Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

20 May 2021 *

(Reference for a preliminary ruling – State aid – Agriculture sector – Slaughtering of animals affected by infectious diseases – Compensation for farmers – Notification and standstill requirements – Article 108(3) TFEU – Concepts of 'existing aid' and 'new aid' – Regulation (EC) No 659/1999 – Exemptions by categories of aid – Regulation (EU) No 702/2014 – *De minimis* aid – Regulation (EU) No 1408/2013)

In Case C-128/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 14 November 2018, received at the Court on 18 February 2019, in the proceedings

Azienda Sanitaria Provinciale di Catania

v

Assessorato della Salute della Regione Siciliana,

intervening party:

AU,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, N. Piçarra (Rapporteur), D. Šváby, S. Rodin and K. Jürimäe, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Azienda Sanitaria Provinciale di Catania, by A. Ravì, avvocato,

* Language of the case: Italian.

– the Italian Government, by G. Palmieri, acting as Agent, and by P. Garofoli, avvocato dello Stato,

– the European Commission, by C. Georgieva and D. Recchia, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 December 2020,

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of Articles 107 and 108 TFEU.

2 That request has been made in proceedings between the Azienda Sanitaria Provinciale di Catania (Regional Health Authority of Catania, Italy) ('the ASPC') and the Assessorato della Salute della Regione Siciliana (Health Directorate of the Region of Sicily, Italy) concerning an application for an order that the ASPC pay compensation to AU, a farmer who had been obliged to slaughter animals affected by infectious diseases.

Legal context

EU law

Regulation (EC) No 659/1999

3 Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1) sets out, in Article 1(b)(ii) and 1(c) thereof:

'For the purpose of this Regulation:

…

(b) "existing aid" shall mean:

…

(ii) authorised aid, that is to say, aid schemes and individual aid which have been authorised by the Commission or by the Council;

…

(c) "new aid" shall mean all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid'.

Regulation (EC) No 794/2004

4 Article 4 of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Regulation No 659/1999 (OJ 2004 L 140, p. 1), entitled 'Simplified notification procedure for certain alterations to existing aid', is worded as follows:

'1. For the purposes of Article 1(c) of Regulation … No 659/1999, an alteration to existing aid shall mean any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the [internal] market. However, an increase in the original budget of an existing aid scheme by up to 20% shall not be considered an alteration to existing aid.

2. The following alterations to existing aid shall be notified on the simplified notification form set out in Annex II:

(a) increases in the budget of an authorised aid scheme exceeding 20%;

(b) prolongation of an existing authorised aid scheme by up to six years, with or without an increase in the budget;

…'

Regulation (EU) No 1408/2013

5 Under Article 3(1) and (2) of Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid in the agriculture sector (OJ 2013 L 352, p. 9):

'1. Aid measures shall be deemed not to meet all the criteria in Article 107(1) [TFEU], and shall therefore be exempt from the notification requirement in Article 108(3) [TFEU], if they fulfil the conditions laid down in this Regulation.

2. The total amount of *de minimis* aid granted per Member State to a single undertaking shall not exceed EUR 15 000 over any period of 3 fiscal years.'

6 Article 7 of that regulation, entitled 'Transitional provisions', provides, in paragraph 1, that:

'This Regulation shall apply to aid granted before its entry into force if the aid fulfils all the conditions laid down in this Regulation. Any aid which does not fulfil those conditions will be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.'

Regulation (EU) No 702/2014

7 Article 2 of Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 [TFEU] (OJ 2014 L 193, p. 1), which entered into force on 1 July 2014, lays down, in points 12 and 29, the following definitions:

'(12) "individual aid" means:

…

(b) awards of aid to individual beneficiaries on the basis of an aid scheme;

…

(29) "date of granting the aid" means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime'.

8 Article 3 of that regulation, entitled 'Conditions for exemption', provides as follows:

'Aid schemes, individual aid granted under aid schemes and ad hoc aid shall be compatible with the internal market within the meaning of Article 107(2) or (3) [TFEU] and shall be exempted from the notification requirement of Article 108(3) [TFEU] provided that such aid fulfils all the conditions laid down in Chapter I of this Regulation, as well as the specific conditions for the relevant category of aid laid down in Chapter III of this Regulation.'

