Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

9 June 2016*

(References for a preliminary ruling — Common Agricultural Policy — Integrated administration and control system for certain aid schemes — Regulation (EC) No 1782/2003 — Single payment scheme — Articles 43 and 44 — Payment entitlements based on areas — Hectares eligible for area aid — Permanent pasture — National legislation making the eligibility of permanent pasture areas which exceed the forage areas initially taken into account for the purposes of determining the payment entitlements subject to conditions that they be used for the purposes of rearing livestock on the farm)

In Joined Cases C-333/15 and C-334/15,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain), made by decisions of 22 May 2015, received at the Court on 6 July 2015, in the proceedings

María del Pilar Planes Bresco

v

Comunidad Autónoma de Aragón,

THE COURT (Eighth Chamber),

composed of D. Šváby, President of the Chamber, J. Malenovský and M. Vilaras (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

— the Spanish Government, by A. Rubio González, acting as Agent,

— the European Commission, by J. Guillem Carrau and H. Kranenborg, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 March 2016,

gives the following

* Language of the case: Spanish.

Judgment

1 These requests for a preliminary ruling concern the interpretation of Articles 29, 43 and 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), as amended by Council Regulation (EC) No 2012/2006 of 19 December 2006 (OJ 2006 L 384, p. 8, 'Regulation No 1782/2003').

2 The requests have been made in two sets of proceedings between Ms María del Pilar Planes Bresco, a farmer, and the Comunidad Autónoma de Aragón (Autonomous Community of Aragon, Spain) concerning the method for determining the area of her agricultural holding eligible for the single area aid provided for in Regulation No 1782/2003 for the agricultural years 2007 and 2008, respectively.

Legal context

EU law

Regulation No 1782/2003

3 Recital 4 of Regulation No 1782/2003 states:

'Since permanent pasture has a positive environmental effect, it is appropriate to adopt measures to encourage the maintenance of existing permanent pasture to avoid a massive conversion into arable land.'

4 Recital 24 of Regulation No 1782/2003 states:

'Enhancing the competitiveness of Community agriculture and promoting food quality and environment standards necessarily entail a drop in institutional prices for agricultural products and an increase in the costs of production for agricultural holdings in the Community. To achieve those aims and promote more market-oriented and sustainable agriculture, it is necessary to complete the shift from production support to producer support by introducing a system of decoupled income support for each farm. While decoupling will leave the actual amounts paid to farmers unchanged, it will significantly increase the effectiveness of the income aid. 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.'

5 Article 2 of that regulation defines the terms 'farmer', 'holding' and 'agricultural activity' as follows:

'(a) "farmer" shall mean a natural or legal person, or a group of natural or legal persons, whatever legal status is granted to the group and its members by national law, whose holding is situated within Community territory, as referred to in Article 299 of the Treaty, and who exercises an agricultural activity,

(b) "holding" shall mean all the production units managed by a farmer situated within the same Member State's territory,

(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’.

6 Article 5 of the regulation states:

‘1. 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 ...

2. Member States shall ensure that land which was under permanent pasture at the date provided for the area aid applications for 2003 is maintained under permanent pasture. ...

However a Member State may, in duly justified circumstances, derogate from the first subparagraph, provided that it takes action to prevent any significant decrease in its total permanent pasture area.

...’

7 Article 29 of Regulation No 1782/2003 provides:

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

8 Article 37(1) of that regulation provides:

‘The reference amount shall be the three-year average of the total amounts of payments, which a farmer was granted under the support schemes referred to in Annex VI, calculated and adjusted according to Annex VII, in each calendar year of the reference period referred to in Article 38.

...’

9 Article 38 of the same regulation states that ‘the reference period comprises the calendar years 2000, 2001 and 2002’.

10 Article 43 of Regulation No 1782/2003, entitled ‘Determination of the payment entitlements’, states:

‘1. 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 above mentioned average number of hectares.

...

2. The number of hectares referred to in paragraph 1 shall further include:

...

(b) all forage area in the reference period.

3. For the purpose of paragraph 2(b) of this Article, "forage area" shall mean the area of the holding that was available throughout the calendar year ... for rearing animals including areas in shared use and areas which were subject to mixed cultivation. The forage area shall not include:

— buildings, woods, ponds, paths,

— areas used for other crops eligible for Community aid or for permanent crops or horticultural crops,

— areas qualifying for the support system laid down for the producers of certain arable crops, used for the aid scheme for dried fodder or subject to a national or Community set-aside scheme.

4. The payment entitlements per hectare shall not be modified save as otherwise provided.'

11 Article 44 of Regulation No 1782/2003, entitled 'Use of payment entitlements', states:

'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.

