational funds and operational programmes. Section 1 of that chapter, entitled 'Value of marketed production', contains Articles 50 and 51 of that regulation. Paragraph 50 thereof, entitled 'Basis of calculation', provides:

'1. The value of marketed production for a producer organisation shall be calculated on the basis of the production of the producer organisation itself and its producer members, and shall only include the production of those fruits and vegetables for which the producer organisation is recognised. …

…

3. The value of the marketed production shall not include the value of processed fruit and vegetables or any other product that is not a product of the fruit and vegetables sector.

However, the value of the marketed production of fruit and vegetables intended for processing, which have been transformed into one of the processed fruit and vegetable products listed in Part X of Annex I to Regulation [No 1234/2007] or any other processed product referred to in this Article and described further in Annex VI to this Regulation, by either a producer organisation, an association of producer organisations or their producer members …, either by themselves or through outsourcing, shall be calculated as a flat rate in percentage applied to the invoiced value of those processed products. That flat rate shall be:

…

(d) 62% for frozen fruit and vegetables;

…'

20 Article 51 of Implementing Regulation No 543/2011 contains definitions. It states:

'1. The annual ceiling on aid referred to in Article 103d(2) of Regulation [No 1234/2007] shall be calculated each year on the basis of the value of marketed production during a 12-month reference period to be determined by the Member States.

…

7. By way of derogation from paragrap[h] 1 …, the value of marketed production for the reference period shall be as calculated under the legislation applicable in that reference period.

However, for operational programmes approved by 20 January 2010, the value of the marketed production for the years until 2007 shall be calculated on the basis of the legislation applicable in the reference period, whereas the value of the marketed production for the years from 2008 shall be calculated on the basis of the legislation applicable in 2008.

For operational programmes approved after 20 January 2010, the value of the marketed production for the years from 2008 shall be calculated on the basis of the legislation applicable at the time the operational programme has been approved.'

21 Section 3 of Chapter II of Title III of Implementing Regulation No 543/2011 deals with operational programmes and contains Articles 55 to 67. Article 60 of that regulation, relating to the eligibility of actions under operational programmes, provides:

'1. Operational programmes shall not include actions or expenditure referred to in the list set out in Annex IX.

…

6. Investments or actions may be implemented on individual holdings and/or premises of producer members of the producer organisation, or association of producer organisations including where the actions are outsourced to members of the producer organisation or association of producer organisations, provided that they contribute to the objectives of the operational programme. If the producer member leaves the producer organisation, Member States shall ensure that the investment or its residual value is recovered. …

7. Investments and actions related to the transformation of fruit and vegetables into processed fruit and vegetables may be eligible for support where such investments and actions pursue the objectives referred to in Article 103c(1) of Regulation [No 1234/2007], including those referred to in point (c) of the first paragraph of Article 122 of that Regulation, and provided that they are identified in the national strategy referred to in Article 103f(2) of Regulation [No 1234/2007].'

22 Article 64 of Implementing Regulation No 543/2011, entitled 'Decision', which sets out without amendment to the substance Article 65 of Regulation No 1580/2007, states:

'1. The competent authority of the Member State shall, as appropriate:

(a) approve amounts of operational funds and operational programmes which meet the requirements of Regulation [No 1234/2007] and those of this Chapter;

(b) approve the operational programmes, on condition that certain amendments are accepted by the producer organisation; or

(c) reject the operational programmes or parts thereof.

2. The competent authority of the Member State shall take decisions on operational programmes and operational funds by 15 December of the year in which they are submitted.

Member States shall notify the producer organisations of those decisions by 15 December.

However, for duly justified reasons, the competent authority of the Member State may take a decision on operational programmes and operational funds by 20 January following the date of submission. The approval decision may stipulate that expenditure is eligible from 1 January of the year following the submission.'

23 Article 65 of that regulation, entitled 'Amendments to operational programmes for subsequent years', sets out without amendment the wording of Article 66 of Regulation No 1580/2007. It provides:

'1. Producer organisations may request amendments to operational programmes, including their duration, by 15 September at the latest, to be applied as from 1 January of the following year.

…

3. The competent authority of the Member State shall take decisions on requests for amendments to operational programmes by 15 December of the year of the request.

However, for duly justified reasons, the competent authority of the Member State may take a decision on amendments to operational programmes by 20 January following the year of the request. The approval decision may stipulate that expenditure is eligible from 1 January following the year of the request.'

24 Section 4 of Chapter II of Implementing Regulation No 543/2011, which contains Articles 68 to 72 thereof, covers aid. In that section, Article 68 of that regulation, entitled 'Approved amount of aid', and which sets out the wording of Article 69 of Regulation No 1580/2007, provides:

'1. Member States shall notify producer organisations and associations of producer organisations of the approved amount of aid, as required by Article 103g(3) of Regulation [No 1234/2007], by 15 December of the year preceding the year for which aid is requested.

2. Where the third subparagraph of Article 64(2) or the second subparagraph of Article 65(3) apply, Member States shall give notification of the approved amount of aid by 20 January of the year for which aid is requested.'

25 Article 69 of Implementing Regulation No 543/2011, entitled 'Aid applications', and which corresponds to Article 70 of Regulation No 1580/2007, provides:

'1. Producer organisations shall submit an application for aid or the balance thereof to the competent authority of the Member State for each operational programme for which aid is requested by 15 February of the year following the year for which the aid is requested.

2. The aid applications shall be accompanied by supporting documents showing:

…

(b) the value of marketed production;

…'

26 Article 70 of Implementing Regulation No 543/2011, which is entitled 'Payment of the aid', provides that 'Member States shall pay the aid by 15 October of the year following the year of implementation of the programme.'

