

Questions referred

1. For the purposes of (i) Article 30(1), (3) and (4) of Regulation No 1260/1999⁽¹⁾ and Rule No 1, point 1.9, of Regulation No 1685/2000,⁽²⁾ (ii) Article 4(3) of Regulation No 70/2001 and (iii) Articles 38 and 39(1) of Regulation No 1260/1999, Article 4 of Regulation No 438/2001,⁽³⁾ Article 2(2) of Regulation No 448/2001,⁽⁴⁾ Article 1(2) of Regulation No 2988/1995⁽⁵⁾ and Article 14 of Regulation No 659/1999,⁽⁶⁾ does the sale of the assisted undertaking, together with its fixed assets, constitute automatically such a substantial modification of the implementation conditions of the co-financed investment in that undertaking as to justify of itself national legislation, such as Article 18(5) of Joint Ministerial Decision 192249/EYS 4057 of 19 August 2002 (Ministerial Decision 9216/EYS 916 of 12-18 February 2004), which enacts an absolute long-term prohibition on the transfer of the fixed assets of the subsidised undertaking, on pain of total or partial revocation of the decision granting the aid and repayment of all or part of the public grant paid?
2. Are (i) Article 30(4) of Regulation No 1260/1999; (ii) Article 4(3) of Regulation No 70/2001⁽⁷⁾ and point 4.12 of the Guidelines on national regional aid concerning the principle of the durability of small and medium-sized enterprises in receipt of aid and (iii) Articles 38 and 39 of Regulation No 1260/1999, Article 2(2) of Regulation No 448/2001, Articles 1(2), 2 and 4 of Regulation No 2988/1995 and Article 14 of Regulation No 659/1999 to be understood as meaning that the sale of the fixed assets and of the assisted undertaking itself, further to an internal shareholders' agreement intended to ensure its viability, does not give rise to a substantial modification to the co-financing operation or to an undue advantage for any of the contracting parties and therefore constitutes neither an irregularity nor a reason to recover the aid, provided that the conditions for the carrying out of the investment are not modified and the transfer falls under a legal regime under which the transferor and the transferee are jointly and severally liable for the debts and for the liabilities that exist at the time of the transfer?
3. Do Articles 17, 52 and 53 of the Charter of Fundamental Rights of the European Union and the principle of legal certainty, interpreted in conjunction with Article 1 of Protocol No 1 to the ECHR, require a fair balance to be struck between financial correction measures and measures for the recovery of aid in accordance with Articles 38[(1)](h) and 39(1) of Regulation No 1260/1999, Article 2(2) of Regulation No 448/2001, Article 4 of Regulation No 2988/1995 and Article 14 of Regulation No 659/1999 and the right to the protection of 'property' of the recipient of the aid, resulting in partial or even total exemption of the recipient, even where it is found that the transfer gave rise to a substantial modification to the assisted operation or an undue advantage?

⁽¹⁾ Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

⁽²⁾ Commission Regulation (EC) No 1685/2000 of 28 July 2000 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards eligibility of expenditure of operations co-financed by the Structural Funds (OJ 2000 L 193, p. 39).

⁽³⁾ Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ 2001 L 63, p. 21).

⁽⁴⁾ Commission Regulation (EC) No 448/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the procedure for making financial corrections to assistance granted under the Structural Funds (OJ 2001 L 64, p. 13).

⁽⁵⁾ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

⁽⁶⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

⁽⁷⁾ Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ 2001 L 10, p. 33).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 1 June 2022 — Weingut A v Land Rhineland-Palatinate

(Case C-354/22)

(2022/C 311/09)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant on a point of law: Weingut A

Respondent in the appeal on a point of law: Land Rhineland-Palatinate

Questions referred

1. Can winemaking have been entirely carried out on the eponymous wine-growing holding within the meaning of the second subparagraph of Article 54(1) of Delegated Regulation (EU) 2019/33 ⁽¹⁾ if the pressing takes place in a winepress installation which has been rented from another wine-growing holding for 24 hours and is exclusively at the disposal of the eponymous wine-growing holding during that period?
2. If that question is answered in the affirmative, is it necessary that the pressing be carried out or at least supervised on-site by employees of the eponymous wine-growing holding, or can the pressing also be carried out by employees of the wine-growing holding renting out the winepress installation in accordance with the instructions of the eponymous wine-growing holding?
3. If the pressing can also be carried out by employees of the wine-growing holding renting out the winepress installation, can they be given the authorisation to intervene in the pressing on the basis of an individual decision in the event of unexpected problems?
4. Is attribution of the winemaking to the eponymous wine-growing holding precluded if the wine-growing holding which rents out the winepress installation and carries out the winepressing has an interest of its own in the manner in which the winepressing is carried out, because a yield- and quality-dependent supplement per hectolitre of Kabinett/Spätlese/Auslese wine on top of the area-based exploitation fee is agreed in the vineyard exploitation agreement which has also been concluded with that holding?

⁽¹⁾ Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation (OJ 2019 L 9, p. 2), in the current version of Delegated Regulation (EU) 2021/1375 of 11 June 2021 (OJ 2021 L 297, p. 16).