Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

16 October 2019 *

(Reference for a preliminary ruling – Common agricultural policy – Apiculture sector – Regulation (EU) No 1308/2013 – Delegated Regulation (EU) 2015/1366 – Application for aid – Conditions – Minimum number of bee colonies – Fixing with retro-active effect – Principle of legal certainty – Principle of the protection of legitimate expectations)

In Case C-490/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Budapest Környéki Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court for the Budapest District, Hungary), made by decision of 17 July 2018, received at the Court on 26 July 2018, in the proceedings

**SD**

v

**Agrárminiszter,**

THE COURT (Ninth Chamber),

composed of D. Šváby, acting as President of the Chamber, K. Jürimäe and N. Piçarra (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– for the Hungarian Government, by M.Z. Fehér and A. Pokoraczki, acting as Agents,

– for the Greek Government, by G. Kanellopoulos, A. Vasilopoulou and E.-E. Krompa, acting as Agents,

– for the European Commission, by L. Havas and B. Hofstötter, acting as Agents,

* Language of the case: Hungarian.

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

gives the following

## Judgment

1 The request for a preliminary ruling concerns the interpretation of Article 2 of Commission Delegated Regulation (EU) 2015/1366 of 11 May 2015 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to aid in the apiculture sector (OJ 2015 L 211, p. 3; 'Regulation 2015/1366').

2 The request has been made in proceedings between SD and the Agrárminiszter (Minister for Agriculture, Hungary) concerning the latter's decision to reject an application for aid to acquire new equipment for the migration of bees.

### Legal context

#### *EU Law*

#### *Regulation (EU) No 1308/2013*

3 Article 55(1) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671), entitled 'National programmes and financing', provides:

'With a view to improving general conditions for the production and marketing of apiculture products, Member States may draw up national programmes for the apiculture sector covering a period of three years ("apiculture programmes"). …'

4 Under Article 56(1)(b) of that regulation, the Commission is empowered to adopt delegated acts in accordance with Article 227 of that regulation on 'the basis for allocating the Union's financial contribution to each participating Member State, based, inter alia, on the total number of beehives in the Union'.

5 The first paragraph of Article 57(c) of that regulation provides that the Commission may adopt implementing acts laying down the necessary measures concerning 'the approval of apiculture programmes submitted by Member States, including the allocation of the Union's financial contribution to each participating Member State and the maximum level of funding by Member States'.

### *Regulation 2015/1366*

6 Recitals 2 to 4 and 11 of Regulation 2015/1366 are worded as follows:

‘(2) Article 55 of Regulation (EU) No 1308/2013 states that Member States may draw up national programmes for the apiculture sector covering a period of three years … It is necessary to fix the basis for allocating the Union’s financial contribution to the participating Member States.

(3) The number of beehives in each participating Member State is an indicator of the size of the Member States’ apiculture sector. The share of each participating Member State in the total number of beehives in the Union represents a simple basis on which to allocate the Union contribution to the apiculture programmes.

(4) In order to ensure a sound distribution of the Union funds, participating Member States should have a reliable method to determine the number of beehives in their territory.

…

(11) It is necessary to provide transitional measures for the allocation of the Union contribution for the 2017-19 apiculture programmes. In order to ensure continuity with the 2014-16 apiculture programmes and to allow sufficient time for all Member States to establish a reliable method to determine the number of beehives ready for wintering between 1 September and 31 December, the allocation of Union funds for the 2017-19 apiculture programmes should be made on the basis of the number of beehives communicated in 2013 by the Member States in their respective 2014-16 apiculture programmes’.

7 Article 1 of Regulation 2015/1366, entitled ‘Beehives’, provides:

‘For the purposes of this Regulation, the term “beehive” means the unit containing a honeybee colony used for the production of honey, other apiculture products or honeybee breeding material, and all the elements necessary for its survival’.

8 Article 2 of that regulation, entitled ‘Method to determine the number of beehives’, provides:

‘Member States submitting national programmes for the apiculture sector as referred to in Article 55 of Regulation (EU) No 1308/2013 (“apiculture programmes”) shall have a reliable method to determine, between 1 September and 31 December each year, the number of beehives ready for wintering present in their territory’.

