Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

25 October 2012*

(Agriculture — Regulations (EC) No 1698/2005 and 1974/2006 — Setting up aid for young farmers — Conditions for grant — Setting up for the first time on an agricultural holding as head of the holding — Conditions governing applicability where the person concerned sets up using a legal person)

In Case C-592/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Korkein hallinto-oikeus (Finland), made by decision of 23 November 2011, received at the Court on 25 November 2011, in the proceedings

Anssi Ketelä,

THE COURT (Eighth Chamber),

composed of L. Bay Larsen, acting as President of the Eighth Chamber, C. Toader and A. Prechal (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Finnish Government, by M. Pere, acting as Agent,

— the Czech Government, by M. Smolek and S. Šindelková, acting as Agents,

— the European Commission, by E. Paasivirta and G. von Rintelen, acting as Agents,

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

gives the following

* Language of the case: Finnish.

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 22(1)(a) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1) and Article 13(4) and (6) of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 (OJ 2006 L 368, p. 15).

2 The reference has been made in proceeding brought by Mr Ketelä against a decision which suspended the payment of setting up aid which he had been previously granted.

Legal context

European Union law

Regulation No 1698/2005

3 According to recitals 11, 13, 14, 16, 17 and 61 in the preamble to Regulation No 1698/2005:

‘(11) To ensure the sustainable development of rural areas it is necessary to focus on a limited number of core objectives at Community level relating to agricultural and forestry competitiveness, land management and environment, quality of life and diversification of activities in those areas, taking into account the diversity of situations, ranging from remote rural areas suffering from depopulation and decline to peri-urban rural areas under increasing pressure from urban centres.

…

(13) To achieve the objective of improving the competitiveness of the agricultural and forestry sectors it is important to build clear development strategies aimed at enhancing and adapting human potential, physical potential and the quality of agricultural production.

(14) With regard to human potential, a set of measures on training, information and diffusion of knowledge, setting up of young farmers, early retirement of farmers and farm workers, use by farmers and forest holders of advisory services and on the setting up of farm management, farm relief and farm advisory services as well as forestry advisory services should be made available.

…

(16) The granting of specific benefits to young farmers may facilitate both their initial establishment and the structural adjustment of their holdings after their initial setting up. The setting-up measure should be made conditional on the establishment of a business plan as an instrument to ensure over time the development of the activities of the new agricultural holding.

(17) Early retirement from farming should target a significant structural change of the transferred holdings through the measure for the setting-up of young farmers according to the requirements of that measure, or by transferring the holding with a view to increasing its size, also taking into account the experience acquired in the implementation of previous Community schemes in this field.

…

(61) In accordance with the principle of subsidiarity and subject to exceptions, there should be national rules on the eligibility of expenditure.'

4 Under the heading 'Scope', Article 1 of Regulation No 1698/2005 states:

'This Regulation

1. lays down the general rules governing Community support for rural development, financed by the EAFRD, established by Regulation (EC) No 1290/2005;

2. defines the Objectives to which rural development policy is to contribute;

…

4. defines the priorities and measures for rural development;

…'

5 Article 2(c) and (d) thereof contain the following definitions:

'(c) "axis": a coherent group of measures with specific goals resulting directly from their implementation and contributing to one or more of the objectives set out in Article 4;

(d) "measure": a set of operations contributing to the implementation of an axis as referred to in Article 4(2);'

6 Article 4(1) of that regulation provides:

'Support for rural development shall contribute to achieving the following objectives:

(a) improving the competitiveness of agriculture and forestry by supporting restructuring, development and innovation;

…'

7 Article 15 of Regulation No 1698/2005 provides that the EAFRD is to act in the Member States through rural development programmes.

8 Article 16(c) of Regulation No 1698/2005 provides:

'Each rural development programme shall include:

…

(c) information on the axes and measures proposed for each axis and their description …

…'

9 In Section 1, entitled ‘Axis 1 Improving the competitiveness of the agricultural and forestry sector’, in Chapter I of Title IV of Regulation No 1698/2005, Article 20(a) thereof states:

‘Support targeting the competitiveness of the agricultural and forestry sector shall concern:

(a) measures aimed at promoting knowledge and improving human potential through:

…

(ii) setting up of young farmers;

(iii) early retirement of farmers and farm workers …

…’

10 Article 22(1) of Regulation No 1698/2005 is worded as follows:

‘Support provided for in Article 20(a)(ii), shall be granted to persons who:

(a) are less than 40 years of age and are setting up for the first time on an agricultural holding as head of the holding;

(b) possess adequate occupational skills and competence;

(c) submit a business plan for the development of their farming activities.’

