Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

12 November 2015*

(Reference for a preliminary ruling — Agriculture — Regulation (EC) No 73/2009 — Articles 7(1), 10(1), 121 and 132(2) — Acts implementing that regulation — Validity, in the light of the TFEU Treaty, the 2003 Act of Accession and the principles of non-discrimination, legal certainty, the protection of legitimate expectations and sound administration — Modulation of direct payments granted to farmers — Reduction of the amounts — Level of direct payments applicable in the Member States of the European Community as constituted on 30 April 2004 and in the Member States that joined it on 1 May 2004 — No publication and no statement of reasons)

In Case C-103/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vilniaus apygardos administracinis teismas (Regional Administrative Court of Vilnius, Lithuania), made by decision of 10 February 2014, received at the Court on 4 March 2014, in the proceedings

Bronius Jakutis,

Kretingalės kooperatinė ŽŪB

v

Nacionalinė mokėjimo agentūra prie Žemės ūkio ministerijos,

Lietuvos valstybė,

intervening parties:

Lietuvos Respublikos Vyriausybė,

Lietuvos Respublikos žemės ūkio ministerija,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan (Rapporteur), A. Prechal, and K. Jürimäe, Judges,

Advocate General: N. Wahl,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 25 February 2015,

* Language of the case: Lithuanian.

after considering the observations submitted on behalf of:

— Mr Jakutis and Kretingalės kooperatinė ŽŪB, by E. Pranauskas, J. Sviderskis and I. Vėgėlė, advokatas,

— the Lithuanian Government, by D. Kriaučiūnas, K. Anužis, R. Makelis, A. Karbauskas and K. Vainienė, acting as Agents,

— the Polish Government, by B. Majczyna, acting as Agent,

— the Council of the European Union, by E. Karlsson and J. Vaičiukaitė, acting as Agents,

— the European Commission, by H. Kranenborg and A. Steiblytė, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 June 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 39 TFEU, of point 27(b) of Chapter 6A of Annex II to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003, L 236, p. 33, 'the 2003 Act of Accession', and of Articles 7(1), 10(1), 121 and 132(2) of 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 and corrigendum OJ 2010 L 43, p. 7), together with the validity of Articles 10(1) and 132(2) of Regulation No 73/2009, the corrigendum to that regulation published in the *Official Journal of the European Union* on 18 February 2010, Commission Implementing Decision C(2012) 4391 final of 2 July 2012 authorising the granting of complementary national direct payments in Lithuania in respect of the year 2012, and Commission working document DS2011/14/REV2 of 20 October 2011.

2 The request has been made in proceedings between, on the one hand, Mr Jakutis and the Kretingalės kooperatinė ŽŪB (Kretingalė agricultural cooperative company) and, on the other, the Nacionalinė mokėjimo agentūra prie Žemės ūkio ministerijos (National Paying Agency under the Ministry of Agriculture, 'the Agency') and the Lietuvos valstybė (the Lithuanian State) concerning the modulation of direct payments by the European Union and the reduction of complementary national direct payments ('CNDPs') in respect of the year 2012 with regard to the applicants in the main proceedings, who claim compensation for loss of earnings.

Legal context

2003 Act of Accession

3 Article 9 of the 2003 Act of Accession ('the Act') provides:

'Provisions of this Act the purpose or effect of which is to repeal or amend acts adopted by the institutions, otherwise than as a transitional measure, shall have the same status in law as the provisions which they repeal or amend and shall be subject to the same rules as those provisions.'

4 Under Article 23 of the Act:

'The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may make the adaptations to the provisions of this Act relating to the common agricultural policy ["CAP"] which may prove necessary as a result of a modification in Community rules. Such adaptations may be made before the date of accession.'

5 Article 57 of the Act is worded as follows:

'1. Where acts of the institutions prior to accession require adaptation by reason of accession, and the necessary adaptations have not been provided for in this Act or its Annexes, those adaptations shall be made in accordance with the procedure laid down by paragraph 2. Those adaptations shall enter into force as from accession.

2. The Council, acting by a qualified majority on a proposal from the Commission, or the Commission, according to which of these two institutions adopted the original acts, shall to this end draw up the necessary texts.'

Regulation (EC) No 1259/1999

6 Council Regulation (EC) No 1259/1999 of 17 May 1999 establishing common rules for direct support schemes under the common agricultural policy (OJ 1999 L 160, p. 113), applied, in accordance with Article 1 thereof, to payments granted directly to farmers under support schemes in the framework of the CAP which were financed in full or in part by the 'Guarantee' section of the European Agricultural Guidance and Guarantee Fund (EAGGF), except those provided for under Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80).

7 Point 27(b) of Chapter 6A of Annex II to the 2003 Act of Accession inserted, inter alia, into Regulation No 1259/1999 Articles 1a to 1c, concerning support schemes in the new Member States.

8 Article 1a of Regulation No 1259/1999 lays down a scheme by which direct payments are gradually increased in the new Member States. That article provided:

'Introduction of support schemes in new Member States

In the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (hereinafter referred to as "new Member States"), the direct payments granted under the support schemes referred to in Article 1 shall be introduced in accordance with the following schedule of increments expressed as a percentage of the then applicable level of such payments in the Community as constituted on 30 April 2004:

— 25% in 2004

— 30% in 2005

— 35% in 2006

— 40% in 2007

— 50% in 2008

— 60% in 2009

— 70% in 2010

— 80% in 2011

— 90% in 2012

— 100% as from 2013.'

9 Article 1b of Regulation No 1259/1999 lays down a single area payment scheme ('SAPS') that the new Member States may implement to replace the direct payments granted under the support schemes referred to in Article 1 of that regulation.

10 Article 1c of Regulation No 1259/1999 gave the new Member States the possibility of granting CNDPs. Paragraph 1 provided:

'For the purposes of this Article "CAP-like national scheme" shall mean any national direct payment scheme applicable prior to the date of accession of the new Member States under which the support was granted to farmers in respect of production covered by one of the [European Union] direct payment schemes listed in Annex I.'

11 According to the final subparagraph of paragraph 2 of that article:

'The total direct support the farmer may be granted in the new Member States after accession under the relevant EU scheme including all [CNDPs] shall not exceed the level of direct support the farmer would be entitled to receive under the corresponding EU scheme then applicable to the Member States in the Community as constituted on 30 April 2004.'