27 Annex IX to Implementing Regulation No 543/2011 lists the actions and expenditure not eligible under operational programmes referred to in Article 60(1) of that regulation. Point 23 of that annex refers to 'investments or similar types of actions not on the holdings and/or premises of the producer organisation, association of producer organisations, or their producer members or a subsidiary …'.

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

28 ETG is a producer organisation within the meaning of Regulation No 1234/2007. By letters of 15 September 2009, 19 December 2009 and 14 January 2010, it submitted to the Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft (Federal Minister for Agriculture, Forestry, the Environment and Water Management, Austria) ('the competent Austrian authority') an application for support for an operational programme for the years 2010 to 2014.

29 Among the actions to benefit from that support was the acquisition of a spinach processing line, used to turn freshly harvested spinach into frozen spinach. That processing line, acquired by ETG, was installed on the site of Ardo Austria Frost GmbH ('Ardo'), an ETG co-contractor, which is active in the processing and marketing of ETG products. That line was to be operated 'under the supervision and responsibility' of ETG and, according to the latter, the land necessary for that processing line had been 'made available to ETG by Ardo pursuant to a loan agreement for the installation and operation of machinery [constituting the processing line]'.

30 By letter of 19 January 2010, the competent Austrian authority approved that operational programme. The Bundesverwaltungsgericht (Federal Administrative Court, Austria) states, in that regard, that it is common ground that, when the competent Austrian authority considered that investment as being eligible for the aid at issue, that authority knew that that processing line was not on land owned by ETG, but on the Ardo site. That court also states that that operational programme was based on a calculation of the value of marketed production made using turnover for 2009, since ETG was only established in 2009, and that that value has been calculated by including in particular the 'processing costs', including, for the spinach concerned, 'reduction into pieces, washing, cutting, drying, blanching … [as well as] freezing'.

31 Several amendments to that operational programme have been approved. In particular, by letter of 13 December 2013, the reference period used to calculate the value of marketed production has been amended. The reference to the year 2009 has been replaced by the average of the years 2009 to 2011, the value of marketed production continuing to include 'processing costs.'

32 By a decision of 12 October 2015, AMA found that the investment in that processing line was not eligible for the aid concerned, by virtue of the non-eligibility criterion laid down in point 23 of Annex IX to Implementing Regulation No 543/2011, therefore, it refused the payment of that aid for the year 2014, insofar as it had been requested for that investment, and it required repayment of the aid already received by ETG for that investment. ETG lodged an appeal against that decision before the Bundesverwaltungsgericht (Federal Administrative Court).

33 The referring court states, as a preliminary point, that it has doubts as to the applicable law, first, to the determination of the permissible nature of the expenditure relating to the processing line concerned and, second, to the calculation of the value of marketed production. Although the question on the permissibility of the expenditure appears to it to be governed by Implementing Regulation No 543/2011, it questions whether the amendment made, by the abovementioned letter of 13 December 2013, to the operational programme approved on 19 January 2010, has the effect of resulting in the application of the new method for calculating the value of marketed production laid down by Implementing Regulation No 543/2011.

34 On the substance, the referring court raises the question, in the first place, of the possible effects, on the amount of aid to be paid for 2014, of the various letters from the Austrian authorities, namely the one approving the operational programme, the one approving the amendment to that programme, and the one notifying ETG of the approved amount of the aid. More specifically, it asks whether it must consider the value of marketed production contained in those letters to be binding and unverifiable by it in the context of the action before it.

35 In that regard, it submits that, under Austrian law, it has jurisdiction to consider, of its own motion, the question of the legality of the contested decision before it, even on the basis of a complaint which has not been raised by ETG and even if the proceedings would have an unfavourable outcome for that company. However, the referring court cannot carry out that ex officio examination if the question has already been decided in an earlier decision which has become final.

36 In the second place, the referring court states that it has doubts as to the validity of the calculation of the value of marketed production, both if that calculation were to be governed by Implementing Regulation No 543/2011 and in the case if it were governed by Regulation No 1580/2007.

37 In the third place, the referring court asks whether the actions relating to the processing of fruit and vegetables can be the subject of EU aid in the context of an operational programme of a producer organisation recognised in the fruit and vegetables sector and, if so, under which conditions.

38 In the fourth place, it questions the scope of the non-eligibility criterion for the aid laid down in point 23 of Annex IX to Implementing Regulation No 543/2011, in particular in the light of the various language versions of that regulation. It submits that the refusal of the aid relating to the processing line was effective against ETG on the ground that 'that investment was a measure implemented on land belonging to a third party'. If point 23 were to be interpreted as meaning that it precludes absolutely aid for investments made on land belonging to a third party, that is to say without the applicant being able to prove on a case-by-case basis that there are legitimate economic reasons to invest in equipment located on land owned by a third party, point 23 of Annex IX could, according to the referring court, be invalid.

39 In the fifth place, the referring court wonders, in the event that the Court interprets point 23 as an 'absolute exclusion criterion' for investments made on land belonging to third parties, whether ETG could nevertheless rely on the principle of protection of legitimate expectations, since, in its view, the Austrian authorities have always been informed that ETG was installing the processing line in question on land owned by Ardo and since they have approved the operational programme concerned in full knowledge of the facts.

40 In the sixth and last place, the referring court points out that, if the Court were to interpret the provisions at issue in a way that is unfavourable to ETG and/or were to declare some of them invalid, the Court could be presented with an application from ETG seeking a temporary limitation of the effects of its judgment. In that regard, the referring court states that it questions how it should itself respond to ETG's arguments on the principle of legal certainty, in order to challenge the repayment sought, or even to obtain the payment of sums forming the subject matter of binding commitments, in the event that the Court does not in any way limit the temporal effects of its ruling, or makes a limitation that does not extend to ETG.