11 Entitled ‘Early retirement’, Article 23 thereof provides:

‘1. Support provided for in Article 20(a)(iii), shall be granted:

(a) to farmers who decide to stop their agricultural activity for the purpose of transferring the holdings to other farmers;

…

3. The transferee shall:

(a) succeed the transferor by setting up as provided for in Article 22; or

(b) be a farmer of less than 50 years old or a private law body and take over the agricultural holding released by the transferor to increase the size of the agricultural holding.

…’

12 Under Article 71(3) of that regulation:

‘The rules on eligibility of expenditure shall be set at national level, subject to the special conditions laid down by this Regulation for certain rural development measures.

…’

Regulation No 1974/2006

13 According to recital 8 in the preamble to Regulation No 1974/2006:

'Regulation (EC) No 1698/2005 lays down conditions for support to young farmers. The time by which those conditions must be fulfilled should be specified, including the duration of the period that Member States may grant to certain beneficiaries in which to comply with the occupational skills and competence condition. Since support to young farmers is subject to the condition that a business plan is submitted by the young farmer, detailed rules should be laid down as regards the business plan and the respect for its provisions by the young farmer.'

14 Article 13(4) and (6) of Regulation No 1974/2006 provides:

'4. The individual decision to grant support for the setting up of young farmers shall be taken no later than 18 months after setting up as defined by the provisions in force in the Member States. …

…

6. Specific conditions may be applied in a situation where a young farmer is not established as sole head of the agricultural holding. Those conditions must be equivalent to those required for a young farmer setting up as sole head of a holding.'

15 Point 5 in Annex II(A) to Regulation No 1974/2006, which, as Article 16(c) of Regulation No 1698/2005 provides, sets out the information which is to appear in rural development programmes, contains inter alia the following information:

'5.3 Information required for Axes and measures

…

5.3.1.1.2. Setting up of young farmers

— the definition of "setting up" used by the Member State/region,

…'

Finnish law

The Law on structural support

16 Paragraph 3(1) of the Law on agricultural structural support (1476/2007) (Laki maatalouden rakennetuista (1476/2007) 'Law on structural support') provides that it applies to the grant, payment, follow-up, inspection and reimbursement of the support co-financed by the European Union if no other provision arises from the legislation of the latter.

17 Entitled 'Setting up aid for young farmers', Paragraph 6 of the Law on structural support states in particular:

'Setting up aid may be granted to farmers who at the time the application is made are under 40 years of age and who are setting up for the first time on an agricultural holding as head of the holding (young farmer). If the applicant is a company, the decision-making powers must be exercised by one or more natural persons who satisfy the conditions set out above.

…

A decree of the Council of Ministers shall set out, within the limits established by European Union law, the activities which may qualify for setting up aid, the condition relating to the decision-making power and the form and the ceiling on aid. …'

18 Entitled 'Conditions relating to the beneficiary', Paragraph 8 of that Law provides inter alia:

'…

The grant of the aid is subject to the condition that the applicant has sufficient occupational competences as regards the activities of the company eligible for aid. Another condition is that the activities of the company receiving aid is of fundamental importance to the income of the applicant. In order to determine that it is necessary to determine the share of the applicant's total annual income represented by the income derived from the entrepreneurial activity.

…

The requirements relating to occupational competences, income and decision-making power of the applicant shall be laid down by a Decree of the Council of Ministers.'

Decree 299/2008

19 Entitled 'Conditions concerning the beneficiary of the aid', Chapter 2 of the Decree of the Council of Ministers on Agricultural Investment aid and Setting-up Aid for Young Farmers (299/2008) (valtioneuvoston asetus maaalouden investointituesta ja nuoren viljelijän aloitustuesta (299/2008), the Setting-up Aid Decree contains Paragraph 3, entitled 'Decision-making powers within the company' which provides inter alia that 'a person is regarded as having authority in a limited company if he holds half of the shares in the company and the shares which he owns produce over half the number of votes of the company's shares. Decision-making power may also result from shares held by several persons and the number of corresponding votes.

20 In Chapter 4, entitled 'Setting-up Aid for young farmers', of the Decree Paragraph 16 entitled 'Natural person who is a beneficiary of aid' states in particular:

'Setting-up aid may be granted to a natural person who, as an agricultural entrepreneur, has started to engage in agriculture on his own account. Setting up aid may also be granted to a natural person who obtains authority in a corporate body and starts to engage in agriculture as a shareholder or partner in that corporate body.'

