

JUDGMENT OF THE COURT (Second Chamber)

4 June 2009*

In Case C-241/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Riigikohus (Estonia), made by decision of 14 May 2007, received at the Court on 21 May 2007, in the proceedings

JK Otsa Talu OÜ

v

Põllumajanduse Registre ja Informatsiooni Amet (PRIA),

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, K. Schiemann, J. Makarczyk (Rapporteur), L. Bay Larsen and C. Toader, Judges,

* Language of the case: Estonian.

Advocate General: J. Mazák,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 10 April 2008,

after considering the observations submitted on behalf of:

- JK Otsa Talu OÜ, by K. Sild, advokaat,
- the Estonian Government, by L. Uibo, acting as Agent,
- the Greek Government, by S. Kharitaki and V. Kontolaimos, acting as Agents,
- the Polish Government, by T. Nowakowski, acting as Agent,
- the Commission of the European Communities, by E. Randvere, J. Schiefferer and Z. Malůšková, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 October 2008,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80), as amended by Council Regulation (EC) No 2223/2004 of 22 December 2004 (OJ 2004 L 379, p. 1; ‘Regulation No 1257/1999’).

- 2 The reference was made in the course of proceedings between JK Otsa Talu OÜ (‘Otsa Talu’), the successor to Agrofarm AS (‘Agrofarm’) and the Põllumajanduse Registre ja Informatsiooni Amet (PRIA) (Agricultural Register and Information Office) concerning the refusal to grant support for environmentally-favourable production in the context of the European Agricultural Guidance and Guarantee Fund (EAGGF).

Legal context

Community law

- 3 Regulation No 1257/1999 establishes the framework for Community support for sustainable rural development.

- 4 According to recital 29 in the preamble to Regulation No 1257/1999, a prominent role should be given to agri-environmental instruments to support the sustainable development of rural areas and to respond to society's increasing demand for environmental services.
- 5 Recital 31 in the preamble to that regulation states that the agri-environmental aid scheme should continue to encourage farmers to serve society as a whole by introducing or continuing the use of farming practices compatible with the increasing need to protect and improve the environment, natural resources, soil and genetic diversity and to maintain the landscape and the countryside.
- 6 Article 22 of Regulation No 1257/1999 is drafted as follows:

'Support for agricultural methods designed to protect the environment, maintain the countryside (agri-environment) or improve animal welfare shall contribute to achieving the Community's policy objectives regarding agriculture, the environment and the welfare of farm animals.

Such support shall promote:

- (a) ways of using agricultural land which are compatible with the protection and improvement of the environment, the landscape and its features, natural resources, the soil and genetic diversity,

- (b) an environmentally-favourable extensification of farming and management of low-intensity pasture systems,

- (c) the conservation of high nature-value farmed environments which are under threat,

- (d) the upkeep of the landscape and historical features on agricultural land,

- (e) the use of environmental planning in farming practice,

- (f) the improvement of animal welfare.'

7 Article 23 of Regulation No 1257/1999 is worded as follows:

‘Support shall be granted to farmers who give agri-environmental or animal welfare commitments for at least five years. Where necessary, a longer period shall be determined for particular types of commitments in view of their effects on the environment or animal welfare.

2. Agri-environmental and animal welfare commitments shall involve more than the application of usual good farming practice including good animal husbandry practice.

They shall provide for services which are not provided for by other support measures, such as market support or compensatory allowances.’

8 Under Article 24(1) of Regulation No 1257/1999:

‘Support in respect of an agri-environmental or animal welfare commitment shall be granted annually and be calculated on the basis of:

(a) income foregone,

(b) additional costs resulting from the commitment given, and

(c) the need to provide an incentive.

Costs related to investments shall not be taken into account when calculating the level of annual support. Costs for non-remunerative investments which are necessary to comply with a commitment may be taken into account in calculating the level of annual support.

...’

9 Article 37(1) and (4) of Regulation No 1257/1999 state:

‘1. Support for rural development shall be granted only for measures which comply with Community law.

...

4. Member States may lay down further or more restrictive conditions for granting Community support for rural development provided that such conditions are consistent with the objectives and requirements laid down in this Regulation.’

10 Under Article 39 of that regulation:

‘1. Member States shall take all necessary steps to ensure the compatibility and consistency of rural development support measures pursuant to the provisions laid down in this Chapter.