9 As regards the conditions laid down in Chapter I of Regulation No 702/2014, Article 4 thereof establishes gross grant equivalents beyond which that regulation does not apply to individual aid, while Articles 5 and 6 of that regulation make its application subject to the respective conditions that the aid be transparent and have incentive effect. Articles 9 and 10 of that regulation concern, respectively, publication and information and the avoidance of double publication.

10 As regards the conditions laid down in Chapter III of Regulation No 702/2014, Article 26(1) and (6) of that regulation provides as follows:

'1. Aid to [small and medium-sized enterprises (SMEs)] active in primary agricultural production for the costs of the prevention, control and eradication of animal diseases or plant pests and aid to compensate such undertakings for losses caused by those animal diseases or plant pests shall be compatible with the internal market within the meaning of Article 107(3)(c) [TFEU] and shall be exempted from the notification requirement of Article 108(3) thereof where it fulfils the conditions laid down in paragraphs 2 to 13 of this Article and in Chapter I.

…

6. Aid schemes shall be introduced within three years from the date of the occurrence of the cost or loss caused by the animal disease or plant pest.

Aid shall be paid out within four years from that date.'

11 Article 51 of Regulation No 702/2014, entitled 'Transitional provisions', provides, in paragraph 1, that that regulation 'shall apply to individual aid granted before the date of entry into force of this Regulation, if that individual aid fulfils all the conditions laid down in this Regulation, with the exception of Articles 9 and 10'.

Italian law

Regional Law No 12/1989

12 Article 1 of Legge Regione Sicilia, n. 12 – Interventi per favorire il risanamento e il reintegro degli allevamenti zootecnici colpiti dalla tubercolosi, dalla brucellosi e da altre malattie infettive e diffusive e contributi alle associazioni degli allevatori (Sicilian Regional Law No 12, laying down measures to facilitate the remediation and reintegration of livestock farms affected by tuberculosis, brucellosis and other infectious and widespread diseases and providing for contributions to farmers' associations), of 5 June 1989 (*Gazzetta ufficiale della Regione Sicilia* No 28 of 7 June 1989) ('Regional Law No 12/1989) is worded as follows:

'1. For the remediation of bovine farms affected by tuberculosis, brucellosis and leucosis, and of ovine and caprine farms affected by brucellosis, in accordance with [legge 9 giugno 1964, n. 615, (Law No 615 of 9 June 1964)] and [leggi 23 gennaio 1968, n. 33 e n. 34 (Laws No 33 and No 34 of 23 January1968)], as subsequently amended and supplemented, compensation shall be granted to owners of bovine animals slaughtered and/or culled as a result of being affected by tuberculosis, brucellosis and leucosis, and to owners of ovine and caprine animals slaughtered and/or culled as a result of being affected by brucellosis, in addition to the compensation provided for in the national provisions in force, to the extent indicated in the table annexed to this law.

2. The Assessore regionale per la sanità [(Regional Health Board)] shall be required to adjust annually, by way of decree, the additional allowance provided for by Regional Law No 12/1989 … to a degree commensurate with annual increases in State grants in that field, within the limits of the budgetary appropriations laid down by the present law.

…

4. For the same purposes as those referred to in the preceding paragraphs and in order to facilitate the carrying-out of remediation measures on livestock farms, a fee of 2 000 Italian lira (ITL) [(approximately EUR 1.03)] shall be paid, in addition to that provided for by the national provisions in force, to self-employed veterinary professionals authorised to carry out the operations referred to in the ministerial decrees of 1 June 1968 and 3 June 1968, for each bovine animal inspected. In any event, total compensation may not exceed ITL 3 000 [(approximately EUR 1.55)].

5. For the purposes of the present Article, expenditure of ITL 7 000 million [(approximately EUR 3 615 000)] for the current financial year and ITL 6 000 million [(approximately EUR 3 099 000)] for each of the financial years 1990 and 1991 shall be allocated.'