### *Hungarian law*

9 Article 4 of a Magyar Méhészeti Nemzeti Program alapján a 2016-2019 közötti végrehajtási időszakokban a központi költségvetés, valamint az Európai Mezőgazdasági Garancia Alap társfinanszírozásában megvalósuló támogatások igénybevételének szabályairól szóló 4/2017 (I. 23.) FM rendelet (Decree No 4/2017 of the Ministry of Agriculture and Rural Development on rules for the use of aid, on the basis of the Hungarian national programme for the apiculture

sector, granted with the cofinancing of the central budget and of the European Agricultural Guarantee Fund for the periods of implementation of 2016-2019) of 23 January 2017 (*Magyar Közlöny* 2017/8.), provides:

'…

10) In respect of the measures referred to in Paragraph 2(2)(a)(ae), Paragraph 2(2)(b)(ba) and (bb), and Paragraph 2(2)(c)(cb), and the aid for the acquisition of radio frequency identifiers within the framework of the measure referred to in Paragraph 2(2)(c)(ca), and in the case of the aid for the restocking of hives with breeding material that is suitable in both veterinary and genetic terms within the context of the measure referred to in Paragraph 2(2)(e), the right to aid shall be based on the number of bee colonies:

(a) determined during the autumn veterinary bee inspection for the implementation period in question,

(b) notified in accordance with a tartási helyek, a tenyészetek és az ezekkel kapcsolatos egyes adatok országos nyilvántartási rendszeréről szóló 119/2007. (X. 18.) FVM rendelet (Decree No 119/2007 of the Ministry of Agriculture and Rural Development of 18 October 2007 on the national register of breeding sites and centres and data relating thereto) and registered under the Livestock Information System (TIR) referred to in Decree No 119/2007 FVM on the basis of the statement made and received by the competent Regional Government Office within 30 days of the entry into force of this Decree in the case of the first implementation period, by 15 November 2017 in the case of the second implementation period, and by 15 November 2018 in the case of the third implementation period;

(c) of which the applicant continues to be the owner on the day on which he submits the application for aid'.

10 Under Article 22 of Decree No 4/2017:

'…

(3) Applications for aid may be made by any producer who is currently a member of the Országos Magyar Méhészeti Egyesület (Hungarian National Association of Beekeepers (OMME)), on the basis of the number of bee colonies set out in Paragraph 4(10).

…

(5) An application for aid may be made by a person who has at least 60 bee colonies in the case of the aid for equipment referred to in points (a), (b) and (e) of subparagraph 4; at least 30 bee colonies in the case of the aid for equipment referred to in point (h) of subparagraph 4; and at least 100 bee colonies in the case of the aid for equipment referred to in points (c), (d), (f) and (g) of subparagraph 4'.

11 The Hungarian apiculture programme for the period 2014-2016 contained aid for transhumance in the apiculture sector laid down in a Magyar Méhészeti Nemzeti Program alapján a 2013–2016 közötti végrehajtási időszakokban a központi költségvetés, valamint az Európai Mezőgazdasági Garancia Alap társfinanszírozásában megvalósuló támogatások igénybevételének szabályairól szóló 118/2013. (XII. 16.) VM rendelet (Decree No 118/2013 of the Ministry of Rural

Development of 16 December 2013 on rules for the use of aid, on the basis of the Hungarian national programme for the apiculture sector, granted with the cofinancing of the central budget and of the European Agricultural Guarantee Fund for the periods of implementation 2013-2016). The grant of that aid was subject to the condition that the beekeeper must own a minimum of 30 bee colonies registered under the TIR. That programme was closed on 31 August 2016.

12 For the period 2017-2019, Decree No 4/2017, which entered into force on 24 January 2017, made the grant of that aid subject to the condition that the beekeeper must own a minimum of 60 bee colonies registered in the TIR. Since, at the time of entry into force of that decree, the number of bee colonies listed in the TIR was that which had been communicated during the 2016 annual survey, provision was made for the beekeepers to amend that information retroactively, within 30 days from the date of entry into force of that decree.

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

13 On 13 March 2017, SD submitted to the Vice President of the Magyar Államkincstár (Hungarian Public Treasury; 'the public Treasury'), responsible for aid for agriculture and rural development, an application for aid for the acquisition of new equipment necessary for the migration of bees. In this respect, it stated that it possessed 62 bee colonies.

14 By a decision of 5 May 2017, the public Treasury rejected that application for the aid, on the ground that SD did not meet the requirement relating to the minimum number of bee colonies registered under the TIR. Only 36 bee colonies were registered under the TIR, whereas, pursuant to Decree No 4/2017, which entered into force on 24 January 2017, the grant of that aid was subject to the condition that a minimum of 60 bee colonies must be listed in the TIR.

