Reports of Cases

OPINION OF ADVOCATE GENERAL
RANTOS
delivered on 2 October 2025 [1]

Case C-163/24

BX
v
Statul Român – Ministerul Finanțelor Publice,
Curtea de Apel București

(Request for a preliminary ruling from the Curtea de Apel București (Court of Appeal, Bucharest, Romania))

(Reference for a preliminary ruling – Agriculture – Common agricultural policy – Direct support schemes – Regulation (EC) No 1782/2003 – Article 20(1) – Identification system for agricultural parcels – Effectiveness of the administration and control systems – Provision (not) intended to confer rights on individuals – Regulation (EC) No 796/2004 – Article 68 – Obligation on the farmer to declare the correct area and identification of the parcel farmed and its boundaries – Reductions and exclusions in cases of overdeclaration – Exceptions – Concept of 'factually correct information' – State liability for loss or damage caused to individuals by the infringement of EU law – Infringement attributable to a court of last instance – Treatment of a series of simple infringements of EU law as a manifest infringement)

I. Introduction

1. The present request for a preliminary ruling from the Curtea de Apel București (Court of Appeal, Bucharest, Romania) [2] concerns, in essence, the interpretation of Article 20(1) of Regulation (EC) No 1782/2003 [3] establishing common rules for direct support schemes under the common agricultural policy ('the CAP') and establishing certain support schemes for farmers, and

[1] Original language: French.

[2] 'the Court of Appeal, Bucharest'.

[3] Council Regulation of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1), as amended by Council Regulation (EC) No 1009/2008 of 9 October 2008 (OJ 2008 L 276, p. 1) ('Regulation No 1782/2003').

of Article 68(1) of Regulation (EC) No 796/2004[4] laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for, inter alia, in Regulation No 1782/2003.

2. The request was made in the context of a dispute between, on the one hand, BX, a Romanian farmer, and, on the other, the Statul Român – Ministerul Finanțelor Publice (Romanian State – Ministry of Public Finance) and the Court of Appeal, Bucharest concerning the liability of that Member State on account, inter alia, of the failure by that court, as a court of last instance, to comply with the obligation laid down in the third paragraph of Article 267 TFEU.

3. The present case invites the Court of Justice, first, to define the scope of the concept of a 'rule of law intended to confer rights on individuals', by examining whether, and under what conditions, a rule of law which undoubtedly pursues an aim in the public interest may also protect the interests of natural and legal persons. Secondly, it provides the Court of Justice with an opportunity to clarify the rules governing the liability of a Member State for a breach of EU law attributable to a court of last instance, as established by the Court of Justice in its judgment in *Köbler*.[5]

II. Legal framework

A. European Union law

1. Regulation No 1782/2003

4. Recitals 1, 2, 11 to 14, 16 and 21 of Regulation No 1782/2003 stated:

'(1) Common conditions should be established for direct payments under the various income support schemes in the framework of the [CAP].

(2) The full payment of direct aid should be linked to compliance with rules relating to agricultural land, agricultural production and activity. Those rules should serve to incorporate in the common market organisations basic standards for the environment, food safety, animal health and welfare and good agricultural and environmental condition. If those basic standards are not met, Member States should withdraw direct aid in whole or in part on the basis of criteria which are proportionate, objective and graduated. Such withdrawal should be without prejudice to sanctions laid down now or in the future under other provisions of Community or national law.

…

[4] Commission Regulation of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the [CAP] and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18), as amended by Commission Regulation (EC) No 381/2007 of 4 April 2007 (OJ 2007 L 95, p. 8) ('Regulation No 796/2004').

[5] Judgment of 30 September 2003, *Köbler* (C-224/01, 'the judgment in *Köbler*', EU:C:2003:513). See also the subsequent case-law of the Court of Justice on the infringement of EU law attributable to a national court, inter alia, judgments of 13 June 2006, *Traghetti del Mediterraneo* (C-173/03, EU:C:2006:391), of 28 July 2016 in *Tomášová* (C-168/15, 'the judgment in *Tomášová*', EU:C:2016:602); of 29 July 2019, *Hochtief Solutions Magyarországi Fióktelepe* (C-620/17, 'the judgment in *Hochtief*', EU:C:2019:630), and orders of 15 October 2019, *Hochtief Solutions Magyarországi Fióktelepe* (C-620/17, EU:C:2019:884), and of 18 December 2019, *Hochtief* (C-362/18, EU:C:2019:1100).

(11) In order to improve the effectiveness and usefulness of the administration and control mechanisms, it is necessary to adapt the system established by [Regulation (EEC) No 3508/92[6]] with a view to including the single payment scheme. … Provision should be made for the possibility of including, at a later stage, other aid schemes.

(12) For the sake of effective control and to prevent the submission of multiple aid applications to different paying agencies within one Member State, each Member State should set up a single system to record the identity of farmers submitting aid applications subject to the integrated system.

(13) The various components of the integrated [administration and control] system are aimed at a more effective administration and control. …

(14) Given the complexity of the system and the large number of aid applications to be processed, it is essential to use the appropriate technical resources and administration and control methods. As a result, the integrated system should comprise, in each Member State, a computerised data base, an identification system for agricultural parcels, aid applications from farmers, a harmonised control system and, in the single payment scheme, a system for the identification and recording of payment entitlements.

…

(16) The identification of agricultural parcels is a key element in the correct application of schemes linked to surface area. Experience has shown that the existing methods have certain deficiencies. Therefore, provision should be made for an identification system to be set up, where necessary, with the aid of remote sensing.

…

(21) The support schemes under the [CAP] provide for direct income support in particular with a view to ensuring a fair standard of living for the agricultural community. This objective is closely related to the maintenance of rural areas. In order to avoid misallocations of Community funds, no support payments should be made to farmers who have artificially created the conditions required to obtain such payments.'

5. Article 17 of Regulation No 1782/2003, entitled 'Scope', provided, in the first paragraph thereof:

'Each Member State shall set up an integrated administration and control system, hereinafter referred to as the "integrated system".'

6. Article 18 of that regulation, entitled 'Elements of the integrated system', provided, in paragraph 1 thereof:

'The integrated system shall comprise the following elements:

(a) a computerised data base,

[6] Council Regulation of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1).

(b) an identification system for agricultural parcels,

(c) a system for the identification and registration of payment entitlements as referred to in Article 21,

(d) aid applications,

(e) an integrated control system,

(f) a single system to record the identity of each farmer who submits an aid application.'

7. Article 19 of that regulation, entitled 'Computerised data base', provided, in paragraph 1 thereof:

'The computerised data base shall record, for each agricultural holding, the data obtained from aid applications.

This data base shall, in particular, allow direct and immediate consultation, through the competent authority of the Member State, of the data relating to the calendar and/or marketing years starting from the year 2000 and, for aid granted under Chapter 10b of Title IV, from 1 May 1998.'

8. Article 20 of that regulation, entitled 'Identification system for agricultural parcels', provided, in paragraph 1 thereof:

'The identification system for agricultural parcels shall be established on the basis of maps or land registry documents or other cartographic references. Use shall be made of computerised geographical information system techniques including preferably aerial or spatial orthoimagery, with a homogenous standard guaranteeing accuracy at least equivalent to cartography at a scale of 1:10000.'

9. Article 21 of Regulation No 1782/2003, entitled 'System for the identification and registration of payment entitlements', was worded as follows:

'1. The system for the identification and registration of payment entitlements shall be set up allowing verification of entitlements and cross-checks with the aid applications and the identification system for agricultural parcels.

2. This system shall allow direct and immediate consultation, through the competent authority of the Member State, of the data relating to at least the previous three consecutive calendar and/or marketing years.'

10. Article 22 of that regulation, entitled 'Aid applications', provided:

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

– all agricultural parcels of the holding,

…

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

…'

2. Regulation No 796/2004

11. Recitals 11, 13, 17, 36, 55 to 58 and 67 of Regulation No 796/2004 stated:

'(11) In order to contribute to the protection of the financial interest of the Community it should be foreseen that payments under [Regulation No 1782/2003] may only be made once the checks with regard to the eligibility criteria have been finalised.

…

(13) For the sake of effective controls, any kind of area use and of the aid schemes concerned should be declared at the same time. Provision should, therefore, be made for submission of a single aid application comprising any applications for aid which are in some way related to area.

…

(17) With a view to simplifying the application procedures and in accordance with Article 22(2) of Regulation [No 1782/2003], provision should, in this context, be made for Member States to provide the farmer as far as possible with pre-printed information.

…

(36) On-the-spot checks of areas, as a general rule, consist of two parts, the first of which relates to verifications and measurements of declared agricultural parcels on the basis of graphic material, aerial photography and so forth. The second part consists of a physical inspection of the parcels to verify the actual size of the agricultural parcels declared and, depending on the aid scheme in question, the declared crop and its quality. Where necessary, measurements should be carried out. The physical inspection in the field may be carried out on the basis of a sample.

…

(55) To protect the Community's financial interests effectively adequate measures should be adopted to combat irregularities and fraud. Separate provisions should be made in cases of irregularities found with regard to eligibility criteria for the different aid schemes concerned.

(56) The system of reductions and exclusions envisaged in [Regulation No 1782/2003] with regard to cross compliance obligations however targets at a different aim, namely to set an incentive for farmers to respect the, already existing, legislation in the different fields of cross compliance.

(57) Reductions and exclusions should be established having regard to the principle of proportionality and, in the case of eligibility criteria, the special problems linked to cases of *force majeure* as well as exceptional and natural circumstances. In the case of cross compliance obligations reductions and exclusions may only be applied where the farmer acted negligently or intentionally. Reductions and exclusions should be graded according to the gravity of the irregularity committed and should go as far as the total exclusion from one or several aid schemes for a specified period. They should, with regard to the eligibility criteria, take into account the particularities of the various aid schemes.