...

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 proceeding the year of lodging the application for participation in the single payment scheme.

4. Member States may, in duly justified circumstances, authorise the farmer to modify his declaration on condition that he respects the number of hectares corresponding to his payment entitlements and the conditions for granting the single payment for the area concerned.'

Regulations (EC) No 795/2004 and (EC) No 796/2004,

12 Article 2(a) of Regulation of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Regulation No 1782/2003 (OJ 2004 L 141, p. 1 and corrigendum OJ 2004 L 291, p. 18), as amended by Commission Regulation (EC) No 1974/2004 of 29 October 2004 (OJ 2004 L 345, p. 85) ('Regulation No 795/2004') provides:

'For the purposes of Title III of Regulation (EC) No 1782/2003 and for the purposes 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'.

13 Article 2(e) of Regulation No 795/2004 defines 'permanent pasture' by reference to 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 Regulation (EC) No 1782/2003 (OJ 2004 L 141, p. 18 and corrigendum OJ 2005 L 37, p. 22, and OJ 2006 L 144, p. 30).

14 Article 2(2) of Regulation No 796/2004 defines 'permanent pasture' as 'land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that is not included in the crop rotation of the holding for five years or longer'.

Spanish law

15 Paragraph13 of the Orden del Departamento de Agricultura y Alimentación del Gobierno de Aragón, por la que se establecen las medidas para la solicitud, tramitación y concesión de la ayuda desacoplada de régimen de pago único, las ayudas acopladas por superficie y por ganado para la campaña 2007/2008 (año 2007), las medidas para declaración de otro tipo de superficies, las medidas para la solicitud de la indemnización compensatoria, las ayudas agroambientales y las medidas para la solicitud de las ayudas para la forestación de tierras agrícolas, para el año 2007 (Order of the Department of Agriculture and Food of the Autonomous Community of Aragon introducing measures relating to applications for, and the processing and granting of, decoupled aid under the Single Payment Scheme and coupled aid based on area and livestock for the agricultural year 2007/2008 (2007), measures relating to declarations for other types of areas, measures relating to applications for compensatory allowance and agro-environmental aid, and measures relating to applications for aid for the afforestation of agricultural land for the year 2007) of 24 January 2007 (*Boletín Oficial de Aragón*, No 13 of 31 January 2007, p. 1310, 'the Order of 24 January 2007'), provides in paragraph 1:

'Eligible hectares' shall mean:

(a) any agricultural area of the holding taken up by arable land, hop gardens, olive groves or olive copses, and permanent pasture.

Permanent pasture shall be eligible only in the case of holdings in respect of which a forage area has been taken into account for the allocation of single payment entitlements up to a maximum area not exceeding half the forage area taken into account for the allocation of single payment entitlements. Permanent pasture declared beyond the stipulations of the present paragraph shall not be considered eligible on the grounds that, in accordance with Article 29 of Regulation No 1782/2003, it is assumed that the beneficiary has artificially created the conditions for obtaining payment.

...'

16 Paragraph 16 of the Orden del Departamento de Agricultura y Alimentación del Gobierno de Aragón, por la que se establecen las medidas para la solicitud, tramitación y concesión de la ayuda desacoplada de régimen de pago único, la solicitud de asignación de derechos de pago único con cargo a la reserva nacional, las ayudas acopladas por superficie y por ganado para la campaña 2008/2009 (año 2008), las medidas para declaración de otro tipo de superficies, las medidas para la solicitud de la indemnización compensatoria, las ayudas agroambientales y las medidas para la solicitud de las ayudas para la forestación de tierras agrícolas, para el año 2008 [Order of the Department of Agriculture and Food of the Autonomous Community of Aragon introducing measures relating to applications for, and the processing and granting of, decoupled aid under the Single Payment Scheme, applications for the allocation of single payment entitlements from the national reserve and for coupled aid based on area and livestock for the agricultural year 2008/2009 (2008), measures relating to declarations for other types of areas, measures relating to applications for compensatory allowance and agro-environmental aid, and measures relating to applications for aid for the afforestation of agricultural land for the year

2008) of 24 January 2008 (*Boletín Oficial de Aragón*, No 12 of 30 January 2008, p. 956), contains provisions identical to those in Paragraph 13(1)(a) of the Order of 24 January 2007, together with an additional final subparagraph which provides the following:

'The preceding paragraph does not apply where the farmer demonstrates that at the time of the application he was the owner of a business engaged in rearing livestock and the permanent pasture identified was used to feed the livestock of that business.'

