



Reports of Cases

ORDER OF THE COURT (Ninth Chamber)

16 January 2014*

(Agriculture — Regulation (EC) No 1698/2005 — EAFRD — Requirements relating to the legal form of local action groups — Amendment of those requirements — Competence of the Member States — Limits)

In Case C-24/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary), made by decision of 3 January 2013, received at the Court on 21 January 2013, in the proceedings

Dél-Zempléni Nektár Leader Nonprofit kft.

v

Vidékfejlesztési Miniszter,

THE COURT (Ninth Chamber),

composed of M. Safjan, President of the Chamber, J. Malenovský and A. Prechal (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 53(2) of the Rules of Procedure of the Court of Justice,

makes the following

Order

- 1 This request for preliminary ruling concerns the interpretation of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1) and Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 (OJ 2006 L 368, p. 15).
- 2 The request has been made in proceedings between Dél-Zempléni Nektár Leader Nonprofit kft. ('DZNLN') and the Vidékfejlesztési Miniszter (Minister for Rural Development) involving a decision of the latter to withdraw the approval DZNLN held as a local action group.

* Language of the case: Hungarian.

Legal context

European Union legislation

3 Regulation No 1698/2005 lays down the rules for the intervention of the EAFRD.

4 Article 15(1) of that regulation provides:

‘The EAFRD shall act in the Member States through rural development programmes. These programmes implement a rural development strategy through a set of measures grouped together in accordance with the axes defined in Title IV, for the achievement of which aid from the EAFRD will be sought.

Each rural development programme shall cover a period between 1 January 2007 and 31 December 2013.’

5 As regards Axis 4’s ‘Leader’ aid scheme, Article 61 of Regulation No 1698/2005 provides:

‘The Leader approach shall comprise at least the following elements:

- (a) area-based local development strategies intended for well-identified subregional rural territories;
- (b) local public-private partnerships (hereinafter local action groups);
- (c) bottom-up approach with a decision-making power for local action groups concerning the elaboration and implementation of local development strategies;
- (d) multi-sectoral design and implementation of the strategy based on the interaction between actors and projects of different sectors of the local economy;

...

- (g) networking of local partnerships.’

6 Under the heading ‘Local action groups’, Article 62 of Regulation No 1698/2005 provides:

‘1. A partnered local development approach shall be implemented by the local action groups satisfying the following conditions:

- (a) they must propose an integrated local development strategy based at least on the elements set out in Article 61(a) to (d) and (g) and be responsible for its implementation;
- (b) they must consist of either a group already qualified for the Leader II ... or Leader+ ... initiatives, or according to the Leader approach, or be a new group representing partners from the various locally based socioeconomic sectors in the territory concerned. At the decision-making level the economic and social partners, as well as other representatives of the civil society, such as farmers, rural women, young people and their associations, must make up at least 50% of the local partnership;
- (c) they must show an ability to define and implement a development strategy for the area.

2. The Managing Authority shall ensure that the local action groups either select an administrative and financial lead actor able to administer public funds and ensure the satisfactory operation of the partnership, or come together in a legally constituted common structure the constitution of which guarantees the satisfactory operation of the partnership and the ability to administer public funds.

...

4. The local action groups shall choose the projects to be financed under the strategy. They may also select cooperation projects.'