(58) In relation to area aid applications, irregularities normally affect parts of areas. Overdeclarations in respect of one parcel may, therefore, be off-set against underdeclarations of other parcels of the same crop-group. Within a certain margin of tolerance it should be foreseen that aid applications are only adjusted to the area actually determined and reductions only start to apply once this margin has been exceeded.

…

(67) Reductions and exclusions with regard to eligibility criteria should, as a general rule, not apply where the farmer submitted factually correct information or where he can show otherwise that he is not at fault.'

12. Article 2 of Regulation No 796/2004, entitled 'Definitions', stated the following:

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

…

(22) "Area determined": shall mean the area for which all conditions laid down in the rules for granting the aid have been met; in the case of the single payment scheme, the area declared may be deemed as being determined only if it is actually being accompanied by a corresponding number of payment entitlements;

…

(25) "Geographical Information System" (hereinafter referred to as "GIS"): shall mean the computerised geographical information system techniques referred to in Article 20 of Regulation [No 1782/2003];

…

(27) "Graphical material": shall mean maps or other documents used to communicate the contents of the GIS between the aid applicants and the Member states;

…'

13. Article 6 of Regulation No 796/2004, entitled 'Identification of agricultural parcels', was worded as follows in paragraph 1 thereof:

'The identification system for agricultural parcels referred to in Article 20 of Regulation [No 1782/2003] shall operate at reference parcel level such as cadastral parcel, or production block which shall ensure unique identification of each reference parcel.

Member States shall, moreover, ensure that agricultural parcels are reliably identified and shall in particular require the single application to be furnished with particulars or accompanied by documents specified by the competent authority that enable each agricultural parcel to be located and measured. The GIS shall operate on the basis of a national geodetic system.'

14. In accordance with Article 12 of Regulation No 796/2004, entitled 'Contents of the single application':

'1. The single application shall contain all information necessary to establish eligibility for the aid, in particular:

…

(d) particulars permitting identification of all agricultural parcels on the holding, their area expressed in hectares to two decimal places, their location and, where applicable, their use and whether the agricultural parcel is irrigated;

…

3. For the purpose of the identification of all agricultural parcels on the holding referred to in paragraph 1(d), the pre-printed forms distributed to the farmer in accordance with Article 22(2) of Regulation [No 1782/2003] shall mention the maximum eligible area per reference parcel for the purposes of the single payment scheme. Moreover, the graphical material supplied to the farmer in accordance with that provision shall indicate the boundaries of the reference parcels and their unique identification and the farmer shall indicate the location of each agricultural parcel.

…

4. When submitting the application form, the farmer shall correct the pre-printed form referred to in paragraphs 2 and 3 if any amendments, in particular transfers of payment entitlements in accordance with Article 46 of Regulation [No 1782/2003], have occurred or if any of the information contained in the pre-printed forms is incorrect.

If the correction relates to the size of the area, the farmer shall indicate the actual size of the area concerned. …'

15. Article 15 of Regulation No 796/2004, entitled 'Amendments to the single applications', stated in paragraph 3 thereof:

'Where the competent authority has already informed the farmer of irregularities in the single application or where it has given notice to the farmer of its intention to carry out an on-the-spot check and where that on-the-spot check reveals irregularities, amendments in accordance with

paragraph 1 shall not be authorised in respect of the agricultural parcels affected by the irregularities.'

16. Article 18 of that regulation, entitled 'Simplification of procedures', was worded as follows in paragraph 1(c) thereof:

'Without prejudice to any specific provisions of this Regulation and of Regulation [No 1782/2003], Member States may permit or require that any kind of communications under this Regulation both from the farmer to the authorities and vice versa be made by electronic means. In that case, appropriate measures shall be taken to ensure in particular that:

…

(c) the transmitted data is reliable in view of the proper management of the aid scheme concerned; where use is made of the data contained in the computerised database for bovine animals, that database shall offer the level of assurance and implementation necessary for the proper management of the aid schemes involved.'

17. Under Article 19 of Regulation No 796/2004, entitled 'Adjustments of obvious errors':

'Without prejudice to Articles 11 to 18, an aid application may be adjusted at any time after its submission, in cases of obvious errors recognised by the competent authority.'

18. Article 22 of that regulation, entitled 'Withdrawal of aid applications', provided:

'1. An aid application may be totally or partially withdrawn at any time in writing.

…

2. Withdrawals in accordance with paragraph 1 shall put the claimant into the position he was in before he submitted the aid application or part of the aid application in question.'

19. Article 24 of that regulation, entitled 'Cross-checks', was worded as follows in paragraph 1(c) thereof:

'The administrative checks referred to in Article 23 of Regulation [No 1782/2003] shall permit the detection of irregularities, in particular the automated detection using computerised means, including cross-checks:

…

(c) between the agricultural parcels as declared in the single application and the reference parcels as contained in the identification system for agricultural parcels to verify the eligibility for aid of the areas as such'.

20. According to Article 30 of Regulation No 796/2004, entitled 'Determination of areas':

'1. Agricultural parcel areas shall be determined by any appropriate means defined by the competent authority which ensure measurement of a precision at least equivalent to that required for official measurements under the national rules.

…

4. The eligibility of agricultural parcels shall be verified by any appropriate means. To that end, additional proof shall be requested where necessary.'

21. Article 51 of that regulation, entitled 'Reductions and exclusions in cases of overdeclaration', provided, in paragraph 1 thereof:

'If, in respect of a crop group, the area declared for the purposes of any area-related aid schemes, except those for starch potato, seed and tobacco as provided for in Chapters 6, 9 and 10c respectively of Title IV of Regulation [No 1782/2003], exceeds the area determined in accordance with Article 50(3), (4) and (5) of this Regulation, the aid shall be calculated on the basis of the area determined reduced by twice the difference found if that difference is more than either 3% or two hectares, but no more than 20% of the area determined.

If the difference is more than 20% of the area determined, no area-linked aid shall be granted for the crop group concerned.'

22. Article 68 of Regulation No 796/2003, entitled 'Exceptions from the application of reductions and exclusions', provided the following, in paragraph 1 and the second subparagraph of paragraph 2 thereof:

'1. The reductions and exclusions provided for in Chapter I shall not apply where the farmer submitted factually correct information or where he can show otherwise that he is not at fault.

2. …

The information given by the farmer as referred to in the first subparagraph shall have the effect that the aid application is adjusted to the actual situation.'

3. Regulation (EC) No 1973/2004

23. Regulation (EC) No 1973/2004[7] contained Article 138, entitled 'Reductions and exclusions in respect of eligibility conditions', which was worded as follows in paragraph 1 thereof:

'Except in cases of *force majeure* or exceptional circumstances as defined in Article 72 of Regulation [No 796/2004], where, as a result of an administrative or on-the-spot check, it is found that the established difference between the area declared and the area determined, within the meaning of point (22) of Article 2 of Regulation [No 796/2004], is more than 3% but no more than 30% of the area determined, the amount to be granted under the single area payment scheme shall be reduced, for the year in question, by twice the difference found.

If the difference is more than 30% of the area determined, no aid shall be granted for the year in question.

…'

[7] Commission Regulation of 29 October 2004 laying down detailed rules for the application of [Regulation No 1782/2003] as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials (OJ 2004 L 345, p. 1).

B. Romanian law

24. The Ordonanța de urgență a Guvernului nr. 125/2006 pentru aprobarea schemelor de plăți directe și plăți naționale directe complementare, care se acordă în agricultură începând cu anul 2007, și pentru modificarea articolului 2 din Legea nr. 36/1991 privind societățile agricole și alte forme de asociere în agricultură (Government Emergency Order No 125/2006 approving direct payment schemes and complementary national direct payments granted in the agriculture sector from 2007 onwards, and amending Article 2 of Law No 36/1991 on agricultural companies and other forms of associations in agriculture), of 21 December 2006 ('OUG No 125/2006'),[8] in the version applicable to the dispute in the main proceedings, stated in Article 3(1)(g) thereof:

'For the purposes of this Government Emergency Order, the terms below are defined as follows:

…

(g) Identification system for agricultural parcels – component of the integrated administration and control system comprising computer applications based on orthophotos, maps, land registry documents or other cartographic references. The techniques used must be based on a computerised geographical information system ensuring the unique identification of each physical block, preferably including aerial or satellite orthoimagery, with a homogenous standard guaranteeing accuracy at least equivalent to cartography at a scale of 1:10 000 and allowing identification within the physical blocks of agricultural parcels in the aid applications. The areas registered in the parcel identification system shall constitute the reference for the control process and for making payments.'

25. Article 7(1)(b) and (c) of OUG No 125/2006 provided:

'In order to be eligible for payments under the single area payment schemes, applicants must be registered in the register of farmers managed by the Agenția de Plăți și Intervenție pentru Agricultură (Payments and Intervention Agency for Agriculture) [("the APIA")], apply for payments within the deadline, and meet the following general conditions:

…

(b) all the agricultural parcels must be declared;

(c) subject to criminal penalties being imposed, true, complete and fully valid data in the direct area payment application form and attached documents must be provided, including the list of areas.'

III. The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court of Justice

26. On 14 May 2007, BX, a Romanian farmer, submitted an application to the APIA – Centrul Județean Argeș (APIA – Argeș district office, Romania) ('APIA Argeș') under the single area payment and less-favoured agricultural areas schemes for the year 2007. That application indicated a total agricultural area of 264.71 hectares (ha), which consisted of several parcels, of

[8] *Monitorul Oficial al României*, Part I, nº 1043, of 29 December 2006.

which BX had determined and identified the respective areas by means of topographic maps provided by APIA Argeș. Those plots included an area of 129.09 ha in the locality of Rucăr (Romania).