21 Paragraph 18 of the Setting-up Aid Decree provides that the applicant is regarded as established on the holding where he has, on the basis of a deed of conveyance or a written leasing contract, obtained possession of an agricultural holding or part of a holding, by which he has achieved an annual agricultural entrepreneur income of at least EUR 10 000. The date of commencement is decided on the basis of the time when the applicant signed the deed of conveyance or leasing contract conferring possession on him.

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

22 From 1 January 2004 to 29 March 2007 Mr Ketelä was managing director of Louhikon Sikako Oy ('Louhikon Sikako') in which he also owned 30% of the shares, the other 70% of the remaining shares being held by another shareholder. That company had, in particular, the object of pig farming.

23 During that period, Mr Ketelä's share of the annual entrepreneurial income calculated for the company amounted in accordance with his share in the capital to more than EUR 10 000.

24 On 25 February 2008, Mr Ketelä sold his shares to the other shareholder.

25 On 30 December 2008, Mr Ketelä submitted an application for setting-up aid for the purchase of the family agricultural holding. The aid was granted by decision of 24 February 2009 by the Etelä-Pohjanmaan työ- ja elinkeinokeskus (South Ostrobothnia Centre for economic development and employment). Following an inspection that body decided however, on 12 June 2009, to suspend payment of the aid on the ground that, as he had already set up as a farmer in his capacity of shareholder in Louhikon Sikako, Mr Ketelä was no longer entitled to setting-up aid.

26 The action brought by Mr Ketelä against that decision was dismissed by the maaseutuelinkeinojen valituslautakunta (Rural Activities Appeal Board) by decision of 17 December 2009. That body stated, in particular, that as a shareholder and managing director of Louhikon Sikako, Mr Ketelä had been responsible for the running of the latter and that he had reached the level of income provided for in the Setting-up Aid Decree.

27 In support of the appeal which he brought against those two decisions before the Korkein hallinto-oikeus (Supreme Administrative Court), Mr Ketelä submits that he is entitled to the aid at issue and that those decisions incorrectly set the date on which he set up, since neither the acquisition of his minority shareholding in Louhikon Sikako nor his capacity of managing director were sufficient to give rise to entitlement to such aid, as he lacked decision-making powers or the responsibility, which are characteristics of a 'head of the holding'.

28 For its part, the South Ostrobothnian työ- ja elinkeinokeskus contends that European Union law and, in particular, Article 13(4) of Regulation No 1974/2006 allows the national law to set out the criteria on the basis of which a person is regarded as 'setting-up' for the first time on an agricultural holding.

29 The Korkein hallinto-oikeus considers that the case before it raises the question whether the applicant in the main proceedings may, on the basis of his activity in Louhikon Sikako, be regarded as a natural person who has already set up as head of an agricultural holding.

30 According to that court, it should be acknowledged in that regard that agricultural activity practised by a natural person in the form of a company may give rise to an entitlement to setting-up aid. Stating that the concept of 'head of the holding' in Article 22(1) of Regulation No 1698/2005 is not defined by that regulation, it wishes to know however in the light of which criteria such capacity may be established. It also wishes to know whether the Member States have a margin of discretion in laying down such criteria.

31 The referring court also wonders whether a refusal to grant setting-up aid based on the existence of previous activity requires that the applicant for the aid was in principle eligible for such aid on the basis of that activity.

32 In those circumstances, the Korkein hallinto-oikeus decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. How are Article 22(1)(a) of [Regulation No 1698/2005] ("are setting up for the first time on an agricultural holding as head of the holding") and Article 13(4) and (6) of [Regulation No 1974/2006] to be interpreted in a situation where agriculture is being engaged in as part of activity in company form? When assessing whether a person has set up for the first time as head of a holding, is decisive significance to be given (in the assessment of previous activity) to the fact that the person has authority based on share ownership in the company; or to the amount of income he obtains from agriculture; or to whether his activity in the company can be

differentiated functionally and economically as an independent production unit? Or is being head of a holding to be assessed as a whole, taking into account (in addition to the abovementioned factors) the person's position in the company, and whether he in fact bears the risk pertaining to entrepreneurial activity?

