Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

19 December 2024*

(Reference for a preliminary ruling – Common fisheries policy – European Maritime and Fisheries Fund (EMFF) – Regulation (EU) No 1303/2013 – Article 69 – Concept of 'eligible expenditure' – Articles 4 and 125 – Regulation (EU) No 508/2014 – Article 48(1)(c) – Modernisation of an aquaculture unit – Regulation (EU, Euratom) 2018/1046 – Article 33 – Principle of sound financial management – Contribution in kind in the form of land and buildings located on that land – Direct link between the contribution in kind and the operation financed)

In Case C-392/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Bacău (Court of Appeal, Bacău, Romania), made by decision of 20 April 2023, received at the Court on 27 June 2023, in the proceedings

Rustrans SRL

v

Ministerul Agriculturii și Dezvoltării Rurale – Direcția Generală Pescuit – Autoritatea de Management pentru POPAM,

THE COURT (Eighth Chamber),

composed of M.L. Arastey Sahún, President of the Fifth Chamber, acting as President of the Eighth Chamber, N. Jääskinen and M. Gavalec (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Ministerul Agriculturii și Dezvoltării Rurale – Direcția Generală Pescuit – Autoritatea de Management pentru POPAM, by F.I. Barbu, acting as Agent,

– the Romanian Government, by R. Antonie, M. Chicu and E. Gane, acting as Agents,

* Language of the case: Romanian.

– the European Commission, by J. Hradil, C. Perrin and L. Radu Bouyon, 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 Article 48(1)(c) of Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ 2014 L 149, p. 1), Articles 4, 69 and 125 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320, and corrigendum OJ 2016 L 200, p. 140), and Article 33 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1).

2 The request has been made in proceedings between Rustrans SRL, on the one hand, and the Ministerul Agriculturii şi Dezvoltării Rurale – Direcția Generală Pescuit – Autoritatea de Management pentru [Programul Operational pentru Pescuit si Afaceri Maritime (POPAM)] (Ministry of Agriculture and Rural Development, Directorate-General for Fisheries, Managing Authority of the Operational Programme for Maritime Affairs and Fisheries (POPAM), Romania) ('the Managing Authority of the Programme for Maritime Affairs and Fisheries'), on the other, concerning the legality of an administrative act by which the latter (i) found that the financing project from which the former benefited was affected by irregularities and (ii) reduced the amount of financial aid granted to Rustrans by establishing a budgetary claim.

Legal context

European Union law

Regulation No 1303/2013

3 Article 4 of Regulation No 1303/2013, entitled 'General principles', provides, in paragraph 8 thereof:

'The Commission and the Member States shall respect the principle of sound financial management …'

4 Article 65 of that regulation, entitled 'Eligibility', provides, in paragraphs 1 and 2 thereof:

'1. The eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, this Regulation or the Fund-specific rules.

2. Expenditure shall be eligible for a contribution from the [European Structural and Investment Funds ('the ESI Funds')] if it has been incurred by a beneficiary and paid between the date of submission of the programme to the Commission or from 1 January 2014, whichever is earlier, and 31 December 2023. In addition, expenditure shall only be eligible for a contribution from the [European Agricultural Fund for Rural Development (EAFRD)] if the relevant aid is actually paid by the paying agency between 1 January 2014 and 31 December 2023.'

5 Article 67 of Regulation No 1303/2013, entitled 'Forms of grants and repayable assistance', provides, in paragraph 1 thereof:

'Grants and repayable assistance may take any of the following forms:

(a) reimbursement of eligible costs actually incurred and paid, together with, where applicable, contributions in kind and depreciation;

…'

6 Under Article 69 of that regulation, entitled 'Specific eligibility rules for grants and repayable assistance':

'1. Contributions in kind in the form of provision of works, goods, services, land and real estate for which no cash payment supported by invoices, or documents of equivalent probative value, has been made, may be eligible on condition that the eligibility rules of the ESI Funds and the programme so provide and that all the following criteria are fulfilled:

