



Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 20 April 2016¹

Case C-111/15

Občina Gorje

v

Republika Slovenija

(Request for a preliminary ruling)

from the Upravno sodišče (Administrative Court, Slovenia))

(Reference for a preliminary ruling — Common agricultural policy — Financing by the EAFRD — Support for rural development — Regulation (EC) No 1698/2005 — Article 71, paragraph 3 — Temporal condition of eligibility of expenditure — Regulation (EU) No 65/2011 — Article 30, paragraph 1 — Rejection of payment claim in its entirety where the claim includes both eligible and non-eligible expenditure))

I – Introduction

1. The European Union's rural development policy is based on the principle of co-financing, the EU providing approximately two thirds of the total funding and the Member States one third. The sums allocated to rural development by the EU and the Member States are considerable. During the 2007 to 2013 programming period, the EU and the Member States set aside more than EUR 150 billion for rural development policy, approximately half of which was allocated to supporting investment measures.²

2. Tackling fraud in this area is becoming increasingly important in view of the high error rate.³ The Court has stated, on the basis of Article 325 TFEU, that Member States are to take the same measures to counter fraud affecting the financial interests of the EU as they take to counter fraud affecting their own financial interests.⁴

3. The present request for a preliminary ruling, made by the Upravno sodišče (Administrative Court, Slovenia) arose in this very context and raises questions relating to the competence of the Member States in relation to the control of aid granted under the EU's rural development policy.

1 — Original language: French.

2 — Special Report No 23/2014 of the European Court of Auditors entitled 'Errors in rural development spending: what are the causes, and how are they being addressed?', paragraph 1.

3 — *Idem*, paragraph 12. For the 2007 to 2013 programming period, the average error rate for expenditure incurred for rural development was estimated at 8.2%.

4 — See the judgment of 28 October 2010 in *SGS Belgium and Others* (C-367/09, EU:C:2010:648, paragraph 40).

4. More specifically, the referring court asks the Court of Justice whether Article 71(3) 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)⁵ precludes national rules which make the eligibility of investment expenditure for an EAFRD contribution subject to the condition that it is incurred after the application for support has been approved. The referring court also seeks to ascertain whether that regulation, and Article 30 of Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Regulation No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures,⁶ preclude national rules which provide for the rejection of a claim for the payment of aid in its entirety where the claim includes both eligible and non-eligible expenditure.

5. The first question referred for a preliminary ruling thus concerns the margin of discretion which the Member States enjoy when laying down the conditions of eligibility of expenditure for support co-financed by the EAFRD, while the second question referred concerns the powers of the Member States to penalise non-fulfilment of the conditions of eligibility.

6. The questions referred for a preliminary ruling arose in administrative proceedings between the Občina Gorje (the Commune of Gorje) and the Agencija Republike Slovenije za kmetijske trge in razvoj podeželja (the Agency of the Republic of Slovenia for Agricultural Markets and Rural Development, 'the Agency') concerning the Agency's rejection of the Commune of Gorje's claim for the payment of support under Slovenia's rural development programme for the period 2007 to 2013.

II – Legal framework

A – EU law

1. Regulation No 1698/2005

7. Implementation of the European Union's rural development policy is based on the principle of shared management between the EU and the Member States, with EU law establishing a general legal framework that is to be supplemented by national laws. Regulation No 1698/2005 lays down the general rules governing EU support for rural development financed by the EAFRD.⁷

8. Pursuant to Title III of Regulation No 1698/2005, which is entitled 'Programming', every Member State must adopt a national programme, to be approved by the European Commission, which implements a rural development strategy by means of four 'axes', which are defined in Title IV of the regulation, entitled 'Rural development support'. Axis 3, headed 'The quality of life in rural areas and diversification of the rural economy', includes, amongst other things, 'village renewal and development' (Article 52(b)(ii)).

5 — OJ 2005, L 277, p. 1.

6 — OJ 2011, L 25, p. 8.

7 — See, on Regulation No 1698/2005, Danielsen, J. H., *EU Agricultural Law*, Kluwer Law International, Alphen-sur-le-Rhin, 2013, pp. 123 to 133.

9. Title V of Regulation No 1698/2005, entitled ‘EARDF contribution’, sets out rules on the funding of the rural development policy, which include Article 71, entitled ‘Eligibility of expenditure’. Article 71(1), (2) and (3), first subparagraph, provide as follows:

‘1. Without prejudice to Article 39(1) of [Council] Regulation (EC) No 1290/2005 [of 21 June 2005 on the financing of the common agricultural policy (OJ 2005, L 209, p. 1)], expenditure shall be eligible for [an] EAFRD contribution if the relevant aid is actually paid by the paying agency between 1 January 2007 and 31 December 2015. Co-financed operations should not be completed before the eligibility starting date.

A new expenditure added at the moment of the modification of a programme referred to in Article 19 shall be eligible from the date of [receipt] by the Commission of the request for modification of the programme.

2. Expenditure shall be eligible for [an] EAFRD contribution only where incurred for operations decided on by the Managing Authority of the programme in question or under its responsibility, in accordance with the selection criteria fixed by the competent body.

3. The rules on eligibility of expenditure shall be set at national level, subject to the special conditions laid down by this regulation for certain rural development measures.’

10. Title VI of Regulation No 1698/2005 concerns, inter alia, the management and control of rural development policy. Paragraph 4 of Article 74, which is entitled, ‘Responsibilities of the Member States’, provides:

‘Member States shall undertake controls in accordance with detailed implementing rules fixed in accordance with the procedure referred to in Article 90(2), notably regarding the type and intensity of controls, adapted to the nature of the different rural development measures.’

11. Regulation No 1698/2005 was repealed and replaced by Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation No 1698/2005.⁸

2. Regulation No 65/2011

12. In accordance with Article 74(4) of Regulation No 1698/2005, the Commission adopted Regulation No 65/2011.

13. In Article 2(a) and (b) of that regulation a distinction is drawn between an ‘application for support’, which is defined as an ‘application for support or to enter a scheme under Regulation (EC) No 1698/2005’ and a ‘payment claim’, which is defined as an ‘application by a beneficiary for payment by the national authorities’.

14. Article 4 of the regulation concerns general principles of control. Article 4(9) provides:

‘The reductions or exclusions under this regulation shall be without prejudice to additional penalties pursuant to other provisions of Union or national law.’

