Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

17 December 2020*

(Reference for a preliminary ruling – Common agricultural policy – Regulation (EU) No 1307/2013 – Rules for direct payments to farmers under support schemes – Basic payment scheme – First sentence of Article 24(2) – Concept of 'eligible hectare at the farmer's disposal' – Unlawful use of the area concerned by a third party – Article 32(2)(b)(ii) – Application for activation of payment entitlements for an afforested area – Concept of 'area which gave a right to payments in 2008' – Single payment scheme or single area payment scheme)

In Case C-216/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany), made by decision of 28 February 2019, received at the Court on 11 March 2019, in the proceedings

WQ

v

Land Berlin,

THE COURT (Sixth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, C. Toader and M. Safjan, Judges,

Advocate General: P. Pikamäe,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 25 June 2020,

after considering the observations submitted on behalf of:

– WQ, by himself,

– the German Government, by J. Möller and D. Klebs, acting as Agents,

– the Spanish Government, by S. Centeno Huerta, J. Ruiz Sánchez and A. Rubio González, acting as Agents,

* Language of the case: German.

– the French Government, by C. Mosser, acting as Agent,

– the Netherlands Government, by M.K. Bulterman, J. Langer and J.M. Hoogveld, acting as Agents,

– the European Commission, by B. Hofstötter and A. Sauka, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608 and corrigendum OJ 2016 L 130, p. 23).

2 The request has been made in proceedings between WQ and Land Berlin (Land of Berlin, Germany) concerning the rules applicable where two applications are made for the allocation of payment entitlements in respect of the same area eligible for agricultural aid under support schemes within the framework of the common agricultural policy (CAP), and the rules applicable to the concept of 'eligible hectare' for the purposes of the allocation of payment entitlements for an afforested area.

The legal framework

Regulation (EC) No 1257/1999

3 The first subparagraph of Article 31(1) of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1999 L 160, p. 80) provides as follows:

'Support shall be granted for the afforestation of agricultural land provided that such planting is adapted to local conditions and is compatible with the environment.'

Regulation (EC) No 1782/2003

4 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) 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 479/2008 of 29 April 2008 (OJ 2008 L 148, p. 1), provided, in Article 2(a) thereof, that:

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

"farmer" means 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 [European] Community territory, as referred to in Article [299 EC], and who exercises an agricultural activity'.

5 Article 22 of that regulation entitled 'Aid applications', which is contained in Title II of that regulation, itself entitled 'General provisions', provided:

'1. Each year, a farmer shall submit an application for direct payments subject to the integrated system, indicating, where applicable:

– all agricultural parcels of the holding,

…

– the number and amount of payment entitlements,

– any other information provided for by this Regulation or by the Member State concerned.

2. A Member State may decide that the aid application needs to contain only changes with respect to the aid application submitted the previous year. A Member State shall distribute pre-printed forms based on the areas determined in the previous year and supply graphic material indicating the location of those areas and, where appropriate, the positioning of olive trees.

…'

6 Article 23 of that regulation, entitled 'Verification of eligibility conditions', provided in paragraphs 1 and 2 thereof:

'1. Member States shall carry out administrative checks on the aid applications including a verification of the eligible area and the corresponding payment entitlements.

2. Administrative checks shall be supplemented by a system of on-the-spot checks to verify eligibility for the aid. …'

7 Article 25 of that regulation, entitled 'Controls on cross compliance', provided in paragraph 1 thereof:

'Member States shall carry out on-the-spot-checks to verify whether the farmer complies with the obligations referred to in Chapter 1.'

8 Article 33 of Regulation No 1782/2003 entitled 'Eligibility', in Chapter 1 of Title III of that regulation, provided in paragraph 1 thereof:

'Farmers shall have access to the single payment scheme if:

(a) they have been granted a payment in the reference period referred to in Article 38 under at least one of the support schemes referred to in Annex VI, …

(b) they have received the holding or part of the holding, by way of actual or anticipated inheritance, by a farmer who met the conditions referred to in point (a), or

(c) they have received a payment entitlement from the national reserve or by transfer.'