Regional Law No 40/1997

13 Under Article 11 of Legge Regione Sicilia, n. 40 – Variazioni al bilancio della Regione ed al bilancio dell'Azienda delle foreste demaniali della regione siciliana per l'anno finanziario 1997 – Assestamento. Modifica dell'articolo 49 della legge regionale 7 agosto 1997, n. 30 (Sicilian Regional Law No 40, providing for amendments to the Regional budget and the budget of the

Sicilian Regional Agency for public forests, for the financial year 1997 – Amendment of Article 49 of Regional Law No 30 of 7 August 1997) of 7 November 1997 (*Gazzetta ufficiale della Regione Sicilia* No 62 of 12 November 1997) ('Regional Law No 40/1997):

'In order to realise the objectives laid down in Article 1 of [Regional Law No 12/1989], as subsequently amended and supplemented, expenditure of ITL 16 billion [(approximately EUR 8 263 310)] is authorised for the payment of amounts due from local health authorities in Sicily to owners of animals slaughtered as a result of being affected by tuberculosis, by brucellosis, by leucosis and by other infectious diseases in the years 1993, 1994, 1995, 1996 and 1997, and for payment, in respect of the same years, of the fees due to self-employed veterinary surgeons involved in remediation activities'.

Regional Law No 22/1999

14 Article 7 of Legge Regione Sicilia n. 22 – Interventi urgenti per il settore agricolo (Sicilian Regional Law No 22, providing for urgent interventions in the agriculture sector) of 28 September 1999 (*Gazzetta ufficiale della Regione Sicilia* No 47 of 1 October 1999) ('Regional Law No 22/1999') allocated, 'for the financial year 1999, expenditure of ITL 20 billion [(approximately EUR 10 329 138)] for the objectives set out in Article 11 of Regional Law No 40/1997'.

Regional Law No 19/2005

15 Under Article 25(16) of Legge Regione Sicilia n. 19 – Misure finanziarie urgenti e variazioni al bilancio della Regione per l'esercizio finanziario 2005. Disposizioni varie (Sicilian Regional Law No 19, laying down urgent financial measures and amending the Region's budget for the financial year 2005. Miscellaneous provisions) of 22 December 2005 (*Gazzetta ufficiale della Regione Sicilia* No 56 of 23 December 2005) ('Regional Law No 19/2005):

'In order to realise the objectives laid down in Article 1 of [Regional Law No 12/1989], and pursuant to and in accordance with the provisions of Article 134 of [legge regionale della Sicilia n. 32 (Sicilian Regional Law No 32)] of 23 December 2000, expenditure of EUR 20 000 000 is authorised for the payment of amounts due from local health authorities in Sicily to owners of animals slaughtered as a result of being affected by infectious diseases in the period between 2000 and 2006, and for payment of the fees due to self-employed veterinary surgeons involved in remediation activities. For the purposes of this paragraph, the expenditure of EUR 10 million [base provision 10.3.1.3.2, chapter 417702] is allocated for the 2005 financial year. For subsequent financial years, arrangements shall be made pursuant to Article 3(2)(i) of Regional Law No 10 of 27 April 1999, as amended and supplemented'.

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

16 AU brought an application before the Tribunale di Catania (District Court, Catania, Italy) seeking an order that the ASPC pay him the sum of EUR 11 930.08 in compensation as provided for in Article 1 of Regional Law No 12/1989. That compensation is financed in accordance with Article 25(16) of Regional Law No 19/2005 to support farmers in the livestock sector who have been forced to slaughter cattle affected by infectious diseases ('the compensation at issue in the main proceedings'). By Order No 81/08, that court granted that application.

17 The ASPC, however, sought to have that order set aside and succeeded in that regard by means of a judgment delivered by that court.

18 By judgment of 24 July 2013, the Corte d'appello di Catania (Court of Appeal, Catania, Italy) upheld the appeal brought by AU and reversed that judgment of the lower court.

19 That court rejected the ASPC's argument that the measure laid down in Article 25(16) of Regional Law No 19/2005 ('the 2005 measure') constituted State aid which could not be implemented before the Commission had declared it compatible with the internal market.