⁸ — OJ 2013 L 347, p. 487. See, on the relationship between Regulation No 1698/2005 and Regulation No 1305/2013, Monteduro, M., et al. (ed.), *Law and Agroecology — A Transdisciplinary Dialogue*, Springer Verlag, Berlin, Heidelberg, 2015, pp. 151 to 159.

15. Administrative checks on the grant of funding under axis 3 of Regulation No 1698/2005 are carried out in two stages, first, under Article 24(2) of Regulation No 65/2011, in relation to applications for support and, secondly, under Article 24(3) of that regulation, in relation to payment claims.⁹ In addition, Articles 25 to 27 of Regulation No 65/2011 set out the rules governing on-the-spot checks.

16. In so far as concerns the payment of aid to beneficiaries, Article 30 of Regulation No 65/2011, entitled 'Reductions and exclusions', provides:

'1. Payments shall be calculated on the basis of what is found to be eligible during the administrative checks. The Member State shall examine the payment claim received from the beneficiary, and establish the amounts that are eligible for support. It shall establish:

- (a) the amount that is payable to the beneficiary based solely on the payment claim;
- (b) the amount that is payable to the beneficiary after an examination of the eligibility of the payment claim.

If the amount established pursuant to point (a) exceeds the amount established pursuant to point (b) by more than 3%, a reduction shall be applied to the amount established pursuant to point (b). The amount of the reduction shall be the difference between those two amounts.

However, no reduction shall be applied if the beneficiary can demonstrate that he/she is not at fault for the inclusion of the ineligible amount.

2. Where a beneficiary is found to have intentionally made a false declaration, the operation in question shall be excluded from support from the EAFRD and any amounts already paid for that operation shall be recovered. Moreover, the beneficiary shall be excluded from receiving support under the same measure for the calendar year of [the] finding and for the following calendar year.

3. The reductions and exclusions referred to in paragraphs 1 and 2 shall be applied *mutatis mutandis* to non-eligible expenditure identified during checks under Articles 25 and 29.'

17. As is stated in Article 34(1) thereof, Regulation No 65/2011 replaced Commission Regulation (EC) No 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures,¹⁰ with effect from 1 January 2011. Under the second subparagraph of that provision, the earlier regulation applies in respect of payment claims submitted before 1 January 2011. In the present case it is established that the application for support and the payment claim were submitted on 19 August 2010 and 1 June 2011 respectively. It follows that the provisions of Regulation No 65/2011 apply in the present case.

B – Slovenian law

1. The Law on Agriculture

18. It is apparent from the order for reference that the Slovenian rural development regime is governed by the Zakon o kmetijstvu (Law on Agriculture, 'the ZKme-1').

⁹ — Article 24 of Regulation No 65/2011 falls within Title II of that regulation, entitled 'Rural development support under axis 1 and axis 3 and certain measures under axis 2 and axis 4.'

¹⁰ — OJ 2006 L 368, p. 74.

19. In so far as concerns decisions on eligibility for funding, Article 53(1) of the ZKme-1 provides that the competent authority is to adopt a decision on eligibility for funding addressed to parties whose applications fulfil the conditions laid down in the applicable provisions and the invitation to tender, and that resources are to be provided to that end.

20. In accordance with Article 56(1) of the ZKme-1, applicants must submit a claim for payment of the funding.

21. Article 56(4) of the ZKme-1 provides:

‘The authority shall adopt a decision rejecting any claim that does not satisfy the requirements laid down in the legal provisions, the invitation to tender or the decision on eligibility for funding.’

2. The RDP Decree

22. On the basis of the ZKme-1, the Slovenian Government adopted a decree on measures implementing axes 1, 3 and 4 of Slovenia’s rural development programme for the period 2007 to 2013 (‘the RDP Decree’).

23. In accordance with Article 78(4) of the RDP Decree, which relates to Measure No 322, entitled ‘Village renewal and development’, support consists in investment in the renovation and construction of buildings for mixed use in the general interest intended for inter-generational meetings, cultural, artistic and sporting activities and other leisure activities for the local rural population.

24. According to the order for reference, Article 79(4) of the RDP Decree provides that only investment expenditure incurred between the date of adoption of the decision on eligibility for funding and the end of the investment period, or at the latest 30 June 2015, is eligible. According to Article 79, the beneficiary’s entering into any obligation relating to the funding concerned (concluding an agreement of any kind or ordering materials, equipment, services or works) constitutes initial expenditure.

III – The facts in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

25. On 18 June 2010, pursuant to the RDP Decree, the Agency published an invitation to tender in relation to a measure implementing axis 3 of Regulation No 1698/2005, namely Measure No 322 (‘Village renewal and development’) within Slovenia’s rural development programme for the period 2007 to 2013.

26. According to point 1 (‘Investments’) of Section IV/1 of the invitation to tender, headed ‘Conditions of eligibility to be fulfilled when submitting an application in the context of the invitation to tender’ (‘point 1 of the invitation to tender’), investment was not to commence before the adoption of a decision on eligibility for funding.

27. In accordance with Article 79(4) of the RDP Decree, point 3 of Section VI of the invitation to tender, headed ‘Eligible expenditure’ (‘point 3 of the invitation to tender’) states that eligible investment expenditure consists in expenditure incurred between the date of adoption of the decision on eligibility for funding and the end of the investment period, or 30 June 2015 at the latest.

28. According to point 4 of Section VI of the invitation to tender ('point 4 of the invitation to tender'), any general expenses or expenditure incurred between 1 January 2007 and the date of submission of the last claim for the payment of funding relating to the preparation of the application, the obtaining of the documentation for the building works and the submission of applications for funding are also eligible for support. Prior to the date on which expenditure becomes eligible, the applicant is not to begin works or sign any undertaking relating to the funding that might possibly be granted.

29. According to point 5 of Section VI of the invitation to tender ('point 5 of the invitation to tender'), the beneficiary's entering into any obligation whatsoever in relation to the funding granted (concluding an agreement of any kind or ordering materials, equipment, services or works) is regarded as initial expenditure within the meaning of Article 79 of the RDP Decree. Under that point, the applicant can nevertheless begin the process of selecting a tenderer in accordance with the legislation on public procurement, albeit that it may not conclude a contract with the selected tenderer before a decision on eligibility for funding is adopted.

30. On 12 July 2010,¹¹ the Commune of Gorje concluded two contracts with a tenderer relating to the renovation of a building of which it was joint owner. According to the referring court, it has been established that the two contracts were concluded subject to a condition precedent that no contractual obligations would arise until the Commune of Gorje obtained a final decision from the Agency on eligibility for funding.