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

- 7 DZNLN, a non-profit-making limited company, was approved as a Leader local action group by a decision of the Új Magyarország Vidékfejlesztési Program Irányító Hatósága (Authority Responsible for the 'New Hungary' Rural Development Programme) of 26 September 2008.
- 8 DZNLN then operated as a Leader local action group in compliance with the requirements of both European Union law and national law.
- 9 The abovementioned approval was withdrawn from DZNLN by decision of 26 April 2012, with effect from 30 April 2012, on the basis that, pursuant to Paragraph 2(1) to (3) of Order 54/2011 of the Minister for Rural Development, starting from that date, only associations could hold the status of Leader local action group. Bodies such as DZNLN, which operate as non-profit-making companies, were excluded from that category.
- 10 In the action brought by DZNLN against that decision, the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Court of Public Administration and Labour) asks whether the decision complied with Regulations Nos 1698/2005 and 1974/2006. That court accordingly decided to stay the proceedings and refer the following questions to the Court of Justice:
 1. Can [Regulations Nos 1698/2005 and 1974/2006] be interpreted as meaning that local action groups set up in the context of agricultural aid can operate only in a form of organisation determined by law in a given Member State?
 2. Can a distinction be made on the basis of the above regulations in such a way that the legislature of the Member State gives recognition only to local action groups constituted as certain legal forms of organisation, laying down conditions which are different from or stricter than those in Article 62(1) of Regulation No 1698/2005?
 3. Is it sufficient under the above regulations if local action groups in a Member State fulfil only the requirements laid down in Article 62(1) of Regulation No 1698/2005? May the Member State restrict that provision by imposing other formal or legal obligations on the bodies which meet the requirements laid down in Article 62(1) of Regulation No 1698/2005?
 4. Can the above regulations be interpreted as meaning that the decision to abolish local action groups operating in accordance with the requirements imposed by Article 62(1) of Regulation No 1698/2005 and which complied with all the relevant national and Community legislation throughout the time they were operating falls within the margin of discretion of a Member State and as permitting only the operation of local action groups which have a new legal form?
 5. Can the above regulations be interpreted as meaning that, even as regards aid programmes which are already under way or during the programming period, a Member State may, where appropriate, alter the legal framework for the operation of local action groups?

6. How must the above regulations be interpreted in the event that local action groups which have hitherto conducted their activities efficiently and legally are abolished? What happens in such a case to the obligations undertaken and the rights acquired by local action groups, having particular regard to the whole group of bodies affected by the abolition?
7. Can Article 62(2) of [Regulation No 1698/2005] be interpreted as meaning that a national provision is acceptable and complies with the law if, under it, a Member State requires Leader local action groups which take the form of non-profit-making companies to convert into associations within a year on the ground that only the association as a legal form of company organisation can properly guarantee the creation of a network between local members, given that, under the applicable Hungarian law, the fundamental aim of a company is the obtaining of profits and the involvement of economic interests prevents the attraction of the public and the recruitment of new members?

The questions referred for a preliminary ruling

- 11 As a preliminary point, it should be recalled, first, that, in accordance with Article 99 of the Rules of Procedure, where the reply to a question referred for a preliminary ruling may be clearly deduced from existing case-law or admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Reporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 12 Second, under Article 53(2) of the same Rules, where a request is manifestly inadmissible, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings. It is appropriate to apply that provision in the present proceedings in respect of the sixth question.

The first three questions

- 13 By its first three questions, which should be considered together, the referring court is essentially asking whether Regulations Nos 1698/2005 and 1974/2006 are to be interpreted as meaning that they require, prohibit or allow the adoption of national provisions which provide that a local action group that satisfies all of the conditions listed in Article 62(1) of Regulation No 1698/2005 is also obliged to adopt a specific legal form of organisation and meet other requirements associated therewith.
- 14 In this respect, it should first be recalled that, if, by virtue of the very nature of regulations and their function in the system of sources of European Union law, the provisions thereof generally have immediate effect in the national legal systems, without it being necessary for the national authorities to adopt application measures, some provisions may, however, require for their implementation the adoption of application measures by the Member States (see, inter alia, Case C-592/11 *Ketelä* [2012] ECR, paragraph 35 and the case-law cited).
- 15 In that regard, it follows from settled case-law that the Member States may adopt rules for the application of a regulation if they do not obstruct its direct applicability and do not conceal its nature as an act of European Union law, and if they specify that a discretion granted to them by that regulation is being exercised, provided that they remain within the limits laid down therein (*Ketelä*, paragraph 36 and the case-law cited).
- 16 It is by referring to the relevant provisions of the regulation concerned, determined in the light of the objectives of that regulation, that it may be examined whether they prohibit, require or allow Member States to adopt specific application measures and, particularly in the latter case, whether the measure concerned comes within the scope of the discretion that each Member State is recognised as having therein (*Ketelä*, paragraph 37 and the case-law cited).