27. After finding, following an administrative check, that other persons had also applied for certain areas declared by BX, APIA Argeș requested clarification in that regard on 20 October 2007.

28. On 28 November 2007, BX and the representatives of those other persons concerned established the areas farmed by each of the farmers and, inter alia, specified that, in relation to the locality of Rucăr, BX used only 45 ha of the 129.09 ha he had declared in his initial application.

29. On the same day, BX submitted Form M.1.1, entitled 'Amendment of the area declaration' ('Form M.1.1') to APIA Argeș, with a view to correcting the area declared in his initial application, declaring, for the locality of Rucăr, an area of 45 ha instead of 129.09 ha. He also submitted a handwritten declaration explaining that the discrepancy between his initial declaration and the amended declaration was due, first, to the incorrect identification of the boundaries of the Găinațu Mic mountain in the Iezer-Păpușa mountain range (Romania), owing to the lack of landmarks on the topographic maps made available to him by APIA Argeș and, secondly, to the difference between the area indicated in the lease agreement (namely 210 ha), which was less than the mountain area actually farmed, and the sum of the areas of the two physical blocks making up that mountain. [9]

30. By note submitted to APIA Arges and registered on 15 May 2008, BX indicated to APIA Arges that it should have revoked Form M.1.1, given that the area of 84.09 ha had been withdrawn incorrectly by means of that form, since, when that form was lodged, BX was not aware of the fact that the locality boundary of Rucăr had been incorrectly entered on the topographic maps of APIA Argeș, which he discovered only subsequently, that is to say, at the beginning of May 2008.

31. By decision of 28 May 2008, APIA Argeș found that BX had made an initial declaration of area which was 46.56% greater than the real situation and, consequently, rejected his payment application on the basis of Article 138(1) of Regulation No 1973/2004.

32. BX brought an action before the Tribunalul București (Regional Court, Bucharest, Romania) ('the Regional Court, Bucharest') seeking, inter alia, annulment of that decision and an order that APIA Argeș pay him the sum of EUR 697 391 by way of compensation for the damage which he claims to have suffered as a result of the unlawful rejection of his application for aid for 2007. In his submission, the alleged overdeclaration is in fact attributable to APIA Argeș, which provided him with topographic maps that were not sufficiently accurate and did not comply with the requirements laid down in Article 20 of Regulation No 1782/2003, something which he stated he could prove by means of documents, witnesses and a topographical survey. Consequently, since he was not 'at fault', no reduction or exclusion of the aid should have been applied to him, in accordance with Article 68(1) of Regulation No 796/2004. By judgment of 20 January 2011, the Regional Court, Bucharest dismissed that action. [10]

[9] It is claimed that those two reasons thus led to overdeclarations of 52 ha and 33 ha respectively compared with the area initially declared concerning the locality of Rucăr.

[10] That court found, in essence, that there had been an overdeclaration of area since BX had been made aware, from the lease agreement and the deed of sale, that the area of land in those documents was 211.06 ha and not 264.71 ha as he had initially declared.

33. BX brought an appeal against that judgment before the Court of Appeal, Bucharest, the court of last instance. In the context of that appeal, as is apparent from the order for reference, BX submitted a request for a reference to the Court of Justice under Article 267 TFEU for a preliminary ruling on the interpretation of Article 68(1) and (2) of Regulation No 796/2004. At the hearing, BX stated that that appeal also contained a request for a reference to the Court of Justice for a preliminary ruling concerning the interpretation of Article 20(1) of Regulation No 1782/2003.

34. By order of 2 April 2012, the Court of Appeal, Bucharest, first of all, dismissed that request, on the ground that the elements put forward by BX 'did not require' a reference for a preliminary ruling under the third paragraph of Article 267 TFEU.

35. By decision of 9 April 2012, that court then dismissed BX's appeal as unfounded. It considered that the decision of 28 May 2008 of APIA Argeș was justified in the light of Article 138(1) of Regulation No 1973/2004, in so far as BX had over-declared the area which he used, that overdeclaration being greater than 30%. By lodging Form M.1.1, with a view to correcting his initial declaration, BX accepted that the error was contained in his initial declaration and not in that of the representative from whom the applicant had leased the land. Moreover, both the initial declaration and the one altering the area were made on the basis of the same maps from APIA Argeș, with the result that the justification for the overdeclaration on the basis of errors in those maps was unfounded.

36. That court also took the view that it fell to the farmer of a plot to state the actual area of that plot in the direct area payment application without relying on the area shown on the deeds of ownership of that plot. The inaccuracy of the topographic maps from APIA Argeș cannot therefore justify BX's overestimation of the areas which he used, in view, in particular, of the obligation laid down in Article 7(1)(c) of OUG No 125/2006 to enter, subject to criminal penalties, true, complete and fully valid data in the form for that application.

37. Furthermore, since both the initial declaration and Form M.1.1. were submitted on the basis of the actual maps of APIA Argeș, the overdeclaration cannot be justified by the errors that could vitiate those maps. Since those maps did not contain sufficient information to enable the areas to be correctly identified, BX should have taken additional steps to establish the exact area he used in order to avoid overdeclaration. According to that court, the inaccuracies in the maps from APIA Argeș could lead to incorrect identification of the areas as to their location on the map, but under no circumstances to an overdeclaration of the area of 46.56%.

38. In addition, the Court of Appeal, Bucharest regarded Form M.1.1 as partially withdrawing an area to which Article 22 of Regulation No 796/2004 applied. Since BX submitted his request for withdrawal after receiving the request for clarification from APIA Argeș, Article 15(3) of that regulation precluded him from being exempted from the application of the penalties provided for in Article 51 of that regulation. Moreover, BX's interpretation that his note of 15 May 2008 had the effect of revoking the declaration of withdrawal of 28 November 2007 cannot be accepted. That regulation did not make it possible to revoke an application for the withdrawal of a parcel, but only the withdrawal of areas.

39. That court also considered that BX's situation did not fall within the cases referred to in Article 68(1) of Regulation No 796/2004 either. BX had initially declared a total area of 264.71 ha, before subtracting an area of 84.09 ha from it, even though there had been no change of situation on the land. He therefore did not submit factually correct information.

40. Taking the view that the dismissal of BX's claim for damages did not result from the inability to prove the material damage suffered, but from the dismissal of the main action, that court did not consider it necessary to gather witness evidence. Similarly, since the Regional Court, Bucharest found that there was an overdeclaration based on BX's withdrawal of areas, a topographical survey did not appear necessary either.

41. On 8 April 2013, BX brought an action before the latter court, this time seeking to establish the liability of the Romanian State for the material and non-material damage caused by the infringement of EU law committed by the Court of Appeal, Bucharest in its decision of 9 April 2012, claiming that that court, first, had failed to apply, inter alia, Article 20 of Regulation No 1782/2003 and Article 68 of Regulation No 796/2004 and, secondly, had failed to comply with the third paragraph of Article 267 TFEU by infringing its obligation to make a reference to the Court of Justice for a preliminary ruling and by failing to state reasons for its refusal to make such a reference.

42. By judgment of 1 July 2016, the Regional Court, Bucharest dismissed BX's action as unfounded.

43. That court held that Article 20(1) of Regulation No 1782/2003 did not confer on individuals rights the infringement of which could give rise to the liability of the State, since it governed the method for identifying agricultural parcels, as well as the characteristics that the plans and land registry documents used for that purpose must have, in order to guarantee common conditions for direct payments under the various aid schemes under the CAP. In that regard, the right to information referred to by BX, understood as the right of access to information relevant for obtaining the aid applied for and for correctly identifying the parcel concerned, is a general right that could be recognised in relation to most of the provisions laying down the conditions for the operation of a given mechanism.

44. However, according to that court, Article 68 of Regulation No 796/2004 clearly creates rights vis-à-vis individuals. It inferred from this that the Court of Appeal, Bucharest had infringed that provision, first, by not determining the meaning of the words 'factually correct information', even though they are not defined in the document, secondly, by concluding that that provision did not apply to BX solely on the basis of the documents underlying the decision given by APIA Argeș and therefore by ignoring the other documents submitted by BX and, thirdly, by not giving BX the opportunity to prove by any means of evidence that he had not been guilty of overdeclaration.

45. However, on the basis of the factors referred to in paragraphs 55 and 56 of the judgment in *Köbler*, the Regional Court, Bucharest held that the infringement of EU law committed by the Court of Appeal, Bucharest was not of such a manifest nature as to render the State liable.

46. In that respect, in the first place, as regards the 'degree of clarity and precision', the Regional Court, Bucharest stated that Article 68 of Regulation No 796/2004 was clear in so far as it governs the farmer's right to be exempted from the penalty of reduction of aid or exclusion from entitlement in the two situations to which it refers and in that it indirectly obliges the court before which the applicability of one of the two situations is relied on to examine whether or not that defence is well founded.

47. In the second place, as regards the question whether the error of law was 'excusable or inexcusable', in Romanian law such an error of law cannot be relied on where the legal provisions are accessible and foreseeable, which includes the provisions published in the *Official Journal of*

the European Union and the judgments delivered by the Court of Justice. In the present case, since Article 68 of that regulation has not yet been interpreted by the Court of Justice, the inability of the Court of Appeal, Bucharest to interpret that provision correctly cannot constitute an inexcusable error.