31. On 19 August 2010, with reference to the invitation to tender relating to Measure No 322, the Commune of Gorje submitted an application for support with a view to the refurbishment, renovation and change of use of the building ('the co-financed operation'). The application related solely to the part of the building of which the Commune of Gorje was joint owner.

32. On 19 October 2010, the Agency adopted a decision on eligibility for funding, granting the Commune of Gorje funding of EUR 128200.52. The commune's application had been approved as a percentage of the total investment made together with the other co-financer, Pošta Slovenije, the Slovenian postal service, rather than on the principle that only certain works would be co-financed.

33. On 1 June 2011, the Commune of Gorje submitted a claim for payment of funding in the sum of EUR 128200.52, appending the requisite documentation to its claim.

34. On 9 September 2011, the Agency's audit department carried out an on-the-spot inspection in the course of which it found, on the basis of the construction site journal and the removal of rubble, that work on the building had begun on 16 August 2010. The audit department found, in particular, that demolition work on the roof, which was a jointly-owned part of the building covered by the claim for payment, had been carried out on 19 August 2010.

35. On 3 November 2011, the Agency rejected the claim for payment on the ground that the Commune of Gorje had not fulfilled all the conditions laid down in the RDP Decree and the invitation to tender. More specifically, according to the Agency, the commune had failed to comply with points 3 to 5 of Section V of the invitation to tender by commencing work on the building on 16 August 2010, prior to the adoption of the decision of 19 October 2010 on eligibility for funding. The Agency also referred to the two contracts which the commune had concluded on 12 July 2010. According to the Agency, all the works commenced under those contracts had therefore given rise to obligations that were incompatible with points 3 to 5 of Section VI of the invitation to tender.

¹¹ — In the order for reference, 13 July 2010 is also given as the date on which the contracts were concluded.

36. The Commune of Gorje brought an action challenging the Agency's decision of 3 November 2011 before the referring court, which, by judgment of 13 February 2013 upheld the commune's action, finding the national provisions incompatible with Regulation No 1698/2005. The referring court consequently annulled the Agency's decision of 3 November 2011 and referred the matter back to the Agency for it to review its decision.

37. On 25 April 2013, the Agency again rejected the commune's claim for payment, essentially on the same grounds, namely the fact that the work on the building had begun prior to the adoption of the decision on eligibility and that the conclusion on 12 July 2010 of the contracts with the tenderer had given rise to obligations that were incompatible with Article 79(4) of the RDP Decree and points 3 to 5 of Section VI of the invitation to tender. The Agency also emphasised, in its decision of 25 April 2013, that the application relating to the investment at issue had been approved as a percentage of the total investment, rather than on the principle that only certain works would be co-financed.

38. The Commune of Gorje brought a new action before the referring court, arguing, amongst other things, that the Agency's decision was based on the RDP Decree and the invitation to tender, which were not consistent with Regulation No 1698/2005 in that they laid down more stringent conditions of eligibility that did the regulation.

39. The Agency, for its part, disputes that the national provisions are inconsistent with Regulation No 1698/2005, arguing that the national provisions merely lay down rules that are more precise, rather than more stringent, that those laid down by the regulation with respect to the eligibility of expenditure for an EAFRD contribution.

40. It was in those circumstances that the Upravno sodišče (Administrative Court) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

- '(1) Is Regulation No 1698/2005, in particular Article 71(3) thereof, pursuant to which the rules on eligibility of expenditure are to be set at national level, subject to the special conditions laid down by that regulation for certain rural development measures, to be interpreted as precluding the national rules laid down in Article 79(4) of [the RDP Decree] and in point 3 of Section VI of the invitation to tender, pursuant to which only expenditure incurred after the adoption of a decision on eligibility for funding (up to the end of the investment period or, at the latest, 30 June 2015) constitutes eligible investment expenditure?
- (2) If the first question is answered in the negative, is Regulation No 1698/2005, in particular Article 71(3) thereof, to be interpreted as precluding the national rule laid down in Article 56(4) of [the ZKme-1], in accordance with which any claim that does not meet the requirements of Article 79(4) of the RDP Decree on eligible investment expenditure incurred after the date of adoption of a decision [on eligibility for funding] must be rejected in its entirety?'

41. Written observations have been submitted by the Commune of Gorje and the Slovenian, Polish and United Kingdom Governments and by the Commission. The Commune of Gorje, the Slovenian Government and the Commission attended the hearing, which was held on 28 January 2016.

IV – Legal assessment

A – *The margin of discretion enjoyed by the Member States under Article 71(3), first subparagraph, of Regulation No 1698/2005 (the first question referred for a preliminary ruling)*

42. The first question concerns the margin of discretion which Article 71(3) of Regulation No 1698/2005 allows the Member States when setting the conditions for the eligibility of expenditure for the grant of aid financed by the EAFRD.

43. Article 71(3) of Regulation No 1698/2005 clearly states that, subject to the special conditions laid down by that regulation, ‘the rules on eligibility of expenditure shall be set at national level’.¹² In accordance with the principles of subsidiarity and shared management¹³ which underlie the EU’s rural development policy, the Member States enjoy, under that provision, a broad discretion¹⁴ which is justified by the fact that the demands of and specific challenges facing rural development will necessarily vary from one Member State to another.

44. By making the eligibility of investment expenditure conditional on its being incurred after an application for support has been approved, the Slovenian rules at issue, Article 79 of the RDP Decree and point 3 of Section VI of the invitation to tender, have, as the Commune of Gorje points out, the effect of restricting contributions from the EARDF to ‘future operations’, and thus excluding the retroactive grant of support. The question that therefore arises is whether such a temporal restriction falls within the ambit of the discretion which the last subparagraph of Article 71(3) of Regulation No 1698/2005 allows every Member State.

45. Whilst it is true, as the referring court and the Commune of Gorje assert, that Regulation No 1698/2005 does not stipulate the date from which expenditure may be eligible, neither does it preclude the Member States from stipulating such a temporal restriction. Indeed, Regulation No 1698/2005 itself contains provisions delimiting the temporal scope of eligible expenditure. Under Article 71(1) of the regulation, expenditure is eligible for an EAFRD contribution only if the relevant aid is actually paid by the paying agency between 1 January 2007 and 31 December 2015. That provision goes on to provide that ‘co-financed operations should not be completed before the eligibility starting date’.

46. There is no reason to assume that Article 71(1) of Regulation No 1698/2005 sets out exhaustively the temporal conditions that may be imposed on the eligibility of expenditure for EARDF support.