- 17 Second, it should be recalled that, pursuant to Article 51(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), the provisions of the Charter apply to the Member States only where they are implementing European Union law. With such an implementation, Member States are likewise required to ensure the observance of the general principles of that law, such as, in particular, the principles of equal treatment, legal certainty, protection of legitimate expectations and proportionality (see, inter alia, Cases C-319/99 *Mulligan and Others* [2002] ECR I-5719, paragraph 46, and C-241/07 *JK Otsa Talu* [2009] ECR I-4323, paragraph 46).
- 18 In the light of the factors recalled in paragraphs 15 and 16 of the present order, it should be noted that Regulation No 1698/2005 does not provide rules relating to the specific legal form of organisation that local action groups should take. In that respect, that regulation is limited to providing in Article 62(2) that the Managing Authority is to ensure that the local action groups either select an administrative and financial lead actor able to administer public funds and ensure the satisfactory operation of the partnership, or come together in a legally constituted common structure, the constitution of which guarantees the satisfactory operation of the partnership and the ability to administer public funds.
- 19 In those circumstances, and particularly with regard to the choice that the latter provision gives the Managing Authority, Regulation No 1698/2005 is not to be construed as meaning that it requires the Member States to oblige local action groups to adopt a specific legal form.
- 20 Next, it should be stated that Article 62(2) also cannot be interpreted as meaning that it prevents the Member States from requiring the adoption by the local action groups of a specific legal form, by favouring, in this way, one of the two methods to which that provision refers.
- 21 As is apparent from the very wording of that provision, it has no purpose other than to help to ensure the satisfactory operation of the partnership and the ability to administer public funds.
- 22 Taking into account, in particular, the wording of Articles 61 and 62(1) of Regulation No 1698/2005, from which it is clear that a local action group is to be a public-private partnership which includes a wide range of private partners and which is to be endowed with a decision-making power and an ability to define and implement a local development strategy of which it is in charge, it should be stated that the requirement of using a specific legal form in order to set up such a group is likely to contribute in a particularly effective way to the achievement of that purpose. To that extent, the imposition of such an obligation falls, in principle, within the margin of discretion available to the Member States in the implementation of Regulation No 1698/2005.
- 23 Finally, on the question of whether, by adopting legislation such as that at issue in the main proceedings, the national authorities remained within the margin of discretion that they thereby enjoy in the implementation of Regulation No 1698/2005, it should be noted that, as is clear from settled case-law, the need to provide an interpretation of European Union law which will be useful for the national court makes it necessary, in particular, that the national court define the factual and legal context of the questions it is asking or, at the very least, that it explain the factual circumstances on which those questions are based (see, inter alia, Case C-380/05 *Centro Europa 7* [2008] ECR I-349, paragraph 57 and the case-law cited).
- 24 However, it is worth noting, in that respect, that, apart from the contention that follows from Paragraph 2(1) to (3) of Order 54/2011, effective from 30 April 2012, that only entities using the legal form of an association may hold the status of Leader local action group, the order for reference contains no indication on the other terms and provisions characterising the new legal framework thereby established and does not specify further specific legal characteristics the 'associations' must possess under the applicable national law. Moreover, that decision provides no clarity whatsoever as regards the earlier national legal framework nor any clear guidance on the reasons that led the competent authority to substitute a new legal framework for the existing one.