12 Article 1c(4), (5) and (8) of Regulation No 1259/1999 was worded as follows:

'4. If a new Member State decides to apply the [SAPS], that new Member State may grant complementary national direct aid under the conditions referred to in paragraphs 5 and 8.

5. The total amount per sector of complementary national aid granted in a given year when applying the [SAPS] shall be limited by a specific financial envelope per sector. This envelope shall be equal to the difference between:

— the total amount of support per sector resulting from the application of the first or second indent of paragraph 2, as appropriate, and

— the total amount of direct support that would be available in the relevant new Member State for the same sector in the year concerned under the [SAPS].

...

8. No complementary national payments or aid shall be granted for agricultural activities covered by a common market organisation not directly supported by a support scheme referred to in Article 1.'

Regulation (EC) No 1782/2003

13 Regulation 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) provided, in Article 10 thereof, entitled 'Modulation':

'1. All the amounts of direct payments to be granted in a given calendar year to a farmer in a given Member State shall be reduced for each year until 2012 by the following percentages:

— 3% in 2005,

— 4% in 2006,

— 5% in 2007,

— 5% in 2008,

— 5% in 2009,

— 5% in 2010,

— 5% in 2011,

— 5% in 2012.

...'

14 Council Decision 2004/281/EC of 22 March 2004 adapting the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, following the reform of the common agricultural policy (OJ 2004 L 93, p. 1) added, inter alia, Articles 143a to 143c to Regulation No 1782/2003.

15 Article 143a of Regulation No 1782/2003 set out the schedule for the introduction of direct payments laid down in Article 1(a) of Regulation No 1259/1999, whereas Article 143b of Regulation No 1782/2003 contained rules relating to the SAPS.

16 Like Article 1c of Regulation No 1259/1999, Article 143c of Regulation No 1782/2003 gave the new Member States the possibility of granting CNDPs and also provided, in the fourth subparagraph of Article 143c(2), that the total direct support the farmer may be granted in the new Member States after accession under the relevant direct payment scheme including all CNDPs was not to exceed the level of direct support the farmer would be entitled to receive under the corresponding direct payment scheme then applicable to the Member States in the Community as constituted on 30 April 2004.

17 Council Regulation (EC) No 583/2004 of 22 March 2004 amending Regulations (EC) No 1782/2003, No 1786/2003 on the common organisation of the market in dried fodder and No 1257/1999, by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union (OJ 2004 L 91, p. 1) introduced, inter alia, Article 12a into Regulation No 1782/2003.

18 Article 12a of Regulation No 1782/2003 provided in paragraph 1:

‘Articles 10 and 12 shall not apply to the new Member States until the beginning of the calendar year, in respect of which the level of direct payments applicable in the new Member States is at least equal to the then applicable level of such payments in the Community as constituted on 30 April 2004.’

Regulation No 73/2009

19 As set out in recital 17 in the preamble to Regulation No 73/2009:

‘Modulation should not reduce the net amount paid to a farmer in a new Member State below the amount to be paid to an equivalent farmer in the Member States other than the new Member States. Therefore, once modulation becomes applicable to farmers in the new Member States, the rate of reduction should be limited to the difference between the level under the phasing-in schedule and the level in the Member States other than the new Member States following the application of modulation. Moreover, modulation should be taken into account in the granting of [CNDPs] to farmers in new Member States who are subject to modulation.’

20 Article 2(d) of that regulation states that the expression ‘direct payment’ means ‘a payment granted directly to farmers under a support scheme listed in Annex I’.

21 Article 7 of that regulation, entitled ‘Modulation’, provides:

‘1. Any amount of direct payments to be granted in a given calendar year to a farmer in excess of EUR 5 000 shall be reduced for each year until 2012 by the following percentages:

(a) in 2009 by 7%;

(b) in 2010 by 8%;

(c) in 2011 by 9%;

(d) in 2012 by 10%.

2. The reductions provided for in paragraph 1 shall be increased by 4 percentage points for amounts exceeding EUR 300 000.

...’

22 Article 10 of Regulation No 73/2009, entitled ’Specific rules for modulation in the new Member States’, provides:

‘1. Article 7 shall apply to farmers in a new Member State in any given calendar year only if the level of direct payments applicable in that Member State for that calendar year pursuant to Article 121 is at least equal to the then applicable level in the Member States other than the new Member States, taking into account any reductions applied under Article 7(1).

2. If Article 7 applies to farmers in a new Member State, the percentage applicable under Article 7(1) shall be limited to the difference between the level of direct payments applicable to it under Article 121 and the level in the Member States other than the new Member States, taking into account any reductions applied under Article 7(1).

…'

23 Article 121 of that regulation states:

'In the new Member States ... direct payments shall be introduced in accordance with the following schedule of increments expressed as a percentage of the then applicable level of such payments in the Member States other than the new Member States:

— 60% in 2009,

— 70% in 2010,

— 80% in 2011,

— 90% in 2012,

— 100% as from 2013.

...'

24 Under Article 132(2) of that regulation,

'The new Member States shall have the possibility, subject to authorisation by the Commission, to complement any direct payments:

(a) with regard to all direct payments, up to 30 percentage points above the applicable level referred to in Article 121 in the relevant year. ... For the direct payments referred to in Chapter 7 of Title IV of Regulation (EC) No 1782/2003, the new Member States may complement the direct payments up to 100%. ...

or

(b) (i) with regard to direct payments other than the single payment scheme, up to the total level of direct support the farmer would have been entitled to receive, on a product by product basis, in the new Member State in the calendar year 2003 under a CAP-like national scheme increased by 10 percentage points. However, for Lithuania, the reference year shall be the calendar year 2002. ...;

(ii) with regard to the single payment scheme, up to the total amount of complementary national direct aid which may be granted by a new Member State in respect of a given year shall be limited by a specific financial envelope. This envelope shall be equal to the difference between:

— the total amount of CAP-like national direct support that would be available in the relevant new Member State in respect of the calendar year 2003 or, in the case of Lithuania, of the calendar year 2002, each time increased by 10 percentage points. ... ,

— and the national ceiling of that new Member State listed in Annex VIII adjusted, where appropriate, in accordance with Article 51(2).