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

Case C-333/15

17 On 30 April 2007, the applicant in the main proceedings submitted, inter alia, a claim for the single payment under Regulation No 1782/2003, declaring to that end 48.47 hectares as 'eligible hectares justifying the allocation of normal aid'.

18 By decision of 11 June 2007, the Minister of Agriculture of the Autonomous Community of Aragon, however, adjusted the area declared by the applicant in the main proceedings, reducing it to 28.70 hectares on the ground that 'the permanent pasture exceeded the forage area'. Of the 63.48 payment entitlements which the applicant in the main proceedings had, 34.78 were excluded because they were considered to be 'unused'.

19 On 26 June 2009, the Minister of Agriculture of the Autonomous Community of Aragon rejected the administrative appeal brought by the applicant in the main proceedings against that decision, stating that Paragraph 13 of the Order of 24 January 2007 applied to her claim.

20 By judgment of 13 March 2013, the Tribunal Superior de Justicia de Aragón (High Court of Justice, Aragon, Spain) rejected the judicial proceedings brought by the applicant in the main proceedings against the Decision of 26 June 2009, holding that the Order of 24 January 2007 applied by the Minister of Agriculture of the Autonomous Community of Aragon was fully compatible with EU law.

Case C-334/15

21 On 22 April 2008, the applicant in the main proceedings submitted another claim for the single payment under Regulation No 1782/2003, declaring, inter alia, to that end 63.48 hectares as 'eligible hectares justifying the allocation of normal aid'.

22 By decision of 25 November 2008, the Minister of Agriculture of the Autonomous Community of Aragon again adjusted the area declared by the applicant in the main proceedings, reducing it to 29.01 hectares on the ground that 'the permanent pasture exceeded the forage area'. Of the 63.48 payment entitlements which the applicant in the main proceedings had, 34.47 were excluded because they were considered to be 'unused'.

23 On 2 March 2010, the Minister of Agriculture of the Autonomous Community of Aragon rejected the administrative appeal brought by the applicant in the main proceedings against that decision, stating that Paragraph 13 of the Order of 24 January 2007 applied to her claim.

24 By judgment of 5 April 2013, the Tribunal Superior de Justicia de Aragón (High Court of Justice, Aragon) rejected the judicial proceedings brought by the applicant in the main proceedings against the Decision of 2 March 2010, holding that the Order of 24 January 2007 applied by the Minister of Agriculture of the Autonomous Community of Aragon was fully compatible with EU law.

The questions referred for a preliminary ruling

25 The applicant in the main proceedings brought two appeals against the judgments of the Tribunal Superior de Justicia de Aragón (High Court of Justice, Aragon) on 13 March and 5 April 2013 before the Tribunal Supremo (Supreme Court), relying on, inter alia, an infringement of Article 44 of Regulation No 1782/2003 and Regulation No 795/2004. She claims, inter alia, that those regulations require that both arable land and permanent pasture are to be regarded as eligible hectares, without imposing any limitation, and only areas taken up by permanent crops, forests or used for non-agricultural activities are to be excluded from that category. Consequently, the authorities cannot exclude part of the hectares which she declared on the ground that they are permanent pasture, and the Order of 24 January 2007 therefore contravenes Regulation No 1782/2003 in that it deprives the term 'eligible hectare' of any substance.

26 In those circumstances, the Tribunal Supremo (Supreme Court) decided to stay the proceedings and to refer the following questions, which are formulated in the same terms in Cases C-333/15 and C-334/15, to the Court for a preliminary ruling:

'(1)

Must Articles 43 and 44 of Regulation No 1782/2003 be interpreted as precluding national legislation which excludes from treatment as eligible hectares all areas of permanent pasture declared by a farmer in excess of those taken into account at the relevant time for the purpose of determining the normal entitlements due to that farmer, making the inclusion of those areas, and therefore the replacement of arable land with pasture, conditional on the pasture being genuinely given over to the rearing of livestock in the specific financial year in respect of which the farmer seeks to activate the payment entitlements?

If that is to be answered in the negative:

(2) Must Article 29 of Regulation No 1782/2003, in excluding payments under support schemes for beneficiaries of such schemes "for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of that support scheme", be interpreted as not permitting States to adopt general measures which reduce the number of "eligible hectares" (of permanent pasture) by laying down general situations in which the beneficiary will be presumed to have artificially created the conditions required for obtaining payment, without establishing, specifically and in relation to a particular farmer, the activity carried on by that farmer and his conduct?'

27 By decision of the President of the Court of 28 July 2015, Cases C-333/15 and C-334/15 were joined for the purposes of the written and oral procedure and the judgment.