48. In the third place, as regards the 'position taken … by an [EU] institution', the Regional Court, Bucharest stated that the Commission did in fact claim, on several occasions, that Romanian legislation did not guarantee the effectiveness of administrative cross-checks. In particular, it highlighted, in its survey No AA/2008/24, [11] that an erroneous mapping system leads to the often erroneous positioning of agricultural parcels by farmers, who thus end up being penalised or not receiving their aid. Such positions are not, however, sufficient for the view to be taken that an EU institution has established the manifest nature of an infringement of EU law. In order to establish that manifest nature, the position taken must relate to the application of the rule infringed. However, in the present case, the Commission's position did not concern the application of Article 68 of Regulation No 796/2004, but the way in which the system for locating agricultural parcels was applied by APIA Argeș.

49. In the fourth place, as regards the question 'whether the infringement was intentional', the Court of Appeal, Bucharest did not infringe EU law intentionally or manifestly. Although the Court of Justice has not yet had the opportunity to interpret Article 68 of Regulation No 796/2004, the Court of Appeal, Bucharest set out the reasons why it considered, first, that it was not necessary to admit the additional evidence requested by BX and, secondly, that Article 68 was not applicable to the dispute in the main proceedings.

50. In the fifth and last place, the Regional Court, Bucharest stated that failure to comply with the third paragraph of Article 267 TFEU cannot, in itself, give rise to liability on the part of the State, since that provision does not confer rights on individuals. In any event, it is true that, in its order of 2 April 2012, the Court of Appeal, Bucharest restricted itself to justifying its refusal to ask the Court of Justice about the interpretation of Article 68 by finding that the elements raised by BX 'did not require' an interpretation by the Court of Justice, without, however, giving further details of the reasons which led it to that conclusion. The Regional Court, Bucharest nevertheless considered that the use of the expression 'does not require' presupposed that the Court of Appeal, Bucharest considered that the interpretation and application of the provisions of Article 68 were self-evident, with the result that they did not require analysis by the Court of Justice.

51. Even though such a justification did not satisfy the requirements identified by the Court of Justice in its judgment in *Cilfit*, [12] the Regional Court, Bucharest held, following a comparison between the circumstances of the dispute in the main proceedings and those of the case which gave rise to the judgment in *Köbler*, that that inadequate statement of reasons cannot constitute a manifest infringement of EU law. While, in the latter case, a court or tribunal against whose decisions there was no judicial remedy under national law had withdrawn its request for a preliminary ruling and, subsequently, misinterpreted the case-law of the Court of Justice, the latter decided that the infringement of EU law was neither manifest nor sufficiently serious to

[11] See, in that regard, the survey conducted in Case No 44537/3/2008.

[12] Judgment of 6 October 1982, *Cilfit* (283/81, 'the judgment in *Cilfit*', EU:C:1982:335). According to the Regional Court, Bucharest, the Court of Appeal, Bucharest should have referred, at least in the grounds of its decision of 9 April 2012, to elements such as the terminology peculiar to EU law, the context in which the provision of EU law was situated, the body of provisions of EU law in the light of which the provision was interpreted, its purpose and the state of development of EU law at the time when the provision was to be applied, in order to enable the court hearing a liability action against the State to ascertain whether the provisions of Article 267 TFEU had been complied with.

render the Member State in question liable. Accordingly, in so far as there was, in the present case, no relevant judgment of the Court interpreting the provisions of EU law at issue, the infringement of those provisions cannot, a fortiori, be regarded as manifest.

52. BX brought an appeal against the judgment of 1 July 2016 delivered by the Regional Court, Bucharest before the Court of Appeal, Bucharest.

53. In the context of that appeal, BX claimed, first of all, that, contrary to what the Regional Court, Bucharest had held, Article 20(1) of Regulation No 1782/2003 confers rights on individuals, which follows both from the case-law of the Court of Justice[13] and from the Commission's survey No AA/2008/24, referred to in point 48 of the present Opinion. An infringement of that provision may therefore lead to the institution at fault incurring liability and being ordered to compensate the damage caused in accordance with Article 41(3), in conjunction with Article 51(1), of the Charter of Fundamental Rights of the European Union ('the Charter'). Next, BX submitted that, by disregarding the clear meaning of Article 68 of Regulation No 796/2004 and the obligations imposed by that provision, the Court of Appeal, Bucharest infringed his right to a fair trial under Articles 47 to 52 of the Charter. The infringement of his rights of defence demonstrates the intentional nature of the infringement. The refusal to make a reference to the Court of Justice for a preliminary ruling, even though he had requested such a reference, reinforces that conclusion, given that the statement of reasons for that refusal was deliberately ambiguous so as to prevent a court from reviewing the merits and legality of that reasoning. Lastly, BX submitted that a finding of a manifest infringement of the obligation laid down in the third paragraph of Article 267 TFEU cannot be reserved for situations in which a court or tribunal against whose decisions there is no judicial remedy under national law fails to comply with a preliminary ruling of the Court of Justice on interpretation. In the absence of such a judgment of the Court of Justice, it is not necessary to examine the criteria referred to in paragraph 55 of the judgment in *Köbler*.

54. In order to rule on the appeal brought by BX, the Court of Appeal, Bucharest considers it necessary to ask the Court of Justice whether, first, Article 20(1) of Regulation No 1782/2003 confers specific rights on individuals, secondly, whether the concept of 'factually correct information', within the meaning of Article 68(1) of Regulation No 796/2004, includes both the correct declaration of areas by the farmer and the correct identification of the parcel farmed and, thirdly, whether, in the circumstances of the dispute in the main proceedings, the fact that it did not refer a question to the Court of Justice for a preliminary ruling on the interpretation of the abovementioned Article 68 constitutes a manifest infringement of EU law such as to give rise to liability on the part of the Romanian State.

55. In those circumstances, the Court of Appeal, Bucharest decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Article 20(1) of Regulation [No 1782/2003] constitute a provision of EU law conferring specific rights on individuals, where infringement of those rights could give rise to State liability as a result of a decision of a national court of last instance?

[13] The referring court mentions, in that regard, the judgment of the Court of Justice of 2 June 1976, *Kampffmeyer and Others* v *EEC* (56/74 to 60/74, EU:C:1976:78, paragraph 13), and the judgments of the General Court of 10 April 2002, *Lamberts* v *Ombudsman* (T-209/00, EU:T:2002:94, paragraph 87), and of 23 November 2011, *Sison* v *Council* (T-341/07, EU:T:2011:687, paragraph 47).

(2) Should the concept of "factually correct information" in Article 68(1) [of Regulation No 796/2004] be interpreted as including both the correct declaration of land areas by the farmer and the correct identification of the parcel of land used and its boundaries?

(3) Given the circumstances of the case, does the failure of the national court of last instance to refer the matter to the [Court of Justice] for a ruling on the interpretation of Article 68 of Regulation No 796/2004 constitute a manifest and sufficiently serious breach such as to render the State liable for the damage allegedly caused by that court's judgment?'

56. Written observations were submitted to the Court of Justice by the Romanian Government and the European Commission. Those same parties, and BX, also presented oral argument at the hearing held on 20 May 2025.

IV. Analysis

A. Preliminary observations

57. As a preliminary point, I would recall that the present case concerns a situation in which BX, a farmer applying for area aid, overestimated the agricultural area in respect of which he had applied for that aid, when the topographic maps made available by the competent national authority, on the basis of which he had identified the agricultural area concerned, were not sufficiently accurate to enable the boundaries of the land being exploited to be identified. In such circumstances, that farmer, who, as a result of the overdeclaration of area, was excluded from the benefit of the aid by a decision of that authority, claimed that it was not a case of an intentional 'overdeclaration' but of the incorrect identification of the boundaries of the land used due to inaccuracies contained in those maps, which did not comply with the conditions laid down in Article 20(1) of Regulation No 1782/2003, and that his application for aid therefore contained 'factually correct information', or which at the very least is not 'at fault', meaning that, under Article 68 of Regulation No 796/2004, the exclusions from payment of the aid should not apply.

58. The legal problem at the heart of the case in the main proceedings thus concerns compensation for the damage which BX allegedly suffered as a result of the decision of the Court of Appeal, Bucharest, which, ruling at last instance, first, dismissed his appeal against the judgment of the Regional Court, Bucharest, by which that court did not recognise his entitlement to the aid on the ground that he had over-declared the area for which he had applied for the aid and, secondly, refused to refer the matter to the Court of Justice for a preliminary ruling. Thus, following the judgment of the Court of Appeal, Bucharest, BX brought an action before the Regional Court, Bucharest seeking a declaration that the Romanian State was liable for infringement of EU law, in particular Article 20 of Regulation No 1782/2003 and Article 68 of Regulation No 796/2004, and of the obligation for a court ruling at last instance to make a reference for a preliminary ruling under the third paragraph of Article 267 TFEU. After that action was declared unfounded by the Regional Court, Bucharest, BX brought an appeal before the Court of Appeal, Bucharest.

59. In those circumstances, the Court of Appeal, Bucharest, which must determine whether it should have made a reference for a preliminary ruling in its capacity as court of last instance, stayed the proceedings and referred three questions to the Court of Justice for a preliminary ruling.

B. The first question referred for a preliminary ruling

60. By its first question, the referring court seeks, in essence, to ascertain whether Article 20(1) of Regulation No 1782/2003 is a provision intended to confer on individuals rights which, when infringed, could incur the liability of the Member State concerned.