For the purpose of calculating the total amount referred to in the first indent of this subpoint, the national direct payments or their components corresponding to the Community direct payments or their components which were taken into account for calculating the effective ceiling of the new Member State concerned in accordance with Article 40 and Article 51(2) shall be included.

For each direct payment concerned, a new Member State may choose to apply either point (a) or (b) of the first subparagraph.

...'

25 The last subparagraph of Article 132(2) of Regulation No 73/2009 was initially worded as follows:

'The total direct support which a farmer may be granted in the new Member States after accession under the relevant direct payment, including all [CNDPs], shall not exceed the level of direct support a farmer would be entitled to receive under the corresponding direct payment then applicable to the Member States in the Member States other than the new Member States, from 2012, taking into account the application of Article 7 in conjunction with Article 10.'

26 That provision was corrected in all of the official languages by the corrigendum published in the *Official Journal of the European Union* on 18 February 2010 and reads as follows:

'The total direct support which a farmer may be granted in the new Member States after accession under the relevant direct payment, including all [CNDPs], shall not exceed the level of direct support a farmer would be entitled to receive under the corresponding direct payment then applicable to the Member States in the Member States other than the new Member States, taking into account, from 2012, the application of Article 7 in conjunction with Article 10.'

27 Article 132(4) to (8) of Regulation No 73/2009 provides:

'4. If a new Member State decides to apply the [SAPS], that new Member State may grant complementary national direct aid under the conditions referred to in paragraphs 5 and 8.

5. The total amount of complementary national aid granted in that year when applying the [SAPS] may be limited by a specific financial envelope per (sub)sector provided that such a (sub)sector specific financial envelope may only relate to:

(a) the combined direct payments to the single payment scheme; and/or

(b) for 2009, one or more of the direct payments that are excluded or may be excluded from the single payment scheme in accordance with Article 70(2) of Regulation (EC) No 1782/2003 or may be subject to partial implementation as referred to in Article 64(2) of that Regulation;

(c) from 2010, one or more of the direct payments that may be subject to partial implementation or specific support as provided for in Article 51(2) and Article 68 of this Regulation.

This envelope shall be equal to the difference between:

(a) the total amount of support per (sub)sector resulting from the application of point (a) or (b) of the first subparagraph of paragraph 2, as appropriate; and

(b) the total amount of direct support that would be available in the relevant new Member State for the same (sub)sector in the year concerned under the [SAPS].

6. The new Member State may decide, on the basis of objective criteria and after authorisation by the Commission, on the amounts of complementary national aid to be granted.

7. The authorisation by the Commission shall:

(a) where point (b) of the first subparagraph of paragraph 2 applies, specify the relevant CAP-like national direct payment schemes;

(b) define the level up to which the complementary national aid may be paid, the rate of the complementary national aid and, where appropriate, the conditions for the granting thereof;

(c) be granted subject to any adjustments which may be rendered necessary by developments in the CAP.

8. No complementary national payments or aid shall be granted for agricultural activities in respect of which direct payments are not provided for in the Member States other than the new Member States.'

28 Regulation (EU) No 671/2012 of the European Parliament and of the Council of 11 July 2012 amending Regulation No 73/2009 (OJ 2012 L 204, p. 11) inter alia, inserted Article 133a, entitled 'Transitional national aid' into that regulation, which provides as follows:

'1. ... the new Member States applying the [SAPS] shall have the possibility to grant transitional national aid in 2013.

Except in the case of Cyprus, the granting of such aid shall be subject to authorisation by the Commission, to be granted in accordance with paragraph 5.

2. The transitional national aid may be granted to farmers in sectors in respect of which [CNDPs] and, in the case of Cyprus, State aids have been authorised in 2012 pursuant to Articles 132 and 133.

3. The conditions for granting the aid shall be identical to those authorised for the granting of payments pursuant to Articles 132 and 133 in respect of 2012.

...'

Regulation (EC) No 1307/2013

29 Article 37(3) 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 Regulation No 73/2009 (OJ 2013 L 347, p. 608), provides:

'The conditions for granting transitional national aid shall be identical to those authorised for the granting of payments pursuant to Article 132(7) or Article 133a of Regulation (EC) No 73/2009 in respect of 2013, with the exception of the reduction of the payments resulting from the application of Article 132(2) in conjunction with Articles 7 and 10 of that Regulation.'

Regulation (EC) No 1310/2013

30 Regulation (EU) No 1310/2013 of the European Parliament and of the Council of 17 December 2013 laying down certain transitional provisions on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), amending Regulation (EU) No 1305/2013 of the European Parliament and of the Council as regards resources and their distribution in respect of the

year 2014 and amending Council Regulation (EC) No 73/2009 and Regulations (EU) No 1307/2013, (EU) No 1306/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards their application in the year 2014 (OJ 2013 L 347 p. 865) inserted Article 133a, entitled 'Transitional national aid in 2014' into Regulation No 73/2009, which provides, in paragraph 3:

'The aid under this Article may be granted to farmers in sectors in respect of which transitional national aid pursuant to Article 133a [was granted] in 2013.'

Implementing Decision C(2012) 4391

31 Recital 6 in the preamble to Implementing Decision C(2012) 4391 final is worded as follows:

'The Commission published a working document for the Management Committee for Direct Payments of 20 October 2011, which contained detailed explanations on how to apply the reductions of the complementary national direct payments, to be applied by certain new Member States in respect of 2012 pursuant to Article 132(2) of Regulation (EC) No 73/2009.'

32 Implementing Decision C(2012) 4391 final comprises two articles which are worded as follows:

'Article 1

1. In respect of the year 2012, Lithuania is authorised to grant [CNDPs] according to the conditions specified in its request of 22 March 2012.

2. The level up to which the [CNDPs] may be paid and the maximum rates are established in the Annex to this Decision.

3. The exchange rate to be used for the payments shall be the exchange rate applicable to the payments granted under the single area payment scheme provided for in Article 122 of Regulation (EC) No 73/2009.