41 In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) Do Articles 65, 66 and 69 of Regulation [No 1580/2007] and (since 2[2] June 2011) Articles 64, 65 and 68 of Implementing Regulation [No 543/2011] require that the decision approving the operational programme and the amounts of funds, or any amendment of that decision, and the decision on the "approved amount of aid" be adopted not merely as notifications but formally as (at least provisionally) binding decisions that can be challenged by the applicant at the outset, that is to say irrespective of any challenge to the final decision (pursuant to Article 70 of Regulation No 1580/2007 or Article 69 of Implementing Regulation No 543/2011) on the application for (closing) payment of the aid?

(b) Are the provisions of EU law cited in Question [(1)(a)] to be interpreted as meaning that, at the time when such decisions are adopted, the value of the marketed production must also be fixed with binding effect (in the normative part of the decision)?

(c) Is EU law, in particular Articles 69 and 70 of Implementing Regulation [No 543/2011], to be interpreted as meaning that a court required to rule on an appeal brought against a decision by which an administrative authority, in connection with a particular annual segment of the operational programme, gave a final adjudication on an application for the payment of financial assistance under Article 103g(5) of Regulation [No 1234/2007], is prevented from examining the question of the legality of the value-of-the-marketed-production calculation used as the basis for the ceiling on aid by a pre-existing final decision approving the operational programme and the amounts of funds and by the decision on the "approved amount of aid"?

(d) If Question [(1)(a), (b) or (c)] is answered in the negative, is Regulation [No 1234/2007], in particular Parts IX ("Fruit and vegetables", specifically in relation to "CN code ex 0709 … Other vegetables, fresh or chilled …") and X ("Processed fruit and vegetable products", in relation to "CN code ex 0710 Vegetables … frozen") of Annex I thereto, to be interpreted as meaning that vegetable products that emerge from the sum of the processes that follow the harvest, namely cleaning, slicing, blanching and freezing, are to be classified not as products within the meaning of Part IX of Annex I but as products within the meaning of Part X of Annex I?

(e) If Question [(1)(d)] is answered in the affirmative, is the concept of the "value of the marketed production" used in Article 103d(2) of Regulation [No 1234/2007], to be interpreted as meaning that that value is to be calculated in such a way as to take into account only the value of the production, minus the value corresponding to the processing stage, by deducting the value of the process whereby the harvested, cleaned, sliced and blanched vegetables are transformed into quick-frozen vegetables?

(f) Is Article 51(7) of Implementing Regulation [No 543/2011] to be interpreted as meaning that a producer organisation that has submitted an operational programme for the years 2010 to 2014 which, although approved before 20 January 2010, was later (on 13 December 2013) the subject of an amended approval inasmuch as the method of calculating the value of the marketed production for that programme was changed, can still rely, for the purposes of the detailed rules governing the calculation of the value of the marketed production, on the "legislation applicable in 2008" even after that amendment to the operational programme (that is to say in connection with the aid to be paid in 2014)?

(g) If Questions [(1)(g) and (f)] are answered in the affirmative, are Article 52(6)(a) and Article 21(1)(i) of Regulation [No 1580/2007] invalid in so far as, pursuant to those provisions, the stages in the processing of harvested vegetables whereby those vegetables are transformed into "another product listed in Annex I to the EC Treaty" are included in the calculation of the value of the marketed production?

(h) If Question [(1)(f)] is answered in the negative (and irrespective of the answers given to the other questions), is Article 50(3)(d) of Implementing Regulation [No 543/2011] invalid?

(2) (a) Is Article 103c of Regulation [No 1234/2007] to be interpreted as meaning that an "operational programme in the fruit and vegetables sector" allows only for the promotion of the production of products capable of being classified as products within the meaning of Part IX of Annex I, but not also the promotion of investments in the processing of such products?

(b) If Question [(2)(a)] is answered in the negative, under what conditions and to what extent does Article 103c of Regulation [No 1234/2007] allow investments in processing to be promoted in this way?

(c) Is Article 60(7) of Implementing Regulation [No 543/2011] invalid?

(3) (a) Is point 23 of Annex IX to Implementing Regulation [No 543/2011] to be interpreted as meaning that the only reason for the exclusion of that promotion is the fact that it takes place on external premises?

(b) If Question [(3)(a)] is answered in the affirmative, is point 23 of Annex IX to Implementing Regulation [No 543/2011] invalid?

(c) If Question [(3)(a)] is answered in the affirmative and Question [(3)(b)] in the negative, is the rule laid down in point 23 of Annex IX to Implementing Regulation [No 543/2011] a clear and unambiguous provision to the extent that the legitimate expectations of an economic operator who [engages in] the promotion of activities which, although performed on external premises, nonetheless form part of his business are not protected, despite the fact that that promotion was the subject of an assurance or approval given by the domestic authorities in full knowledge of the facts?

(4) Does the fact that the Court of Justice does not limit in a manner beneficial to the person concerned the effects of a judgment (within the meaning of the second paragraph of Article 264 TFEU) which, by virtue of a new interpretation of EU law or a declaration as to the invalidity of an act of EU law previously regarded as valid, is detrimental in law to that person, have the effect of preventing that person from relying on the principle of legal certainty in a particular case before a national court, where it is established that he is acting in good faith?'

Consideration of the questions referred

Question 3(a)

42 By Question 3(a), which is appropriate to examine in the first place, the referring court asks, in essence, whether point 23 of Annex IX to Implementing Regulation No 543/2011 must be interpreted as meaning that an investment made in the context of an operational programme covered by

Article 60(1) of that regulation is located on land which is owned by a third party, and not the producer organisation concerned, is, under the first of those provisions, a ground for non-eligibility for aid for the expenditure incurred by that producer organisation in respect of that investment.