61. As a reminder, the Regional Court, Bucharest, in the context of the dispute in the main proceedings, found that the infringement of Article 20(1) of that regulation was not capable of incurring the liability of the Romanian State since that provision did not confer rights on individuals.[14] BX, for his part, disputes that conclusion, referring to decisions of the Commission made in 2010 and 2011.[15] More specifically, that conclusion is contrary to the Commission's survey No AA/2008/24, which stated that an erroneous mapping system does not fulfil the function of ensuring the effectiveness of administrative cross-checks (general interest), but also leads to the often erroneous positioning of agricultural parcels in the identification system for those parcels by farmers, who thus end up being penalised or not receiving their aid or being compensated for their expenses, 'which also puts at stake the particular interest of each farmer'. Thus, in such a context, Article 20 of that regulation has an institutional dimension, namely that of ensuring the effectiveness of administration and control procedures under the CAP. However, that does not automatically exclude the possibility that that provision confers rights on individuals and, in particular, the right to be informed by means of accurate topographic maps, since failure to comply with that condition linked to the accuracy of the maps could deprive the farmer of relevant information in the process of obtaining the aid and have a direct impact on the possibility of receiving financial support.

62. In that regard, I would point out at the outset that, as regards a Member State incurring liability for loss or damage caused to individuals as a result of infringements of EU law that are attributable to it, the Court of Justice has repeatedly held that individuals harmed are entitled to reparation for that loss or damage where three conditions are met: first, the rule of law infringed must be intended to confer rights on individuals; secondly, the breach of that rule must be sufficiently serious; and, thirdly, there must be a direct causal link between that breach of the obligation resting on the Member State and the loss or damage sustained by those individuals.[16]

63. More precisely, as regards the first condition, raised in the first question referred, the Court of Justice has already held that rights conferred on individuals arise not only where they are *expressly granted* by provisions of EU law, but also by reason of *positive or negative obligations* which those provisions impose in a clearly defined manner, whether on individuals, on the Member States or on the EU institutions.[17] The breach of such positive or negative obligations by a Member State is liable to hinder the exercise by the individuals concerned of the rights implicitly conferred on them under the provisions of EU law in question, rights which they are meant to invoke at national

[14] See point 43 of the present Opinion.

[15] Decisions in which Romania was censured for deficiencies in relation to the LPIS-GIS system, administrative checks and the application of penalties for providing inaccurate information to farmers and ineffective checks in respect of area aid.

[16] See, inter alia, judgments of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79, paragraph 51); the judgment in *Köbler* (paragraph 51); the judgment in *Tomášová* (paragraph 22); the judgment in *Hochtief* (paragraph 35); of 18 January 2022, *Thelen Technopark Berlin* (C-261/20, EU:C:2022:33, paragraph 44), and of 28 June 2022, *Commission* v *Spain (Breach of EU law by the legislature)* (C-278/20, 'the judgment in *Breach of EU law by the legislature*', EU:C:2022:503, paragraph 31). Moreover, again according to the Court of Justice, it is, in principle, for the national courts to apply those criteria in accordance with the guidelines laid down by the Court of Justice in that respect (see judgment of 4 October 2018, *Kantarev*, C-571/16, 'the judgment in *Kantarev*', EU:C:2018:807, paragraph 95 and the case-law cited).

[17] See judgment of 22 December 2022, *Ministre de la Transition écologique and Premier ministre (Liability of the State for air pollution)* (C-61/21, 'the judgment in *Liability of the State for air pollution*', EU:C:2022:1015, paragraph 46 and the case-law cited). See also, to that effect, the case-law on the non-contractual liability of the European Union under the second paragraph of Article 340 TFEU (see judgment of 5 March 2024, *Kočner* v *Europol*, C-755/21 P, EU:C:2024:202, paragraphs 118 to 120 and the case-law cited).

level, and thus alter the legal situation which those provisions seek to establish for those individuals. That is the reason why the full effectiveness of those rules of EU law and the protection of the rights which they are intended to confer require that individuals have the possibility of obtaining redress, irrespective of whether the provisions in question have direct effect, since direct effect is neither necessary nor sufficient in itself for the first of the three conditions referred to in point 62 of the present Opinion to be satisfied. [18]

64. It is in the light of those principles that it is necessary to examine whether Article 20(1) of Regulation No 1782/2003, which lays down the rules relating to the establishment of the identification system for agricultural parcels, which themselves form part of the common rules on direct payments under income support schemes within the framework of the CAP, is intended to confer rights on individuals and, in particular, on aid applicants entitling them to bring an action for compensation for the damage caused by the lack of accuracy of the APIA's topographic maps. [19]

65. For the reasons set out below, I consider that that provision cannot be regarded as conferring specific rights on applicants for aid or, at the very least, as seeking to create a legal situation that applies to those applicants, either expressly or implicitly.

66. In the first place, I note that it is not apparent from the wording of Article 20(1) of Regulation No 1782/2003 that it is intended to confer rights on aid applicants. That provision, which comes under Title II of that regulation, entitled 'General provisions', and, more specifically, Chapter 4 thereof, entitled 'Integrated administration and control system', is purely technical in nature in that it provides that that identification system for agricultural parcels is to be 'established on the basis of maps or land registry documents or other cartographic references'. That provision defines the techniques used for the implementation of that system, stating that they are to use 'computerised geographical information system techniques including preferably aerial or spatial orthoimagery, with a homogenous standard guaranteeing accuracy at least equivalent to cartography at a scale of 1:10 000'.

67. It follows, first, that the wording of Article 20(1) of that regulation contains no reference to individuals or, a fortiori, to aid applicants, with the result that no rights are 'expressly granted' by it, within the meaning of the case-law of the Court of Justice cited in point 63 of the present Opinion. Secondly, that provision imposes on the competent authorities of the Member States responsible for the administration and control of direct payments to farmers a 'positive obligation' to use systems for identifying agricultural parcels using, inter alia, topographic maps with a minimum level of accuracy. It is not apparent from the wording of that provision that that 'positive obligation' gives rise to any rights vis-a-vis individuals, for the purposes of that same case-law of the Court of Justice. That provision does not contain any indication that the use of topographic maps should create a benefit for individuals and, in particular, for farmers who apply for aid.

68. In the second place, that finding also appears to follow from the contextual and teleological interpretation of Article 20 of Regulation No 1782/2003.

[18] See judgments in *Liability of the State for air pollution* (paragraph 47 and the case-law cited) and *Kantarev* (paragraph 97 and the case-law cited).

[19] See, for other examples where the Court of Justice examined whether an infringed rule of law was intended to confer rights on individuals, judgments of 12 October 2004, *Paul and Others* (C-222/02, EU:C:2004:606, paragraph 50); of 25 March 2021, *Balgarska Narodna Banka*, (C-501/18, EU:C:2021:249, paragraph 115); of 10 March 2022, *Grossmania* (C-177/20, EU:C:2022:175, paragraph 70), and the judgment in *Liability of the State for air pollution* (paragraphs 45 to 57).

69. In that regard, I would like to point out that, under the first paragraph of Article 17 of that regulation, 'each Member State shall set up an integrated administration and control system', referred to as the 'integrated system', which, in accordance with the second and third paragraphs of that provision, applies to various support schemes under the CAP, [20] as well as to the control of the rules laid down in the general provisions of that regulation. [21] The general objective pursued by that integrated system, according to recitals 11 and 13 of that regulation, is to 'improve the effectiveness and usefulness of the administration and control mechanisms'.

70. In that context, under Article 18(1) of Regulation No 1782/2003, read in the light of recital 13 thereof, the integrated administration system comprises a series of elements which, together, are aimed at 'a more effective administration and control'. Those elements include, under point (b), the 'identification system for agricultural parcels' ('the LPIS'), which is referred to in Article 20 of that regulation. Thus, the LPIS is only one of the components of the integrated system and cannot be analysed independently, without taking account of the more general objectives pursued by the implementation of the integrated system. In accordance with recital 14 of that regulation, the LPIS, like the other elements of the integrated system – namely the computerised data base, aid applications from farmers, the harmonised control system and, in the single payment scheme, the system for the identification and recording of payment entitlements – contributes to a more effective administration and control, given the complexity of the system and the large number of aid applications to be processed. In particular, according to recital 16 of that regulation, the identification of agricultural parcels, where necessary, with the aid of remote sensing, 'is a key element in the correct application of schemes linked to surface area', given that 'experience has shown that the existing [identification] methods have certain deficiencies'.

71. It follows that that provision, like the other components of the 'integrated system' established by Regulation No 1782/2003, [22] is intended solely to improve the effectiveness of control by ensuring that the competent authorities of the Member States can effectively verify that aid applications comply with the requirements of EU law. The purpose of the effective administration and control of direct payments is precisely to protect the financial interests of the European Union. [23] From that point of view, topographic maps, if they are not sufficiently accurate, may compromise the effectiveness of control, thus creating the risk that Member States will not detect undue payments, which represents a financial risk for the EU budget.

72. Therefore, those provisions, although potentially useful for farmers, [24] were not drafted by the EU legislature in order to accommodate farmers in the context of their aid applications. The level of accuracy of the topographic maps to be used by the competent authorities of the Member States is laid down in order to ensure the effectiveness of the control of aid applications, since the

[20] Namely, the single payment scheme (established in Title III of Regulation No 1782/2003) and other support schemes (established in Title IV of that regulation), as well as simplified support schemes for the calendar years 2002 to 2005 (under Article 2a of Council Regulation (EC) No 1259/1999 of 17 May 1999 establishing common rules for direct support schemes under the [CAP] (OJ 1999 L 160, p. 113)).

[21] Namely, in Chapters 1 to 3 of Title II, entitled 'General provisions', of Regulation No 1782/2003.

[22] See, in particular, Article 19 ('Computerised data base'), Article 21 ('System for the identification and registration of payment entitlements') and Article 22 ('Aid applications') of Regulation No 1782/2003.

[23] See, to that effect, recitals 11 and 55 of Regulation No 796/2004.