- 25 Therefore, it should be stated that the content of the order for reference does not allow the Court to give the referring court indications which would go further than those, of a general nature, already referred to in paragraphs 15 to 17 of the present order.
- 26 In that respect, it should be recalled, in particular, that the information provided in orders for reference must not only be such as to enable the Court to give helpful answers, but also to enable the governments of the Member States and other interested parties to submit observations pursuant to Article 23 of the Statute of the Court of Justice of the European Union. In accordance with settled case-law, it is the Court's duty to ensure that that possibility is safeguarded, bearing in mind the fact that, by virtue of that provision, only orders for reference are notified to the interested parties (see, *inter alia*, order in Case C-116/00 *Laguillaumie* [2000] ECR I-4979, paragraph 14 and the case-law cited).
- 27 To that extent, the fact that the Hungarian government has sought, in its written observations, to set out more precisely the national regulatory framework, the knowledge of which alone would allow for more specific responses to be provided, where necessary, to the concerns raised in the questions for preliminary ruling cannot make up for the abovementioned shortcomings which characterise the order for reference.
- 28 Furthermore, it should be noted that, even though the questions of the referring court are formally directed at Regulation No 1974/2006, that court has not, either in its questions or in the text of the order for reference, identified a provision of that regulation which it would request, specifically, to be interpreted, nor, *a fortiori*, has it given any explanation as to the link that it seeks to establish between such a provision and the main proceedings, or the purpose of those proceedings. In those circumstances, it is not necessary to consider the questions asked in relation to Regulation No 1974/2006.
- 29 In the light of the foregoing, the answer to the first three questions is that Regulation No 1698/2005, in particular Articles 61 and 62 thereof, must be interpreted as meaning that it does not require, nor, in principle, prohibit the adoption of national provisions to the effect that a local action group which meets all of the conditions listed in Article 62(1) of that regulation may not operate unless it does so under a particular form of legal organisation. It is, however, for the referring court to ensure that, bearing in mind all of its relevant characteristics, such legislation does not obstruct the direct applicability of that regulation and that it specifies the exercise of the margin of discretion granted to the Member States by that regulation whilst remaining within its bounds. It is likewise for the referring court to ensure that that national rule observes the provisions of the Charter and the general principles of European Union law.

The fourth, fifth and seventh questions

- 30 By its fourth, fifth and seventh questions, which it is appropriate to consider together, the referring court is essentially asking whether European Union law precludes a rule of national law which provides that local action groups may not operate unless they do so under a particular form of legal organisation from being applied, at the end of a transitional period of one year, to local action groups that have been validly created under a different form of legal organisation under the earlier national legislation, even though the aid programmes and the programming period relating thereto are underway.
- 31 As is apparent from paragraph 17 of the present order, the Member States are, in particular, obliged to ensure observance of the Charter and the general principles of European Union law by adopting legislation such as that at issue in the main proceedings.

- 32 Among those general principles is the principle of legal certainty which requires that rules involving negative consequences for individuals should be clear and precise and their application predictable for those subject to them (see, *inter alia*, Case C-17/03 *VEMW and Others* [2005] ECR I-4983, paragraph 80 and the case-law cited).
- 33 The Court has already ruled that an individual cannot place reliance on there being no legislative amendment whatever, but can only call into question the arrangements for the implementation of such an amendment. In this regard, the principle of legal certainty requires, in particular, that the legislature take account of the special situations of traders and provides, where appropriate, adaptations to the application of the new legal rules (see *VEMW and Others*, paragraph 81 and the case-law cited).
- 34 In that context, it should be stated that a transitional period of one year for the purpose of enabling the operators concerned to adapt to new legislation such as that at issue in the main proceedings is not, in principle, unreasonable.
- 35 As regards the other aspects characterising that legislation, it should be stated that the referring court has not provided, in its request for a preliminary ruling, sufficient information that would allow the Court to give it a helpful answer going beyond the recalling of the principles already reiterated in paragraphs 15 to 17 of the present order and in the answer given to the first three questions.
- 36 Apart from the details relating to the transitional period, the description of the relevant national legal framework in the order for reference is, as has been already stated in paragraph 24 of the present order, insufficient. Similarly, that decision provides no information relating to (i) the conditions characterising the initial approval as a local action group and the legal commitments which DZNLN has, as a result, been given by the authorities, or (ii) the specific implications which would result for an entity such as DZNLN in adopting the legal form of an association under the new legal regime established by Order 54/2011 or, in the absence of such change of form, the loss of status of local action group.
- 37 In those circumstances, the answer to the fourth, fifth and seventh questions is that European Union law does not preclude, in principle, a rule of national law which provides that local action groups may not operate unless they do so under a specific legal form from applying, at the end of a transitional period of one year, to local action groups that have been validly created under a different form of legal organisation under earlier national legislation, even though the aid programmes and the programming period relating thereto are underway. That is so, however, only in so far as it is for the national court to verify that, in the light, in particular, of the specific characteristics of the abovementioned successive rules of national law and of the practical implications thereof, the application of the new legislation to such local action groups specifies the exercise of the margin of discretion granted to the Member States by Regulation No 1698/2005 whilst remaining within its bounds and that such application is in conformity with the provisions of the Charter and the general principles of European Union law.