9 Article 34 of the regulation entitled 'Application', provided in paragraph 3 thereof:

'Except in case of *force majeure* and exceptional circumstances within the meaning of Article 40(4), no entitlements shall be allocated to farmers referred to in Article 33(1)(a) and (b) and to those who receive payment entitlements from the national reserve, if they do not apply to the single payment scheme by 15 May of the first year of application of the single payment scheme.

…'

10 Article 44 of that regulation entitled 'Use of payment entitlements', provided:

'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 except areas under 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 on the date fixed by the Member State which shall be no later than the date fixed in that Member State for amendment of the aid application.

…'

11 Article 54 of that regulation entitled 'Use of set-aside entitlements', provided:

'1. Any set-aside entitlement accompanied by a hectare eligible for set-aside entitlement shall give right to the payment of the amount fixed by the set-aside entitlement.

2. By way of derogation from Article 44(2), "hectare eligible for set-aside entitlement" shall mean any agricultural area of the holding taken up by arable land, except areas which at the date provided for the area aid applications for 2003 were under permanent crops, forests or used for non-agricultural activities or under permanent pasture. …

However, the following areas may be counted as being set aside, as a result of an application made after 28 June 1995:

…

– areas afforested pursuant to Article 31 of Regulation [No 1257/1999].

…'

Regulation (EU) No 1306/2013

12 Article 58(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) provides as follows:

'Member States shall set up efficient management and control systems in order to ensure compliance with the legislation governing Union support schemes aimed at minimising the risk of financial damage to the [European] Union.'

13 Article 59(1) of that regulation states:

'Except where otherwise provided, the system set up by the Member States in accordance with Article 58(2) shall include systematic administrative checking of all aid applications and payment claims. That system shall be supplemented by on-the-spot checks.'

14 According to Article 63(1) of that regulation:

'Where it is found that a beneficiary does not comply with the eligibility criteria, commitments or other obligations relating to the conditions for the granting of the aid or support, as provided for in the sectoral agricultural legislation, the aid shall not be paid or shall be withdrawn in full or in part and, where relevant, the corresponding payment entitlements as referred to in Article 21 of Regulation [No 1307/2013] shall not be allocated or shall be withdrawn.'

Regulation No 1307/2013

15 Recital 2 of Regulation No 1307/2013 states:

'One of the core objectives, and one of the key requirements, of the CAP reform is the reduction of the administrative burden. This should be taken firmly into account when shaping the relevant provisions for the direct support scheme.'

16 Article 24 of Regulation No 1307/2013 entitled 'First allocation of payment entitlements', states in paragraphs 1 and 2 thereof:

'1. Payment entitlements shall be allocated to farmers who are entitled to be granted direct payments in accordance with Article 9 of this Regulation provided that:

(a) they apply for allocation of payment entitlements under the basic payment scheme by the final date for submission of applications in 2015 to be set in accordance with point (b) of the first subparagraph of Article 78 of Regulation [No 1306/2013], except in case of *force majeure* or exceptional circumstances; and

…

2. Except in the case of *force majeure* or exceptional circumstances, the number of payment entitlements allocated per farmer in 2015 shall be equal to the number of eligible hectares, which the farmer declares in his aid application in accordance with point (a) of the first subparagraph of

Article 72(1) of Regulation [No 1306/2013] for 2015 and which are at his disposal on a date fixed by the Member State. That date shall be no later than the date fixed in that Member State for amending such an aid application.'