2. When assessing the significance of previous activity when aid is being granted on the basis of other activity, is "being head of a holding" to be interpreted in the same way in the case of previous activity and in that of the activity which forms the basis of the aid application? Does refusal of setting up aid for young farmers as referred to in Article 22 of [Regulation No 1698/2005] on the basis of activity previously engaged in require that the previous activity would be activity which, in principle, would be eligible for aid under the currently valid provisions?

3. Is Article 13(4) of Regulation [No 1974/2006] to be interpreted in such a way that, the criteria mentioned in question 1 above on the basis of which a person is regarded as having set up as head of a holding can be made more precise or defined in more detail in national legislation, or does the provision merely give entitlement to define the date of setting up as a farmer?'

Consideration of the questions referred

The first and third questions

33 By its first and third questions which it is appropriate to examine together, the referring court asks essentially, first, whether Articles 22(1)(a) of Regulation No 1698/2005 and 13(4) and (6) of Regulation No 1974/2006 must be interpreted as meaning that certain criteria derive from those regulations for the purpose of determining whether a person is setting-up for the first time on an agricultural holding as the head of holding, within the meaning of the first of those provisions, in a situation in which the person concerned sets up using a limited company. It asks more particularly whether such criteria reside in the decision-making power held by that person in the company as a shareholder, or the amount of income he obtains from agriculture, or to whether his activity in the company can be differentiated functionally and economically as an independent production unit, his position in the company, or whether he in fact bears the risk pertaining to entrepreneurial activity. The referring court asks, second, whether European Union law and, in particular, Article 13(4) of Regulation No 1974/2006 must be interpreted as meaning that the Member States remain entitled to lay down such criteria in their national law, and to what extent.

34 In order to answer those questions it must be recalled, as a preliminary point, that, according to settled case-law, the need for a uniform application of European Union law and the principle of equality require that the terms of a provision of European Union law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union (see, in particular, Joined Cases C-424/10 and C-425/10 *Ziolkowski* [2011] ECR I-14035, paragraph 32 and the case-law cited).

35 Furthermore, it should also be recalled that, if, by virtue of the very nature of regulations and of their function in the system of sources of European Union law, the provisions of regulations generally have immediate effect in the national legal systems without its being necessary for the national authorities to adopt measures of application, however, some of their provisions may necessitate, for their implementation, the adoption of measures of application by the Member States (see, in particular, Case C-316/10 *Danske Svineproducenter* [2011] ECR I-13721, paragraphs 39 and 40 and the case-law cited).

36 In that regard, it follows from settled case-law that Member States may adopt rules for the application of a regulation if they do not obstruct its direct applicability and do not conceal its Community nature, and if they specify that a discretion granted to them by that regulation is being exercised, provided that they adhere to the parameters laid down under it (*Danske Svineproducenter*, paragraph 41 and the case-law cited).

37 It is by referring to the relevant provisions of the regulation concerned, interpreted in the light of the objectives of that regulation, that it may be determined whether they prohibit, require or allow Member States to adopt certain measures of application and, particularly in the latter case, whether the measure concerned comes within the scope of the discretion that each Member State is recognised as having (*Danske Svineproducenter*, paragraph 43).

38 In the light of those preliminary considerations, it is appropriate, first of all, to note that it is clear from recital 61 in the preamble to and Article 71(3) of Regulation No 1698/2005 that, while the rules on eligibility of expenditure are set, as a general rules, at national level, that is the case only subject to the special conditions laid down under that regulation for certain rural development measures.

39 The setting-up aid for young farmers is such a measure and the condition of eligibility relating to setting-up for the first time on an agricultural holding as head of the holding laid down by Article 22(1)(a) of Regulation No 1698/2005 is a specific condition for that measure. Thus, in order to determine the scope of that condition of eligibility, it is necessary to have regard first and foremost to the terms of the provision interpreted, where necessary, in the light of the context to which it belongs and the objectives of Regulation No 1698/2005.

40 As regards the objectives pursued, it is clear from recitals 11, 13, 14 and 16 in the preamble to and Articles 1(2), 4(1) and 20(a) of that regulation that the latter aims, by means of the aid concerned, to facilitate the establishment of young farmers and, subsequently the structural adjustment of the holding, with a view to enhancing human potential and improving the competitiveness of the agricultural and forestry sectors and to contribute in such a way as to ensure the sustainable development of rural areas. Furthermore, as provided by Article 23(3)(a) of Regulation No 1698/2005, the grant of such setting-up aid is a condition, in certain cases, for the grant of early retirement aid which farmers who decide to stop their agricultural activity for the purpose of transferring the holding may be entitled. Those two aid measures which are covered by the same axis, a concept defined in Article 2(c) of Regulation No 1698/2005 as being a coherent group of measures with specific goals resulting directly from their implementation and contributing to one or more of the objectives set out in Article 4 thereof, may thus contribute together, as is clear from recital 17 in the preamble thereto, to the structural change of agricultural holdings.