The sixth question

- 38 By its sixth question, the national court is asking, in essence, what implications the provisions of Regulations Nos 1698/2005 and 1974/2006 may have on the obligations undertaken and the rights acquired by a local action group, were it to disappear.
- 39 In that regard, it should be recalled that, in accordance with settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the

case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court is in principle bound to give a ruling (see, *inter alia*, Case C-571/10 *Kamberaj* [2012] ECR, paragraph 40 and the case-law cited).

- 40 However, the Court must examine the circumstances in which cases are referred to it by the national court in order to assess whether it has jurisdiction. The spirit of cooperation which must prevail in preliminary ruling proceedings requires the national court for its part to have regard to the function entrusted to the Court of Justice, which is to contribute to the administration of justice in the Member States and not to give opinions on general or hypothetical questions (see *Kamberaj*, paragraph 41 and the case-law cited).
- 41 In that regard, a reference from a national court may be refused only where it is quite obvious that the interpretation of European Union law sought bears no relation to the actual facts of the main action or to its purpose or where the problem is hypothetical or the Court does not have before it the factual or legal material necessary to give a helpful answer to the questions submitted to it (see *Kamberaj*, paragraph 42 and the case-law cited).
- 42 In the present case, the main proceedings involve a dispute between DZNLN and the Vidékfejlesztési Miniszter concerning the lawfulness of the decision by which the latter withdrew its approval of the former as a local action group.
- 43 However, it is not apparent from any part of that decision that the proceedings the national court are called upon to decide concern the issue of what is to happen to obligations undertaken or the rights acquired by a local action group, and it is clear, in that regard, that the national court has not established in what way the sixth question submitted to the Court could bear any relation to the actual facts or purpose of the proceedings pending before it (see, to that effect, *Kamberaj*, paragraph 57).
- 44 Under these conditions, it must be held that that question did not involve an interpretation of European Union law which meets an objective need of the decision that the referring court must take (see, to that effect, order of 24 March 2011 in Case C-194/10 *Abt and Others*, paragraphs 37 and 38 and the case-law cited).
- 45 Consequently, the sixth question is manifestly inadmissible.

Costs

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

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

- 1. The provisions of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), in particular Articles 61 and 62 thereof, must be interpreted as meaning that it does not require nor, in principle, prohibit, the adoption of national provisions to the effect that a local action group which meets all of the conditions listed in Article 62(1) of that regulation may not operate unless it does so under a particular form of legal organisation. It is, however, for the referring court to ensure that, bearing in mind all of its relevant characteristics, such legislation does not obstruct the direct applicability of that regulation and that it specifies the exercise of the margin of discretion granted to the Member States**

by that regulation whilst remaining within its bounds. It is likewise for the referring court to ensure that that national rule observes the provisions of the Charter of Fundamental Rights of the European Union and the general principles of European Union law.

2. European Union law does not preclude, in principle, a rule of national law which provides that local action groups may not operate unless they do so under a specific legal form from applying, at the end of a transitional period of one year, to local action groups that have been validly created under a different form of legal organisation under earlier national legislation, even though the aid programmes and the programming period relating thereto are underway. That is so, however, only in so far as it is for the national court to verify that, in the light, in particular, of the specific characteristics of the abovementioned successive rules of national law and of the practical implications thereof, the application of the new legislation to such local action groups specifies the exercise of the margin of discretion granted to the Member States by Regulation No 1698/2005 whilst remaining within its bounds and that such application is in conformity with the provisions of the Charter of Fundamental Rights of the European Union as well as the general principles of European Union law.

[Signatures]