(c) assuming that compliance with the 20 % threshold must be assessed in relation to the expenditure dedicated to the aid scheme, must such an assessment be made by comparing the overall level of expenditure in the approval decision with the overall budget subsequently allocated to all aid schemes granted by the body responsible for such allocations, or by comparing the levels notified under each of the categories of aid identified in that decision with that body's corresponding budget line?

(1) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 2004 L 140, p. 1).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Austria) lodged on 3 October 2016 — Erzeugerorganisation Tiefkühlgemüse e. Gen. v Agrarmarkt Austria

(Case C-516/16)

(2016/C 462/13)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant: Erzeugerorganisation Tiefkühlgemüse e. Gen.

Respondent: Agrarmarkt Austria

Questions referred

I.1. Do Articles 65, 66 and 69 of Commission Regulation (EC) No 1580/2007 (1) of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector and (since 23 June 2011) Articles 64, 65 and 68 of Commission Implementing Regulation (EU) No 543/2011 (2) of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors require that the decision approving the operational programme and the amounts of funds, or any amendment of that decision, and the decision on the 'approved amount of aid' be adopted not merely as notifications but formally as (at least provisionally) binding decisions that can be challenged by the applicant at the outset, that is to say irrespective of any challenge to the final decision (pursuant to Article 70 of Regulation 1580/2007 or Article 69 of Regulation No 543/2011) on the application for (closing) payment of the aid?

I.2. Are the provisions cited in Question I.1 to be interpreted as meaning that, at the time when such decisions are adopted, the value of the marketed production must also be fixed with binding effect (in the normative part of the decision)?

I.3. Is EU law, in particular Articles 69 and 70 of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, to be interpreted as meaning that a court required to rule on an appeal brought against a decision by which an administrative authority, in connection with a particular annual segment of the operational programme, gave a final adjudication on an application for the payment of financial assistance under Article 103 g(5) of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), in the version of Council Regulation (EC) No 361/2008 of 14 April 2008 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('Single CMO Regulation'), is prevented from examining the question of the legality of the value-of-the-marketed-production calculation used as the basis for the ceiling on aid by a pre-existing final decision approving the operational programme and the amounts of funds and by the decision on the 'approved amount of aid'?

I.4. If Question I.1., I.2. or I.3. is answered in the negative, is Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), in particular Parts IX ('Fruit and vegetables', specifically in relation to 'CN code ex 07 09 … Other vegetables, fresh or chilled …') and X ('Processed fruit and vegetable products', in relation to 'CN code ex 07 10 Vegetables … frozen') of Annex I thereto, to be interpreted as meaning that vegetable products that emerge from the sum of the processes that follow the harvest, namely cleaning, slicing, blanching and freezing, are to be classified not as products within the meaning of Part IX of Annex I but as products within the meaning of Part X of Annex I?

I.5. If Question I.4. is answered in the affirmative, is the concept of the 'value of the marketed production' used in Article 103d(2) of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), in the version of Council Regulation (EC) No 361/2008 of 14 April 2008 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('Single CMO Regulation'), to be interpreted as meaning that that value is to be calculated in such a way as to take into account only the value of the production, minus the value corresponding to the processing stage, by deducting the value of the process whereby the harvested, cleaned, sliced and blanched vegetables are transformed into quick-frozen vegetables?

I.6. Is Article 51(7) of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors to be interpreted as meaning that a producer organisation that has submitted an operational programme for the years 2010 to 2014 which, although approved before 20 January 2010, was later (on 13 December 2013) the subject of an amended approval inasmuch as the method of calculating the value of the marketed production for that programme was changed, can still rely, for the purposes of the detailed rules governing the calculation of the value of the marketed production, on the 'legislation applicable in 2008' even after that amendment to the operational programme (that is to say in connection with the aid to be paid in 2014)?

I.7. If Questions I.5. and I.6. are answered in the affirmative, are Article 52(6)(a) and Article 21(1)(i) of Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector invalid in so far as, pursuant to those provisions, the stages in the processing of harvested vegetables whereby those vegetables are transformed into 'another product listed in Annex I to the EC Treaty' are included in the calculation of the value of the marketed production?

I.8. If Question I.6. is answered in the negative (and irrespective of the answers given to the other questions), is Article 50 (3)(d) of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors invalid?

II.1. Is Article 103c of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), in the version of Council Regulation (EC) No 361/2008 of 14 April 2008 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('Single CMO Regulation') to be interpreted as meaning that an 'operational programme in the fruit and vegetables sector' allows only for the promotion of the production of products capable of being classified as products within the meaning of Part IX of Annex I, but not also the promotion of investments in the processing of such products?

II.2. If Question II.1. is answered in the negative, under what conditions and to what extent does Article 103c of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), in the version of Council Regulation (EC) No 361/2008 of 14 April 2008 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('Single CMO Regulation'), allow investments in processing to be promoted in this way?

II.3. Is Article 60(7) of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors invalid?

III.1. Is point 23 of Annex IX to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors to be interpreted as meaning that the only reason for the exclusion of that promotion is the fact that it takes place on external premises?

III.2. If Question III.1. is answered in the affirmative, is point 23 of Annex IX to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors invalid?

III.3. If Question III.1. is answered in the affirmative and Question III.2. in the negative, is the rule laid down in point 23 of Annex IX to Commission Implementing Regulation (EU) No 543/2011 a clear and unambiguous provision to the extent that the legitimate expectations of an economic operator who [engages in] the promotion of activities which, although performed on external premises, nonetheless form part of his business are not protected, despite the fact that that promotion was the subject of an assurance or approval given by the domestic authorities in full knowledge of the facts?

IV. Does the fact that the Court of Justice does not limit in a manner beneficial to the person concerned the effects of a judgment (within the meaning of the second paragraph of Article 264 TFEU) which, by virtue of a new interpretation of EU law or a declaration as to the invalidity of an act of EU law previously regarded as valid, is detrimental in law to that person, have the effect of preventing that person from relying on the principle of legal certainty in a particular case before a national court, where it is established that he is acting in good faith?

([1]) OJ 2007 L 350, p. 1.
([2]) OJ 2011 L 157, p. 1.

Request for a preliminary ruling from the Sofiyski gradski sad (Bulgaria) lodged on 4 October 2016 — ZPT AD v Narodno sabranie na Republika Bulgaria, Varhoven administrativen sad, Natsionalna agentsia za prihodite

(Case C-518/16)

(2016/C 462/14)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Parties to the main proceedings

Applicant: ZPT AD

Defendants: Narodno sabranie na Republika Bulgaria, Varhoven administrativen sad, Natsionalna agentsia za prihodite

Questions referred

1. Do implementing provisions of EU law such as Regulation No 1998/2006 ([1]) have direct effect and apply directly, and, if so, does a provision of national law which narrows or restricts the applicable scope of the EU legal provisions infringe those principles?

2. Is State aid granted in the form of tax relief compatible with competition in the internal market, where such aid is invested in assets used for the manufacture of products, some of which are exported to third countries or to Member States?

3. Does the manufacture of products for export through the use of assets obtained by means of State aid come within the scope of activity directly linked to the quantities exported within the meaning of Article 1(d) of Regulation No 1998/2006? If the answer is in the negative, are Member States entitled to provide in national legislation for additional restrictions on exporters of products manufactured using assets that are the result of tax relief investment? If the answer is in the affirmative, how does that rule relate to the provisions of Article 35 TFEU concerning the prohibition of quantitative restrictions on exports between Member States and all measures having equivalent effect and does it constitute discrimination and infringement of the free movement of goods?