(a) the public support paid to the operation which includes contributions in kind does not exceed the total eligible expenditure, excluding contributions in kind, at the end of the operation;

(b) the value attributed to contributions in kind does not exceed the costs generally accepted on the market in question;

(c) the value and the delivery of the contribution can be independently assessed and verified;

(d) in the case of provision of land or real estate, a cash payment, for the purposes of a lease agreement of a nominal amount per annum not exceeding a single unit of the currency of the Member State, may be made;

(e) in the case of contributions in kind in the form of unpaid work, the value of that work is determined by taking into account the verified time spent and the rate of remuneration for equivalent work.

The value of the land or real estate referred to in point (d) of the first subparagraph of this paragraph shall be certified by an independent qualified expert or duly authorised official body and shall not exceed the limit laid down in point (b) of paragraph 3.

…

3. The following costs shall not be eligible for a contribution from the ESI Funds and from the amount of support transferred from the Cohesion Fund to the [Connecting Europe Facility] as referred to in Article 92(6):

…

(b) the purchase of land not built on and land built on in the amount exceeding 10% of the total eligible expenditure for the operation concerned. For derelict sites and for those formerly in industrial use which comprise buildings, that limit shall be increased to 15%. In exceptional and duly justified cases, the limit may be raised above the respective aforementioned percentages for operations concerning environmental conservation;

…'

7 Article 125 of Regulation No 1303/2013, entitled 'Functions of the managing authority', provides, in paragraphs 1 and 3 thereof:

'1. The managing authority shall be responsible for managing the operational programme in accordance with the principle of sound financial management.

…

3. As regards the selection of operations, the managing authority shall:

(a) draw up and, once approved, apply appropriate selection procedures and criteria that:
   (i) ensure the contribution of operations to the achievement of the specific objectives and results of the relevant priority;
   (ii) are non-discriminatory and transparent;
   (iii) take into account the general principles set out in Articles 7 and 8;

(b) ensure that a selected operation falls within the scope of the [European Maritime and Fisheries Fund (EMFF)], the Fund or Funds concerned and can be attributed to a category of intervention or, in the case of the EMFF, a measure identified in the priority or priorities of the operational programme;

…'

Regulation No 508/2014

8 Article 48 of Regulation No 508/2014, entitled 'Productive investments in aquaculture', provides, in paragraph 1 thereof:

'The EMFF may support:

…

(c) the modernisation of aquaculture units, including the improvement in working and safety conditions of aquaculture workers;

…’

Regulation 2018/1046

9 Article 2 of Regulation 2018/1046, entitled ‘Definitions’, provided:

‘For the purposes of this Regulation, the following definitions apply:

…

(59) “sound financial management” means implementation of the budget in accordance with the principles of economy, efficiency and effectiveness;

…’

10 Article 33 of that regulation, entitled ‘Performance and principles of economy, efficiency and effectiveness’, provided, in paragraph 1 thereof:

‘Appropriations shall be used in accordance with the principle of sound financial management, and thus be implemented respecting the following principles:

(a) the principle of economy which requires that the resources used by the Union institution concerned in the pursuit of its activities shall be made available in due time, in appropriate quantity and quality, and at the best price;

(b) the principle of efficiency which concerns the best relationship between the resources employed, the activities undertaken and the achievement of objectives;

(c) the principle of effectiveness which concerns the extent to which the objectives pursued are achieved through the activities undertaken.’

11 Article 36 of Regulation 2018/1046, entitled ‘Internal control of budget implementation’, provided, in paragraph 1 thereof:

‘Pursuant to the principle of sound financial management, the budget shall be implemented in compliance with the effective and efficient internal control appropriate to each method of implementation, and in accordance with the relevant sector-specific rules.’