4. Where the total amount of direct payments to be granted to a farmer pursuant to Regulation (EC) No 73/2009, including all [CNDPs], exceeds EUR 5 000, the amount of [CNDPs] to be granted to that farmer in accordance with the Annex to this Decision shall be reduced by an amount equal to 10% of the total amount exceeding EUR 5 000. That percentage shall be increased by 4 percentage points where the total amount of all direct payments, including all [CNDPs], exceeds EUR 300 000, but the reduction shall only apply to the part of the total amount exceeding EUR 300 000 and which is made up of [CNDPs].

Article 2

This Decision is addressed to the Republic of Lithuania.'

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

33 Since the accession of the Republic of Lithuania to the European Union, the income of Lithuanian farmers has been supported through direct payments, which comprise payments funded from the EU budget and national direct payments covered by the budget of the State concerned. The Republic of Lithuania has opted for SAPS. Under that scheme, the payment is calculated by dividing the annual financial envelope of the State concerned by the relevant agricultural area eligible for support.

34 Under the 2003 Act of Accession, direct payments from the European Union to farmers in Lithuania and in other new Member States have increased gradually. They did not have to reach 100% of the level of direct payments made in the Member States other than the new Member States until the year 2013. Prior to that date, the new Member States were allowed to grant CNDPs, after approval by the Commission.

35 According to the referring court, the target set in the 2003 Act of Accession, to reach, in respect of the year 2012, a level of direct payments of 90% of the level of direct payments made in the Member States other than new Member States, was not reached in Lithuania. This stems from the fact that direct payments were made on the basis of the reference yield from agricultural crops determined between 2000 and 2002. It is on that basis that the financial envelope for direct payments at 100% for the Republic of Lithuania was calculated, to divide by the base area to obtain the direct payment per hectare. However, until 2012 the reference yield nevertheless rose sharply and the base area grew steadily. The amount of the direct payments per hectare was reduced accordingly.

36 On 20 October 2011, the Commission adopted working document DS/2011/14/REV2, specifying the detailed rules according to which, in respect of the year 2012, some of the new Member States were required, under Regulation No 73/2009, to apply a modulation of direct payments and a reduction of CNDPs. Thus, on the one hand, direct payments exceeding EUR 5 000 were in principle subject to modulation. On the other hand, by virtue of Implementing Decision C(2012) 4391 final, the CNDPs paid to farmers in Lithuania were subject to a reduction of 10%.

37 For the year 2012, Mr Jakutis and the Kretingalė agricultural cooperative company applied to the Agency for support for agricultural and other areas.

38 With regard to Mr Jakutis, the Agency adopted, on 5 June 2013, a decision by which, since the total amount of direct payments, including all CNDPs, which he received in respect of the year 2012 exceeded EUR 5 000 (that is to say LTL 17 264), the reduction of CNDPs should apply.

39 With regard to the Kretingalė agricultural cooperative company, the Agency applied, by a decision of 22 May 2013, the modulation of direct payments financed out of the EAGF, as well as the reduction of CNDPs. The total amount of direct payments and [CNDPs] paid to that company exceeds EUR 300 000.

40 M. Jakutis and the Kretingalė agricultural cooperative company brought an action for annulment of those decisions before the referring court.

41 According to the applicants in the main proceedings, there was no legal basis for applying in Lithuania either the modulation of direct payments or the reduction of CNDPs in respect of 2012. They claim that, pursuant to the provisions of the 2003 Act of Accession, as long as it is not established in fact that the amounts and levels of direct payments to farms in Lithuania are equal to those in the Member States other than the new Member States, the direct payments to be made to Lithuanian farms cannot be modulated under Articles 7 and 10(1) of Regulation No 73/2009.

42 The applicants in the main proceedings submit that, in respect of the year 2012, the level of direct payments in Member States other than the new Member States was in excess of 90% of the level of all direct payments, while it was mathematically impossible for it to exceed 90% of that level in Lithuania. Furthermore, the direct payments funded from the EU budget and paid to Lithuanian farmers in respect of 2012 were less than half of those received in Member States other than the new Member States, even modulated by 10%. As long as it is not established in fact that the amounts and levels of direct payments to farms in Lithuania are equal to those in Member States other than the new Member States, the direct payments to be made to Lithuanian farms should not be and could not be modulated nor could the CNDPs be reduced.

43 The Agency argues that it was not competent to assess the legality of Lithuanian government decrees and even less so with regard to decisions of the Commission.

44 The Lithuanian government confirms the evidence relied on by the applicants in the main proceedings, stating that the Commission did not conduct any investigation or provide any information confirming that, in respect of 2012, the level of direct payments was the same in Member States other than the new Member States and in the new Member States. The arguments in working document DS/2011/14/REV2, according to which the level of payments in the new Member States had reached that of the payments in Member States other than the new Member States, are based on an interpretation of the percentages set out in Regulation No 73/2009.

45 According to the Lithuanian Government, a large number of farms in Member States other than the new Member States, in respect of 2012, received less than EUR 5 000 in direct payments and, under Article 7 of Regulation No 73/2009, modulation was not applicable to them as the direct payments were paid to them at the rate of 100%. The consequence of this, it is argued, is that if modulation was applied only in respect of farms which receive more than EUR 5 000 in direct payments, the overall level of direct payments in Member States other than the new Member States would be over 90% of the level of all direct payments. However, in the new Member States, all farms receive direct payments at the rate of 90%, regardless of whether or not the direct payments paid to the farm exceed EUR 5 000.

46 The referring court has doubts as to whether that situation complies with the principle of non-discrimination. Since the amount paid per hectare objectively differed between the new Member States and Member States other than the new Member States, those groups of Member States are in different situations and, as such, should not be treated in the same way, namely by applying modulation equally. Thus, the Commission is required, under the principles of care and sound administration, to gather all the matters of facts necessary to exercise its discretion.

47 In those circumstances the Vilniaus apygardos administracinis teismas (Regional Administrative Court of Vilnius) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Regarding appraisal of the level of direct payments in the new Member States and in the Member States other than the new Member States under Article 10(1) of Regulation No 73/2009, applied in conjunction with Articles 7 and 121 of that regulation:

(a) Must Article 7(1) of Regulation No 73/2009, applied in conjunction with Article 10(1) and Article 121 of that regulation, be interpreted as meaning that in 2012 the level of direct payments in the Member States other than the new Member States that are in excess of EUR 5 000 is 90%?