43 In that regard, it should first of all be pointed out that AMA's decision of 12 October 2015, relating to the payment of the balance of the EU's financial aid for 2014, in the context of an operational programme for the years 2010 to 2014, that programme having been approved on 19 January 2010, namely before the adoption of Regulation No 543/2011, is disputed before the referring court. However, in the absence of any transitional provision to the contrary and considering that Article 149 of Implementing Regulation No 543/2011 repeals Regulation No 1580/2007 and states that the references made to it are to be construed as being references to Implementing Regulation No 543/2011, it must be held that the question of the validity of the actions carried out and the expenditure made in respect of the payment of that aid for the year 2014 is in fact governed by the provisions of Implementing Regulation No 543/2011.

44 Moreover, point 23 of Annex IX to Implementing Regulation No 543/2011, which, as is apparent from the order for reference and from the national file provided to the Court, constitutes the provision on the basis of which the acquisition of the relevant processing line has been declared ineligible for the aid at issue in the case in the main proceedings, and which replaced point 22 of Annex VIII to Regulation No 1580/2007, did not make amendments to that latter provision relevant for the purposes of this case.

45 In fact, point 22 of Annex VIII to Regulation No 1580/2007 provided for the non-eligibility of operational programmes of investments or similar types of actions which were not 'on the holdings' of, inter alia, producer organisations, whereas point 23 of Annex IX to Implementing Regulation No 543/2011 covers not only the holdings but also the 'premises' of such an organisation. Consequently, if an investment falls within the non-eligibility criterion provided for in point 23, it necessarily also falls under the equivalent criterion provided for in point 22.

46 As regards the interpretation requested, it should be recalled that Article 60(1) of Implementing Regulation No 543/2011 provides that operational programmes are not to include actions or expenditure referred to in the list set out in Annex IX to that regulation. Annex IX, in point 23, lists, among the investments or similar types of actions not eligible to receive aid under operational programmes, 'investments or similar types of actions not on the holdings and/or premises of the producer organisation, association of producer organisations, or their producer members or a subsidiary in the situation referred to in Article 50(9) [of that regulation]'.

47 In the present case, it is clear from the order for reference that Ardo, on whose land the processing line concerned in the case in the main proceedings is located, is a third party in relation to the applicant's producers organisation, ETG. In those circumstances, it is sufficient, in order to answer the question referred, to determine whether the expression 'on the holdings and/or premises of the producer organisation' covers only holdings and/or premises which the producer organisation owns or if another interpretation must be made.

48 The need for a uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union (judgment of 21 December 2011, *Ziolkowski and Szeja*, C-424/10 and C-425/10, EU:C:2011:866, paragraph 32 and the case-law cited).

49 Implementing Regulation No 543/2011 does not define what is meant by investments 'on the holdings and/or premises of the producer organisation' and also does not refer to national law as regards the meaning to be given to those terms. Therefore, those terms must be regarded, for the purposes of application of that regulation, as designating an autonomous concept of EU law which must be interpreted in a uniform manner throughout the Member States.

50 It is the Court's settled case-law that the meaning and scope of terms, for which EU law gives 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 (judgments of 10 March 2005, *EasyCar*, C-336/03, EU:C:2005:150, paragraph 21, and of 3 September 2014, *Deckmyn and Vrijheidsfonds*, C-201/13, EU:C:2014:2132, paragraph 19 and the case-law cited) and it being precluded that, where there are doubts, the text of a provision be considered in isolation in one of its language versions (see, to that effect, judgments of 16 July 2009, *Horvath*, C-428/07, EU:C:2009:458, paragraph 35 and the case-law cited, and of 11 June 2015, *Pfeifer & Langen*, C-51/14, EU:C:2015:380, paragraph 34).

51 In the present case, the usual meaning of the expression at issue does not, on its own, make it possible to give an unequivocal interpretation of it from the outset. In fact, that expression may, in everyday language and according to the language versions, refer to a holding or premises which is the property of the producer organisation concerned or cover, more generally, a holding or premises over which the producer organisation exercises some form of control.

52 However, first it is clear from the context in which point 23 of Annex IX to Implementing Regulation No 543/2011 is found that investments made on the holdings and/or premises of third parties in relation to the producer organisation concerned cannot, in principle, even partially benefit from aid by way of an operational programme.

53 In fact, Article 60(6) of that regulation provides that, where investments are implemented on holdings and/or premises of producer members of the producer organisation, Member States are to ensure that, except duly justified circumstances, that investment or its residual value be recovered if the producing member leaves the organisation. Similarly, it is apparent from recital 42 of that regulation that, so as to prevent the unjustified enrichment of a private party who has severed links with the producer organisation during the useful life of an investment, that organisation must be allowed to recover the residual value of the investment.

54 Second, the objectives pursued by Implementing Regulation No 543/2011 also establish that only producer organisations recognised in accordance with EU law may benefit from EU financial aid. In that regard, it should be recalled, in addition to recital 42 of that regulation, the substance of which is set out in the preceding paragraph of the present judgment, that that regulation lays down detailed rules for the application of Regulation No 1234/2007 as regards the sectors of fruit and vegetables as well as processed fruit and vegetables. It follows from Article 103b of that regulation that the financing of operational funds of producer organisations in the fruit and vegetables sector, to which EU financial aid may contribute, may be used only to finance operational programmes approved by Member States in accordance with Article 103g of that regulation.