Romanian law

12 Article 4 of Hotărârea Guvernului nr. 347 privind stabilirea cadrului general de implementare a operațiunilor cofinanțate din Fondul European pentru Pescuit și Afaceri Maritime prin Programul operațional pentru pescuit și afaceri maritime 2014-2020 (Government Decision No 347 laying down the general framework for the implementation of operations co-financed by

the European Maritime and Fisheries Fund through the Operational Programme for Maritime Affairs and Fisheries 2014–2020) of 11 May 2016 (*Monitorul Oficial al României*, Part I, No 368 of 12 May 2016), in the version in force on the date the funding was granted, provides:

'(1) Without prejudice to Articles 5 and 6, in order to be eligible, expenditure must meet all of the following conditions of a general nature:

(a) be incurred by the beneficiary and actually paid by it under the conditions laid down by law, between 1 January 2014 and 31 December 2023, provided that the co-financed operation has not been physically completed or fully implemented before the application for funding under the Operational Programme for Maritime Affairs and Fisheries 2014-2020 is submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary, in accordance with Article 65(6) of [Regulation No 1303/2013];

(b) be accompanied by invoices issued in accordance with the provisions of national legislation or of the State in which they were issued, or other accounting documents on the basis of which the payment obligation is recorded, together with supporting documents attesting to the payment and reality of the expenditure effected, on the basis of which that expenditure can be verified/checked/audited/certified, with the exception of expenditure relating to repayable assistance granted in one of the forms provided for in Article 67(1)(b), (c) and (d) of [Regulation No 1303/2013];

(c) be in accordance with the funding contract concluded between the [Ministerul Agriculturii și Dezvoltării Rurale (Ministry of Agriculture and Rural Development, Romania)], through the Managing Authority of the [Programme for Maritime Affairs and Fisheries], and the beneficiary;

(d) comply with the relevant provisions of EU and national law;

(e) be in accordance with the provisions of the programme;

(f) be entered in the accounts of the beneficiary in accordance with Article 67 of [Regulation No 1303/2013].

(2) Expenditure relating to subcontracting for works shall be eligible for up to a maximum of 30% of the total eligible amount of the works contract.

(3) Expenditure relating to subcontracting for services shall be eligible for up to a maximum of 40% of the total eligible amount of the services contract.'

13 Article 2(1)(a) of Ordonanța de urgență a Guvernului nr. 66 privind prevenirea, constatarea și sancționarea neregulilor apărute în obținerea și utilizarea fondurilor europene și/sau a fondurilor publice naționale aferente acestora (Government Emergency Order No 66 concerning the prevention and detection of, and penalties for, irregularities associated with the receipt and use of European funds and/or related national public funds) of 29 June 2011 (*Monitorul Oficial al României*, Part I, No 461 of 30 June 2011) ('OUG No 66/2011') defines an 'irregularity', for the purposes of that emergency order, as 'any breach of legality, regularity and compliance, in relation to provisions of national and/or European law, as well as terms of contracts or agreements or other commitments legally entered into on the basis of those provisions, resulting from an action or an inaction on the part of the beneficiary or the authority competent to manage

European funds, which, as a result of an amount unduly paid, has, or could have, an adverse effect on the general budget of the Union/the budgets of international public donors and/or related national public funds.'

14 Article 3 of OUG No 66/2011 provides:

'(1) The authorities competent to manage European funds are required to respect the principle of sound financial management, as defined in European legislation or by international donors, as appropriate.

(2) In the selection and approval of applications for financial support, the authorities competent to manage European funds are required to use rules and procedures ensuring respect for the following principles:

(a) sound financial management, based on the principles of economy, effectiveness and efficiency;

(b) the principles of free competition and equal and non-discriminatory treatment;

(c) transparency – making information relating to the implementation of the procedure for granting European funds available to any interested person;

(d) the prevention, throughout the procedure for selecting the projects to be financed, of situations arising which involve conflicts of interest;

(e) the exclusion of cumulation – the activity in respect of which the application for funding from European funds is made cannot receive financial support from other non-repayable sources of funding, except for amounts constituting State aid granted under the conditions laid down by law.