(b) If part (a) of the first question is answered in the affirmative, does that mean that in respect of 2012 the level of direct payments in the new Member States and Member States other than the new Member States has not equalised, on the basis of the content and objectives of Article 10(1) and Article 121 of Regulation No 73/2009?

(c) Are the end of Article 10(1) of Regulation No 73/2009 (“… taking into account any reductions applied under Article 7(1)”) and working document DS/2011/14/REV2, in which for the purposes of comparison a different basis for direct payments is laid down — in the new Member States the level of direct payments is appraised without modulation having been applied (90% in accordance with Article 121), whilst in the Member States other than the new Member States modulation has been applied (100% minus 10% in accordance with Article 7(1)(d) of that regulation) — contrary to the 2003 Act of Accession and to principles

of EU law, inter alia the principles of the protection of legitimate expectations, of sound administration, of fair competition and of non-discrimination, as well as to the objectives of the CAP, which are laid down in Article 39 TFEU?

(2) Regarding the incompatibility of Article 10(1) and the end of the final subparagraph of Article 132(2) of Regulation No 73/2009, and the measures of EU law adopted on their basis, with the 2003 Act of Accession and certain principles of EU law:

(a) Are the end of Article 10(1) of Regulation No 73/2009 ("… taking into account any reductions applied under Article 7(1)"), the end of the final subparagraph of Article 132(2) ("… taking into account, from 2012, the application of Article 7 in conjunction with Article 10"), as well as working document DS/2011/14/REV2 and Implementing Decision C(2012) 4391 final, which were adopted on their basis, contrary to the 2003 Act of Accession, which does not prescribe the modulation of direct payments and the reduction of [CNDPs] in the new Member States and/or the year in which equalisation of direct payments in the new Member States and Member States other than the new Member States is presumed?

(b) Are Article 10(1) and the final subparagraph of Article 132(2) of Regulation No 73/2009, as well as working document DS/2011/14/REV2 and Implementing Decision C(2012) 4391 final, in so far as, in accordance with their content and objectives, the modulation of direct payments and the reduction of [CNDPs] are applied in 2012 in the new EU Member States, which receive considerably less support than the Member States other than the new Member States, contrary to principles of EU law, inter alia the principles of the protection of legitimate expectations, of fair competition and of non-discrimination, and to the objectives of the CAP, which are laid down in Article 39 TFEU, in particular the objective of increasing agricultural productivity?

(c) Does the amendment of the final subparagraph of Article 132(2) of Regulation No 73/2009 ("taking into account, from 2012, the application of Article 7 in conjunction with Article 10"), which was carried out under the corrigendum procedure (an amendment by which an alteration of a non-technical nature was made, and the content of the provision was fundamentally amended as it was laid down that equalisation of direct payments in the new Member States and Member States other than the new Member States was presumed in 2012), infringe principles of EU law, inter alia the principles of the protection of legitimate expectations, of legal certainty, of sound administration and of non-discrimination?

(d) Does the word "dydis" used in Article 1c of Regulation No 1259/1999 have the same meaning as the word "lygis" ["level"] in the final subparagraph of Article 132(2) of Regulation No 73/2009?

(3) Are Implementing Decision C(2012) 4391 final and working document DS/2011/14/REV2, which were not published in the *Official Journal of the European Union* and do not state adequate reasons (they were adopted in reliance solely upon the presumption that in 2012 the level of direct payments in the new Member States and Member States other than the new Member States equalised), contrary to the 2003 Act of Accession and in breach of principles of EU law, inter alia the principles of legal certainty, of the protection of legitimate expectations and of sound administration? If so, must Article 1(4) of Implementing Decision C(2012) 4391 final be annulled as contrary to Regulation No 73/2009 and the 2003 Act of Accession?'

Consideration of the questions referred

Question 1(a) and (b)

48 By question 1(a) and (b), the referring court asks, in essence, whether Articles 7(1), 10(1) and 121 of Regulation No 73/2009 must be interpreted as meaning that the concept of 'level of direct payments applicable in the Member States other than the new Member States' should be interpreted as meaning that that level was, in respect of the year 2012, equal to 90% of the level of all direct payments and the concept of 'level of direct payments in the new Member States' should be interpreted as meaning that that level was, in respect of the year 2012, equal to that in the Member States other than the new Member States.

49 An affirmative answer to this question would render applicable, under Articles 7, 10 and 121 of that regulation, modulation of the direct payments paid to farmers in the new Member States and, in accordance with Article 132 of that regulation, to the CNDPs.

50 It is common ground that not only were the amounts of the payments made to those farmers, in respect of 2012, lower than those made to farmers in Member States other than the new Member States, but also that those amounts differed within the two groups of Member States.

51 However, Article 10(1) of Regulation No 73/2009, by establishing a link between the respective levels of direct payments in those two groups of Member States, states that, despite the existence of considerable differences between the amounts of direct payments in each of those two groups of Member States, which are opposed to a common level being obtained by calculating the average of the respective amounts, a common level has been determined.

52 In the absence of a definition in EU law of the 'level of direct payments applicable in the Member States other than the new Member States', referred to in Articles 10 and 121 of Regulation No 73/2009, that expression must be interpreted having regard to the context in which it occurs and the objectives pursued by the EU legislature (see, to that effect, judgment in *Szatmári Malom*, C-135/13, EU:C:2014:327, paragraph 31 and the case-law cited).

53 In that regard, it should be recalled that the reference to that level was introduced into EU law by the 2003 Act of Accession in order to regulate the gradual introduction of direct payments into the new Member States.

54 The purpose of that progressive rather than immediate introduction of those payments in the new Member States was not to slow down the restructuring of the agricultural sector and not to create significant disparities in income or social imbalances by the granting of aid not proportionate to the income level of farmers and the general population (see, to that effect, judgments in *Bábolna*, C-115/10, EU:C:2011:376, paragraph 34, and *Poland* v *Council*, C-273/04, EU:C:2007:622, paragraph 69).

55 Although it is apparent from the schedule for introduction set out in Chapter 6 of Annex II to the 2003 Act of Accession that the direct payments made to farmers in the new Member States still represent a certain percentage of the 'applicable level' in Member States other than the new Member States, they are calculated quite independently.