55 It is manifestly contrary to the scheme of Implementing Regulation No 543/2011, as set out in paragraphs 52 and 53 of the present judgment, and to that objective, that third parties may benefit from that financial aid. That would be the case, however, if it were accepted that investments, which are not guaranteed to exclusively benefit the producer organisation concerned, were eligible for that aid.

56 In that respect, although the mere fact that the producer organisation does not own the holding or premises on which the investment is made cannot necessarily suffice, in principle, to establish that is not guaranteed that that investment is for the exclusive benefit of that organisation, it is at least

imperative, so that it is considered eligible expenditure under an operational programme referred to in Article 60(1) of Implementing Regulation No 543/2011, that the investment in question be on a holding and/or premises which, in law and in fact, are under the exclusive control of that organisation, so that any use of that investment for the benefit of a third party is excluded.

57 Point 23 of Annex IX of Regulation 543/2011, in so far as it refers to investments 'on the holdings and/or premises of the producer organisation', must therefore be interpreted in the sense that it covers investments on holdings and/or premises which, in law and in fact, are under the exclusive control of the producer organisation concerned, so that any use of that investment for the benefit of a third party is excluded.

58 As the European Commission claimed, solely that interpretation enables the financial interests of the European Union to be protected and avoids any distortion of competition between producer organisations in the fruit and vegetables sector.

59 In the present case, it is apparent from the order for reference that, although the processing line at issue in the case in the main proceedings was purchased by ETG and is used 'under the supervision and responsibility' of the latter, that processing line is set up on land owned by Ardo, which was 'made available to ETG by [Ardo] under a loan agreement for the installation and operation of machinery [constituting the processing line]'. The investment concerned therefore does not appear to have been carried out on a holding and/or premises which, in law and in fact, are under the exclusive control of ETG, so that any use of it for the benefit of a third party is excluded. The application of the non-eligibility criterion for the aid laid down in point 23 of Annex IX to Implementing Regulation No 543/2011 therefore appears to be justified.

60 In that regard, it is also important to point out that the alleged existence of 'legitimate economic grounds' which would justify that the investment at issue in the case in the main proceedings has been made on the holding and/or premises of a third party, over which the producer organisation concerned does not exercise exclusive control, cannot in any case allow the consideration that that non-eligibility criterion does not apply to the present case. The same is true of the financial allocation of that investment to that producer organisation and to the existence of an alleged 'economic attachment' of that investment to the producer organisation's operations or even to the fact that there would be an 'operational link' between that investment and that organisation. Such grounds do not in any way guarantee that the investment at issue in the case in the main proceedings is not used for the benefit of a third party.

61 Having regard to all the foregoing considerations, the answer to Question 3(a) must be that point 23 of Annex IX to Implementing Regulation No 543/2011, in so far as it refers to investments made 'on holdings and/or premises of the producer organisation' must be interpreted as meaning that:

– the mere fact that an investment made in the context of an operational programme covered by Article 60(1) of that regulation is located on land which is owned by a third party, and not the producer organisation concerned, is not, in principle, under point 23 of Annex IX, a ground for non-eligibility of aid for the expenditure incurred, by that producer organisation, in respect of that investment;

– point 23 of Annex IX relates to investments on holdings and/or premises which are, in law and in fact, under the exclusive control of that producer organisation, so that any use of those investments for the benefit of a third party be excluded.

Question 3(b)

62 As is apparent from the considerations set out by the referring court in its request for a preliminary ruling, Question 3(b) is only raised in the event that point 23 of Annex IX to Implementing Regulation No 543/2011 should be interpreted as meaning that the mere fact that the producer organisation at issue in the main proceedings does not own the land on which an investment is made in the context of an operational programme referred to in Article 60(1) of that regulation constitutes, by virtue of the first of those provisions, a ground for non-eligibility for the aid concerned for the costs incurred by that producer organisation in respect of that investment.

63 It follows from the answer to Question 3(a) that such an interpretation cannot be accepted. Consequently, there is no need to answer Question 3(b).

Question 3(c)

64 Question 3(c), is also referred in the event that point 23 of Annex IX to Implementing Regulation No 543/2011 should be interpreted as meaning that the mere fact that the producer organisation concerned in the main proceedings does not own the land on which an investment made by way of an operational programme referred to in Article 60(1) of that regulation is, by virtue of the first of those provisions, a ground for non-eligibility for the aid concerned for the costs incurred by that producer organisation in respect of that investment.

65 As has already been stated in paragraph 63 of the present judgment, that interpretation cannot be accepted. However, by Question 3(c), the referring court asks, in fact, whether, in circumstances such as those at issue in the case in the main proceedings, ETG can rely on the principle of the protection of legitimate expectations as regards the legality of the aid that has been granted or promised to it for the investment concerned. As has been stated in paragraph 59 of the present judgment, the criterion of non-eligibility for the aid laid down in point 23 of Annex IX to Implementing Regulation No 543/2011 appears to be applicable to that investment, even if it is on a ground different from that envisaged by the referring court. Therefore, Question 3(c) remains relevant and must be answered.

66 By that question, the national court asks, in essence, whether the principle of the protection of legitimate expectations must be interpreted as precluding, in circumstances such as those at issue in the case in the main proceedings, the competent national authority, first, refusing the payment of the amount of the financial aid which had been requested by a producer organisation for an investment finally considered to be ineligible for that aid pursuant to point 23 of Annex IX to Implementing Regulation No 543/2011 and, second, requesting the producer organisation to reimburse the aid already received for that investment.

67 The circumstances at issue in the case in the main proceedings are characterised by the fact that, when the competent Austrian authority approved the operational programme concerned, and thus took the view that the investment relating to the acquisition of the processing line concerned in the main proceedings was a priori eligible for the aid requested, and when it made the first partial payments relating to that investment, that authority was fully aware of the circumstances under which that processing line would be installed and operated.