(3) In the context of the implementation of a non-repayable funding contract, beneficiaries are required to respect:

(a) the principle of sound financial management, based on the principles of economy, effectiveness and efficiency;

(b) the principles of free competition and equal and non-discriminatory treatment, in accordance with the funding contract and the applicable legislation;

(c) the principle of transparency, in accordance with the funding contract and the applicable legislation.

(3^1) In accordance with the principle of sound financial management, the authorities competent to manage European funds and public law beneficiaries are required to draw up and apply management and control procedures ensuring that the funds are properly granted and used.'

15 Ordinul nr. 816/2016 al ministrului agriculturii și dezvoltării rurale privind aprobarea Listei detaliate a cheltuielilor eligibile pentru operațiunile finanțate, inclusiv cheltuielile de personal ale Autorității de management, în cadrul Programului operațional pentru pescuit și afaceri maritime 2014-2020 (Order No 816/2016 of the Minister for Agriculture and Rural Development approving the detailed list of eligible expenditure for financed operations, including expenditure for the staff

of the Managing Authority, within the framework of the Operational Programme for Maritime Affairs and Fisheries 2014-2020) of 24 May 2016 (*Monitorul Oficial al României*, Part I, No 401 of 26 May 2016), in the version in force at the time the funding was granted, includes an annex containing a detailed list of eligible expenditure for financed operations, including expenditure for the staff of the Managing Authority, within the framework of the Operational Programme for Maritime Affairs and Fisheries 2014-2020.

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

16 Rustrans submitted an application for funding to the Managing Authority of the Programme for Maritime Affairs and Fisheries under the Operational Programme for Maritime Affairs and Fisheries 2014-2020, based in particular on Article 48(1)(c) of Regulation No 508/2014 ('the application for funding'), with a view to carrying out a project to extend and diversify its aquaculture activities ('the project concerned'). By that project, Rustrans sought to improve its competitiveness by modernising its aquaculture unit, increasing its production capacity and optimising its production costs, through the purchase of technological equipment and state-of-the-art materials specific to aquaculture.

17 In the context of that project, Rustrans undertook to provide, in the form of a contribution in kind, a plot of land and the buildings located on that land, which included, inter alia, a fish farm, that contribution being made at the values determined in the application for funding.

18 On 18 September 2018, Rustrans and the Managing Authority of the Programme for Maritime Affairs and Fisheries concluded a funding contract for the project concerned. According to the terms of that contract, non-repayable funding was granted to Rustrans for the purchase of equipment, technological machinery and materials.

19 The total amount of the funding contract was 19 151 676.06 Romanian lei (RON) (approximately EUR 3 850 000), of which RON 5 009 988.24 (approximately EUR 1 000 000) was granted by the Managing Authority of the Programme for Maritime Affairs and Fisheries as non-repayable funding, that is to say, 28.67% of the total eligible amount approved.

20 For that non-repayable funding of RON 5 009 988.24, the EMFF contribution totalled RON 3 757 491.18 (approximately EUR 755 000), or 75% of the amount of non-repayable funding, and that of the national budget totalled RON 1 252 497.06 (approximately EUR 250 000), or 25% of the amount of non-repayable funding.

21 Rustrans' contribution in respect of eligible co-financing, consisting of a contribution in kind in the form of the provision of land and buildings located on that land, including a fish farm, amounted to RON 12 467 883.69 (approximately EUR 2 500 000), that is to say, 71.33% of the total eligible amount.

22 The value of the land contributed in kind by Rustrans was RON 1 505 336.03 (approximately EUR 301 000), that is to say, 8.61% of the total eligible amount.