15 SD lodged a complaint with the Minister for Agriculture, who, by decision of 21 August 2017, upheld the decision of the public Treasury rejecting that application.

16 SD brought an action against that decision of the Minister for Agriculture before the Budapest Környéki Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court for the Budapest District, Hungary).

17 That court has doubts as to whether 'the provision in Decree No 4/2017 which … without allowing sufficient time to prepare … doubles the number of bee colonies required in order to obtain the aid, is compatible with EU law'.

18 It is in that context that the Budapest Környéki Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court for the Budapest District, Hungary) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Must the "reliable method" referred to in Article 2 of Delegated Regulation (EU) 2015/1366, used to determine, between 1 September and 31 December each year, [the number] of beehives, be interpreted as meaning that it is the applicant for aid who must notify the number of bee colonies and, if so, is this a reliable method?

(2) If, under Article 2 of Delegated Regulation (EU) 2015/1366, the number of beehives – used as the basis for aid to the apiculture sector – must be determined between 1 September and 31 December each year owing to bees' biological characteristics, is it possible to interpret that provision as meaning that Member States may depart from this rule?

(3) If the answer is in the affirmative, may the national legislation stipulate that the number of bee colonies required is to be determined retrospectively, in January?

(4) Can the fact that [EU funds] are to be allocated for the 2017-[2019] apiculture programmes on the basis of the number of beehives notified in 2013 by the Member States in the context of the 2014-2016 apiculture programmes be interpreted as meaning that, after the period that ended on 31 December 2016, which provides the basis for the distribution of aid for 2017, the number of beehives needed in order to be allocated aid may also be determined by a different method?

(5) Can Delegated Regulation (EU) 2015/1366 be interpreted as permitting the adoption of a national rule of law under which a *de minimis* aid payment is subject to a requirement that is not compatible [with EU law]? Must the aid provided for in EU law also be appropriate, in practice, for promoting beekeeping?'

**Admissibility**

19 In their written observations, the Hungarian Government and the Commission submit that Article 2 of Regulation 2015/1366, the interpretation of which is sought by the referring court, concerns only the basis for allocating the Union's financial contribution to the Member States and that, therefore, that article is not relevant for the purposes of determining the conditions to which the grant of the aid received individually by each beekeeper at national level is subject.

20 In that regard, it must be borne in mind that, 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 the 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 (judgment of 25 July 2018, *AY* (Arrest warrant – Witness), C-268/17, EU:C:2018:602, paragraph 24 and the case-law cited).

21 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for this Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, 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 25 July 2018, *AY* (Arrest warrant – Witness), C-268/17, EU:C:2018:602, paragraph 25 and the case-law cited).

22 It is also clear from the settled case-law of the Court that in the procedure providing for cooperation between national courts and the Court under Article 267 TFEU, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. The Court may, where appropriate, reformulate the questions referred to it and, in that context, provide all the criteria for the interpretation of EU law which national courts require in order to decide the actions pending before them (see, to that effect, judgments of 10 September 2009, *Plantanol*, C-201/08, EU:C:2009:539, paragraph 45 and the case-law cited, and of 19 September 2018, *González Castro*, C-41/17, EU:C:2018:736, paragraph 54).

23 In the present case, it is clear from the order for reference that the dispute in the main proceedings concerns the validity of a decision of the public Treasury, upheld by the Minister for Agriculture, who rejected the aid application submitted by SD on the ground that the latter had not met the conditions laid down for the grant of that aid, namely the number of 60 beehives required by the national apiculture programme for the period 2017-2019, laid down by Decree No 4/2017.

24 It is in that context that, by its first, second, fourth and fifth questions, which should be examined together, the referring court requests, in essence, an interpretation of Regulation 2015/1366, in order to assess whether the conditions for the grant of the aid at issue in the main proceedings, laid down by Decree No 4/2017, comply with Regulation 2015/1366, and in particular with Article 2 of that regulation.

25 In that regard, it should be pointed out, in the first place, that, with a view to improving general conditions for the production and marketing of apiculture products in the Union, Article 55(1) of Regulation No 1308/2013 provides that Member States may draw up national programmes for the apiculture sector covering a period of three years and that those programmes may be eligible for Union contribution under the conditions set out in Article 55(2) and (3) of that regulation.