The questions referred for a preliminary ruling

The first question

28 By its first question, the referring court asks, in essence, whether Regulation No 1782/2003 must be interpreted to the effect that it precludes national legislation, such as that at issue in the main proceedings, which prevents areas of permanent pasture declared by a farmer which exceed the area of permanent pasture initially taken into account for determining the amount of her payment entitlements per hectare being taken into account as hectares eligible for area aid for an agricultural year, unless the farmer demonstrates that those areas are actually being used for the purposes of rearing livestock on her farm in that agricultural year.

29 It must be stated, first of all, that although Regulation No 1782/2003 was repealed by Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16), in view of the date of the facts in the main proceedings, the provisions of the former regulation must be applied.

30 Next, it must be noted that, by virtue of Regulation No 1782/2003, each farmer has the right every year, subject to compliance with a certain number of standards and requirements relating to good management and good agricultural and environmental conditions, and subject to the completion of declaration formalities, to the payment of area aid, the amount of which is determined in accordance with the payment entitlements per hectare allocated to the farmer when the scheme implemented by that regulation entered into force.

31 In accordance with Article 43(1) of Regulation No 1782/2003, each farmer's payment entitlement per hectare is calculated by dividing the reference amount, that is to say, the average of the amounts of direct aid granted to the farmer during the reference period of three years, namely 2000 to 2002, by the average number of hectares which gave rise to that aid in the same period, the total number of payment entitlements being equal to that average number of hectares. Article 43(2) of that regulation stipulates that all forage areas in the reference period are included in the calculation of the average number of hectares taken into account for the calculation of the payment entitlements.

32 Under Article 44(1) of Regulation No 1782/2003, any payment entitlement accompanied by a hectare eligible for area aid is to give rise to the payment of the amount fixed by the payment entitlement. Article 44(2) of that regulation provides that any agricultural area of the farmer's holding taken up by arable land and permanent pasture, except areas under permanent crops and forests, or used for non-agricultural activities, constitutes a hectare eligible for area aid.

33 Consequently, as the Advocate General stated in point 25 of her Opinion, in order for areas declared by a farmer with a view to obtaining area aid to be eligible within the meaning of Article 44(2), they must satisfy three conditions, that is to say, first, they must be an agricultural area, secondly, they must be part of the farmer's agricultural holding, and thirdly, they must not be taken up by permanent crops or forests, or be used for non-agricultural activities (see judgment of 2 July 2015 in *Demmer*, C-684/13, EU:C:2015:439, paragraph 54).

34 In that regard, first, Article 2(a) of Regulation No 795/2004 defines an agricultural area as being the total area taken up by arable land, permanent pasture and permanent crops. Article 2(2) of Regulation No 796/2004, to which Article 2(e) of Regulation No 795/2004 refers, defines permanent pasture as land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown), and which has not been included in the crop rotation of the holding for five years or longer.

35 It follows from those provisions that classification as 'permanent pasture', and consequently, as an 'agricultural area', depends on the actual use of the land in question, and that an area must be classified as 'agricultural' where, inter alia, it is used as permanent pasture (judgment of 14 October 2010 in *Landkreis Bad Dürkheim*, C-61/09, EU:C:2010:606, paragraph 37).

36 Secondly, Article 2(b) of Regulation No 1782/2003 defines 'agricultural holding' as all the production units managed by a farmer and situated within the territory of the same Member State, and Article 2(a) defines 'farmer' as being, inter alia, a natural or legal person whose holding is situated within the Union territory and who exercises an agricultural activity.

37 The Court has already held in that regard that agricultural areas are allocated to a farmer's holding where the farmer has the power to manage those areas for the purposes of an agricultural activity, that is to say, where the farmer enjoys a degree of autonomy with regard to those areas sufficient for

the carrying-out of his agricultural activity (see judgments of 14 October 2010 in *Landkreis Bad Dürkheim*, C-61/09, EU:C:2010:606, paragraphs 58 and 62; of 2 July 2015 in *Wree*, C-422/13, EU:C:2015:438, paragraph 44; and in *Demmer*, C-684/13, EU:C:2015:439, paragraph 58).

38 It must be pointed out that, in the disputes in the main proceedings, it is common ground that the hectares declared by the applicant in the main proceedings with a view to obtaining area aid for the agricultural years 2007 and 2008 are part of the agricultural area of her holding, and that the permanent pasture areas declared in fact come under that classification. In any event, it is for the referring court to carry out the necessary checks in that regard.