2. The rural development plans submitted by Member States shall include an appraisal of the compatibility and the consistency of the support measures envisaged and an indication of the measures taken in order to ensure compatibility and consistency.

3. Support measures shall, where necessary, be subsequently revised to ensure compatibility and consistency.'

11 Article 41 of Regulation No 1257/1999 provides:

'1. Rural development plans shall be drawn up at the geographical level deemed to be the most appropriate. They shall be prepared by the competent authorities designated by the Member State and submitted by the Member State to the Commission after competent authorities and organisations have been consulted at the appropriate territorial level.

2. Rural development support measures to be applied in one area shall be integrated, whenever possible, into a single plan. Wherever several plans need to be established, the relationship between measures put forward in such plans shall be indicated and their compatibility and consistency ensured.'

National legislation

12 The Law on the implementation of the common agricultural policy of the European Union (Euroopa Liidu ühise põllumajanduspoliitika rakendamise seadus), adopted on 24 March 2004 and which entered into force on 1 May 2004 (RT I 2004, 24, 163), governs questions relating to the procedure for granting rural development support in connection with the common agricultural policy.

13 Under Paragraph 42 of that law:

‘1. Rural development support in connection with the common agricultural policy ... shall be granted in accordance with the provisions of the “Estonian rural development plan 2004-06” programme (“Eesti maaelu arengukava 2004-06”) ... (“the Development Plan”). The authorities provided for by that programme shall organise the allocation of support and shall verify the regularity of applications lodged for support.

2. The Minister for Agriculture shall determine which kinds of rural development support are to be granted and which kinds of activities are to be supported in each budgetary year and shall determine the allocation of the resources made available for rural development support.

3. No right to apply for and receive rural development support shall arise if provision is not made for the granting of that support or the supporting of that activity in the budgetary year in question on the basis of subparagraph 2 of this paragraph.’

14 Paragraph 43 of that law, relating to the conditions for obtaining rural development support, is drafted as follows:

‘1. A person shall be entitled to apply for rural development support if he complies with the requirements laid down in this Law and in the programme referred to in Paragraph 42(1) of this Law.

2. The Minister for Agriculture may determine more detailed requirements for obtaining rural development support with respect to the applicant and the planned activity and the list of the areas where rural development support is to be granted. Those requirements may be determined separately for each kind of support.’

- 15 Under Paragraph 44(2) of the Law, entitled ‘Applications for rural development support and treatment of applications’:

‘The Minister for Agriculture shall determine the detailed rules for applying for rural development support and the treatment of applications, the form of the application, the grounds for reducing support and separate rates for each kind of support, and the grounds for refusing an application. The rules for applying for support and treatment of applications may be determined separately for each kind of support.’

- 16 The detailed requirements for obtaining rural development support are governed by Regulation No 51 of the Minister for Agriculture of 20 April 2004 (RT I 2004, 51, 879), and entered into force on 1 May 2004.

- 17 Paragraph 3(1) of Regulation No 51, entitled ‘Requirements for obtaining support’, is drafted as follows:

‘Support ... may be applied for by a natural person, legal person, association or other grouping of persons without the status of a legal person ... operating in agriculture ...

who or which is active in the sectors listed in point 9.2 of Chapter 9 of the Development Plan and meets the requirements laid down in point 9.2 of Chapter 9 of the Development Plan, and:

1. uses land of at least 1 hectare, entered on the Agricultural Aid and Agricultural Parcels Register, which is agriculturally cropped, completely set aside, used for the production of animal feed or as pasture ... or which is, temporarily, not subject to any agricultural exploitation;
2. fulfils the general environmental conditions for agriculture, set out in Table 39 of Chapter 9 of the Development Plan throughout the undertaking;
3. enters into a commitment to fulfil the obligations listed in subparagraphs 1 and 2 and the requirements for obtaining agri-environmental support for five years from the date laid down for applying for support.'

¹⁸ On 21 April 2005, Regulation No 51 was amended by Regulation No 43 of the Minister for Agriculture, which came into force on 1 May 2005 ('Regulation No 51, as amended').