56 Accordingly, the base area was determined in Chapter 6, whereas both the annual ceilings and the rules determining payments made under the SAPS were set out in Regulation No 1782/2003 after having being inserted, respectively, by Decision 2004/281 and by Regulation No 583/2004.

57 It must be considered that the level that direct payments made in the new Member States had to reach in respect of 2013, namely 100% of the projected amounts, using the abovementioned reference data for 2003, is not based on the actual level of direct payments. It was thus the intention of the EU legislature not to equalise the nominal levels, but to reach an abstract level of 100%, while accepting that that gives rise to different amounts in each Member State.

58 Admittedly, as the referring court has observed, the base area in Lithuania has, since 2003, more than doubled, thereby reducing the amount of direct payments per hectare. However, that fact, which concerns only the amounts of direct payments made to each farmer individually, has no bearing on the functioning of the mechanism introduced, which gradually raises the ceiling on direct payments to the level of 100%.

59 Since the postulated connection between the respective levels of direct payments stems from the 2003 Act of Accession and, consequently, from provisions of primary law (see, to that effect, judgment in *Parliament* v *Council*, C-413/04, EU:C:2006:741, paragraph 43), it must be assumed in the interpretation of Regulation No 73/2009 in so far as it reflects the provisions set out in Annex II of that Act of Accession.

60 In those circumstances, it is not possible to accept the argument put forward by the referring court and supported by the applicants in the main proceedings and the Lithuanian government, and which contests the equivalence, within the meaning of Article 10 of Regulation No 73/2009, of the levels of direct payments applicable, respectively, in the Member States other than the new Member States and in the new Member States, due to the fact that the inapplicability of modulation to direct payments under EUR 5 000 has the result that the amount of direct payments made in respect of 2012, in Member States other than the new Member States, despite the 10% modulation, is in fact more than the level of 90% of all direct payments, the level formally reached in the new Member States.

61 As the level of direct payments applicable before modulation is 100% irrespective of the amounts actually paid in the various Member States, the overall modulation of 10%, provided for in Article 7(1) of Regulation No 73/2009, must be regarded as a reduction within the meaning of Article 10(1) of that regulation, which must be taken into account for the purposes of finding that the applicable levels of direct payments are equivalent.

62 However, to take account of the nominal effects of those calculations would, apart from raising the question of the number of farmers receiving less than EUR 5 000, respectively, in the Member States other than the new Member States and in the new Member States, would highlight the issue of the considerable difference between the amounts of direct payments per hectare paid respectively, rendering it impossible to make an absolute comparison between the level of payments made in those two groups of Member States. The choice of the abstract criterion of applicable level of direct payments is of such a nature as to prevent such considerations.

63 Having regard to all the foregoing, the answer to question 1(a) and (b) is that Articles 7(1), 10(1) and 121 of Regulation No 73/2009 must be interpreted as meaning that the concept of 'level of direct payments applicable in the Member States other than the new Member States' should be interpreted as meaning that that level was, in respect of the year 2012, equal to 90% of the level of all direct payments and the concept of 'level of direct payments in the new Member States' should be interpreted as meaning that that level was, in respect of the year 2012, equal to that in Member States other than the new Member States.

Questions 1(c) and 2(a) and (b)

64 By question 1(c) and 2(a) and (b), the referring court asks whether the final part of Article 10(1) and the final subparagraph of Article 132(2) of Regulation No 73/2009, Implementing Decision C(2012) 4391 final and working document DS/2011/14/REV2 are invalid.

65 As regards working document DS/2011/14/REV2, it should be noted at the outset that it is stated in recital 6 in the preamble to Implementing Decision C(2012) 4391 final that that decision was adopted, inter alia, taking into account the content of that working document. In those circumstances it is sufficient, in the present case, to examine the validity of that decision, a separate examination of the validity of that working document not being necessary.

Compatibility with the 2003 Act of Accession

66 As regards, first, the alleged incompatibility with the 2003 Act of Accession, this arises, according to the referring court, from the fact that that Act does not provide for modulation of direct payments from the European Union nor for reduction of CNDPs in the new Member States, so that the application, under the provisions in question, of modulation in the new Member States, in respect of 2012, that is to say, before the level of 100% of direct payments had been reached, infringes the agreement reached in 2003, according to which direct payments had to reach that level in 2013.

– Direct payments from the European Union

67 It should be noted at the outset that the gradual introduction of direct payments from the European Union in the new Member States was not intended to lead to equivalence of the amounts paid respectively in the Member States other than the new Member States and in the new Member states. The objective, as is apparent from paragraphs 53 and 54 above, was to avoid harming the development of the agricultural sector in the new Member States by introducing, without transition, a predetermined level of support for each of those Member States.

68 In view of that specific objective, the scheme established under the 2003 Act of Accession is not opposed, in principle, to the application to the new Member States of a general reform, such as modulation, intended to improve the operation of the CAP in all Member States by achieving a better balance between the policy tools designed to promote sustainable agriculture and those designed to promote rural development.

69 Although the 2003 Act of Accession did not resolve the issue of the application of modulation in the new Member States, this is because the CAP reform which introduced modulation was carried out in parallel with the negotiations on accession of the new Member States. As the Advocate General stated in point 91 of his Opinion, the modulation was introduced by Regulation No 1782/2003 after the conclusion of the 2003 Act of Accession and Article 12a of Regulation No 1782/2003, governing modulation in the new Member States, was inserted in that regulation by Regulation No 583/2004. The possibility of introducing such changes to the *acquis communautaire* applicable to those Member States was expressly provided for in Articles 23 and 57 of the 2003 Act of Accession.

70 While the possible application of modulation to direct payments made in the new Member States is not itself contested in the main proceedings, the referring court seeks clarification regarding the conditions of that application.

71 In that regard, it is undisputed that the content of Article 12a of Regulation No 1782/2003 was adopted and clarified, in two respects, in Article 10 of Regulation No 73/2009. This requires, first, that account be taken of the effects of modulation in the Member States other than the new Member States in order to establish that the level of direct payments in the new Member States is already at least

equivalent to that applicable in the former Member States. Second, it follows that the percentage to be considered for the purpose of modulation in the latter Member States is limited to the difference in the respective levels of direct payments.