20 That court noted that, by decision of 11 December 2002 on State aids NN 37/98 (ex N 808/97) and NN 138/02 – Italy (Sicily) – Aid following epizootic diseases: Article 11 of Regional Law No 40/1997 'Changes to the Region's balance sheet and to the balance sheet of the State Forest Agency for the financial year 1997 – Amendment of Article 49 of Regional Law No 30/1997' (aid NN 37/98) and of Article 7 of Regional Law No 22/1999 'Urgent interventions for the agricultural sector' (aid NN 138/02) [C(2002) 4786] ('the 2002 decision'), the Commission had already authorised the regional-law provisions, namely Article 11 of Regional Law No 40/1997 and Article 7 of Regional Law No 22/1999, as a State aid measure compatible with the internal market which had financed the compensation at issue in the main proceedings up until 1997 ('the 1997 and 1999 measures'). The Corte d'appello di Catania (Court of Appeal, Catania) took the view that the Commission's finding in the 2002 decision, to the effect that the 1997 and 1999 measures were compatible with the internal market, extended to the 2005 measure, which also financed that compensation.

21 In appeal proceedings brought by the ASPC against the judgment of the Corte d'appello di Catania (Court of Appeal, Catania), the referring court, namely the Corte suprema di cassazione (Supreme Court of Cassation, Italy), expresses uncertainty as to whether the 2005 measure constitutes State aid within the meaning of Article 107(1) TFEU and, if so, whether that measure is compatible with Articles 107 and 108 TFEU.

22 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) On the basis of [Articles 107 and 108 TFEU] and the "Community Guidelines for State aid in the agriculture sector" [(OJ 2000 C 28, p. 2)], does the measure set out in Article 25(16) of [Regional Law No 19/2005], under which, "in order to realise the objectives laid down in Article 1 of [Regional Law No 12/1989], and pursuant to and in accordance with the provisions of Article 134 of Sicilian Regional Law No 32 of 23 December 2000, expenditure of EUR 20 000 000 is authorised for the payment of amounts due from [local health authorities] in Sicily to owners of animals slaughtered as a result of being affected by infectious and widespread diseases in the period between 2000 and 2006, and for payment of the fees [due] to self-employed veterinary [surgeons] involved in the remediation activities. For the purposes of this paragraph, expenditure of EUR 10 000 000 [base provision 10.3.1.3.2, chapter 417702] is authorised for the 2005 financial year. For subsequent financial years, arrangements shall be made pursuant to Article 3(2)(i) of Regional Law No 10 of 27 April 1999, as amended", constitute State aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods?

(2) Although the provision laid down in Article 25(16) of [Regional Law No 19/2005] … might in principle constitute State aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, can this nonetheless be recognised as being compatible with Articles [107 and 108 TFEU] in view of the reasons that led the

[Commission], by means of its [2002 decision], to take the view, where the criteria provided for in the "Community Guidelines for State aid in the agriculture sector" are met, that similar provisions contained in Article 11 of [Regional Law No 40/1997] and in Article 7 of [Regional Law No 22/1999] were compatible with [Articles 107 and 108 TFEU]?'

Procedure before the Court

23 Due to the risks linked to the coronavirus pandemic, the hearing scheduled for 30 April 2020 was cancelled.

24 Consequently, by decision of 6 April 2020, the questions to which the parties had previously been invited to reply at the hearing were converted into questions requiring a written response on the part of the interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union. In addition, by way of measures of organisation of procedure provided for in Article 62(1) of the Rules of Procedure of the Court of Justice, the Italian Republic was requested to answer additional questions.

25 The ASPC, the Italian Republic and the Commission replied to the questions within the time limits set by the Court.

Consideration of the questions referred

The second question

26 As regards the second question, which it is appropriate to examine first, the Commission points out in its written observations that it has exclusive competence to assess the compatibility of aid measures with the internal market, subject to review by the Courts of the European Union, and it expresses the view that that question, which concerns the issue of whether the 2005 measure is compatible with Article 107(2) and (3) TFEU, must therefore be declared inadmissible.