¹⁹ Under Paragraph 82(7) of Regulation No 51, as amended:

'In 2005, a person may apply for support for an environmentally-friendly production activity if a decision was made in 2004 granting the applicant support for an environmentally-friendly production activity and the applicant has entered into the commitment specified in Paragraph 3(1)(3).'

20 According to Chapter 9.2, point 1 of the Development Plan, provision was made to support environmentally-favourable production.

21 Under point 12.6.2 of the Development Plan, entitled 'Agri-environmental support':

'The applications submitted shall be examined and a decision shall be taken in accordance with the criteria for obtaining support and with the financial resources allocated in respect of the measure in the corresponding year. If necessary, the applications shall be ranked in order of merit.

If there are not sufficient budgetary resources to satisfy the applications that comply with the requirements, the Minister for Agriculture may determine a procedure for reducing agri-environmental support under which the support or total support is reduced proportionately for all applicants complying with the requirements for agri-environmental support payments, on the basis of the area of the agricultural land covered by the application or by the activities to be supported or on any other basis.'

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

22 On 26 May 2005, Agrofarm submitted an application to the PRIA for area payments and support for environmentally-favourable production. Having already made the necessary preparations in 2004, Agrofarm was ready to give a commitment to implement that type of production in order to obtain rural development support.

- 23 By Decision No 1-3134/74, of 19 December 2005, the Director-General of the PRIA rejected Agrofarm's application on the ground that support could not be granted for agricultural parcels which were not the subject of a valid commitment to environmentally-favourable production.
- 24 On 1 February 2006, Agrofarm brought proceedings before the Tartu halduskohus (Administrative Court, Tartu) before which it argued, inter alia, that by adopting Regulation No 51, as amended, the Minister for Agriculture had breached the principles of proportionality and equal treatment. By judgment of 28 April 2006, the Tartu halduskohus dismissed the action, holding in essence that Regulation No 51, as amended, did not adversely affect the applicant's rights.
- 25 As the legal successor to Agrofarm, Otsa Talu brought an appeal against that judgment before the Tartu ringkonnakohus (Regional Court, Tartu). Having stated that Regulation No 1257/1999 precluded the introduction of unequal rules as regards the applicants for agri-environmental support, Otsa Talu pointed out that, on account of the late adoption of Regulation No 51, as amended, one month before the time-limit for making an application for support for 2005, the principles of the protection of legitimate expectations and of the rule of law had been breached. The Tartu ringkonnakohus dismissed the appeal by judgment of 7 September 2006, finding, in essence, that Regulation No 51, as amended, was not contrary to Community law.
- 26 Otsa Talu brought an appeal on a point of law before the Riigikohus (Supreme Court). The applicant argued that Regulation No 51, as amended, was incompatible with Community law, in particular with Article 24(1) of Regulation No 1257/1999, according to which support paid in exchange for agri-environmental commitments given is granted annually. Furthermore, Otsa Talu submitted that Regulation No 51, as amended, is also contrary to point 12.6.2 of the Development Plan which provides that, if there are not sufficient budgetary resources, the total amount of the agri-environmental support to be paid to all the applicants satisfying the conditions applicable must be reduced pro rata.

- 27 For its part, the PRIA submitted before the referring court that, as regards the interpretation of the nature of the rural development support concerned, it is not social support which must be distributed on a general basis, but support the conditions for entitlement to which result from the needs and priorities of the State's agricultural policy.
- 28 According to the referring court, the question which arises in the case in the main proceedings is whether it is lawful during the support period to change the conditions for granting agri-environmental support in order to restrict the category of eligible applicants. It notes that the applicable Community rules do not contain any detailed provisions relating to the allocation of that support.
- 29 The referring court takes the view that it is consistent with the aim of rural development support, as provided for in Regulation No 1257/1999, to support new applicants each year who are ready to give a commitment to environmentally-favourable production. That approach is consistent with the principle of equal treatment and with the aim of ensuring better environmental protection. Moreover, the referring court points out that the word 'annually', in Article 24 of the regulation, must be interpreted as meaning that it is possible to join the rural development support scheme each year.
- 30 The referring court doubts, therefore, whether the condition that the applicant must already have been the subject of a decision to grant rural development support in the previous budgetary year in order to claim such support for the following budgetary year is consistent with Regulation No 1257/1999.
- 31 Furthermore, it notes that, under the Development Plan, in the event that there are insufficient budgetary resources, provision is made for the adoption of a procedure to reduce pro rata the support for all the applicants fulfilling the conditions for the grant of rural development support.