23 Rustrans submitted four applications for reimbursement following the implementation of the project concerned, which led to that company being paid a total amount of RON 4 826 294.03 (approximately EUR 965 000), of which RON 3 619 720.51 (approximately EUR 724 000) was by way of a contribution from the EMFF (75%) and RON 1 206 573.51 (approximately EUR 240 000) was by way of a contribution from the national budget (25%).

24 In 2021, the Commission's Directorate-General for Maritime Affairs and Fisheries carried out an audit which revealed the existence of two irregularities as regards the arrangements for the Managing Authority of the Programme for Maritime Affairs and Fisheries agreeing to reimburse the expenditure relating to a contribution in kind made to a project in the form of the provision of land and buildings. The first irregularity identified consisted of an infringement of Article 69(1) and (3)(b) of Regulation No 1303/2013, given that the expenditure relating to that contribution exceeded the maximum limit of 10% of the total eligible expenditure of such projects. The second irregularity concerned the absence of a link between that contribution in kind and the operation financed in the light of the principle of sound financial management, laid down in Article 4(8) and in Article 125(1) of Regulation No 1303/2013 and in Article 33(1) of Regulation 2018/1046.

25 In that context, the Managing Authority of the Programme for Maritime Affairs and Fisheries carried out checks on the project concerned. By a report establishing irregularities and determining the budgetary debts of 19 October 2022, that authority found irregularities, within the meaning of Article 2(1)(a) of OUG No 66/2011, relating, first, to the absence of a direct link between the contribution in kind and the operation financed and, second, to the fact that the limit of 10% of total eligible expenditure, laid down in Article 69(1) of Regulation No 1303/2013, had been exceeded.

26 A budgetary claim of RON 3 378 392.20 (approximately EUR 676 000) was therefore established, of which RON 2 533 794.15 (approximately EUR 507 000) was in respect of the EMFF contribution, and RON 844 598.05 (approximately EUR 169 000) was in respect of the contribution from the national budget.

27 On 7 November 2022, Rustrans brought an action before the Curtea de Apel Bacău (Court of Appeal, Bacău, Romania), which is the referring court, in order to seek, first, the annulment of that report of 19 October 2022 and, second, exemption from payment of RON 3 378 392.20 (approximately EUR 676 000).

28 That court questions whether, in the first place, the contribution in kind consisting of land and of buildings has a 'direct link' with the operations financed, namely the purchase of specific equipment, technological machinery and materials intended to modernise existing aquaculture units.

29 Furthermore, in the context of the assessment of whether the principles of sound financial management and efficiency have been respected, there is a difference of opinion between the Commission and the Romanian State, each party having determined differently the costs necessary for the modernisation of existing aquaculture units. The Romanian State considered that those costs included the land and the buildings located thereon, as without them the project would not have been possible, whereas the Commission considered that the land and the buildings were a prerequisite for the modernisation operation.

30 According to the referring court, the project's activities, as described in the application for funding, were intended not to intervene directly in the immovable property by means of which the applicant co-financed the project, but rather, to provide the fish farm with the means necessary to carry out its specific activity. It notes that, in accordance with the principles of sound financial management and efficiency, only the costs necessary for, and associated with, the modernisation of existing aquaculture units are eligible under that provision.

31 In the second place, the referring court questions whether the rate of 10%, laid down in Article 69(3)(b) of Regulation No 1303/2013, which excludes the eligibility of costs for the purchase of land, whether built on or not, exceeding 10% of the total eligible expenditure of the operation concerned, applies overall to the entire contribution in kind, namely the land and the buildings, or only to the contribution consisting of the land.

32 In those circumstances, the Curtea de Apel Bacău (Court of Appeal, Bacău) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) For the purpose of modernising an aquaculture unit by means of the investment referred to in Article 48(1)(c) of Regulation No 508/2014, does the contribution in kind of land adjoining ponds, aquaculture plants or tanks made of concrete, as well as buildings present on that land, constitute eligible expenditure within the meaning of Article 69 of Regulation No 1303/2013, where modernisation of the aquaculture unit is carried out through the purchase of equipment, technological machinery and materials for the fish farm?