17 Article 32 of Regulation No 1307/2013 entitled 'Activation of payment entitlements', provides in paragraphs 1 and 2 thereof:

'1. Support under the basic payment scheme shall be granted to farmers, by means of declaration in accordance with Article 33(1), upon activation of a payment entitlement per eligible hectare in the Member State where it has been allocated. Activated payment entitlements shall give a right to the annual payment of the amounts fixed therein …

2. For the purposes of this Title, "eligible hectare" means:

…

(b) any area which gave a right to payments in 2008 under the single payment scheme or the single area payment scheme laid down, respectively, in Titles III and IVA of Regulation [No 1782/2003], and which:

…

(ii) for the duration of the relevant commitment by the individual farmer, is afforested pursuant to Article 31 of Regulation [No 1257/1999] …'

Delegated Regulation (EU) No 639/2014

18 Recital 16 of Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation No 1307/2013 and amending Annex X to that Regulation (OJ 2014 L 181, p. 1) states:

'In line with the case-law of the Court … [beginning with the judgment of 14 October 2010, *Landkreis Bad Dürkheim* (C-61/09, EU:C:2010:606, paragraph 50 et seq.)], payment entitlements should be allocated to the person enjoying decision-making power, benefits and financial risks in relation to the agricultural activity on the land for which such allocation is requested. It is appropriate to clarify that this principle applies in particular where an eligible hectare is subject to an application for allocation of payment entitlements by more than one farmer.'

19 Article 15 of that delegated regulation entitled 'Establishment of eligible hectares for the purposes of Articles 24(2) and 39(2) of Regulation [No 1307/2013]', provides in paragraph 2 thereof:

'Where an eligible hectare referred to in paragraph 1 is subject to an application for allocation of payment entitlements by two or more applicants, the decision whom to allocate the payment entitlement shall be based on the criterion who enjoys the decision-making power in relation to the agricultural activities exercised on that hectare and who bears benefits and financial risks related to those activities.'

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

20 During 2006, the Amt für Landwirtschaft und Forsten (Agriculture and Forestry Office, Germany) granted WQ direct payments under Title III of Regulation No 1782/2003. However, it did not take into account, for the purposes of activating payment entitlements, the afforested area of the person concerned, classed as set-aside areas.

21 In the context of his subsequent applications under Regulation No 1782/2003, in particular for the year 2008, WQ no longer declared those afforested areas, since the administration had, according to WQ, informed him in 2007 that those afforested areas were not eligible for the aid concerned.

22 On 6 May 2014, WQ purchased two plots of land in Gräningen (Germany). The deed of sale stipulated that that land was not subject to any lease. On 19 December 2014, WQ was entered in the land register as the owner of that land.

23 On 8 May 2015, WQ submitted his aid application for the year 2015. That application covered, inter alia, the parcels located in Gräningen and part of a parcel located in the communal district of Bernau (Germany). WQ's stated use of those parcels was as 'farmland not used for production'.

24 With regard to the parcels located in Gräningen, on 10 July 2015 it was found that the land in question was being cultivated by a third party. That third party also submitted an aid application for the year 2015, which was rejected. The rejection decision was not contested. As regards the parcel located in the communal district of Bernau, part of which was also the subject of an aid application by a third party, it was the third party to whom the related payment entitlements were allocated.

25 By decision of the Landesamt für Ländliche Entwicklung, Landwirtschaft und Flurneuordnung (Regional Office for Rural Development, Agriculture and Land Consolidation, Germany) of 17 December 2015, the Land of Berlin awarded WQ payment entitlements for 2015 under the basic payment referred to in Article 24 of Regulation No 1307/2013. It nonetheless refused to allocate such entitlements either for the parcels in respect of which two applications were made, which were cultivated by third parties and located in the communal districts of Gräningen and Bernau, or for the afforested areas, which were classed as set-aside areas.

26 WQ appealed against that decision and requested the allocation of additional payment entitlements. In his view, the Land of Berlin was wrong not to grant him payment entitlements for the parcels in Gräningen and Bernau or for the afforested areas which he owned.

27 By decision of the Regional Office for Rural Development, Agriculture and Land Consolidation of 15 September 2016, the Land of Berlin dismissed that appeal as unfounded, stating, as regards the parcels located in Gräningen and Bernau, that the agricultural areas concerned had been cultivated by a third party, who had also applied for the allocation of payment entitlements. Consequently, those parcels were not, in fact, 'at [the] disposal' of WQ for the purposes of Article 24(2) of Regulation No 1307/2013. In order for those parcels to be 'at his disposal', within the meaning of that provision, WQ ought actually to have used them. As regards the afforested areas, the Land of Berlin found that no application had been submitted by the person concerned for 2008, as required by the legislation.