72 That rule aims to ensure, as stated in recital 17 in the preamble to Regulation No 73/2009, that modulation does not lead to a reduction in the net amount paid to a farmer in a new Member State to a level below the amount to be paid to an equivalent farmer in the Member States other than the new Member States.

73 As the Polish Government and the Commission have rightly pointed out in their written observations, under this rule, the applicability of modulation, in respect of 2012, has not led to a reduction in direct payments below EUR 300 000 made in the new Member States due to the fact that the difference in the respective levels was equal to zero.

74 However, the application of modulation, in respect of 2012, to direct payments made in the new Member States has resulted in a reduction of 4% for amounts greater than EUR 300 000. That reduction may, admittedly, increase the considerable difference existing between the amounts of direct payments per hectare paid, respectively, in Member States other than the new Member States and in the new Member States. However, the level of those amounts reached, after that reduction, in the new Member States, will remain well above the level applicable in Member States other than the new Member States, where modulation is in the order of 14%.

75 It must therefore be held that, read together with Article 10(2) and recital 17 in the preamble to Regulation No 73/2009, Article 10(1) of that regulation does not have a disproportionate effect in relation to the objective of achieving, in all Member States, a better balance between the promotion of sustainable agriculture and the promotion of rural development, an objective which is part of the normative framework outlined in the 2003 Act of Accession.

76 In those circumstances, it should be found that the final part of Article 10(1) of Regulation No 73/2009, in so far as it allows application of the system of modulation of direct payments in all EU Member States in respect of 2012, by taking into account the effects of modulation in the Member States other than the new Member States, is compatible with the 2003 Act of Accession.

– The CNDPs

77 Article 132(2) of Regulation No 73/2009 provides that the total direct support which a farmer may be granted in the new Member States, including all CNDPs, is not to exceed the level of direct support a farmer would be entitled to receive under the corresponding direct payment then applicable in the Member States other than the new Member States, taking into account the application of Article 7 in conjunction with Article 10.

78 Whereas that prohibition on exceeding the maximum level had already been inserted by point 27(b) of Chapter 6A of Annex II to the 2003 Act of Accession, in Article 1c of Regulation No 1259/1999, the requirement to take into account in that regard the effects of modulation in the Member States other than the new Member States was laid down only by Article 132(2).

79 That requirement led the Commission to find that modulation should apply to CNDPs paid in Lithuania in respect of 2012.

80 While it must be held, for the same reasons that have already justified the modulation of direct payments only from the European Union pursuant to the final part of Article 10(1) of Regulation No 73/2009, that the progress in the application of modulation to all direct payments made to farmers in the new Member States is in principle compatible with the 2003 Act of Accession, the

assessment of the detailed rules of that application, set out Implementing Decision C(2012) 4391 final, requires an interpretation of Article 132 of Regulation No 73/2009 in compliance with the 2003 Act of Accession.

81 In that regard, it should be noted that authorisation by the Commission, to which the granting of CNDPs is subject, under Article 132(6) of that regulation, depends on a concrete and detailed examination of the payments in question, the stages of which were already set out in Article 1c of Regulation No 1259/1999, which had been inserted into that regulation by point 27(b) of Chapter 6A of Annex II to the 2003 Act of Accession. It followed from that provision that the conditions for application of modulation were to vary depending on the payment scheme chosen by a new Member State, namely the Single Payment Scheme or the SAPS.

82 Although both Article 1c and Article 132(2) of Regulation No 73/2009 refer, in principle, to all new Member States, it follows from paragraph 4 of each of those articles that a new Member State that applies the SAPS may grant complementary national direct aid under the conditions referred to in paragraphs 5 to 8 of each of those articles.

83 In accordance with the legitimate ground of applying, as from 2012, the rules for modulation in the new Member States, including, as suggested in recital 17 in the preamble to Regulation No 73/2009, with regard to CNDPs, the mechanism for reducing the cumulative amount of direct payments from the European Union and from CNDPs should be aligned with that for modulation of direct payments from the European Union only.

84 Thus, as regards that cumulative amount, the reductions must be taken into account only where modulation for direct payments from the European Union is applicable. To the extent that, under Article 10(2) of Regulation No 73/2009, modulation is not applicable to payments of less than EUR 300 000, reductions should not burden CNDPs either.

85 Since, as has been noted in paragraph 73 of the present judgment, Article 7(1) of Regulation No 73/2009 does not apply in the new Member States, only Article 7(2) of that regulation is applicable and, therefore, only a reduction of 4 percentage points for amounts exceeding EUR 300 000 is applicable.

86 By imposing the application of modulation in respect of 2012 with regard to farmers for whom the total amount from national direct payments and from the European Union is between EUR 5 000 and EUR 300 000, Implementing Decision C(2012) 4391 final did not respect the alignment between the modulation of direct payments and that of the CNDPs.

87 It follows that Implementing Decision C(2012) 4391 final must be declared invalid.

Compatibility with the general principles raised

88 As it has been established that Implementing Decision C(2012) 4391 final is not compatible with the 2003 Act of Accession, it is no longer necessary to examine the compatibility of that decision with the general principles raised by the referring court.

89 As regards Articles 10 and 132 of Regulation No 73/2009, it is not apparent from the order for reference how those provisions would infringe the principles of EU law referred to, with the exception of that of non-discrimination.

90 Regarding the last mentioned principle, it must nevertheless be noted that, due to the fact that the agricultural situation in the new Member States was radically different from that in the Member States other than the new Member States, which prevents any valid comparison being made

(judgment in *Poland* v *Council*, C-273/04, EU:C:2007:622, paragraphs 87 and 88), the specific provisions of Articles 10 and 132 of Regulation No 73/2009, which meet the legitimate ground of applying, as from 2012, the rules for modulation in the new Member States, do not infringe the principle of non-discrimination.

91 It follows from the foregoing that the answer to question 1(c) and question 2(a) and (b), is that Implementing Decision C(2012) 4391 final is invalid, while examination of those questions has not disclosed any factor of such a kind as to affect the validity of the end of the final subparagraph of Article 132(2) of Regulation No 73/2009.