32 The referring court is of the view that the ‘narrowing down’ of the class of recipients was not a proportionate expedient for resolving the difficulties resulting from insufficient budgetary resources and the support should, instead, have been reduced pro rata in respect of all applicants originally fulfilling the applicable requirements, as had been envisaged by the Development Plan.

33 In those circumstances, the Riigikohus decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is it compatible with the objective of agri-environmental support laid down in Articles 22 to 24 of ... Regulation No 1257/1999 ...:

(a) to give continued support only to applicants for whom, within the framework of that programme, a decision awarding agri-environmental support has already been made in the previous budgetary year, and who have entered into an environmental commitment,

or

(b) also to provide support in each budgetary year to new applicants who are prepared to enter into a commitment in respect of environmentally-friendly production and accordingly organise their production to comply with the statutory requirements?

(2) If the answer to Question 1 is variant (b), does Article 24(1), in conjunction with Article 37(4) and Article 39 of ... Regulation ... No 1257/1999 authorise a Member State, if in the context of the programme it becomes clear that there are no longer sufficient budgetary means for granting first-time support:

(a) to amend the original rules and requirements for applications for and grants of agri-environmental support and to determine that support may be applied for only if the applicant has been the subject of a decision granting support in the previous budgetary year and an environmentally-friendly production obligation is therefore in force in his regard,

or

(b) to reduce proportionately the support of all applicants meeting the requirements for agri-environmental support?’

The questions referred for a preliminary ruling

³⁴ By its two questions, which it is appropriate to deal with together, the referring court asks essentially whether the provisions of Article 24(1) of Regulation No 1257/1999, read in conjunction with Articles 37(4) and 39 thereof, preclude a Member State from

changing, on the ground of insufficient budgetary resources, the conditions for the grant of rural development support in order to restrict the class of eligible applicants to farmers already concerned by a decision to grant such support in the previous budgetary year.

³⁵ In that connection, it must be recalled, as regards the objectives of Regulation No 1257/1999 relating to agri-environmental measures, that it follows from recitals 29 and 31 in the preamble to that regulation that agri-environmental instruments contribute to the sustainable development of rural areas, and that agri-environmental regime seeks to encourage farmers to serve society as a whole by introducing or continuing the use of farming practices compatible with the increasing need to protect the environment.

³⁶ The general conditions for the grant of support for farming practices designed, in particular, to maintain the countryside are set out in Articles 22 to 24 of Regulation No 1257/1999, from which it is clear that agri-environmental measures are characterised by the five-year commitment given by the farmers concerned to use environmentally-favourable farming practices. In exchange for agri-environmental commitments, support is allocated annually by the States according to the loss of revenue incurred or the resulting additional costs.

³⁷ In order to guarantee the transparency of the measures contemplated, the Member States are to establish, in accordance with Article 41 of Regulation No 1257/1999, rural development plans, including, inter alia, the description of the support measures for rural development such as agri-environmental measures and an indicative overall financial table summarising the national and Community financial resources. Those programmes are to be submitted to the Commission which must appraise the plans to determine whether they are consistent with the regulation, although that approval does not confer on them the nature of an act of Community law (see, to that effect, Case C-336/00 *Huber* [2002] ECR I-7699, paragraphs 39 and 40).

- 38 Having regard to the objective of Regulation No 1257/1999 which is designed to promote agri-environmental as well as rural development in general, the Member States must try to manage their financial resources adequately so as to enable each eligible applicant, within the meaning of that regulation, to benefit from rural development support.
- 39 However, it must be observed that, under Articles 37(4) and 39(3) of Regulation No 1257/1999, the Member States may lay down further or more restrictive conditions for granting Community support for rural development provided that such conditions are consistent with the objectives and requirements laid down in the regulation and that support measures may, where necessary, be subsequently revised by the Member States in order to ensure compatibility and consistency.
- 40 Therefore, agri-environmental support programming is likely to evolve, since the adaptation of the scheme must be managed in accordance with the objectives of Regulation No 1257/1999.
- 41 In the case in the main proceedings, according to the report of the monitoring committee set up in accordance with Article 48(3) of Regulation No 1257/1999, there were twice as many applications for rural development support for 2004 as were predicted by the Development Plan.
- 42 Given the number of applications allowed in 2004, it turned out that the resources provided for the financing of support for environmentally-favourable production were not sufficient to accept fresh applications in 2005 and 2006.