28 On 11 October 2016 WQ brought an action against that decision before the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany). In his application, WQ argued that the agricultural parcels in Gräningen and Bernau had been unlawfully cultivated by third parties and that those parcels were therefore 'at his disposal' within the meaning of Article 24(2) of Regulation No 1307/2013. As regards the afforested areas, he explained that Article 32(2)(b)(ii) of Regulation No 1307/2013 required only that the areas be eligible for aid, the submission of an application and the receipt of aid in the past being irrelevant in that regard.

29 The Verwaltungsgericht Berlin (Administrative Court, Berlin) considers, on the one hand, on the basis, in particular, of Article 17(1) of the Charter of Fundamental Rights of the European Union, that no one may be deprived of his or her property solely because a third party asserts a baseless claim to that property. In particular, it doubts whether agricultural land can be regarded as not being at the disposal of its owner where a third party cultivates it without having a right to do so. The referring court adds that the situation could be different with respect to a valid right of use claimed by a third party.

30 The referring court considers, on the other hand, that the eligibility of an area for aid, pursuant to Article 32(2)(b) of Regulation No 1307/2013, is subject to the timely submission of an application under Regulation No 1782/2003. In that regard, it questions whether it is sufficient, as the applicant claims, that the area was considered eligible in 2007 irrespective of the submission of any application.

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

'(1) Does the owner of eligible hectares have those hectares at his disposal within the meaning of the first sentence of Article 24(2) of Regulation No 1307/2013 if no third party has a right of use in respect of the eligible hectares, and, in particular, no right of use derived from the owner, or is the area at the disposal of a third party or at no one's disposal if a third party is actually using that area for agricultural purposes without any right of use?

(2) Is the phrase "any area which gave a right to payments in 2008 under the single payment scheme or the single area payment scheme laid down, respectively, in Titles III and IVA of Regulation [No 1782/2003]" in Article 32(2)(b) of Regulation No 1307/2013 to be interpreted as meaning that the area must in 2008 have satisfied the conditions laid down in Titles III and IVA of Regulation No 1782/2003 for a right to payments under the single payment scheme or the single area payment scheme?

(3) If the answer to Question 2 is in the negative: Is the phrase "any area which gave a right to payments in 2008 under the single payment scheme or the single area payment scheme laid down, respectively, in Titles III and IVA of Regulation No 1782/2003" in Article 32(2)(b) of Regulation No 1307/2013 to be interpreted as meaning that, in order for an area that is afforested in accordance with Article 31 of Regulation [No 1257/1999] to be classified as eligible hectares within the meaning of Article 32(2)(b)(ii) of Regulation No 1307/2013, it is necessary that a set-aside entitlement or other payment entitlement within the meaning of Article 44(1) or Article 54(1) of Regulation No 1782/2003 has been granted in respect of that area?

(4) If the answer to Question 3 is in the negative: Is the phrase "any area which gave a right to payments in 2008 under the single payment scheme or the single area payment scheme laid down, respectively, in Titles III and IVA of Regulation No 1782/2003" in Article 32(2)(b) of Regulation No 1307/2013 to be interpreted as meaning that, in order for an area that is afforested in accordance with Article 31 of Regulation [No 1257/1999] to be classified as eligible hectares within the meaning of Article 32(2)(b)(ii) of Regulation No 1307/2013, it is necessary that in 2008 the farmer made an application under Article 22(1) and/or Article 34(1) of Regulation No 1782/2003 and satisfied the other conditions for a direct payment under Titles III or IVA?'

The questions referred for a preliminary ruling

The first question

32 By its first question, the referring court asks, in essence, whether, where an aid application is submitted both by the owner of agricultural land and by a third party who is actually using that land without having any right of use thereof, the eligible hectares corresponding to that land are 'at [the] disposal', for the purposes of the first sentence of Article 24(2) of Regulation No 1307/2013, of one or other of those applicants or of neither of them.