39 Thirdly, it must be pointed out, first, that Regulation No 1782/2003, as is clear from paragraph 30 above, does not make the eligibility for area aid of permanent pasture areas of an agricultural holding subject to the condition that they must correspond to the forage areas initially taken into account for the purposes of calculating the payment entitlements of that holding.

40 Secondly, Article 2(c) of Regulation No 1782/2003 defines the term 'agricultural activity' inter alia as maintaining the land in good agricultural and environmental condition as established under Article 5 of that regulation, with that activity being taken into consideration alongside the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes.

41 To that end, Article 5(1) of Regulation No 1782/2003 provides that Member States are to ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition. Moreover, Article 5(2) of that regulation provides that Member States are to ensure that land which was under permanent pasture at the date laid down for the area aid applications for 2003 is maintained under permanent pasture.

42 In that regard, Regulation No 1782/2003 defines the various obligations to maintain permanent pasture which both Member States and farmers must comply with. Article 3 of that regulation thus provides, inter alia, that the objective for the Member States is to maintain, at national or regional level, the ratio of the land under permanent pasture in relation to the total agricultural area. Article 4 of that regulation adds, inter alia, that, where that ratio is decreasing to the detriment of permanent pasture, the Member State concerned must provide for the obligation that farmers do not convert land under permanent pasture without prior authorisation.

43 It follows that the permanent pasture areas of an agricultural holding are eligible for area aid where they come within the agricultural area of that holding, and that, as the Advocate General stated in point 30 of her Opinion, maintaining them in good agricultural and environmental condition, in itself, amounts to an agricultural activity; the fact that the grass and other herbaceous forage, which under Article 2(2) of Regulation No 796/2004 those areas must be used to produce, are not used directly for the purposes of rearing livestock on the farm is immaterial.

44 That analysis is borne out by the objectives of Regulation No 1782/2003 and by the role of permanent pasture in achieving those objectives.

45 First, Regulation No 1782/2003 states in recital 4 that permanent pasture has a positive environmental effect and that it is appropriate to adopt measures to encourage the maintenance of existing permanent pasture to avoid a massive conversion into arable land.

46 In that regard, the Court has already held that environmental protection, one of the essential objectives of the European Union, must be regarded as forming part of the common agricultural policy (judgment of 16 July 2009 in *Horvath*, C-428/07, EU:C:2009:458, paragraph 29) and, more specifically, that it

forms part of the objectives of the single payment scheme (judgment of 14 October 2010 in *Landkreis Bad Dürkheim*, C-61/09, EU:C:2010:606, paragraph 39), as is clear from recitals 3, 21 and 24 of Regulation No 1782/2003.

47 Secondly, Regulation No 1782/2003, as is clear from recital 24, aims to replace the previous system of direct production aid with a system of direct aid for agricultural holdings, decoupled from production and paid directly to the farmers to supplement their income (see judgment of 5 February 2015 in *Agrooikosystimata*, C-498/13, EU:C:2015:61, paragraph 40).

48 It follows that all the permanent pasture areas which come within the agricultural area of an agricultural holding are eligible for area aid for the purposes of Article 44(2) of Regulation No 1782/2003, and their eligibility is not subject to the condition that those areas correspond to the forage areas initially included in the calculation of the average number of hectares taken into account for the purposes of calculating the payment entitlements, or the condition that the permanent pasture areas which exceed those forage areas are actually used for the purposes of rearing livestock on the farm, provided that they are used for an agricultural activity within the meaning of that regulation, this being a matter for the referring court to determine.

49 Consequently, the answer to be given to the first question is that Regulation No 1782/2003 must be interpreted to the effect that it precludes national legislation, such as that at issue in the main proceedings, which prevents areas of permanent pasture declared by a farmer which exceed the area of permanent pasture initially taken into account for determining the amount of her payment entitlements per hectare being taken into account as hectares eligible for area aid for an agricultural year, unless the farmer demonstrates that those areas are actually being used for the purposes of rearing livestock on her farm in that agricultural year.

The second question

50 In light of the reply to the first question, there is no need to reply to the second question, since it was referred to the Court only in the event of a negative reply to the first question.

Costs

51 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 (Eighth Chamber) hereby rules:

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, as amended by Council Regulation (EC) No 2012/2006 of 19 December 2006 must be interpreted to the effect that it precludes national legislation, such as that at issue in the main proceedings, which prevents areas of permanent pasture declared by a farmer which exceed the area of permanent pasture initially taken into account for determining the amount of her payment entitlements per hectare being taken into account as hectares eligible for area aid for an agricultural year, unless the farmer demonstrates that those areas are actually being used for the purposes of rearing livestock on her farm in that agricultural year.

[Signatures]