[24] See, for example, access to computerised databases under Article 19 of Regulation No 1782/2003. The correct identification of agricultural parcels in order to obtain financial support depends in part on the quality of the maps made available; however, contrary to BX's contention, it cannot be accepted that, without those maps, it would have been impossible for an aid applicant to determine the boundaries of his land correctly.

integrated system does not operate as a support instrument for farmers with regard to their applications. Such an instrument is, however, provided for in Regulation No 1782/2003, namely 'the farm advisory system', which is established by the Member States for 'farmers'. [25]

73. Furthermore, I note that while a farmer may benefit from the use of the 'integrated system', that utility is, by its very nature, inherent in any organisational system, following the example of the 'integrated system', in so far as no system seems to operate in a self-referential manner, for itself: it always ultimately ends up being the utility of the citizen. However, such a utility is entirely indirect and reflexive, and is not sufficient to 'confer rights on individuals' within the meaning of the case-law of the Court of Justice. [26] Otherwise, any provision of an organisational nature would have to be considered as conferring rights on individuals, which would be a *reductio ad absurdum*.

74. In the third and last place, the purely objective and technical nature of Article 20 of Regulation No 1782/2003 is even clearer in the light of the legislative history of that provision. In that regard, I note that the 'integrated administration and control system' was enshrined in Regulation No 3508/92 in order, inter alia, to improve the effectiveness and efficiency of the administration and control mechanisms (recital 3 of that regulation) by using appropriate technical resources and administration and control methods given the complexity of such a system and the large number of aid applications to be processed (recital 5 of that regulation), comprising, in each Member State, 'a computerized data base, an alphanumeric identification system for agricultural parcels, aid applications from farmers, a harmonized control system and, in the livestock sector, a system for the identification and recording of animals'. [27] In addition, and so far as is relevant, I note that the same concept and purpose of the LPIS have been reproduced in Regulation (EC) No 73/2009, [28] which repealed and replaced Regulation No 1782/2003, and in all the regulations which followed it. [29]

75. Consequently, in view of its wording, context, objective and origin, the purpose of Article 20 of Regulation No 1782/2003 is to govern the method of identification of agricultural parcels, as an element of the integrated administration and control system for the lawfulness of the use of EU funds, thereby contributing to the protection of the financial interests of the European Union, and was not intended to establish a rule of EU law conferring rights on individuals. Its provisions, which concern the implementation of the identification system for agricultural parcels, which are key elements of the integrated administration and control system, are intended to ensure its

[25] See Articles 13 to 16 and recitals 8 and 9 of Regulation No 1782/2003.

[26] See the case-law of the Court of Justice cited in footnotes 16 and 17 to the present Opinion.

[27] Regulation No 1782/2003 recognises that the identification of agricultural parcels is a key element in the correct application of schemes linked to surface area; that experience has shown that the existing methods have certain deficiencies; that therefore, provision should be made for an alphanumeric identification system to be set up, where necessary, with the aid of remote sensing (see recital 16 of that regulation).

[28] Council Regulation of 19 January 2009 establishing common rules for direct support schemes for farmers under the [CAP] and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16) (see Articles 15 and 17, and recital 21 of that regulation).

[29] See Articles 68 and 70, and recitals 44 and 45 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the [CAP] and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549), and also Articles 66 and 68 and recitals 58 to 60 of Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the [CAP] and repealing Regulation (EU) No 1306/2013 (OJ 2021 L 435, p. 187). However, I note that Article 17 of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ 2014 L 227, p. 69) also introduced an obligation for the competent authority to provide the aid applicant with a geospatial aid application form, in particular for the purpose of identifying all agricultural parcels.

proper functioning, thus making it possible for the competent authorities of the Member States to fulfil their obligations with regard to the effective administration and control of aid applications.

76. That conclusion cannot, in my view, be called into question by survey No AA/2008/24 conducted by the Commission, to which BX refers in his arguments with a view to emphasising the erroneous nature of the conclusion reached by the Regional Court, Bucharest. As the Commission stated in its written observations, that survey led to the conclusion that there was a deficiency in the identification system for agricultural parcels in Romania, which resulted in financial corrections. However, such a survey, by its nature, does not concern the relationship between the European Union and Romania and is aimed exclusively at identifying financial risks to EU funds. Consequently, it cannot be inferred from that survey that the Commission considered that Article 20 of Regulation No 1782/2003 protected the individual rights of farmers.

77. I therefore propose that the answer to the first question referred for a preliminary ruling should be that Article 20(1) of Regulation No 1782/2003 cannot be interpreted as being intended to confer rights on individuals or, in particular, on applicants for direct payments.

C. The second question referred for a preliminary ruling

78. By its second question, the referring court asks, in essence, whether Article 68(1) of Regulation No 796/2004 must be interpreted as meaning that the concept of 'factually correct information' in that provision refers both to the correct declaration of land areas by the farmer and to the correct identification by the farmer of the parcel of land farmed and its boundaries.

79. As a reminder, in the present case, BX's application was excluded from receiving direct payments on the basis of Article 138(1) of Regulation No 1973/2004, in the light of the fact that he had submitted an initial declaration of area which was 46.56% greater than the real situation.[30] BX denies that he made such an overdeclaration. According to BX, the overdeclaration alleged against him is attributable to APIA Argeș, which provided him with topographic maps that were insufficiently accurate and therefore not compliant with the requirements laid down in Article 20 of Regulation No 1782/2003. Consequently, BX provided 'factually correct information' and, in any event, was not 'at fault', so that no reduction or exclusion of the aid should have been applied to him, in accordance with Article 68(1) of Regulation No 796/2004.

80. As a preliminary point, I would recall that Article 68 of that regulation, which contains the provisions relating to exceptions to the application of reductions and exclusions to the aid payments referred to, inter alia, in Chapter I thereof, dealing with findings relating to eligibility criteria, provides, in paragraph 1 thereof, that reductions and exclusions from receiving payments are not to apply where the farmer has submitted to the competent authority '*factually correct information* or where he [or she] can show *otherwise* that he [or she] is not at fault'.[31] As set out in recital 67 of that regulation, 'reductions and exclusions with regard to eligibility criteria should, as a general rule, not apply where the farmer submitted factually correct information or where he can show otherwise that he is not at fault.'

81. In that regard, as regards the application of Article 68(1) of that regulation in relation to information relating to the eligibility criteria, that provision must be read in conjunction with Article 12 thereof, which governs the content of the 'single application' submitted by the

[30] See point 31 of the present Opinion.

[31] Emphasis added.

farmer,[32] by which the farmer declares not only the area he or she uses for agricultural purposes but also his or her payment entitlements.[33] Thus, in accordance with Article 12(1) of Regulation No 796/2004, the 'the single application shall contain all information necessary to establish eligibility for the aid, in particular, … particulars permitting *identification* of all agricultural parcels on the holding, their *area* expressed in hectares to two decimal places, their *location* and, where applicable, their use and whether the agricultural parcel is irrigated'.[34]

82. It is therefore clear from the wording of the latter provision that both the 'correct declaration of land areas by the farmer', in so far as it refers to the 'area expressed in hectares to two decimal places', and the 'correct identification of the parcel of land used and its boundaries', in so far as it refers to 'the identification of agricultural parcels' and 'their location', constitute information necessary for the purpose of deciding on eligibility for aid. That finding is, moreover, consistent with the actual concept of 'identification' of an agricultural parcel, which resides exclusively in the identification of the boundaries of a parcel and not in its area, which, in turn, can be determined only after the precise boundaries of that parcel have been identified. In other words, the correct identification of an agricultural parcel necessarily entails, unless there is a calculation error, a correct declaration of the areas.

83. However, in the light of the circumstances of the dispute in the main proceedings, it seems necessary to me to widen the scope of that question and to examine whether a farmer who has submitted incorrect information to the competent national authority may nevertheless escape a reduction of, or exclusion from, aid under Article 68(1) of Regulation No 796/2004 where that farmer shows that he or she is not 'at fault' in view of the fact that the error found by that authority is not attributable to him or her.

84. In that regard, the question of the imputability of the infringement depends on the specific features of each individual case. Thus, the fact that an authority, such as the APIA, provided the applicant for the aid with inaccurate or insufficiently accurate documents which did not enable him or her to locate and define precisely the parcels which he or she wishes to use may exempt that farmer from any 'fault' where that farmer succeeds in showing that he or she had no other evidence available, on the basis of other maps or land registry documents or other cartographic references, enabling him or her to identify or locate those parcels. However, in the light of my proposed answer to the first question referred for a preliminary ruling, it is not apparent from the provisions relating to the 'integrated system' of Regulation No 1782/2003 that they confer any right on that farmer to prove the location and area of his or her parcels by means of the documents held by the competent national authority.

85. As regards the facts of the dispute in the main proceedings, as set out in the order for reference, I note, at the outset, with regard to the assessment of the nature of the 'factually correct information', as the Court of Justice has already held, that the eligible hectare accompanying any payment entitlement is to be at the farmer's disposal,[35] since such an area is allocated to a farmer's holding where he or she has the power to manage that holding for the purposes of an agricultural activity.[36] The farmer must enjoy a sufficient degree of autonomy with regard to that area, that

[32] That 'single application' is defined in Article 2(11) of Regulation No 796/2004, as 'the application for direct payments in respect of the single payment scheme and other area-related aid schemes with the exception of an application for hops payment by a recognised producer group pursuant to the second paragraph of Article 68a of Regulation (EC) No 1782/2003'.

[33] See recital 16 of Regulation No 796/2004.

[34] Emphasis added.

[35] See judgment of 14 October 2010, *Landkreis Bad Dürkheim* (C-61/09, 'the judgment in *Landkreis Bad Dürkheim*', EU:C:2010:606, paragraph 53).