47. Moreover, it does not seem possible to me to infer from Article 71(1) of the regulation, as does the Commune of Gorje, that the co-financed operation may be commenced before the eligibility starting date and, consequently, that the Member States may not make the eligibility of expenditure conditional on its being incurred after the application for support has been approved. On the other hand, the expression ‘eligibility starting date’ employed in the wording of that provision in itself indicates, to my mind, that it is permissible for the Member States to fix an eligibility starting date, that is to say, to stipulate a point in time before which investment expenditure incurred is not eligible for an EARDF contribution.

¹² — See also recital 61 of the regulation.

¹³ — See point 7 of this Opinion.

¹⁴ — See, to that effect, the judgment of 15 May 2014 in *Szatmári Malom* (C-135/13, EU:C:2014:327, point 60). See also the Commission’s proposal which led to the adoption of Regulation No 1698/2005 (Proposal of 14 July 2004 for a Council regulation on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (COM(2004) 490 final), in paragraph 13 of the explanatory memorandum to which the Commission emphasises the objective of ‘leaving Member States more freedom in how they wish to implement their programmes through less detailed rules and eligibility conditions and simplified financial management and control arrangements’.

48. Nor am I convinced that a temporal condition such as the national condition at issue would, as the Commune of Gorje asserts, have the effect of rendering Regulation No 1698/2005 nugatory or of impeding the attainment of the objectives pursued by that regulation. Indeed, such a condition does not restrict EARDF co-financing to any particular temporal horizon narrower than the payment period stipulated in Article 71(1) of Regulation No 1698/2005 (which is from 1 January 2007 to 31 December 2015). It simply provides that the beneficiary must await approval of the application for support before incurring expenditure relating to the co-financed operation.¹⁵

49. On that basis, I see no reason to conclude that rules such as the Slovenian rules at issue obstruct the direct applicability of Regulation No 1698/2005, conceal its Community nature or exceed the discretion which that regulation confers on the Member States, those being criteria which the Court has identified.¹⁶ What is more, there is in my view nothing to suggest that such rules run counter to the principle of proportionality by making it excessively difficult or even impossible for beneficiaries to obtain funding.¹⁷

50. On the contrary, a temporal condition such as that at issue in the main proceedings is, in my opinion, likely to assist in the attainment of the objectives pursued by Regulation No 1698/2005, which include improving the quality of life in rural areas¹⁸ and, under axis 3 more specifically, village renewal and development,¹⁹ by ensuring that EARDF funds are allocated in the best possible way.

51. On this point, I concur with the observation made by the Slovenian, Polish and United Kingdom Governments that the national rules could reduce the ‘deadweight risk’, that is to say, the grant of support for investments that have already been made, in part or in full, without the grant of support. That risk has been identified by the Court of Auditors, which recommended that the Commission should encourage the Member States to adopt practices whereby investment expenditure is eligible only once the support has been approved.²⁰

52. Furthermore, to rule ineligible expenditure incurred before the adoption of a decision on eligibility could, as the Slovenian Government argues, ensure more effective monitoring of the way in which EARDF funds are used. In particular, the on-the-spot checks contemplated by Articles 25 to 27 of Regulation No 65/2011, during which competent authorities must, amongst other things, verify that the nature and the timing of expenditure correspond to the works actually executed or the services actually delivered, could be rendered more difficult if expenditure relating to a co-financed operation were incurred, in whole or in part, before the application for support is approved.

15 — It is expressly stated in point 5 of Section VI of the invitation to tender that, although beneficiaries may not enter into any obligations relating to the funding concerned, they may nevertheless begin the process of selecting a tenderer in accordance with the legislation on public procurement. Preparations for a proposed operation are not therefore held up, albeit that beneficiaries may not conclude a contract with a tenderer before the application for support has been approved. Under point 4 of Section VI of the invitation to tender, general expenses relating to the preparation of the application, the obtaining of the documentation for the building works and the submission of the application for support are exempt from the temporal condition laid down in Article 79(4) of the RDP Decree. See, in connection with general costs, Article 55(1)(c) of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2006, L 368, p. 15).

16 — See the judgment of 15 May 2014 in *Szatmári Malom* (C-135/13, EU:C:2014:327, paragraph 55 and the case-law cited).

17 — See the order of 16 January 2014 in *Dél-Zempléni Nektár Leader Nonprofit* (C-24/13, EU:C:2014:40, paragraph 17 and the case-law cited).

18 — See Article 4(1)(c) of Regulation No 1698/2005.

19 — See Article 52(b)(ii) of Regulation No 1698/2005.

20 — See Special Report No 8 of the Court of Auditors: Targeting of aid for the modernisation of agricultural holdings, 2012, paragraphs 60 to 65 and 73.

53. In this connection, the Court of Auditors responded favourably to a Commission proposal of 12 October 2011 for the amendment of Regulation No 1698/2005, referring to the proposed provisions under which expenditure would be eligible only after a grant application has been submitted.²¹

54. With the adoption of the new EARDF regulation, Regulation No 1305/2013, the EU legislature approved the Commission's proposal for amendment of the conditions of eligibility. Under the new regulation, the Member States are expressly authorised to stipulate, as the Slovenian authorities have done, a temporal condition pursuant to which only investment expenditure that is incurred after an application for support has been approved is eligible for an EARDF contribution.²²

55. Whilst it is true that Regulation No 1305/2013 applies only from 1 January 2014 onwards,²³ which means that it does not apply in the present case, the fact that the EU legislature adopted the new regulation indicates, to my mind, that it recognised that a temporal condition of the type at issue in the present case could be justified as a means of ensuring the sound financial management of EARDF resources.

56. In light of the foregoing, there is, in my opinion, nothing to support the conclusion that, by stipulating a temporal condition such as that at issue in the main proceedings, a Member State exceeds the discretion which the first subparagraph of Article 71(3) of Regulation No 1698/2005 confers on it.²⁴ Consequently, I propose that the first question referred for a preliminary ruling should be answered in the negative.

B – The legal consequences of failure to comply with the conditions of eligibility (the second question referred for a preliminary ruling)

1. The subject of the second question referred for a preliminary ruling

57. It is clear from the order for reference that the Agency rejected the payment claim in the present case because of the failure to comply with the condition of eligibility of expenditure laid down in Article 79(4) of the RDF Decree and points 3 and 5 of Section VI of the invitation to tender, pursuant to which only investment expenditure incurred after an application for support has been approved is eligible. It is also clear that the referring court has established that some of the expenditure relating to the co-financed operation was incurred after the application for support was approved, that is to say, in accordance with the conditions of eligibility of expenditure, although other expenditure was incurred before approval was given, and was thus contrary to the conditions of eligibility of expenditure.²⁵

21 — *Idem*, paragraph 64. The Court of Auditors nevertheless observed that the legislative proposals from the Commission did 'not sufficiently address the risk of deadweight, as the investment project could still start before the approval of the application (and even before the application [had] been submitted, with the provision that costs incurred up to the application date [would] not be eligible for support)'.