68 In that regard, it should be recalled that the exercise by a Member State of any discretion to decide whether or not it would be expedient to demand repayment of EU funds unduly or irregularly granted would be inconsistent with the duty under the common agricultural policy for national administrations to recover such funds (see, to that effect, inter alia, judgment of 21 September 1983, *Deutsche Milchkontor and Others*, 205/82 to 215/82, EU:C:1983:233, paragraph 22).

69 Following settled case-law of the Court, the principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of EU law; nor can the conduct of a national authority responsible for applying EU law, which acts in breach of that law, give rise to a legitimate expectation on the part of a trader of beneficial treatment contrary to EU law (judgments of 1 April 1993, *Lageder and Others*, C-31/91 to C-44/91, EU:C:1993:132, paragraph 35, and of 20 June 2013, *Agroferm*, C-568/11, EU:C:2013:407, paragraph 52).

70 In the present case, it follows from the analysis of Question 3(a) that the aid in question was granted contrary to point 23 of Annex IX to Implementing Regulation No 543/2011, interpreted in the light of the context in which that provision is inserted and the relevant objective pursued by the applicable regulation.

71 Moreover, when approving the operational programme concerned, it was already well established that, in the context of financing the common agricultural policy, a strict interpretation of the conditions for the European Union taking over costs was necessary, since the management of the common agricultural policy, on the basis of equality between traders in the Member States, requires that the national authorities of a Member State, by means of a wide interpretation of a specific provision, should not favour traders of that Member State (see, to that effect, judgment of 27 February 1985, *Italy* v *Commission*, 55/83, EU:C:1985:84, paragraph 31 and the case-law cited, and of 6 November 2014, *Netherlands* v *Commission*, C-610/13 P, not published, EU:C:2014:2349, paragraph 41).

72 In the light of those considerations, it must be held that point 23 of Annex IX to Implementing Regulation No 543/2011 constitutes a provision against which the principle of the protection of legitimate expectations cannot be relied on.

73 Moreover, the competent Austrian authority could not reasonably undertake to grant ETG treatment contrary to EU law.

74 Therefore, by approving the operational programme concerned and making the first payments relating to the investment at issue in the case in the main proceedings, that national authority was unable to create, for the benefit of ETG, regardless of ETG's good faith, a legitimate expectation of benefiting from treatment contrary to EU law.

75 In the light of the foregoing considerations, the answer to Question 3(c) is that the principle of the protection of legitimate expectations must be interpreted as not precluding, in circumstances such as those at issue in the case in the main proceedings, the competent national authority, first, refusing payment of the amount of the financial aid which had been requested by a producer organisation for an investment finally considered to be ineligible for that aid pursuant to point 23 of Annex IX to Implementing Regulation No 543/2011 and, second, requesting the producer organisation to reimburse the aid already received for that investment.

Question 1(a) to (h)

76 By Question 1(a) to (c), the referring court asks, in essence, whether Articles 65, 66 and 69 of Regulation No 1580/2007 and Articles 64, 65 and 68 to 70 of Implementing Regulation No 543/2011 must be interpreted as meaning that, where a national court, in circumstances such as those at issue in the case in the main proceedings, hears an action directed against a decision of a national authority ruling on an application for payment of the amount of financial aid in the framework of an operational programme, presented in accordance with Article 103g(5) of Regulation No 1234/2007, they preclude that, in the context of that action, that court assesses of its own motion the question of the legality of the method of calculating the value of the marketed production. In the event that Question 1(a) to (c) is answered in the negative, the referring court asks Question 1(d) to (h).

77 The fact however remains that Question 1(a) to (c), and thus Question 1(d) to (h), are relevant only in the event that it arises from the answer to Question 3(a) that the criterion of non-eligibility for the aid provided for in point 23 of Annex IX to Implementing Regulation No 543/2011 could not be applied to the investment at issue in the case in the main proceedings. It is apparent from the answer to Question 3(a) that that is not the case.

78 Consequently, there is no need to answer Question 1(a) to (h).

Question 2(a) to (c)

79 By Question 2(a) and (b), the referring court asks, in essence, whether Article 103c of Regulation No 1234/2007 must be interpreted as precluding, in the context of an operational programme in the fruit and vegetables sector, within the meaning of that article, that EU financial aid be granted for investments for processing fruit and vegetables and, if that is not the case, under which conditions and to what extent such aid is authorised. By Question 2(c), the referring court asks whether Article 60(7) of Implementing Regulation No 543/2011, which provides that certain investments and actions relating to the processing of fruit and vegetables into processed fruit and vegetables may be eligible, under certain conditions, to receive aid, is valid.

80 Following settled case-law of the Court, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgments of 16 December 2008, *Cartesio*, C-210/06, EU:C:2008:723, paragraph 67, and of 29 January 2013, *Radu*, C-396/11, EU:C:2013:39, paragraph 22). The same is true where the questions raised concern the validity of a provision of EU law (see, to that effect, judgments of 10 December 2002, *British American Tobacco (Investments) and Imperial Tobacco*, C-491/01, EU:C:2002:741, paragraphs 34 and 35 and the case-law cited).

81 In the present case, it is apparent from the order for reference and the national file provided to the Court that the only ground on which the refusal to pay the amount of the aid for the processing line in question and the request for reimbursement of the aid already received for it is based in the contested decision in the case in the main proceedings is based is in the application of the criterion of non-eligibility for the aid provided for in point 23 of Annex IX to Implementing Regulation No 543/2011.