(2) Must Article 48(1)(c) of Regulation No 508/2014, read in conjunction with Articles 4 and 125 of Regulation [No] 1303/2013 and Article 33 of [Regulation 2018/1046][, relating to] the principle of sound financial management, be interpreted as meaning that there is no direct link between the modernisation of an aquaculture unit by means of expenditure on the purchase of equipment, technological machinery and materials for the fish farm located on the land[, on the one hand,] and the contribution in kind of the land adjoining concrete ponds, land adjoining ponds for aquaculture plants, land adjoining concrete tanks and buildings located on that land[, on the other]?

(3) Does the [limit of 10%] referred to in Article 69(3)(b) of Regulation No 1303/2013 apply only to contributions consisting of land and buildings for which a cash payment is made for the purposes of a lease agreement (referred to in Article 69(1)(d) [of that regulation]) or does it also apply to the contribution in kind [consisting of] land and immovable property belonging ([and] not rented) to the beneficiaries?

(4) Does Article 69 of [Regulation No 1303/2013] set a limit of 10% only for the contribution in kind consisting of land or does it set a limit of 10% for the contribution in kind consisting of land and buildings?'

Consideration of the questions referred

The first and second questions

Admissibility

33 The Romanian Government and the Managing Authority of the Programme for Maritime Affairs and Fisheries dispute the admissibility of the first and second questions referred, on several grounds. First, according to the Managing Authority of the Programme for Maritime Affairs and Fisheries, those questions are inadmissible because they relate to Article 69 of Regulation No 1303/2013, which is a clear, foreseeable and unambiguous provision and, therefore, does not require interpretation. Similarly, that authority submits that the reasons which led the referring court to question the interpretation of the provisions at issue or the link between those provisions and the national legislation applicable to the dispute in the main proceedings, as well as the lack of clarity of the questions referred for a preliminary ruling, render those questions inadmissible.

34 In that regard, it is sufficient to recall that, although the fact that the correct interpretation of EU law was so clear in the present case as to leave no room for any reasonable doubt may, if proven, prompt the Court to rule by means of an order pursuant to Article 99 of the Rules of Procedure of the Court of Justice, that same fact nevertheless cannot prevent the national court from referring questions for a preliminary ruling; nor can it have the effect of rendering the questions thus referred inadmissible (judgment of 7 September 2023, *Asociația 'Forumul Judecătorilor din România'*, C-216/21, EU:C:2023:628, paragraph 49 and the case-law cited).

35 Furthermore, it should be noted that, according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling. It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 7 September 2023, *Groenland Poultry*, C-169/22, EU:C:2023:638, paragraph 32 and the case-law cited).

36 In the present case, the referring court stated, in the order for reference, that, to resolve the dispute in the main proceedings, it is necessary for it to interpret not only Article 69 of Regulation No 1303/2013 but also Articles 4 and 125 of that regulation, as well as Article 33 of Regulation 2018/1046, which relates to the principle of sound financial management, in order to determine whether the contribution in kind made by Rustrans in the form of the provision of land and buildings located on that land may be regarded as eligible expenditure, within the meaning of Regulation No 1303/2013, and, therefore, may be co-financed in the form of a reimbursement. It

is therefore not quite obvious that the interpretation of Article 69 of Regulation No 1303/2013 that is sought bears no relation to the actual facts of the main action or its purpose or that the problem in the main proceedings is hypothetical.

37 Second, the Romanian Government claims that, by its first and second questions, the referring court is asking the Court of Justice to carry out a factual assessment seeking to establish whether there is a direct link between the contribution in kind at issue in the main proceedings and the subject matter of the project concerned, a task which falls not on the Court but on the referring court.

38 In that regard, it should be recalled that, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court (judgments of 15 November 1979, *Denkavit Futtermittel*, 36/79, EU:C:1979:258, paragraph 12, and of 13 June 2024, *Adient*, C-533/22, EU:C:2024:501, paragraph 33 and the case-law cited).