33 In that regard, the first sentence of Article 24(2) of Regulation No 1307/2013 provides that, except in the case of *force majeure* or exceptional circumstances, the number of payment entitlements allocated per farmer in 2015 is to be equal to the number of eligible hectares, which the farmer declares in his or her aid application for 2015 and which are at his or her disposal on a date fixed by the Member State.

34 While noting that the phrase 'at his disposal' is not defined in that provision, it must be observed that neither Article 24 of Regulation No 1307/2013 nor any other provision of EU legislation requires a title or any evidence of a right of use to be submitted in support of an application for the allocation of payment entitlements in order to establish that the declared eligible hectares are at the disposal of the applicant.

35 The Court has ruled in that regard that Member States enjoy a measure of discretion as regards the supporting documents and the evidence to be required from an aid applicant in relation to the areas covered by the application. However, the exercise by Member States of their discretion in respect of the evidence to be provided in support of an aid application, particularly as regards the possibility of requiring an aid applicant to produce a valid legal document attesting to his or her right to use the areas covered by that application, must be consistent with the objectives pursued by the EU legislation concerned, as well as the general principles of EU law and, in particular, the principle of proportionality (judgment of 24 June 2010, *Pontini and Others*, C-375/08, EU:C:2010:365, paragraphs 82 and 86).

36 Accordingly, Member States are entitled to presume that the eligible hectares covered by the application for the allocation of payment entitlements are 'at [the] disposal' of the farmer making the application, for the purposes of that provision.

37 Such an approach is consistent with one of the key requirements of the CAP reform implemented by Regulation No 1307/2013, which is described in recital 2 of that regulation and which aims at reducing the administrative burden.

38 However, the measure of discretion of Member States as regards the evidence to be provided in support of an application for the allocation of payment entitlements is offset, as the Netherlands Government pointed out in its observations, by the Member States' introduction of a mechanism for the systematic administrative checking of all aid applications and payment claims in accordance with Article 58(2) of Regulation No 1306/2013, read in conjunction with Article 59(1) thereof, in order to detect improper claims. Moreover, in accordance with Article 63(3) of that regulation, where undue payments are made in the context of granting aid, the amount of aid unduly paid is to be recovered.

39 Therefore, although Member States are entitled to presume that the eligible hectares covered by the application for the allocation of payment entitlements are at the disposal of the farmer applying for those entitlements, they are required to introduce the systematic checking of the applications for allocation of payment entitlements and the corresponding payment claims in order to prevent and, where necessary, remedy any irregularities committed and recover any undue payments.

40 However, in the event that two or more competing applications for the allocation of payment entitlements are submitted, as in the main proceedings, the presumption that the eligible hectares covered by the application for allocation of payment entitlements are at the disposal of the farmer making the application is called into question.

41 In such circumstances, the competent authorities of the Member States are required to verify which of the two applicants has the eligible hectares at his or her disposal.

42 It is true that Article 15(2) of Delegated Regulation No 639/2014 provides that, where an eligible hectare is the subject of an application for allocation of payment entitlements by more than one applicant, the decision whom to allocate the payment entitlement is to be based on the criterion who enjoys the decision-making power in relation to the agricultural activities exercised and who bears benefits and financial risks related to those activities.

43 However, it must be observed that, as reflected in recital 16 of that delegated regulation, those criteria derive from paragraph 50 et seq. of the judgment of 14 October 2010, *Landkreis Bad Dürkheim* (C-61/09, EU:C:2010:606). However, that judgment was delivered in the context of a factual situation characterised by the existence of legal relationships and links between the various persons who could claim to have at their disposal the various plots of lands concerned.

44 However, it follows from the request for a preliminary ruling that the first question raised is based on a situation different from that which gave rise to the judgment of 14 October 2010, *Landkreis Bad Dürkheim* (C-61/09, EU:C:2010:606). According to the referring court, in the present case the third parties assert no legal claim as regards the agricultural land concerned. Consequently, in such circumstances, it is not necessary to apply the criteria laid down in Article 15(2) of Delegated Regulation No 639/2014.