27 It must be noted, in this regard, that, in that question, the referring court also makes reference to the 2002 decision, by which the Commission had authorised measures similar to the 2005 measure. Moreover, the referring court itself acknowledges that the national courts do not have jurisdiction to rule on the compatibility of the compensation at issue in the main proceedings with the internal market.

28 However, until a final decision has been taken by the Commission, it is for the national court to ensure that the rights of individuals are safeguarded in the case where State authorities may potentially be infringing the obligations referred to in Article 108(3) TFEU. Such disregard, if relied on by individuals and confirmed by the national courts, must lead those courts to draw all the consequences in accordance with their national law, without their decisions, however, implying an assessment of the compatibility of the aid with the internal market, which is a matter within the exclusive competence of the Commission, subject to review by the Court (judgment of 2 May 2019, *A-Fonds*, C-598/17, EU:C:2019:352, paragraph 46). In that regard, the national court may have to request the Court, under Article 267 TFEU, to interpret provisions of EU law where this is necessary to resolve the dispute brought before it.

29 By its second question, the referring court is asking, in essence, whether Article 108(3) TFEU must be interpreted as meaning that a measure introduced by a Member State in order to finance, for a period extending over several years and up to a maximum amount of EUR 20 million, both compensation to support farmers who have been obliged to slaughter animals affected by infectious diseases and payment of the fees due to self-employed veterinary surgeons involved in remediation activities, must be subject to the preliminary-examination procedure, even in the case where the Commission had authorised similar measures.

30 It must be recalled at the outset that Article 108 TFEU establishes separate procedures for existing and new State aid. Whereas Article 108(1) TFEU allows for existing aid to be implemented as long as the Commission has not found it to be incompatible with the internal market, Article 108(3) TFEU provides that plans to grant or alter existing aid must be notified, in sufficient time, to the Commission and may not be implemented until the examination procedure has resulted in a final decision (see, to that effect, judgment of 20 September 2018, *Carrefour Hypermarchés and Others*, C-510/16, EU:C:2018:751, paragraph 25 and the case-law cited).

31 It is therefore necessary to examine whether the measure at issue in the main proceedings may be classified as 'existing aid'.

32 Under Article 1(b)(ii) of Regulation No 659/1999, the concept of 'existing aid' encompasses 'authorised aid, that is to say, aid schemes and individual aid which have been authorised by the Commission or by the Council', whereas, under Article 1(c) of that regulation, 'new aid' means 'all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid'.

33 Furthermore, the first sentence of Article 4(1) of Regulation No 794/2004 provides that, 'for the purposes of Article 1(c) of Regulation [No 659/1999], an alteration to existing aid shall mean any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the [internal] market'.

34 In the present case, it is common ground that the 1997 and 1999 measures, which were intended to finance the compensation at issue in the main proceedings and which, for that purpose, allocated ITL 16 billion (approximately EUR 8 263 310) and ITL 20 billion (approximately EUR 10 329 138) respectively for the period from 1993 up to 1997, were authorised by the Commission in the 2002 decision. Those measures therefore constitute, as the Advocate General noted in point 48 of his Opinion, an authorised aid scheme, and, therefore, 'existing aid' within the meaning of Article 1(b)(ii) of Regulation No 659/1999.

35 As regards the 2005 measure, while it has the same objective as the 1997 and 1999 measures, namely the refinancing of compensation as laid down in Article 1 of Regional Law No 12/1989, it provides for both, as the Advocate General noted in point 53 of his Opinion, an increase of EUR 20 million in the budget allocated to the aid scheme authorised by the Commission in its 2002 decision and a prolongation of the compensation refinancing period from 2000 to 2006.

36 Such changes to the authorised aid scheme cannot, however, be regarded as being purely formal or administrative in nature within the meaning of the first sentence of Article 4(1) of Regulation No 794/2004. On the contrary, they constitute an alteration to existing aid within the meaning of Article 1(c) of Regulation No 659/1999.