39 In the present case, it is sufficient to note that, contrary to the Romanian Government's assertions, by its first and second questions, the referring court is not asking the Court to carry out an assessment of a factual nature, but rather to interpret provisions of EU law in order to determine whether a contribution in kind in the form of the provision of land and buildings located on that land is capable of falling within the concept of 'eligible expenditure' within the meaning of Article 69 of Regulation No 1303/2013.

40 It follows that the first and second questions are admissible.

Substance

41 As a preliminary point, it should be noted that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions (judgment of 7 September 2023, *Groenland Poultry*, C-169/22, EU:C:2023:638, paragraph 47 and the case-law cited).

42 In that regard, it is apparent from the request for a preliminary ruling that the first and second questions concern whether a contribution in kind made by a beneficiary in the form of the provision of land and buildings located on that land is capable of satisfying the eligibility rules of the ESI Funds referred to in Article 69 of Regulation No 1303/2013. It should be noted, first, that the concept of eligibility of expenditure is specifically the subject of Article 65(1) and (2) of that regulation and, second, that Article 67(1)(a) of that regulation provides that grants may take the form of reimbursement of eligible costs which are actually incurred and paid by the beneficiary, together with, where applicable, contributions in kind.

43 In addition, Article 48(1)(c) of Regulation No 508/2014, to which the referring court refers, merely provides that the EMFF may support the modernisation of aquaculture units, without providing specific indications as to the eligibility of expenditure related to a given operation.

44 In those circumstances, and in order to provide the referring court with an answer which will be of use to it, it must be held that, by its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 65(1) and (2), Article 67(1)(a) and Article 69 of Regulation No 1303/2013, read in conjunction with Article 4 and Article 125(1) of that regulation, and with Article 33 of Regulation 2018/1046, are to be interpreted as meaning that a contribution in kind made by a beneficiary in the form of the provision of land and buildings located thereon for the purposes of a project for the modernisation of an aquaculture unit consisting solely of the purchase of specific equipment, technological machinery and materials for an existing fish farm falls within the concept of 'eligible expenditure' within the meaning of those provisions.

45 In the first place, it should be noted, at the outset, that, in accordance with Article 65(1) of Regulation No 1303/2013, the eligibility of expenditure is to be determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, that regulation or the rules specific to each of the ESI Funds. Under Article 65(2) of that regulation, expenditure is to be eligible for a contribution from the ESI Funds only if it has been incurred by a beneficiary and paid between the date of submission of the programme to the Commission or from 1 January 2014, whichever is earlier, and 31 December 2023.

46 Next, Article 67(1)(a) of Regulation No 1303/2013 provides that grants and repayable assistance may take the form of a reimbursement of eligible costs actually incurred and paid, together with, where applicable, contributions in kind and depreciation.

47 Lastly, Article 69(1) of that regulation lays down specific eligibility rules for contributions in kind in the form of, inter alia, the provision of land and real estate for which no cash payment supported by invoices, or other documents of equivalent probative value has been made. In accordance with that provision, such contributions in kind are subject to (i) the eligibility rules of the ESI Funds and the programme so providing and (ii) all the criteria set out in that provision being fulfilled. In that regard, the second subparagraph of Article 69(1) of that regulation provides that the value of land or real estate is to be certified by an independent qualified expert or by a duly authorised official body and is not to exceed the limit laid down in Article 69(3)(b) thereof, that is to say, that it is not, in principle, to exceed an amount greater than 10% of the total eligible expenditure of the operation concerned.

48 It must therefore be held that it is not apparent from the wording of those provisions that the EU legislature expressly made the eligibility of a contribution in kind in the form of the provision of land and buildings located on that land subject to the existence of a direct link between such a contribution in kind made by the beneficiary, on the one hand, and the co-financed project, on the other.