45 In the light of all the foregoing considerations, the answer to the first question referred is that the first sentence of Article 24(2) of Regulation No 1307/2013 must be interpreted as meaning that, where an aid application is submitted both by the owner of agricultural land and by a third party who is actually using that land without any legal basis, the eligible hectares corresponding to that land are solely 'at the disposal' of the owner of that land, for the purposes of that provision.

The second to fourth questions

46 By its second to fourth questions, which must be considered together, the referring court asks, in essence, whether the words 'any area which gave a right to payments in 2008 under the single payment scheme or the single area payment scheme laid down, respectively, in Titles III and IVA of Regulation [No 1782/2003]', set out in Article 32(2)(b) of Regulation No 1307/2013, merely require that the afforested area concerned formally satisfy the conditions laid down in Titles III and IVA of Regulation No 1782/2003, or whether a set-aside entitlement or other payment entitlement, within the meaning of Article 44(1) or Article 54(1) of Regulation No 1782/2003, should also have been granted in respect of that area and/or whether an application under Article 22(1) of Regulation No 1782/2003 should have been made in 2008 and whether the other conditions for a direct payment under Title III or Title IVA should have been satisfied in that year.

47 It must be recalled, first of all, that the second to fourth questions are raised in the context of an application for the first allocation of payment entitlements for an afforested area submitted under Article 24(2) of Regulation No 1307/2013. That provision provides that the number of payment entitlements allocated per farmer in 2015 is to be equal to the number of eligible hectares which the farmer declares in his or her aid application for 2015.

48 The concept of eligible hectare is defined in particular in Article 32(2)(b)(ii) of Regulation No 1307/2013, which provides that any area afforested in accordance with EU law or under a national scheme which gave a right to payments in 2008 under the single payment scheme or the single area payment scheme remains eligible, provided that the afforestation commitment is maintained.

49 In that regard, the question arises as to whether the phrase 'gave a right to payments in 2008', contained in that provision, should be interpreted as meaning 'gave rise to' or 'conferred entitlement to' such payments.

50 Since a comparative analysis of the various language versions of that provision does not allow that question of interpretation to be resolved, reference must be made to the provisions in force at the time of the facts in the main proceedings, and in particular to Regulation No 1782/2003, which implemented the single payment scheme and the single area payment scheme at that time.

51 First of all, it must be observed that, in accordance with Article 33 of Regulation No 1782/2003, only farmers, as defined in Article 2 of that regulation, had access to the single payment scheme.

52 Next, according to Article 34(3) of Regulation No 1782/2003, read in conjunction with Article 57 thereof, the farmers referred to in Article 33(1)(a) of that regulation had to apply to the single payment scheme by 15 May of the first year of application of the single payment scheme, failing which no payment entitlement or set-aside entitlement would be allocated.

53 Thus, the allocation of a payment entitlement or set-aside entitlement under the single payment scheme or the single area payment scheme implemented by Regulation No 1782/2003 was conditional on the submission of an application to one of those schemes by a person who is a farmer. Accordingly, it must be concluded that the mere existence of an agricultural area could not, in itself, in the absence of an application to one of those schemes made by a farmer, constitute the basis for a payment entitlement or set-aside entitlement under one of those schemes.

54 Finally, the fact that payment entitlements or set-aside entitlements were allocated for a particular area did not mean that that area gave a right to payments. In accordance with Article 44(1) and Article 54(1) of Regulation No 1782/2003, those payment entitlements also had to be used in order to confer entitlement to payment of the amount fixed by the payment entitlement or set-aside entitlement.

55 As regards, more specifically, the set-aside entitlements relating to the payment for afforested areas, entitlements for which certain derogations were provided in Articles 53 to 56 of Regulation No 1782/2003, it should be recalled that under the second indent of the second subparagraph of Article 54(2) of Regulation No 1782/2003, following an application submitted after 28 June 1995, areas afforested pursuant to Article 31 of Regulation No 1257/1999 were regarded as being set aside.