26 It is important to note, in the second place, that the EU legislature sought, in Article 56(1)(b) of that regulation, to authorise the Commission to adopt delegated acts relating to the basis for allocating the Union's financial contribution to each participating Member State, having regard, in particular, to the total number of beehives in the Union.

27 In that context, Regulation 2015/1366, the legal basis of which is Article 56(1) of Regulation No 1308/2013, sets the criteria relating to the Union's financial contribution to Member States' apiculture programmes, established every three years.

28 Although Article 4 of Regulation 2015/1366 states that the Union contribution to apiculture programmes is allocated to Member States with apiculture programmes in proportion to the average total number of beehives notified by such Member States, Article 2 of that regulation, which should be read in the light of its recitals 2 to 4, requires Member States to establish a reliable method on the basis of which, between 1 September and 31 December each year, the number of beehives present in their territory must be determined, which constitutes the essential criterion for the distribution of EU aid between Member States for the purposes of financing national apiculture programmes.

29 Consequently, Article 2 of that regulation is limited to organising the distribution of the Union's contribution to the financing of those national programmes and does not concern the conditions for the grant of aid to beekeepers in the context of those programmes.

30 Yet the dispute in the main proceedings concerns specifically one of those conditions, the fixing of which falls within the competence of the Member States under Article 55(1) of Regulation No 1308/2013. Where the Member States exercise that competence, they are not required by that provision to distribute the aid concerned based on a given criterion, such as the number of beehives, or, where they apply that criterion, to take the period running from 1 September to 31 December as a reference period.

31 It follows that the interpretation of Article 2 of Regulation 2015/1366 sought by the referring court in its first, second, fourth and fifth questions is irrelevant in respect of the outcome of the dispute in the main proceedings.

32 However, by its third question, the referring court asks whether, in the light of EU law, the national legislation – which has applied the number of bee colonies as a criterion for the purposes of granting aid in the context of an apiculture programme – may 'stipulate that the number of bee colonies required is to be determined retrospectively, in January', as a condition for the grant of that aid. As that question falls, as noted by the Hungarian Government and the Commission, within the scope of the principles of legal certainty and the protection of legitimate expectations, laid down, as general principles of law, in the EU legal order, interpretation of those principles is necessary in order to answer that question.

**Substance**

33 The third question referred by the referring court should be understood as seeking to ascertain, in essence, whether the principles of legal certainty and protection of legitimate expectations must be interpreted as meaning that they preclude national legislation, such as that at issue in the main proceedings, which, under Article 55(1) of Regulation No 1308/2013, establishes the programme in the apiculture sector for a new period of three years, first, from setting conditions for the grant of aid in that sector which differ from those provided for in the previous programmes and, secondly, from allowing beekeepers to benefit from that aid from a date prior to the entry into force of that legislation, where they fulfil the new conditions provided for by that legislation.

34 In that regard, it should be pointed out that the wide discretion enjoyed by the Member States under Article 55(1) of Regulation No 1308/2013 to draw up national programmes covering periods of three years, with a view to improving the general conditions of production and marketing in the apiculture sector, and to establish and alter the conditions for the grant of aid for that purpose to operators in that sector, must comply with the requirements flowing from the general principles recognised in the EU legal order (see, in that regard, judgment of 15 July 2004, *Gerekens and Procola*, C-459/02, EU:C:2004:454, paragraph 21), which include, according to the Court's settled case-law, the principles of legal certainty and protection of legitimate expectations (see, in that regard, judgments of 15 February 1996, *Duff and Others*, C-63/93, EU:C:1996:51, paragraph 20; of 18 May 2000, *Rombi and Arkopharma*, C-107/97, EU:C:2000:253, paragraph 65; of 20 June 2013, *Agroferm*, C-568/11, EU:C:2013:407, paragraph 47, and of 10 December 2015, *Veloserviss*, C-427/14, EU:C:2015:803, paragraph 30).

35 According to the Court's settled case-law, the principle of legal certainty is aimed at ensuring foreseeability of situations and legal relations (see, in that regard, judgment of 10 December 2015, *Veloserviss*, C-427/14, EU:C:2015:803, paragraph 31 and the case-law cited).