Question 2(c)

92 By question 2(c), the referring court essentially asks whether the final subparagraph of Article 132(2) of Regulation No 73/2009, as worded following the corrigendum published in the *Official Journal of the European Union* on 18 February 2010, is invalid in so far as that alteration by corrigendum introduced a substantive change rather than a technical correction.

93 It should be noted at the outset that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment in *Rosselle*, C-65/14, EU:C:2015:339, paragraph 43 and the case-law cited).

94 It should be noted that the correction of Article 132(2) of Regulation No 73/2009 was made in all the official languages of the European Union. Although the original version of the final subparagraph of Article 132(2) contained, in all the official languages of the European Union, the reference to 2012, that reference appeared, in some language versions, at the beginning of that subparagraph while in others it was at the end of that subparagraph.

95 The Lithuanian language version belongs to the first category of those language versions, in which the year was mentioned at the beginning of the last subparagraph of Article 132(2) of Regulation No 73/2009 before the correction. The correction made is the following, namely that the words ‘from 2012’ were deleted at the beginning of that subparagraph and the words ‘taking into account’ and ‘the application of Article 7 in conjunction with Article 10’ were inserted at the end of that subparagraph.

96 As the Commission has rightly observed, the reference to 2012 at the beginning of the last subparagraph of Article 132(2) of Regulation No 73/2009 could suggest that that provision should be interpreted as meaning that the prohibition on exceeding the maximum level concerned 2012 only, an interpretation that cannot be reconciled with the objective interpretation of that provision.

97 It must therefore be held that the correction made by the corrigendum published in the *Official Journal of the European Union* on 18 February 2010 constitutes a mere clarifying correction not affecting the scope of the provision concerned.

98 Consequently, as regards question 2(c), the consideration of the question referred for a preliminary ruling has not revealed any factor capable of affecting the validity of the final subparagraph of Article 132(2) of Regulation No 73/2009, as worded following the corrigendum published in the *Official Journal of the European Union* on 18 February 2010.

Question 2(d)

99 By question 2(d), the referring court asks whether the word 'dydis' in the Lithuanian version ('level' in the English language version), used in the last subparagraph of Article 1c(2) of Regulation No 1259/1999, which was inserted into the regulation by the 2003 Act of Accession, has the same meaning as the word 'lygis' ('level' in the English language version) used in the final subparagraph of Article 132(2) of Regulation No 73/2009.

100 It should be noted at the outset that Article 132 lays down, in essence, the same rules as Article 143c of Regulation No 1782/2003 which, in turn, reproduces the measures set out in Article 1c of Regulation No 1259/1999.

101 The relevant Lithuanian word used in the final subparagraph of Article 143c(2) of Regulation No 1782/2003 is 'dydis', as in the final subparagraph of Article 1c(2) of Regulation No 1259/1999. This term was therefore changed only when Regulation No 73/2009 was adopted, which uses the word 'lygis' in the final subparagraph of Article 132(2).

102 However, in several other language versions of the final subparagraph of Article 1c(2) of Regulation No 1259/1999 and of the final subparagraph of Article 132(2) of Regulation No 73/2009, the words used remained essentially the same. This applies in particular to the versions in Spanish, German, English, French, Italian, and Portuguese.

103 According to settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all EU languages. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (judgment in *Ivansson and Others*, C-307/13, EU:C:2014:2058, paragraph 40).

104 In that regard, it should be observed that neither the general scheme nor the purpose of Regulation No 73/2009 favour a different interpretation in respect of previous legislation reflecting the replacement of the word 'lygis' with the word 'dydis'. On the contrary, recital 48 in the preamble to that regulation states that '[t]he conditions for granting [CNDPs] should be maintained'.

105 It must be held, therefore, that the change in the wording used in the Lithuanian language version of the final subparagraph of Article 132(2) of Regulation No 73/2009 as compared to that used in the articles corresponding to the earlier regulations does not alter the meaning of that subparagraph. As the Advocate General stated in point 42 of his Opinion, that finding is borne out by the fact that the final subparagraph of Article 132(2) of Regulation No 73/2009 reproduces the measures set out in point 27(b) of Chapter 6A of Annex II to the 2003 Act of Accession.

106 Consequently, the answer to question 2(d) is as follows: the meaning of the word 'dydis', used in the Lithuanian language version of the final subparagraph of Article 1c(2) of Regulation No 1259/1999, which was inserted into that regulation by the 2003 Act of Accession, is the same as that of the word 'lygis', used in the Lithuanian language version of the final subparagraph of Article 132(2) of Regulation No 73/2009.

Question 3

107 By question 3, the referring court essentially asks whether Implementing Decision C(2012) 4391 final is invalid for reasons relating to its statement of reasons or to lack of publication in the *Official Journal of the European Union*.

108 In view of the finding, in paragraph 87 of the present judgment, that that implementing decision is invalid, there is no need to answer that question.

Costs

109 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 (Fourth Chamber) hereby rules:

1. **Articles 7(1), 10(1) and 121 of 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, must be interpreted as meaning that the concept of 'level of direct payments applicable in the Member States other than new Member States' must be interpreted as meaning that that level was, in 2012, equal to 90% of the level of all direct payments and that the concept of 'level of direct payments in the new Member States' must be interpreted as meaning that that level was, in 2012, equal to that in the Member States of the European Community as constituted on 30 April 2004.**

2. **Commission Implementing Decision C(2012) 4391 final of 2 July 2012 authorising the granting of complementary national direct payments in Lithuania in respect of the year 2012, is invalid since the consideration of the questions referred has disclosed no factor of such a kind as to affect the validity of the end of Article 10(1) and the end of the final subparagraph of Article 132(2) of Regulation No 73/2009.**

3. **The consideration of those questions has not revealed any factor capable of affecting the validity of the final subparagraph of Article 132(2) of Regulation No 73/2009, as worded following the corrigendum published in the *Official Journal of the European Union* on 18 February 2010.**

4. **The meaning of the word 'dydis', used in the Lithuanian language version of the final subparagraph of Article 1c(2) of Council Regulation (EC) No 1259/1999 of 17 May 1999 establishing common rules for direct support schemes under the common agricultural policy, which was inserted into the regulation by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded is the same as that of the word 'lygis', used in the Lithuanian language version of the final subparagraph of Article 132(2) of Regulation No 73/2009.**

[Signatures]