56 It must be observed that neither Article 44 nor Article 54 of Regulation No 1782/2003 clarified the concept of 'use' of a payment entitlement or set-aside entitlement. Those two articles, in paragraphs 1 thereof, provided only that the payment entitlements or set-aside entitlements accompanied by an eligible hectare '[were to] give entitlement', that is to say, in this case, conferred entitlement, to payment of the amount fixed by the payment entitlement.

57 In order to use the payment entitlements or set-aside entitlements accompanied by an eligible hectare, it was necessary, in accordance with Article 44(3) of Regulation No 1782/2003, read in conjunction with Article 57 of that regulation, to declare the parcels corresponding to the eligible hectare accompanying any payment entitlement or set-aside entitlement. That declaration was made in the context of an application for direct payments submitted under Article 22 of that regulation.

58 In addition to specifying that the information had to be attached to the aid application, Article 22(1) of Regulation No 1782/2003 provided that the farmer had to submit an application for direct payments each year. In accordance with Article 23 thereof, that application had to be the subject matter of administrative checks on eligibility and, in certain cases, an on-the-spot check under Article 25 of that regulation.

59 It must be recalled in that context that the Court has emphasised the importance of submitting an annual application for payments, in particular with a view to verifying effectively whether the conditions for granting aid are complied with (see, to that effect, judgment of 7 February 2013, *Pusts*, C-454/11, EU:C:2013:64, paragraph 33).

60 Accordingly, in order for the view to be taken that an area, whether afforested or not, 'gave a right to payments in 2008 under the single payment scheme', an application for direct payments had to have been made in relation to that area in 2008, pursuant to Article 22 of Regulation No 1782/2003, which thus gives rise to use of the payment entitlements and set-aside entitlements referred to in Articles 44 and 54 of that regulation. That application had to be the subject matter of administrative checks on eligibility in accordance with Article 23 of that regulation and, where appropriate, an on-the-spot check under Article 25 of that regulation.

61 In the light of all the foregoing considerations, the second to fourth questions referred must be answered to the effect that Article 32(2)(b)(ii) of Regulation No 1307/2013, in particular the wording 'any area which gave a right to payments in 2008 under the single payment scheme or the single area payment scheme laid down, respectively, in Titles III and IVA of Regulation No 1782/2003', must be interpreted as meaning that, in the context of an application for

activation of set-aside entitlements for an afforested area under that provision, the area concerned must have been the subject matter in 2008 of an aid application pursuant to Article 22 of Regulation No 1782/2003, followed by administrative checks on eligibility in accordance with Article 23 thereof and, where appropriate, an on-the-spot check under Article 25 of that regulation. All the other conditions laid down in Titles III and IVA of that regulation for receiving a direct payment must also have been fulfilled.

Costs

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

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

1. **The first sentence of Article 24(2) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 must be interpreted as meaning that, where an aid application is submitted both by the owner of agricultural land and by a third party who is actually using that land without any legal basis, the eligible hectares corresponding to that land are solely 'at the disposal' of the owner of that land, for the purposes of that provision.**

2. **Article 32(2)(b)(ii) of Regulation No 1307/2013, in particular the wording 'any area which gave a right to payments in 2008 under the single payment scheme or the single area payment scheme laid down, respectively, in Titles III and IVA 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) 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 479/2008 of 29 April 2008]', must be interpreted as meaning that, in the context of an application for activation of set-aside entitlements for an afforested area under that provision, the area concerned must have been the subject matter in 2008 of an aid application pursuant to Article 22 of Regulation No 1782/2003, as amended by Regulation No 479/2008, followed by administrative checks on eligibility in accordance with Article 23 thereof and, where appropriate, an on-the-spot check under Article 25 of that regulation. All the other conditions laid down in Titles III and IVA of that regulation for receiving a direct payment must also have been fulfilled.**

[Signatures]