49 In the second place, it should also be recalled that, under Article 317 TFEU, the Commission is to implement the EU budget in cooperation with the Member States, in accordance with, inter alia, the principle of sound financial management, which Article 2(59) of Regulation 2018/1046 defines as the implementation of the budget in accordance with the principles of economy, efficiency and effectiveness. The principle of sound financial management therefore requires that the ESI Funds, which include the EMFF, be used by the Member States in accordance with the legal principles and requirements underlying EU sector-specific rules.

50 In that regard, Article 4(8) of Regulation No 1303/2013 states that the Member States are to respect the principle of sound financial management, in accordance with Article 33 of Regulation 2018/1046.

51 According to paragraph 1 of Article 33 of Regulation 2018/1046, appropriations are to be used in accordance with the principle of sound financial management and are to be implemented respecting the principles set out in that paragraph, namely the principles of economy, effectiveness and efficiency, the last of those principles being defined, in point (b) of that paragraph, as concerning the best relationship between the resources employed, the activities undertaken and the achievement of objectives.

52 In that context, Article 125(1) of Regulation No 1303/2013 provides that the managing authority is to be responsible for managing the operational programme, in accordance with the principle of sound financial management. Article 125(3) of that regulation states, in essence, that it is for that authority to ensure that (i) operations selected for funding comply, throughout their implementation period, with the applicable EU rules and rules of the Member States concerned and (ii) those operations contribute to the achievement of the specific objectives and results of the relevant priority.

53 It follows from those considerations that it is for the managing authority to verify that operations selected for funding respect the principle of efficiency, that is to say that the best relationship exists between the means implemented, the activities undertaken and the objectives pursued by such operations. That relationship implies that, in the context of an operation co-financed by one of the structural and investment funds, the expenditure incurred by the beneficiary and the contributions in kind which the beneficiary may provide to support that project must, in order to be considered eligible, have a direct link with the activity undertaken.

54 In the present case, as is apparent from the information provided by the referring court, the project concerned, consisting of the extension and of the diversification by Rustrans of its aquaculture activity, falls within the scope of the objective laid down in Article 48(1)(c) of Regulation No 508/2014, namely the modernisation of an aquaculture unit, and consists solely of the purchase of equipment, technological machinery and materials. To that end, Rustrans contributed to the financing of that project by means of a contribution in kind consisting of the provision of land and buildings located on that land without, however, specifying in its application for funding that the project was intended to be carried out directly on that land and those buildings. It follows that that contribution in kind does not appear to have a direct link with the project financed such that that contribution may be regarded as eligible for EU funding, which it is nevertheless for the referring court to verify.

55 In the light of all the foregoing considerations, the answer to the first and second questions is that Article 65(1) and (2), Article 67(1)(a) and Article 69 of Regulation No 1303/2013, read in conjunction with Article 4 and Article 125(1) of that regulation, and with Article 33 of Regulation 2018/1046, must be interpreted as meaning that a contribution in kind made by a beneficiary in the form of the provision of land and buildings located on that land for the purposes of a project for the modernisation of an aquaculture unit consisting solely of the purchase of specific equipment, technological machinery and materials for an existing fish farm does not fall within the concept of ‘eligible expenditure’ within the meaning of those provisions.

The third and fourth questions

56 In the light of the answer given to the first and second questions, it is not necessary to answer the third and fourth questions.

Costs

57 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 (Eighth Chamber) hereby rules:

Article 65(1) and (2), Article 67(1)(a) and Article 69 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, read in conjunction with Article 4 and Article 125(1) of that regulation and with Article 33 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012,

must be interpreted as meaning that a contribution in kind made by a beneficiary in the form of the provision of land and buildings located on that land for the purposes of a project for the modernisation of an aquaculture unit consisting solely of the purchase of specific equipment, technological machinery and materials for an existing fish farm does not fall within the concept of 'eligible expenditure' within the meaning of those provisions.

[Signatures]