41 In the second place, it must be noted, as the referring court and the Finnish and Czech Governments have observed that the provisions of Regulation No 1698/2005 do not preclude a natural person who sets up as a young farmer using a legal person for that purpose from receiving the aid referred to in Article 20(a)(ii) thereof.

42 It must be held that the wording of Article 22(1)(a) of Regulation No 1698/2005 which refer to ‘persons who … are setting up for the first time on an agricultural holding as head of the holding’ does not prejudge the legal form, corporate or not, taken by such a holding (see, by analogy, Case C-162/91 *Tenuta il Bosco* [1992] ECR I-5279, paragraph 12).

43 However, the exclusion from the circle of potential beneficiaries of setting-up aid of young farmers who set up on an agricultural holding, simply because they use a legal person to do so, does not appear to be reconcilable with the objectives pursued by Regulation No 1698/2005, as set out in paragraph 40 of this judgment, which seek to facilitate, by means of the aid concerned, the enhancement of human potential and the structural adjustment of the holdings in order to improve competitiveness in the agricultural sector and to ensure sustainable development for rural areas.

44 Such an exclusion might also infringe the principle of non-discrimination in Article 40(2) TFEU (see, to that effect, *Tenuta il Bosco*, paragraph 16).

45 Third, it must be examined whether, where a young farmer uses a legal person in order to set up on an agricultural holding, it is a requirement for the grant of the aid that the person concerned has authority in the legal person and in what circumstances that requirement is fulfilled.

46 As is apparent from the order for reference, the questions from the Korkein hallinto-oikeus arise from the fact that the applicant in the main proceedings was, in the course of his previous professional activities, managing director of Louhikon Sikako and a 30% shareholder in that company, the other remaining 70% being held by another person.

47 Since those questions relate to the criteria according to which a young farmer who sets up as 'head of the holding' within the meaning of Article 22(1)(a) of Regulation No 1698/2005, it should be noted from the outset that that regulation does not define the concept or contain any express indications to help define it.

48 As regards Regulation No 1974/2006, although it aims, in particular and as is clear from recital 8 in the preamble thereto, to lay down certain conditions applicable to aid for young farmers, it must be held that it does not contain any further indications as to the substantive concept 'head of the holding' or refer to the law of the Member States in order to determine its meaning.

49 The first sentence of Article 13(4) of that regulation, to which the referring court makes mention in its first and third questions, aims to set a maximum period in which the individual decision for the grant of setting up aid must be taken and, in that regard, it merely states that that period must not exceed 18 months after setting up as defined by the provisions in force in the Member States, without containing, any reference to the concept of 'head of the holding'. In those circumstances, neither that provision nor the first indent of point 5.3.1.1.2 in Annex II(A) to that regulation can be interpreted as relating to that concept.

50 As to Article 13(6) of that regulation to which the national court also refers in its first question, it simply states that setting up aid may also be granted where the young farmer is not established as sole head of an agricultural holding requiring, in that respect, that the specific conditions which may therefore be laid down remain equivalent to those required for a young farmer setting up as sole head of a holding.

51 Having regard to the foregoing, it must be recalled that according to settled case-law, the meaning and scope of terms for which European Union law provides no definition must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part (see to that effect, in particular, Case C-549/07 *Wallentin-Hermann* [2008] ECR I-11061, paragraph 17, and *Ziolkowski*, paragraph 34).

52 As regards the words used, it must be observed in that regard that an expression such as 'head of the holding' may vary according to the specific objectives pursued by the rules of European Union law in question (see, by analogy, regarding the concept of 'agricultural holding', Case 85/77 *Azienda avicola Sant'Anna* [1978] ECR 527, paragraph 9).

53 In order to determined the scope of that expression for the purpose of Article 22(1)(a) of Regulation No 1698/2005, it must be observed that the various conditions for the grant of setting-up aid that Article 22(1) lays down, contribute collectively to achieving the objectives set out in paragraph 40 of this judgment.