[36] See judgment in *Landkreis Bad Dürkheim* (paragraph 58).

being a matter for the referring court to assess, taking into account all the circumstances of the case.[37] In addition, in accordance with the case-law of the Court of Justice, it is essential that *no third party carry out any agricultural activity* on the disputed areas *during that period*. In order to avoid the situation where a number of farmers claim allocation of the parcels concerned to their holding, those areas may not, during that period, be considered as allocated to other farmers' holdings for the purposes of the single payment scheme.[38]

86. In the present case, first, it is apparent from the order for reference that the area leased by BX from the owner of the land was smaller than that which he had declared. If BX knew that the area actually farmed was greater than that held under the lease concluded with the landowner, he should have submitted evidence of this to APIA Argeș. However, I note that in his statements, BX failed to indicate a factual element which, however, appears essential, namely the correct area, whereas he should and could have foreseen that some of the areas declared were used by the owner or by other persons. Furthermore, I note that, in the present case, the overdeclaration did not concern a minor discrepancy which could, if appropriate, be tolerated or excused, but concerned a difference exceeding 80 hectares, which appears difficult to conceive in the case of agricultural plots belonging to the holding of a farmer who is required to manage them as part of his professional activity. Secondly, although BX relies on errors contained in the topographic maps which had been provided to him by APIA Argeș, it is clear from the case file that both the initial declaration and the declaration amending the area were made on the basis of the APIA maps.

87. Accordingly, I propose that the answer to the second question referred for a preliminary ruling should be that Article 68(1) of Regulation No 796/2004, read in conjunction with Article 12 thereof, must be interpreted as meaning that the concept of 'factually correct information' contained in the first of those provisions refers, as regards the eligibility criteria for aid, to any information necessary for the purpose of deciding on such eligibility and includes, inter alia, both the correct declaration of areas by the farmer and the correct identification by that farmer of the parcel farmed and its boundaries.

D. The third question referred for a preliminary ruling

88. By its third question, the referring court asks, in essence, whether the fact that, in the circumstances of the dispute in the main proceedings, it did not make a reference to the Court of Justice, under the third paragraph of Article 267 TFEU, for a preliminary ruling on the interpretation of Article 68(1) of Regulation No 796/2004 constitutes a manifest infringement of EU law such as to render the Member State in question liable for the damage allegedly caused by that court's decision.

[37] See judgment in *Landkreis Bad Dürkheim* (paragraph 62).

[38] See judgment in *Landkreis Bad Dürkheim* (paragraph 66).

89. In other words, not wishing to be accused of being both judge and party, that court invites us to make a substantive ruling on whether its decisions of 2 and 9 April 2012 manifestly infringed EU law. [39]

90. As a preliminary point, I consider it relevant to point out that, in accordance with the settled case-law of the Court of Justice, the liability of a Member State for loss or damage caused by a decision of a court adjudicating at last instance which infringes a rule of EU law is governed by the same conditions as those governing the liability of a Member State, which are mentioned in point 62 of the present Opinion. [40]

91. In particular, as regards the second of those conditions, which the third question referred for a preliminary ruling concerns, and which requires the infringement of the rule of EU law to be sufficiently serious, the Court of Justice has already stipulated that the State's liability as a result of judicial activities can be incurred only in the exceptional case where the national court adjudicating at last instance has manifestly infringed the applicable law. In order to determine whether there is a sufficiently serious breach of EU law, it is necessary to take account of all the factors which characterise the situation brought before the national court. Therefore, according to the case-law of the Court of Justice, among the factors which can be taken into consideration in that regard are, in particular, the degree of clarity and precision of the rule infringed, the scope of the room for assessment that the infringed rule allows for national authorities, whether the infringement and the damage caused were intentional or involuntary, whether any error of law was excusable or inexcusable, and the fact that the position taken by an EU institution may have contributed to the adoption or maintenance of national measures or practices contrary to EU law, and non-compliance by the court in question with its obligation to make a reference for a preliminary ruling under the third paragraph of Article 267 TFEU. [41]

92. In that respect, as regards that obligation to make a reference for a preliminary ruling, which is expressly raised in the third question referred, I note that, in accordance with the third paragraph of Article 267 TFEU, where any question necessitating a preliminary ruling is raised in a case

[39] I note that, by its third question, the national court appears to be referring solely to the ground based on an infringement of the third paragraph of Article 267 TFEU. The following analysis is therefore without prejudice to the examination of the other pleas raised by BX alleging misapplication of Article 20 of Regulation No 1782/2003 and Article 68 of Regulation No 796/2004 (see point 41 of the present Opinion). In that regard, for the sake of completeness, I note that, according to the Regional Court, Bucharest, the Court of Appeal, Bucharest infringed Article 68 of Regulation No 796/2004 in several respects, that is to say: (i) by failing to determine the meaning of the phrase 'factually correct information'; (ii) by concluding that that provision did not apply to BX solely on the basis of the documents underlying the decision of APIA Argeș and therefore ignoring the other documents produced by BX; and, (iii), by not offering him the opportunity to prove by any evidentiary means that he had not been guilty of overdeclaration (see point 44 of the present Opinion). In such a situation, it cannot be excluded that the existence of a number of 'simple' faults (allegedly) committed by the State in the context of the same action could, depending on the circumstances, justify a reclassification of that fault as a single 'aggravated' fault, which could give rise to compensation.

[40] See judgments in *Köbler* (paragraph 52), *Tomášová* (paragraph 23) and *Hochtief* (paragraph 36).

[41] See judgments in *Köbler* (paragraphs 54 and 55) and *Tomášová* (paragraphs 24 and 25). Those elements, which are clearly inspired by the general body of rules on the liability of the State, set out in the leading judgment of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79, paragraph 56), are, however, indicative and not exhaustive, since the national court which is required to assess the manifest nature of a breach of EU law must, in my view, also be free to take into account other factors that may be more relevant or better suited to the situation before it. Thus, where the breach of EU law is attributed to a national court, it will be necessary, in accordance with the judgment in *Köbler* (paragraph 53), to take into account the specific nature of the judicial function and the legitimate requirements of legal certainty. To that end, certain criteria established in the various national systems of the Member States which have adapted their system of liability of public authorities, where appropriate, by establishing a special system based on the judgment in *Köbler*, could be relevant in order to take into account the specificities inherent in their judicial activities. Thus, the use of concepts such as 'lack of diligence' or 'negligence' in relation to what is required of a normally diligent and prudent judge could also be relevant. Likewise, the consequences of such a fault could be taken into account, in particular if it were likely to infringe seriously the rights of the person concerned.

pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal must bring the matter before the Court of Justice. [42]

93. That obligation is not, however, absolute.

94. In accordance with the limits recognised by the judgment in *Cilfit* and by subsequent settled case-law of the Court of Justice, [43] a national court or tribunal against whose decisions there is no judicial remedy under national law cannot be relieved of that obligation to make a reference to the Court of Justice for a preliminary ruling unless it has made a reasoned finding that the question raised is irrelevant or that the EU law provision in question has already been interpreted by the Court of Justice or that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt (see, respectively, the '*acte éclairé*' doctrine or the '*acte clair*' doctrine. [44]

95. In that context, the Court of Justice established in the judgment in *CIM* that it follows from the system established by Article 267 TFEU, read in the light of the second paragraph of Article 47 of the Charter, that, if a national court or tribunal against whose decisions there is no judicial remedy under national law takes the view, because the case before it involves one of the three situations mentioned in the previous point of the present Opinion, that it is relieved of its obligation to make a reference to the Court of Justice under the third paragraph of Article 267 TFEU, the reasons for its decision must show either that the question of EU law raised is irrelevant for the resolution of the dispute, or that the interpretation of the EU law provision concerned is based on the case-law of the Court of Justice or, in the absence of such case-law, that the interpretation of EU law was so obvious to the national court or tribunal of last instance as to leave no scope for any reasonable doubt. [45] It should be noted, however, that generally the assessment of such a decision by a national court must be carried out on the basis of the legal and factual elements existing at the time of its adoption. [46] However, while it is true that the national court is required to provide reasons for its decisions, since the obligation to provide an explicit statement of reasons in terms of the judgment in *CIM* were not expressly released until 6 October 2021, that obligation is, in my opinion, enforceable against national courts only from that date onwards. [47]

96. It is in the light of those principles identified by the Court of Justice that it is necessary to examine whether, in the present case, the Court of Appeal, Bucharest, in its capacity as a court of last instance, committed a manifest infringement of EU law, first, by deciding not to make a

[42] That obligation to refer is part of the cooperation, created in order to ensure the proper application and uniform interpretation of EU law in all the Member States, between national courts, in their capacity as courts responsible for the application of EU law, and the Court of Justice, and its particular purpose is to prevent a body of national case-law that is not in accord with the rules of EU law from coming into existence in any Member State (see judgments of 4 November 1997, *Parfums Christian Dior*, C-337/95, EU:C:1997:517, paragraph 25 and the case-law cited, and of 15 September 2005, *Intermodal Transports*, C-495/03, EU:C:2005:552, paragraph 29 and the case-law cited).

[43] See judgment of 6 October 2021 in *Consorzio Italian Management and Catania Multiservizi* (C-561/19, 'the judgment in *CIM*', EU:C:2021:799, paragraph 33 and the case-law cited).

[44] See the judgment in *CIM* (paragraphs 32 and 33 and the case-law cited).

[45] See the judgment in *CIM* (paragraph 51 and the case-law cited), judgment of 29 July 2024, *Breian* (C-318/24 PPU, EU:C:2024:658, paragraph 68) and of 15 October 2024, *KUBERA* (C-144/23, EU:C:2024:881, paragraphs 62 to 65).