- 43 It is true that the development plan established by the Estonian Minister for Agriculture provided, in point 12.6.2, for a response to the situation where there were insufficient budgetary resources in the form of a pro rata reduction of that support for all applicants fulfilling the conditions of eligibility.
- 44 However, such a reduction is merely an option, which is also clearly apparent from the plan.
- 45 Furthermore, as the Estonian Government essentially submitted at the hearing, if Estonia had decided to reduce pro rata the amount of rural development support for the recipients of such support in 2004 and for new applicants in 2005, it would have been impossible to compensate the former for the additional costs and loss of revenue.
- 46 In addition, subject to the compatibility and consistency with the objectives and provisions of Regulation No 1257/1999, and compliance with the general principles of Community law, with which the Member States must comply when they implement Community rules (see, to that effect, Joined Cases C-181/04 to C-183/04 *Elmeka* [2006] ECR I-8167, paragraph 31, and the case-law cited), such as the principles of equal treatment, the protection of legitimate expectations, and proportionality, the national authorities had the option of using a measure other than the one provided for in the Development Plan.
- 47 In that connection, it must be stated that the system for granting rural development support, as laid down by Regulation No 51, as amended, aims to support farmers who have given agri-environmental commitments by providing continued support throughout the duration of the programme.

- 48 Taking account of the background of insufficient budgetary resources recorded in 2005 in Estonia, the choice made by the national legislature in order to limit the class of farmers who were able to benefit from rural development support to farmers having already given agri-environmental commitments in the previous budgetary year is within the discretion available to the Member States under Regulation No 1257/1999.
- 49 Furthermore, as regards the principle of equal treatment, it should be pointed out that a farmer who submits an application for rural development support for the first time is not in the same situation as a farmer who, in accordance with a decision already made, is bound to comply with a certain number of obligations with respect to his commitment to engage in environmentally-favourable farming, a commitment which, as is clear from Articles 23 and 24 of Regulation No 1257/1999, involves more than the application of usual good farming practice, which is likely to generate additional costs as well as loss of effective revenue, which the State undertakes to compensate.
- 50 Also, the principle of equal treatment, which requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified, does not preclude a Member State from adopting a measure such as Regulation No 51, as amended, (Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraph 63).
- 51 As regards the principle of the protection of legitimate expectations, with which the Member States must comply when they implement Community rules (see the case-law cited in paragraph 46 of this judgment), it must be recalled that, in the field of the common agricultural policy, economic operators are not justified in having a legitimate expectation that an existing situation which is capable of being altered by the competent authorities in the exercise of their discretionary power will be maintained (see, to that effect, with respect to the common organisation of the markets, Case C-310/04 *Spain v Council* [2006] ECR I-7285, paragraph 81).

52 Furthermore, Otsa Talu could not legitimately expect that the agri-environmental support scheme would remain unchanged throughout the corresponding period.

53 Lastly, it must be observed that the principle of proportionality does not preclude a measure such as Regulation No 51, as amended. Since the Republic of Estonia carried out an overall assessment of the consequences arising from the insufficient budgetary resources recorded in 2005, it was able to adopt a measure such as that at issue in the main proceedings in order to achieve the objective pursued by the Community rules, namely rural development which respects the environment without going beyond what is necessary to achieve that objective.

54 Having regard to all of the foregoing, the answer to the questions raised is that the provisions of Article 24(1) of Regulation No 1257/1999, read in conjunction with Articles 37(4) and 39 thereof, do not preclude a Member State from restricting, on account of insufficient budgetary resources, the class of recipients of rural development support to farmers already concerned by a decision to grant such support in the previous budgetary year.

Costs

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

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

The provisions of Article 24(1) of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, as amended by Council Regulation (EC) No 2223/2004 of 22 December 2004, read in conjunction with Articles 37(4) and 39 thereof, do not preclude a Member State from restricting, on account of insufficient budgetary resources, the class of recipients of rural development support to farmers already concerned by a decision to grant such support in the previous budgetary year.

[Signatures]