22 — The second subparagraph of Article 60(2) of Regulation No 1305/2013 provides, in respect of certain investment operations, that, leaving aside certain general costs, only expenditure which has been incurred after an application has been submitted to the competent authority is to be considered eligible. Under the third subparagraph of Article 60(2), Member States may provide in their programmes that only expenditure which has been incurred after the application for support has been approved by the competent authority is eligible.

23 — See Article 90 of Regulation No 1305/2013. In addition, pursuant to Article 88 of the regulation, Regulation No 1698/2005 continues to apply to operations implemented pursuant to programmes approved by the Commission under that regulation before 1 January 2014.

24 — As regards Article 79(4) of the RDP Decree and points 4 and 5 of Section VI of the invitation to tender, pursuant to which the beneficiary's entering into any obligation relating to the funding concerned (concluding an agreement of any kind or ordering materials, equipment, services or works) constitutes initial expenditure, I would observe that that rule serves, in my opinion, to clarify the temporal condition laid down in Article 79 of the RDF Decree and point 3 of Section VI of the invitation to tender and, consequently, to ensure that EARDF funds are not granted for investments that would have been made, in part or in full, even without the grant of support.

25 — I would point out in this connection that it is entirely for the national court to ascertain, in the present case, whether or not the Commune of Gorje fulfilled the conditions for the approval of the application for support and acceptance of the payment claim, and to draw the necessary consequences in so far as the decision under appeal is concerned.

58. In that context, the referring court seeks to establish, by its second question, whether, by providing that a payment claim must be rejected in its entirety in a situation such as that at issue in the main proceedings, Article 56(4) of the ZKme-1 is overly stringent. The referring court also questions whether the payment claim in this case should be governed by Article 30 of Regulation No 65/2011, which, in certain situations, provides for reductions in the amount payable to the beneficiary or for the exclusion of the operation from EARDF support.

59. In light of the observations submitted to the Court, which the parties that attended the hearing have confirmed, it seems necessary to me, at this juncture, to emphasise that the second question, as framed by the referring court, does not concern the condition laid down in point 1 of Section IV/1 of the invitation to tender, which provides that investment may not commence before a decision on eligibility for funding is adopted.²⁶ Indeed, that condition is a condition of eligibility for funding and does not concern the ‘eligibility of expenditure’ for the purposes of Article 71(3) of Regulation No 1698/2005.²⁷

60. I would reiterate that, in accordance with Article 2(a) and (b) of Regulation No 65/2011, a distinction must be drawn between an ‘application for support’ and a ‘payment claim’.²⁸ That distinction may be found in the national rules, inasmuch as point 1 of Section IV/1 of the invitation to tender stipulates a condition of eligibility for funding which the beneficiary must fulfil in order for its application for support to be approved,²⁹ while Article 79(4) of the RDF Decree and points 3 and 5 of Section VI of the invitation to tender stipulate a condition of eligibility of expenditure which must be fulfilled in order for a payment claim to be approved.³⁰

61. Whilst, as the Slovenian Government points out, it is true that the competent authority may, in the course of checking a payment claim, check whether the beneficiary has fulfilled the conditions of eligibility for funding,³¹ I am not aware of anything that suggests that it has been established in the present case that those conditions, including the conditions referred to in point 1 of Section IV/1 of the invitation to tender, were not fulfilled.³² I would observe in this connection that the Court must in principle confine its examination to the matters which the court or tribunal making the reference

26 — Regarding the second question referred for a preliminary ruling, the Slovenian Government and the Commission have emphasised the fact that the Commune of Gorje did not fulfil the condition laid down in point 1 of Section IV/1 of the invitation to tender.

27 — I would reiterate that the discretion which the first subparagraph of Article 71(3) of Regulation No 1698/2005 allows the Member States solely relates to ‘rules on eligibility of expenditure’, as is clear from the wording of that provision and the title of Article 71, ‘Eligibility of expenditure’.

28 — See points 13 and 15 of this Opinion. The distinction between the approval of an application for support and the approval of a payment claim is also evident from Article 71(2) of Regulation No 1698/2005, which provides that ‘expenditure shall be eligible for [an] EAFRD contribution only where incurred for operations *decided on* by the Managing Authority of the programme in question or under its responsibility, in accordance with the selection criteria fixed by the competent body’ (my emphasis).

29 — Point 1 of Section IV/1 of the invitation to tender is headed ‘Conditions of eligibility to be fulfilled when submitting an application in the context of the invitation to tender’. Whether those conditions are fulfilled must, in principle, be determined by the competent authority before approving an application for support. See, in this connection, Article 24(2)(a) to (c) of Regulation No 65/2011.

30 — I would reiterate that conditions 3 and 5 appear in Section VI of the invitation to tender, entitled ‘Eligible expenditure’. See points 27 to 29 of this Opinion.

31 — I would point out in this connection that the lists given in Article 24(2) and (3) of Regulation No 65/2011 of the items included in checks on applications for support and checks on payment claims respectively are not exhaustive, as is clear from the words ‘shall in particular include’, which are used in both provisions.

32 — Although the decision challenged in the main proceedings, that is to say, the decision of 25 April 2013, states that the work on the building at issue was commenced before the application for support was approved, the decision merely refers to Article 79(4) of the RDF Decree and points 3 and 5 of Section VI of the invitation to tender, which relate to the conditions of eligibility of expenditure. See points 35 and 37 of this Opinion. Moreover, a question of principle arises, namely whether breach of a condition of eligibility for funding may entail the rejection of a claim for payment, as in the present case, or whether it should instead result in the withdrawal or annulment of the initial approval of the application for support, which did not occur in the present case. The latter solution seems preferable to me, inasmuch as it reflects the distinction established by Regulation No 65/2011 between applications for support and payment claims.

has decided to submit to it for consideration, in particular in so far as concerns the manner in which the national rules in question must be applied, which the referring court or tribunal regards as established, since it is for the national court alone to assess the scope of national provisions and the manner in which they must be applied.³³

62. Therefore, the second question must be understood as asking whether Regulation No 1698/2005 and the regulation for its implementation preclude national rules which provide for the rejection of a payment claim in its entirety where the claim includes both eligible and ineligible expenditure.