54 The requirement that the beneficiary of the aid has adequate occupational skills and competence and that he submits a development plan, laid down in Article 22(1)(b) and (c) of Regulation No 1698/2005, are capable of facilitating the enhancement of human potential and the structural adjustment of the holding and to contribute to improving competitiveness of the agricultural sector and the sustainable development of rural areas.

55 In that context, the condition that the person concerned sets up 'as head of the holding' laid down in Article 22(1)(a) must be interpreted as requiring essentially that the person concerned, even if he has those skills and qualifications also has the effective and long-term control and management of the agricultural holding, which constitutes, in effect, a measure of the effectiveness and durability of the development to be undertaken by the person concerned in relation to that holding.

56 In such a context, while it remains open to the Member States to specify the conditions from which it may be determined that an applicant for aid has the 'head of the holding', so as to strengthen legal certainty by increasing the predictability of the requirements laid down by Article 22(1)(a) of Regulation No 1698/2005, provided that such conditions do not go beyond the framework they aim to set out and therefore aim, in compliance with that provision and the objectives pursued by that regulation to ensure that the applicant has an effective and long-term control and management of the agricultural holding (see, by analogy, Case C-113/02 *Commission* v *Netherlands* [2004] ECR I-9707, paragraph 19, and *Danske Svineproducenter*, paragraphs 49 and 51).

57 In that regard, it must be observed that it is clear, in particular, from Paragraph 6 of the Law on Structural Aid and Paragraph 3 of the Setting up Aid Decree that, where the aid application relates to an activity exercised through a legal person, the decision-making power must be exercised by a natural person who is under 40 years old and who is setting up for the first time in an agricultural undertaking as head of the holding, and that such decision-making power requires in particular that the person concerned holds more than half of the shares in the legal person and that those shares represent more than half of the votes.

58 It is clear that such conditions do not conflict with the requirement set out in paragraph 56 of the present judgment.

59 As regards the case in the main proceedings, it must be recalled that, when he took over the management of Louhikon Sikako as managing director, Mr Ketelä held only 30% of the shares in that company, while 70% of the remaining shares were owned by a third person.

60 Therefore, it must be held, having regard to all of the foregoing, that, in such circumstances, the person concerned cannot be regarded as having been able to exercise effective and long-term control and management of the holding concerned or, therefore, as having already set up, on account of that activity, as 'head of the holding' within the meaning of Article 22(1)(a) of Regulation No 1698/2005. It also follows that the previous activity cannot be an obstacle to the grant of setting up aid applied for by the person concerned in the context of taking over the family farm.

61 In those circumstances, and without it being necessary to examine the other criteria for assessment which the referring court mentions in its first question, the answer to the first and third questions is that Article 22(1)(a) of Regulation No 1698/2005, must be interpreted as meaning that the requirement laid down by that provision that the person concerned must be setting up for the first time on an agricultural holding as 'head of the holding' means, in a situation in which the person concerned sets up using a limited company, that he has effective and long-term control and management of the agricultural holding. While it is open to the Member States to lay down conditions from which it may be concluded that an aid applicant has the capacity of head of the holding, this is subject to the proviso that such conditions do not go beyond the framework that they aim to define and, therefore, in compliance with the objectives pursued by Regulation No 1698/2005, ensure that that applicant has effective and long-term control and management of the agricultural

holding. National provisions such as those at issue in the main proceedings satisfy such requirements as they provide that where a young farmer sets up using a legal person, the grant of aid is conditional on the fact that he has the decision-making power in the company, which requires that he holds more than half of the shares in that company and that those shares represent more than half of the votes.

The second question

62 Having regard to the findings made in paragraph 60 of the present judgment and the answer to the first and third questions, there is no need to answer the second question.

Costs

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

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

Article 22(1)(a) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) must be interpreted as meaning that the requirement laid down by that provision that the person concerned must be setting up for the first time on an agricultural holding as 'head of the holding' means, in a situation in which the person concerned sets up using a limited company, that he has effective and long-term control and management of the agricultural holding.

While it is open to the Member States to lay down conditions from which it may be concluded that an aid applicant has the capacity of head of the holding, this is subject to the proviso that such conditions do not go beyond the framework that they aim to define and, therefore, in compliance with the objectives pursued by Regulation No 1698/2005, ensure that that applicant has effective and long-term control and management of the agricultural holding. National provisions such as those at issue in the main proceedings satisfy such requirements as they provide that where a young farmer sets up using a legal person, the grant of aid is conditional on the fact that he has the decision-making power in the company, which requires that he holds more than half of the shares in that company and that those shares represent more than half of the votes.

[Signatures]