82 To answer Question 2(a) to (c) in such a circumstance would therefore clearly be to provide an advisory opinion on a hypothetical question, in infringement of the tasks assigned to the Court in the context of judicial cooperation established by Article 267 TFEU (judgment of 24 October 2013, *Stoilov i Ko*, C-180/12, EU:C:2013:693, paragraph 47 and the case-law cited, and, to that effect, judgment of 7 November 2013, *Romeo*, C-313/12, EU:C:2013:718, paragraphs 39 and 40.

83 Consequently, there is no need to reply to Question 2(a) to (c).

The fourth question

84 By Question 4, the referring court, asks, in essence, whether, in circumstances such as those at issue in the case in the main proceedings, EU law must be interpreted as meaning that, in the absence of any temporal limitation of the effects of the present judgment, it precludes the principle of legal certainty being taken into account in order to exclude the repayment of aid unduly paid.

85 As a preliminary point, it should be stated that that question is based on the premiss that the Court has not temporally limited the effects of the present judgment. ETG has, in essence, requested such a limitation in the event that the Court should find one of the provisions of EU law at issue in the case in the main proceedings to be invalid. In the present judgment, however, the Court has confined itself to interpreting certain provisions of EU law.

86 In contrast, the Austrian Government has requested the Court to temporally limit the effects of the present judgment, particularly in the event that the Court should consider that point 23 of Annex IX to Implementing Regulation No 543/2011 should be interpreted in the sense that investments made on land owned by a third party are not eligible for aid. As is clear from paragraphs 59 and 61 of the present judgment, the investments at issue in the case in the main proceedings do not appear eligible for aid if they are made on holdings and/or premises which are not under the exclusive control of the producer organisation concerned. It is therefore appropriate to rule on that request.

87 In support of that request, the Austrian Government submits that there is a risk of serious economic repercussions for the applicant company in the main proceedings, which could disappear, as well as for the whole fruit and vegetables sector. In addition, the Austrian Government maintains that point 23 of Annex IX to Implementing Regulation No 543/2011 refers, in many language versions, to the existence of an operational link between the producer organisation and the investment concerned, thus creating an objective and significant uncertainty as to the scope of EU law.

88 It is settled case-law that the interpretation which, in the exercise of the jurisdiction conferred on it by Article 267 TFEU, the Court gives to a provision of EU law clarifies and defines the meaning and scope of that provision as it must be or ought to have been understood and applied from the time of its entry into force. It follows that the provision as thus interpreted may, and must, be applied by the courts even to legal relationships which arose and were established before the judgment ruling on the request for interpretation, provided that in other respects the conditions for bringing a dispute relating to the application of that rule before the courts having jurisdiction are satisfied (judgments of 15 March 2005, *Bidar*, C-209/03, EU:C:2005:169, paragraph 66 and the case-law cited, and of 22 September 2016, *Microsoft Mobile Sales International and Others*, C-110/15, EU:C:2016:717, paragraph 59 and the case-law cited).

89 It is only quite exceptionally that the Court may, in application of the general principle of legal certainty inherent in the EU legal order, be moved to restrict for any person concerned the opportunity of relying on a provision which it has interpreted with a view to calling into question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed, namely, that those concerned must have acted in good faith and there must be a risk of serious difficulties (judgments of 15 March 2005, *Bidar*, C-209/03, EU:C:2005:169, paragraph 67 and the case-law cited, and of 22 September 2016, *Microsoft Mobile Sales International and Others*, C-110/15, EU:C:2016:717, paragraph 60 and the case-law cited).

90 More specifically, the Court has taken that step only in quite specific circumstances, notably where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force and where it appeared that individuals and national authorities had been led to adopt practices which did not comply with EU law by reason of objective, significant uncertainty regarding the implications of EU provisions, to which the conduct of other Member States or the European Commission may even have

contributed (judgments of 15 March 2005, *Bidar*, C-209/03, EU:C:2005:169, paragraph 69 and the case-law cited, and of 22 September 2016, *Microsoft Mobile Sales International and Others*, C-110/15, EU:C:2016:717, paragraph 61 and the case-law cited).

91 In addition, it is for the Member State seeking to limit the temporal effects of a judgment on a preliminary ruling to produce, before the Court, figures showing the risk of serious economic repercussions (judgment of 7 July 2011, *Nisipeanu*, C-263/10, not published, EU:C:2011:466, paragraph 34 and the case-law cited, and, by analogy, judgment of 9 April 2014, *T-Mobile Austria*, C-616/11, EU:C:2014:242, paragraph 53).

92 In the present case, in its application for the temporal limitation of the effects of the present judgment, also presented if the Court should declare the invalidity of one or more provisions referred to by the national court, the Austrian Government in no way explains how the interpretation adopted in paragraph 61 of the present judgment is, on its own, likely to entail a risk of serious economic repercussions. In that respect, the Austrian Government merely refers, in a general way, to the fact that the absence of a temporal limitation of the effects of the present judgment 'could lead to potentially fatal consequences' and relies on 'a high number of legal relationships', without providing any data on the number of producer organisations that may be concerned or any amounts involved.

93 Consequently, the existence of a risk of serious economic repercussions, within the meaning of the case-law referred to in paragraphs 89 and 90 of the present judgment, such as to justify a temporal limitation of the effects of the present judgment, cannot be considered to be established. Subsequently, it is not necessary to limit the temporal effects of the present judgment, without it even being necessary to determine whether the first criterion referred to in those paragraphs is satisfied.

94 As regards the question whether, in circumstances such as those at issue in the case in the main proceedings, the principle of legal certainty may nevertheless be relied on by ETG before the referring court, it should be recalled that it is for the Member States, by virtue of Article 4(3) TEU, to ensure that EU regulations, particularly those concerning the common agricultural policy, are implemented within their territory (see, by analogy, judgment of 16 July 1998, *Oelmühle and Schmidt Söhne*, C-298/96, EU:C:1998:372, paragraph 23 and the case-law cited).