37 It follows from the Court's case-law that prolonging the period for application of a previously authorised aid scheme, whether or not combined with an increase in the budget allocated to that scheme, gives rise to new aid, distinct from the authorised aid scheme (see, to that effect, judgments of 20 May 2010, *Todaro Nunziatina & C.*, C-138/09, EU:C:2010:291, paragraphs 46 and 47; of 4 December 2013, *Commission* v *Council*, C-111/10, EU:C:2013:785, paragraph 58; of 4 December 2013, *Commission* v *Council*, C-121/10, EU:C:2013:784, paragraph 59; and of 26 October 2016, *DEI and Commission* v *Alouminion tis Ellados*, C-590/14 P, EU:C:2016:797, paragraphs 50, 58 and 59).

38 Likewise, Article 4(2)(b) of Regulation No 794/2004 lists the 'prolongation of an existing authorised aid scheme by up to six years, with or without an increase in the budget', among the alterations made to existing aid which must, in principle, be notified to the Commission by means of the simplified notification form.

39 In those circumstances, a measure providing for both the prolongation of an authorised aid scheme from 2000 to 2006 and the increase of EUR 20 million in the budget allocated to that scheme must be deemed to constitute 'new aid' within the meaning of Article 1(c) of Regulation No 659/1999.

40 A Member State intending to grant such aid is therefore, in principle, required to comply with the obligation to give prior notification of that aid to the Commission and to refrain from implementing that aid until that procedure has resulted in a final decision, as laid down in Article 108(3) TFEU.

41 However, it is necessary to examine whether, as the Italian Government submits in its written observations, the 2005 measure may be exempted from that notification requirement pursuant to Articles 3 and 26 of Regulation No 702/2014.

42 Regulation No 702/2014, which was adopted pursuant to Article 108(4) TFEU, provides, in Article 3, that, notwithstanding the general obligation to notify each measure intended to grant or alter 'new aid' within the meaning of Article 108(3) TFEU, which constitutes one of the fundamental features of the system of monitoring in the field of State aid, a Member State may, under that regulation, rely on the exemption from that requirement if an aid measure which it adopted or an aid project which it plans to adopt fulfils the conditions laid down therein. As a qualification of that general obligation, those conditions must be interpreted strictly. Conversely, the notification and standstill requirements laid down in Article 108(3) TFEU remain applicable to State aid not covered by Regulation No 702/2014 (see, by analogy, judgment of 5 March 2019, *Eesti Pagar*, C-349//17, EU:C:2019:172, paragraphs 59, 60 and 86 and the case-law cited).

43 As regards, in the first place, the applicability *ratione temporis* of Regulation No 702/2014 to the dispute in the main proceedings, Article 51 of that regulation, which concerns transitional provisions, provides, in paragraph 1, that that regulation applies to individual aid granted before the date of its entry into force, if that aid fulfils all the conditions laid down in that regulation, with the exception of Articles 9 and 10.

44 According to point 12(b) of Article 2 of Regulation No 702/2014, the concept of 'individual aid', within the meaning of that regulation, includes all awards of aid to individual beneficiaries on the basis of an aid scheme. In addition, the 'date of granting the aid' is defined in point 29 of Article 2 of that regulation as being the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime.

45 Although Regulation No 702/2014 does not define the term 'granted', referred to in Article 51(1) of that regulation, it follows from the Court's case-law that, from the moment at which the right to receive support through State resources is conferred on the beneficiary under the applicable national legislation, the aid must be deemed to be granted, with the result that the actual transfer of the resources in question is not decisive (see, to that effect, judgments of 21 March 2013, *Magdeburger Mühlenwerke*, C-129/12, EU:C:2013:200, paragraph 40, and of 19 December 2019, *Arriva Italia and Others*, C-385/18, EU:C:2019:1121, paragraph 36).

46 It follows that 'individual aid' within the meaning of point 12 of Article 2 of Regulation No 702/2014, which was granted before 1 July 2014 on the basis of an aid scheme such as the 2005 measure, comes within the temporal scope of that regulation.