63. The Court is called upon to clarify, first of all, whether the Member States are free to adopt national rules under which legal penalties are imposed in the event of non-compliance with rules governing the eligibility of expenditure laid down pursuant to the first subparagraph of Article 71(3) of Regulation No 1698/2005 and, secondly, whether national rules such as those at issue in the main proceedings are consistent with the principle of proportionality.

2. The Member States' power to regulate the legal consequences of failure to fulfil conditions of eligibility

a) Preliminary remarks

64. According to Article 1(1) and 2(3) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests,³⁴ EU law is to determine, for the purposes of protecting the EU's financial interests, the nature and scope of measures and penalties concerning irregularities with regard to EU law.³⁵ Nevertheless, it is clear from the case-law of the Court that, where EU legislation does not make specific provision for a penalty in cases of infringement, or where such legislation provides that certain penalties may be imposed for infringement of EU law but does not exhaustively list the penalties that the Member States may impose, Article 4(3) TEU requires the Member States to take all effective measures to penalise conduct detrimental to the financial interests of the EU.³⁶

65. The question which therefore arises in the present case is whether EU law lists exhaustively the penalties that may be imposed in the event of failure to fulfil conditions of eligibility of expenditure laid down pursuant to the first subparagraph of Article 71(3) of Regulation No 1698/2005.

b) The first subparagraph of Article 71(3) of Regulation No 1698/2005

66. Pursuant to the first subparagraph of Article 71(3) of Regulation No 1698/2005, 'the rules on eligibility of expenditure shall be set at national level, subject to the special conditions laid down by this regulation ...'

33 — See the judgments of 6 March 2003 in *Kaba* (C-466/00, EU:C:2003:127, paragraph 41) and of 1 June 2006 in *Innoventif* (C-453/04, EU:C:2006:361, paragraph 29).

34 — OJ 1995, L 312, p. 1.

35 — According to Article 1(1) thereof, Regulation No 2988/95 concerns 'irregularities' with regard to Community law. See the judgment of 17 September 2014 in *Cruz & Companhia* (C-341/13, EU:C:2014:2230, paragraph 40), in which the Court held that, by requiring the repayment of export refunds wrongly received from the EU budget by an operator, the competent national authorities are bringing proceedings in respect of an irregularity, within the meaning of Article 1 of Regulation No 2988/95, such that they act within the scope of that regulation. See also the Opinion of Advocate General Bot in *Județul Neamț and Județul Bacău* (C-260/14 and C-261/14, EU:C:2016:7, points 72 to 74).

36 — See the judgment of 28 October 2010 in *SGS Belgium and Others* (C-367/09, EU:C:2010:648, paragraph 41 and the case-law cited). In my opinion, the same must apply in cases of failure to fulfil national conditions laid down pursuant to EU law, since the protection of the EU's financial interests is equally important in such cases.

67. The use of the words ‘rules on eligibility’, which are fairly broad in meaning, might at first sight militate in favour of the interpretation recommended by the Slovenian Government, which is that, under that provision, the Member States do have power to regulate the legal consequences of failure to fulfil conditions of eligibility. However, it is apparent from reading the first subparagraph of Article 71(3) of Regulation No 1698/2005 in the context of the regulation as a whole that Article 71 relates solely to the substantive conditions of eligibility of expenditure and does not concern the legal penalties attaching to failure to fulfil such conditions.

68. Accordingly, Article 74(4) of Regulation No 1698/2005 expressly provides that the Member States are to undertake controls in accordance with detailed implementing rules fixed by the Commission,³⁷ notably regarding the type and intensity of controls, adapted to the nature of the different rural development measures. Regulation No 65/2011, which the Commission adopted pursuant to Article 74, contains detailed rules concerning the checks that Member States must carry out in relation to the EAFRD.

69. It follows, in my view, that the first subparagraph of Article 71(3) of Regulation No 1698/2005 does not confer power on the Member States to lay down the legal sanctions which attach to failure to fulfil conditions of eligibility of expenditure.³⁸

c) Article 30(1) of Regulation No 65/2011

70. Article 30 of Regulation No 65/2011 requires the Member States, in certain situations, to reduce the amount payable and, in other situations, to exclude the operation from EARDF support completely.

71. It is clear from Article 30(1) of Regulation No 65/2011 that a reduction in the amount payable is to be applied where the amount claimed by the beneficiary exceeds by more than 3% the amount which is eligible, that is to say, the amount that is payable after an examination of the eligibility of the payment claim. Where this is necessary, the amount of the reduction, which is applied to the eligible amount, corresponds, in accordance with the third subparagraph of Article 30(1), to the difference between the amount claimed and the eligible amount. It is also clear from the fourth subparagraph of Article 30(1) that no reduction is to be applied if the beneficiary can demonstrate that ‘he/she is not at fault for the inclusion of the ineligible amount’. In addition, in accordance with Article 30(2), the co-financed operation is to be excluded from support from the EARDF where a beneficiary is found to have intentionally made a false declaration.³⁹

37 — Article 74(4) of Regulation No 1698/2005 refers to the procedure referred to in Article 90(2) thereof, which in turn refers to Articles 4 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999, L 184, p. 23).

38 — That conclusion is supported by the placing of the first subparagraph of Article 71(3) within Title V of the regulation, which is entitled ‘EAFRD contribution’, rather than in Title VI, entitled ‘Management, control and information’.

39 — In such a case, pursuant to Article 30(2) of Regulation No 65/2011, the beneficiary is also to be excluded from receiving support under the same measure for the calendar year of the finding and for the following calendar year.