36 It is also clear from the Court's settled case-law that any economic operator on whose part the national authorities have promoted reasonable expectations may rely on the principle of the protection of legitimate expectations. However, where a prudent and circumspect economic operator could have foreseen that the adoption of a measure is likely to affect his interests, he cannot plead that principle if the measure is adopted. Furthermore, economic operators are not justified in having a legitimate expectation that an existing situation which is capable of being altered by the national authorities in the exercise of their discretionary power will be maintained (see, in particular, judgments of 10 September 2009, *Plantanol*, C-201/08, EU:C:2009:539, paragraph 53, and of 10 December 2015, *Veloserviss*, C-427/14, EU:C:2015:803, paragraph 39).

37 Those principles must be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the extent of the obligations which they impose on them (see, in that regard, in particular, judgments of 29 April 2004, *Sudholz*, C-17/01, EU:C:2004:242, paragraph 34, and of 13 March 2008, *Vereniging Nationaal Overlegorgaan Sociale Werkvoorziening and Others*, C-383/06 to C-385/06, EU:C:2008:165, paragraph 52).

38 It is for the referring court alone to determine whether national legislation complies with the fundamental principles of the EU legal order. The Court, in a reference for a preliminary ruling under Article 267 TFEU, is solely competent to provide the national court with all the criteria for the interpretation of EU law which may enable it to determine the issue of compatibility (see, in that regard, judgment of 10 September 2009, *Plantanol*, C-201/08, EU:C:2009:539, paragraph 45 and the case-law cited).

39 In the present case, it should be pointed out, first, that the establishment of the conditions for the grant of the aid concerned resulting from the new apiculture programme for the period 2017-2019, adjusted by Decree No 4/2017, manifested itself in an increase in the number of bee colonies required to obtain that aid, and, secondly, that the previous programme in that sector was closed on 31 August 2016.

40 Thus, in order to assess, in the light of the principle of legal certainty, both the foreseeable nature of the establishment of conditions for the grant of the aid concerned for the new period, which are different from those laid down in the previous programmes, and the application of those conditions, from the date on which the previous apiculture programme was closed, to beekeepers who, on that date, met the new conditions laid down, it should be pointed out, as has already been stated in paragraph 34 of the present judgment, that Article 55(1) of Regulation No 1308/2013 grants Member States broad discretion to draw up apiculture programmes for a period of three years, 'with a view to improving general conditions for the production and marketing of apiculture products'.

41 It follows that Member States may, in principle, establish conditions for the grant of that aid for a new period, which are different from those laid down in the previous programmes, in particular as regards the number of bee colonies required, and determine the date from which beekeepers may benefit from the aid provided for in the new apiculture programme where they fulfil the conditions laid down in that programme.

42 In that regard, it should be added that the establishment of conditions for the grant of the aid concerned for a new period which differ from those laid down in the previous programmes, with a view to 'improving general conditions for the production and marketing of apiculture products' in accordance with Article 55(1) of Regulation No 1308/2013, cannot constitute an unforeseeable event for those applying for that aid.

43 As regards the principle of the protection of legitimate expectations, the beekeepers concerned could not legitimately expect the conditions required for the grant of aid under the previous apiculture programmes to be maintained in the programme adopted for the new period.

44 Accordingly, the beekeepers who did not fulfil those new conditions could not legitimately expect to be able to continue to benefit from the aid granted by a national programme which was no longer in force.

45 Moreover, given that those new conditions allow the beekeepers who fulfil such conditions to be granted the corresponding aid from a date before the entry into force of the programme setting those conditions, those conditions may be regarded as being capable of allowing the achievement of the objective of 'improving general conditions for the production and marketing of apiculture products', set out in Article 55(1) of Regulation No 1308/2013.

46 In those circumstances, the answer to the third question should be that, subject to verifications to be carried out by the referring court, the principles of legal certainty and protection of legitimate expectations must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which, under Article 55(1) of Regulation No 1308/2013, establishes the programme in the apiculture sector for a new period of three years, first, fixes conditions for the grant of aid in that sector which differ from those provided for in the previous programmes and, secondly, allows beekeepers to benefit from that aid from a date prior to the entry into force of that legislation, where they fulfil the new conditions provided for by that legislation.

## Costs

47 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 (Ninth Chamber) hereby rules:

**Subject to verifications to be carried out by the referring court, the principles of legal certainty and protection of legitimate expectations must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which, under Article 55(1) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, establishes the programme in the apiculture sector for a new period of three years, first, fixes conditions for the grant of aid in that sector which differ from those provided for in the previous programmes and, secondly, allows beekeepers to benefit from that aid from a date prior to the entry into force of that legislation, where they fulfil the new conditions provided for by that legislation.**

[Signatures]