[46] See, by analogy, judgment of 10 September 2019, *HTTS* v *Council* (C-123/18 P, EU:C:2019:694, paragraph 39) regarding actions for damages as a result of the unlawfulness of an act or of conduct that may give rise to the non-contractual liability of the European Union.

[47] That obligation for national courts ruling at last instance to provide reasons could be implicitly deduced from the previous case-law of the Court of Justice, namely the judgments in *Cilfit* and *Köbler*, but also from Article 47 of the Charter (see, to that effect, the Opinions of Advocate General Bot in *Ferreira da Silva e Brito and Others*, C-160/14, EU:C:2015:390, points 90 and 94 and of Advocate General Bobek in *CIM*, C-561/19, EU:C:2021:291, point 171), even though it was only in the judgment in *CIM* that the Court of Justice laid down that obligation by establishing an express link with the three criteria arising from the judgment in *Cilfit* (see, to that effect, the Opinion of Advocate General Ćapeta in *Remling*, C-767/23, EU:C:2025:486, point 37).

reference to the Court of Justice for a preliminary ruling in accordance with the third paragraph of Article 267 TFEU, and, secondly, by failing to fulfil its obligation state the reasons for that decision.

97. In that regard, I note that the third question referred for a preliminary ruling, as formulated by the referring court, relates, in essence, only to the alleged infringements of the obligations to make a reference and to state reasons for rejecting such reference requests, in view of the interpretation of Article 68(1) of Regulation No 796/2004. However, it would appear that BX also requested an interpretation of Article 20(1) of Regulation No 1782/2003.[48] I therefore propose to broaden the scope of this question so that it also covers that element. Moreover, there is a clear and close link, in the present case, between those two provisions, since the inaccuracy of the topographic maps, relevant to Article 20, falls within the grounds relied on by BX to justify the application of Article 68(1) of Regulation No 796/2004.

98. In the first place, *as regards the obligation to make a reference for a preliminary ruling concerning the interpretation of Article 20(1) of Regulation No 1782/2003*, it is apparent from the documents before the Court of Justice that the Court of Appeal, Bucharest confined itself, in its order of 2 April 2012, to rejecting the request for a reference for a preliminary ruling, finding that the elements which BX had put forward 'did not require' a reference for a preliminary ruling in accordance with the third paragraph of Article 267 TFEU, without giving reasons why it maintained that procedural position.[49] It therefore appears that that court implicitly took the view that that interpretation was not *relevant*, probably because Article 20(1) of that regulation was not capable of giving rise to liability on the part of the Romanian State, since it did not confer rights on individuals.[50] In that regard, I note that, given that that provision had not yet been interpreted by the Court of Justice, and that therefore the Court of Appeal, Bucharest was not, in principle, exempt from its obligation to make the reference for a preliminary ruling,[51] the latter should have provided the reasons why it considered itself released from its obligation to refer the matter to the Court of Justice under the exceptions recognised by the judgment in *Cilfit*. However, as noted above, the absence of 'necessity' should be understood, in the present case, as a lack of 'relevance'. As it is, the assessment of the criterion of 'relevance', unlike that of the other two criteria relating to the '*acte clair*' doctrine or the '*acte éclairé*' doctrine, falls within the sole jurisdiction of the referring court.[52] Thus, it is for that court to examine, first, whether the grounds of the order of 2 April 2012, read in conjunction with the judgment of 9 April 2012 of that court, made it sufficiently clear why the interpretation of Article 20(1) of that regulation was not 'necessary' for the purposes of the action for liability, and, secondly, whether the absence of any 'necessity' to interpret Article 20(1) thereof was well founded, in particular inasmuch as the argument that BX wished to draw from that provision was, in essence, ineffective, and therefore not relevant in the present case.

99. In any event, even assuming that the Court of Appeal, Bucharest infringed Article 267 TFEU by failing to make a reference for a preliminary ruling or to provide sufficient reasons for its decision, such an infringement cannot, in my view, be characterised as 'manifest'. First, as is apparent from point 95 of the present Opinion, since the obligation to state reasons in accordance with the requirements outlined in the judgment in *CIM* was not laid down by the

[48] See point 33 of the present Opinion.

[49] See point 34 of the present Opinion.

[50] See, in the same sense, the analysis of the Regional Court, Bucharest set out in point 43 of the present Opinion.

[51] See, to that effect, judgment of 27 March 1963, *Da Costa and Others* (28/62 to 30/62, EU:C:1963:6, p. 75 and 76).

[52] See, to that effect, the Opinion of Advocate General Ćapeta in *Remling* (C-767/23, EU:C:2025:486, point 30) which notes that the Court of Justice does not have jurisdiction to interpret the first criterion, namely the one relating to 'relevance'.

Court of Justice until a number of years after the adoption of the decisions at issue in the main proceedings, that obligation cannot be strictly enforceable against the Court of Appeal, Bucharest, nor, a fortiori, constitute a basis for a manifest infringement of EU law for failure to state reasons. Secondly, it is apparent from the answer which I propose to give to the first question referred for a preliminary ruling that Article 20(1) of Regulation No 1782/2003 does not confer any rights on individuals. Therefore, the interpretation suggested by the Court of Appeal, Bucharest coincides with that position and would not have contributed to the adoption or maintenance of national measures or practices contrary to EU law.

100. In the second place, *as regards the obligation to make a reference for a preliminary ruling concerning the interpretation of Article 68(1) of Regulation No 796/2004*, in the absence of an interpretation of that provision by the Court of Justice, it must be stated that, as noted by the Regional Court, Bucharest, the Court of Appeal, Bucharest should have included more information in the grounds of the decision rejecting the request to make a reference,[53] in order to enable the court hearing a civil liability action against the Romanian State to ascertain whether the conditions for the application of the third paragraph of Article 267 TFEU were met. In those circumstances, and in so far as it is common ground that Article 68(1) of Regulation No 796/2004 confers rights on individuals, it could be argued that the first condition for incurring liability relating to the infringement of a rule of EU law is satisfied.

101. However, like the preceding analysis, and in the light of the judgment in *Köbler* and the subsequent case-law of the Court of Justice,[54] that inadequate statement of reasons cannot, in my view, constitute a manifest breach of EU law or a breach of EU law that is sufficiently serious to render the Romanian State liable. First, BX relies on Article 68(1) of Regulation No 796/2004, starting from the premiss that there was an infringement of Article 20(1) of Regulation No 1782/2003. In so far as, in the present case, the Court of Appeal, Bucharest did not find any such infringement, taking the view that the interpretation of Article 68(1) of Regulation No 796/2004 was not 'necessary', appears to me, at first glance, consistent and certainly does not constitute a 'manifest infringement of the applicable law', namely Regulation No 796/2004 and Regulation No 1782/2003 or the case-law of the Court of Justice relating to those regulations,[55] in so far as, in the present case, there was no judgment of the Court of Justice interpreting the provisions of EU law at issue. Secondly, it is apparent from the documents before the Court of Justice that the Court of Appeal, Bucharest considered that the correct interpretation and application of Article 68 of Regulation No 796/2004 was so obvious that it left no scope for 'any reasonable doubt', within the meaning of the case-law of the Court of Justice referred to in point 94 of the present Opinion. According to the referring court, BX's situation did not fall within the cases referred to in Article 68(1) of that regulation, since BX had initially declared a certain area and subsequently removed 84.09 ha from that area, even though there was no change in the situation on the land, but also because he could and should have known the exact area which he was using and declared it correctly. Consequently, the referring court, ruling at last instance, does not appear to have manifestly infringed EU law when it considered, in the exercise of its discretion, that it was in a position to refrain from making a reference to the Court of Justice for a preliminary ruling on the interpretation of Article 68 of Regulation No 796/2004, since, in its view, the answer was obvious.

[53] See footnote 12.

[54] See the case-law of the Court of Justice cited in footnote 5 to the present Opinion.

[55] See, to that effect, judgments in *Köbler* (paragraph 52) and *Tomášová* (paragraph 23).

102. Therefore, I propose that the answer to the third question referred for a preliminary ruling should be that the fact that, in the circumstances of the dispute in the main proceedings, the referring court did not refer a question to the Court of Justice for a preliminary ruling, in accordance with the third paragraph of Article 267 TFEU, concerning the interpretation of Article 68(1) of Regulation No 796/2004, subject to that court's final assessment, does not appear to constitute a manifest infringement of EU law such as to render the Member State in question liable.

V. Conclusion

103. In the light of the foregoing considerations, I propose that the Court of Justice should answer the questions referred for a preliminary ruling by the Curtea de Apel Bucureşti (Court of Appeal, Bucharest, Romania) as follows:

(1) Article 20(1) of Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, as amended by Council Regulation (EC) No 1009/2008 of 9 October 2008,

must be interpreted as meaning that that provision cannot be intended to confer rights on individuals and, in particular, on applicants for direct payments.

(2) Article 68(1) of Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulations (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, as amended by Commission Regulation (EC) No 381/2007 of 4 April 2007, read in conjunction with Article 12 of that regulation,

must be interpreted as meaning that the concept of 'factually correct information' contained in the first of those provisions refers both to the farmer's correct declaration of the areas and to the farmer's correct identification of the parcel of land farmed and of its boundaries.

(3) Article 267 TFEU

must be interpreted as meaning that the fact that, in the circumstances of the dispute in the main proceedings, the referring court did not make a reference to the Court of Justice for a preliminary ruling on the interpretation of Article 68(1) of Regulation No 796/2004, as amended by Regulation No 381/2007, subject to the final assessment of that court, does not appear to constitute a manifest infringement of EU law such as to render the Member State in question liable.