72. I would observe at this juncture that the use of the different terms ‘*éligibilité*’ and ‘*admissibilité*’ in the French language versions of Article 71(3) of Regulation No 1698/2005 and Article 30 of Regulation No 65/2011 respectively does not call into question the application of the latter provision to a situation such as that in the main proceedings. Indeed, that linguistic divergence does not appear in certain language versions of the two regulations.⁴⁰ There is therefore no reason to assume that the two terms used in the French language versions of the regulations have any different meaning.⁴¹

73. I concur with the analysis of the Commune of Gorje and the Commission that Article 30(1) of Regulation No 65/2011 applies in the circumstances of the case in the main proceedings.⁴²

74. Whilst it is true that Article 30 of Regulation no 65/2011 concerns the calculation of the amount payable and stipulates, in paragraph 1 thereof, that that calculation is to be made ‘on the basis of what is found to be eligible during the administrative checks’, the scope of that provision is not limited, as the Slovenian Government points out, to situations in which the conditions of eligibility of expenditure have been completely fulfilled. Indeed, it is expressly stated in Article 30(3) of the regulation that the reductions referred to in paragraph 1 of Article 30 apply ‘*mutatis mutandis* to non-eligible expenditure identified during checks under Articles 25 and 29 [of the regulation]’, that is to say, on-the-spot checks and ex-post checks. It follows, in my opinion, that paragraph 1 of Article 30 applies directly to ineligible expenditure identified in the course of other types of checks, including administrative checks.⁴³

75. In a situation such as that in the present case, where some of the expenditure included in the payment claim is eligible according to the national conditions of eligibility and the remainder is not, the application of Article 30(1) of Regulation No 65/2011 would entail a reduction in the amount payable in accordance with the method described in that paragraph, whereunder the difference between the amount claimed by the beneficiary (all of the expenditure included in the payment claim) and the eligible amount (the eligible expenditure alone) is calculated and, if the difference represents more than 3% of the eligible amount, the eligible amount is reduced by that difference.

76. I cannot, therefore, subscribe to the Commission’s argument that the application of Article 30(1) of Regulation No 65/2011 would, in a situation such as that in the present case, entail a 100% reduction, or in other words the complete exclusion of the investment expenditure. The Commission states, in this connection, that the present case involves the ineligibility of the entirety of the investment, not merely part of it, since the Commune of Gorje did not fulfil the condition of access (or eligibility) stipulated for the entirety of the investment, in accordance with which the investment was not to be commenced before a decision on eligibility was adopted. According to the Commission, the failure to observe that condition of access ‘tainted’ the entire investment.

40 — The English language versions of the two regulations use the term ‘eligibility’ in the first subparagraph of Article 71(3) of Regulation No 1698/2005 and in point (b) of the second subparagraph of Article 30(1) of Regulation No 65/2011. In the Danish version, the terms are ‘støtteberettigelse’ and ‘støtteberettiget’. In the Spanish version the terms are ‘subvencionabilidad’ and ‘admisibilidad’, in the Italian, ‘ammissibilità’ in both, the Romanian ‘eligibilitate’ and ‘eligibilității’. The German language version of the two regulations contains linguistic variations of no legal significance: ‘Zuschussfähigkeit’ and ‘Förderfähigkeit’. The Hungarian language version employs similar, but not identical concepts: ‘jogosultság’ in the first subparagraph of Article 71(3) of Regulation No 1698/2005 and ‘ámogathatóságának’ in Article 30(1) of Regulation No 65/2011.

41 — I would point out that, where there is divergence between the various language versions of a text of EU law, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part (see the judgment of 29 April 2010 in *M and Others* (C-340/08, EU:C:2010:232, paragraph 44)), which corroborates the fact that the two terms are to be understood as having the same meaning.

42 — Given the facts of the dispute in the main proceedings, as presented by the referring court, there is nothing to indicate that the Commune of Gorje intentionally made a false declaration, such as would entail the application of Article 30(2) of Regulation No 65/2011.

43 — On the other hand, if the conditions of eligibility for funding are not entirely fulfilled, the initial approval of the application for support could be withdrawn or annulled and the calculation of the amount payable, under Article 30(1) of Regulation No 65/2011, would not be carried out. See footnote 32 to this Opinion.

77. I would observe in this connection, first of all, that neither Regulation No 1698/2005 nor Regulation No 65/2011 draws a distinction between the various categories of conditions of eligibility of expenditure and, equally, neither of those regulations authorises the Member States to prescribe particular consequences for failure to fulfil certain conditions which they regard as being more 'fundamental'. Secondly, the Commission's argument is based, in reality, on point 1 of the invitation to tender, which, as I indicated in points 59 and 61 of this Opinion, constitutes a condition of eligibility for funding, non-fulfilment of which does not entail a reduction of the amount payable pursuant to Article 30(1) of Regulation No 65/2011.⁴⁴

78. Thus, the question that arises is whether Article 30 of Regulation No 65/2011 lists exhaustively the penalties which the Member States may impose in the event of non-fulfilment of the conditions of eligibility of expenditure laid down at national level pursuant to the first subparagraph of Article 71(3) of Regulation No 1698/2005.

79. Even though Article 4(9) of Regulation No 65/2011 expressly provides that the reductions and exclusions under the regulation are without prejudice to additional penalties pursuant to other provisions of Union or national law, I share the Commune of Gorje's view that the Member States cannot provide for national penalties that go as far as to exclude an operation from EARDF support entirely, since a penalty of the same nature is already set out in detail in the regulation.⁴⁵ Indeed, under Article 30(2) of Regulation No 65/2011, such a penalty is expressly restricted to the situation in which a beneficiary has intentionally made a false declaration. The Member States cannot, therefore, effect a total exclusion in other, different situations, as the Slovenian rules which apply to the case in the main proceedings do, since that would in practice alter the scope of Article 30(2) of Regulation No 65/2011.

80. I conclude from that that Article 30 of Regulation No 65/2011 precludes national rules such as the Slovenian rules which apply to the case in the main proceedings, which provide for the rejection of a payment claim in its entirety, and thus the complete exclusion of an operation from EARDF support, where the payment claim includes both eligible and ineligible expenditure.

81. In light of the answer which I have just proposed, it is no longer necessary to consider whether the rejection of a payment claim in its entirety is consistent with the principle of proportionality. I shall therefore examine this question only in the alternative, in case the Court should not agree with my conclusion and find that Regulation No 65/2011 does not preclude national legislation such as Article 56(4) of the ZKme-1.

44 — In similar fashion, the Slovenian Government uses the term 'conditions precedent' to describe the national condition set out in point 1 of Section IV/1 of the invitation to tender, in accordance with which the beneficiary may not commence the investment until a decision on eligibility has been adopted.

45 — See, in similar fashion, the judgment of 24 May 2007 in *Maatschap Schonewille-Prins* (C-45/05, EU:C:2007:296, paragraphs 64 to 68).