47 In the second place, as regards the conditions which must be fulfilled under Regulation No 702/2014 in order for an exemption to be possible from the general notification requirement, it follows from Article 3 of that regulation that, in order for individual aid granted under aid schemes to be exempted from that requirement, that aid must fulfil all the conditions laid down in Chapter I of that regulation, as well as the specific conditions for the relevant category of aid laid down in Chapter III of that regulation.

48 As regards the conditions set out in Chapter I of Regulation No 702/2014, Article 4 thereof establishes gross grant equivalents beyond which that regulation does not apply to individual aid, while Articles 5 and 6 of that regulation make its application contingent on the respective conditions that the aid be transparent and have incentive effect. Articles 7 and 8 of Regulation No 702/2014 respectively concern aid intensity and eligible costs and the rules on cumulation. As for Articles 9 and 10 of that regulation, which concern, respectively, publication and information and the avoidance of double publication, it follows from Article 51(1) of that regulation that individual aid granted before its entry into force is not included in the aid which must fulfil the conditions laid down in those Articles 9 and 10.

49 Concerning the specific conditions laid down in Chapter III of Regulation No 702/2014, Article 26 of that regulation concerns aid to cover the costs of prevention, control and eradication of animal diseases and intended to make good the damage caused by such diseases.

50 According to Article 26(1) of Regulation No 702/2014, aid granted to small and medium-sized enterprises active in primary agricultural production to support the costs of preventing, controlling and eradicating, in particular, animal diseases and aid to compensate such undertakings for losses caused, in particular, by those animal diseases, is exempted from the notification requirement provided for in Article 108(3) TFEU in the case where that aid meets the conditions laid down in paragraphs (2) to (13) of Article 26 and in Chapter I of Regulation No 702/2014. Among those conditions, the second subparagraph of Article 26(6) provides that such aid must be paid out within four years from the date of the occurrence of the cost or loss caused by the animal disease.

51 Finally, as regards the question, raised by the Commission in its response to the Court's questions, as to whether the compensation claimed by AU under the 2005 measure constitutes *de minimis* aid within the meaning of Regulation No 1408/2013, which entered into force on 1 January 2014, it must be noted that Regulation No 1408/2013 applies, pursuant to Article 7(1) thereof, the wording of which is the same as that of Article 51(1) of Regulation No 702/2014, to aid granted before its entry into force if that aid fulfils all the conditions laid down in that regulation.

52 Furthermore, according to Article 3(1) of that regulation, aid measures are deemed not to meet all the criteria set out in Article 107(1) TFEU, and are therefore exempt from the general notification requirement in Article 108(3) TFEU, if they fulfil all of the conditions set out in that regulation, including that laid down in Article 3(2) therein according to which, as the Advocate General notes in point 85 of his Opinion, the total amount of the *de minimis* aid granted per Member State to a single undertaking must not exceed EUR 15 000 over any period of three fiscal years.

53 It follows from all of the foregoing considerations that Article 108(3) TFEU must be interpreted as meaning that a measure introduced by a Member State to finance, for a period extending over several years and up to a maximum amount of EUR 20 million, both compensation to support farmers who have been obliged to slaughter animals affected by infectious diseases and payment of fees due to self-employed veterinary surgeons involved in remediation activities, must be subject to the preliminary-examination procedure laid down in that provision in the case where that measure is not covered by an authorisation decision of the Commission to that effect, unless that measure fulfils the conditions laid down by Regulation No 702/2014 or the conditions laid down by Regulation No 1408/2013.

The first question

54 In view of the answer given to the second question, there is no need to examine the first question.

Costs

55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 108(3) TFEU must be interpreted as meaning that a measure introduced by a Member State to finance, for a period extending over several years and up to a maximum amount of EUR 20 million, both compensation to support farmers who have been obliged to slaughter animals affected by infectious diseases and payment of fees due to self-employed veterinary surgeons involved in remediation activities, must be subject to the preliminary-examination procedure laid down in that provision in the case where that measure is not covered by an authorisation decision of the European Commission to that effect, unless that measure fulfils the conditions laid down by Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 [TFEU], or the conditions laid down by Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid in the agriculture sector.

[Signatures]