95 Similarly, it follows from Article 9(1) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1), referred to by AMA in the contested decision in the case in the main proceedings and the substance of which has been incorporated in Article 58(1) and (2) 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 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549, and corrigendum OJ 2016 L 130, p. 13) that Member States are to, within the framework of the common agricultural policy, take all measures necessary to recover sums lost as a result of irregularities or negligence. The exercise of any discretion to decide whether or not it would be expedient to demand repayment of EU funds unduly or irregularly granted would be inconsistent with that duty (see, by analogy, judgment of 16 July 1998, *Oelmühle and Schmidt Söhne*, C-298/96, EU:C:1998:372, paragraph 23 and the case-law cited), as has already been noted in paragraph 68 of the present judgment.

96 Nevertheless, as the Commission has stated, in the absence of provisions of EU law, disputes concerning the recovery of amounts wrongly paid under EU law must be decided by national courts in application of their own domestic law, subject to the limits imposed by EU law, on the basis that the rules and procedures laid down by domestic law must not have the effect of making it practically impossible or excessively difficult to recover aid not due and that the national legislation must be applied in a manner which is not discriminatory as compared to procedures for deciding similar

national disputes (judgments of 16 July 1998, *Oelmühle and Schmidt Söhne*, C-298/96, EU:C:1998:372, paragraph 24 and the case-law cited, and of 15 January 2009, *Bayerische Hypotheken- und Vereinsbank*, C-281/07, EU:C:2009:6, paragraph 24 and the case-law cited).

97 Accordingly, it cannot be regarded as contrary to EU law for national law, as far as the recovery of sums wrongly paid by public authorities are concerned, to take into account, in addition to the principle of legality, the principle of legal certainty, since the latter principle forms part of the legal order of the European Union (judgments of 19 September 2002, *Huber*, C-336/00, EU:C:2002:509, paragraph 56 and the case-law cited, and of 21 June 2007, *ROM-projecten*, C-158/06, EU:C:2007:370, paragraph 24).

98 In particular, the principle of legal certainly requires that EU rules enable those concerned to know precisely the extent of the obligations which are imposed on them. Individuals must be able to ascertain unequivocally what their rights and obligations are and take steps accordingly (judgment of 21 June 2007, *ROM-projecten*, C-158/06, EU:C:2007:370, paragraph 25 and the case-law cited).

99 In the present case, it follows from the analysis of Question 3(a) that the provision contained in point 23 of Annex IX to Implementing Regulation No 543/2011, interpreted in the light of the context in which that provision is contained and of the relevant objective pursued by the applicable rules, allowed the person, the ultimate beneficiary of EU financial aid, to know precisely the extent of the obligations which are imposed on it and to ascertain unequivocally what its rights and obligations are and to take steps accordingly.

100 That being so, the EU's interest in recovering aid which has been received in infringement of the conditions for granting it must be fully taken into account when assessing the interests in question, including — notwithstanding what has been pointed out in paragraph 99 of the present judgment — whether the principle of legal certainty precludes the recipient of the aid from being required to repay it (judgments of 19 September 2002, *Huber*, C-336/00, EU:C:2002:509, paragraph 57 and the case-law cited, and of 21 June 2007, *ROM-projecten*, C-158/06, EU:C:2007:370, paragraph 32).

101 Moreover, it is settled case-law that the beneficiary of aid may challenge a demand for recovery only if he acted in good faith when applying for it (judgment of 19 September 2002, *Huber*, C-336/00, EU:C:2002:509, paragraph 58 and the case-law cited).

102 In the light of all the foregoing, the answer to Question 4 must be that, in circumstances such as those at issue in the case in the main proceedings, EU law must be interpreted as meaning that, in the absence of a temporal limitation of the effects of the present judgment, it does not preclude the principle of legal certainty being taken into account in order to exclude the recovery of aid unduly paid, provided that the conditions laid down be the same as for the recovery of purely national financial payments, that the interests of the European Union be taken fully into account and that the good faith of the beneficiary of the aid be established.

Costs

103 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 (Seventh Chamber) hereby rules:

1. **Point 23 of Annex IX to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, in so far as it refers to investments made 'on holdings and/or premises of producer organisations', must be interpreted as meaning that:**

   – **the mere fact that an investment made in the context of an operational programme covered by Article 60(1) of that regulation is located on land which is owned by a third party, and not the producer organisation concerned, is not, in principle, under point 23 of Annex IX, a ground for non-eligibility of aid for the expenditure incurred, by that producer organisation, in respect of that investment;**

   – **point 23 of Annex IX relates to investments made on holdings and/or premises which are, in law and in fact, under the exclusive control of that producer organisation, so that any use of those investments for the benefit of a third party be excluded.**

2. **The principle of the protection of legitimate expectations must be interpreted as not precluding, in circumstances such as those at issue in the case in the main proceedings, the competent national authority, first, refusing payment of the amount of the financial aid which had been requested by a producer organisation for an investment finally considered to be ineligible for that aid pursuant to point 23 of Annex IX to Implementing Regulation No 543/2011 and, second, requesting the producer organisation to reimburse the aid already received for that investment.**

3. **In circumstances such as those at issue in the case in the main proceedings, EU law must be interpreted as meaning that, in the absence of a temporal limitation of the effects of the present judgment, it does not preclude the principle of legal certainty being taken into account in order to exclude the recovery of aid unduly paid, provided that the conditions laid down be the same as for the recovery of purely national financial payments, that the interests of the European Union be taken fully into account and that the good faith of the beneficiary of the aid be established.**

[Signatures]