3. Observance of the principle of proportionality

82. In accordance with Article 74(1) of Regulation No 1698/2005, the Member States are to adopt all the legislative, statutory and administrative provisions necessary to ensure that the EU's financial interests are effectively protected.⁴⁶ The Member States are nevertheless required to observe the general principles of EU law, in particular that of proportionality.⁴⁷ It follows that the severity of the penalties applied in the event of non-compliance must be commensurate with the seriousness of the breaches for which they are imposed, and in particular ensure a genuinely dissuasive effect, whilst at the same time remaining consistent with the principle of proportionality.⁴⁸

83. In this connection, the Commune of Gorje argues that, by providing for the rejection of the payment claim in its entirety where the claim includes both eligible and ineligible expenditure, without any account being taken of the nature and extent of the breach, Article 56(4) of the ZKme-1 goes beyond what is necessary to attain the objective pursued. According to the Commune of Gorje, the Slovenian rules are, consequently, contrary to the principle of proportionality, a view that is disputed by the Polish Government and the Commission.

84. Whilst exclusion resulting from failure to comply with the conditions governing the grant of aid is not a penalty, but merely the consequence of failure to fulfil the conditions laid down by law,⁴⁹ the rejection of a payment claim provided for in Article 56(4) of the ZKme-1 is, in a situation such as that at issue in the main proceedings, not the consequence of failure to fulfil the conditions governing the grant of aid, but rather of failure to fulfil the conditions of eligibility of expenditure.⁵⁰

85. Moreover, in a situation such as that at issue in the main proceedings, the payment claim is rejected in its entirety under Article 56(4) of the ZKme-1, including the part thereof which relates to eligible expenditure incurred in accordance with the national rules. In so far as that part of the claim is concerned, the rejection of the payment claim cannot be regarded as the mere consequence of a failure to fulfil the conditions, but must instead be regarded as punitive.

86. Infringements of national legislation in the context of operations which benefit from co-financing from the European Union must unquestionably be penalised in an effective manner, in order to protect the EU's financial interests from fraud and to ensure the full attainment of the objectives pursued by the EU legislature. There is no doubt that, by depriving a beneficiary of the payment of any support, rules such as the Slovenian rules at issue are particularly dissuasive and are thus likely to combat effectively irregularities committed in connection with the EARDF.⁵¹

46 — In accordance with Article 48(1) of Regulation No 1974/2006, the Member States are to ensure, for the purposes of Article 74(1) of Regulation No 1698/2005, that all the rural development measures they intend to implement are verifiable and controllable. See also Article 325(1) TFEU and Article 9(1) of Regulation No 1290/2005.

47 — See the judgment of 28 October 2010 in *SGS Belgium and Others* (C-367/09, EU:C:2010:648, paragraph 40).

48 — See the judgment of 25 April 2013 in *Asociația Accept* (C-81/12, EU:C:2013:275, paragraph 63 and the case-law cited). See also the Opinion of Advocate General Wahl in *Szemerey* (C-330/14, EU:C:2015:605, points 51 to 63). The requirement for proportionality is also apparent from Article 35(3) of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ 2014, L 181, p. 48), which repealed and replaced Regulation No 65/2011 with effect from 1 January 2015.

49 — See the judgments of 24 May 2012 in *Hehenberger* (C-188/11, EU:C:2012:312, paragraph 37 and the case-law cited) and 24 May 2007 in *Maatschap Schonewille-Prins* (C-45/05, EU:C:2007:296, paragraph 47 and the case-law cited), which concern the situation where the EU legislature lays down the conditions governing eligibility for the grant of aid.

50 — See points 59 to 61 of this Opinion on the distinction between conditions of eligibility for funding and conditions of eligibility of expenditure.

51 — See footnote 3 to this Opinion regarding the error rate for expenditure in the field of rural development. See also the judgments of 2 October 2014 in *Van Den Broeck* (C-525/13, EU:C:2014:2254, paragraph 33) and of 15 September 2005 in *Ireland v Commission* (C-199/03, EU:C:2005:548, paragraph 31).

87. Nevertheless, by providing for the rejection of a payment claim in its entirety, Article 56(4) of the ZKme-1 provides for a penalty that bears no relationship to the infringement committed by the beneficiary, since it is the same whether the infringement affects a substantial part of the claim or only a negligible part of it.⁵²

88. Admittedly, Article 30(1) of Regulation No 65/2011 also makes provision for reductions which go beyond the irregularity found, providing that the eligible amount is to be reduced by the difference between that amount and the amount claimed by the beneficiary. Nevertheless, unlike the national rules, that provision provides for a reduction which is calculated by reference to the infringement committed, which, in my opinion, ensures that the principle of proportionality is observed.

89. The considerations on which the Slovenian Government relies in order to justify the national condition which is the subject of the first question referred for a preliminary ruling, namely reducing the 'deadweight' risk and ensuring effective control, apply only to the part of the claim which relates to eligible expenditure. Thus, notwithstanding the failure to fulfil the conditions of eligibility in so far as part of the expenditure is concerned, the co-financed operation can, as such, achieve its goal and provide real added value in the sphere of rural development.⁵³

90. I conclude that national legislation which provides for the rejection of a payment claim in its entirety where the claim includes both eligible and ineligible expenditure, without any account being taken of the nature and extent of the infringement committed, must be regarded as contrary to the principle of proportionality.⁵⁴

V – Conclusion

91. In light of the foregoing, I propose that the Court should answer the questions referred for a preliminary ruling by the Upravno sodišče (Administrative court, Slovenia) as follows:

The first subparagraph of Article 71(3) 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) must be interpreted as not precluding national rules pursuant to which only investment expenditure incurred after an application for support has been approved is eligible for EAFRD support.

Article 30 of Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures must be interpreted as precluding national legislation which provides for the rejection of a payment claim in its entirety where the claim includes both eligible and ineligible expenditure.

52 — I would point out that, when applying national law, national courts are required to interpret it, as far as possible, in light of the wording and purpose of EU law, including the principle of proportionality. See the judgment of 10 April 1984 in *Colson and Kamann* (14/83, EU:C:1984:153, paragraph 26). In this connection, one might wonder whether it is possible to interpret Article 56(4) of the ZKme-1 in a manner that is consistent with the principle of proportionality. Specifically, it seems to me that one could ask whether the words 'any claim that does not satisfy the requirements' used in that provision necessarily refers to the payment claim in its entirety or only the part thereof that does not fulfil the national conditions.

53 — See, regarding non-compliance with procurement rules, the Commission's Replies of 5 February 2015 to the Special Report of the European Court of Auditors 'Errors in rural development spending: what are the causes, and how are they being addressed?' (COM(2015) 71 final), p. 2.

54 — See also the judgment of 15 September 2005 in *Ireland v Commission* (C-199/03, EU:C:2005:548, paragraphs 59 and 60).