



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

30 March 2017¹

(Reference for a preliminary ruling — Common agricultural policy — EAFRD financing — Rural development support — Natura 2000 payments — Eligibility limited to private owners — Forest area partially owned by the State)

In Case C-315/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kúria (Supreme Court, Hungary), made by decision of 19 April 2016, received at the Court on 2 June 2016, in the proceedings

József Lingurár

v

Miniszterelnökséget vezető miniszter,

THE COURT (Tenth Chamber),

composed of M. Berger, President of the Chamber, A. Borg Barthet and E. Levits (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Hungarian Government, by E.E. Sebestyén, M.Z. Fehér and G. Koós, acting as Agents,

— the European Commission, by J. Aquilina and A. Tokár, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- ¹ This request for a preliminary ruling concerns the interpretation of Articles 42 and 46 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).

¹ — Language of the case: Hungarian.

- 2 The request has been made in proceedings between József Lingurár and the Miniszterelnökséget vezető miniszter (Chancellery of the Prime Minister, Hungary) concerning the decision refusing to grant him Natura 2000 support for a forest area which he owns.

Legal context

European Union law

- 3 Under Article 7 of Regulation No 1698/2005:

‘Member States shall be responsible for implementing the rural development programmes at the appropriate territorial level, according to their own institutional arrangements, in accordance with this Regulation.’

- 4 Article 36(b)(iv) of that regulation specifies that support under the section ‘Improving the environment and the countryside’ is to concern measures targeting the sustainable use of forestry land through Natura 2000 payments.

- 5 Article 42 of that regulation, relating to the general conditions applicable to measures targeting the sustainable use of forestry land, provides, in paragraph 1:

‘Support under this subsection shall be granted only for forests and wooded areas owned by private owners or by their associations or by municipalities or their associations. ...

This restriction shall not apply to the support provided for in Article 36(b)(i), (iii), (vi) and (vii).’

- 6 Article 46 of that regulation is worded as follows:

‘Support provided for in Article 36(b)(iv), shall be granted annually and per hectare of forest to private forest owners or associations thereof in order to compensate for costs incurred and income foregone resulting from the restrictions on the use of forests and other wooded land due to the implementation of [Council] Directive 79/409/EEC [of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)] and [Council Directive] 92/43/EEC [of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7)] in the area concerned. Support shall be fixed between the minimum and maximum amounts laid down in the Annex.’

- 7 Article 50(1) of Regulation No 1698/2005 provides as follows:

‘Member States shall designate the areas eligible for payments provided for in ... Article 36(b)(i), (iii), (iv) and (vi), taking into account paragraphs 2 to 5 of this Article.’

- 8 Article 30(4) of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Regulation No 1698/2005 (OJ 2006 L 368, p. 15) provides:

‘The following forests and wooded areas shall be excluded from the scope of the first sentence of Article 42(1) of Regulation (EC) No 1698/2005:

- (a) forest and other wooded land owned by central or regional governments, or by government-owned corporations;
- (b) forest and other wooded land owned by the Crown;

- (c) forests owned by legal persons at least 50% of whose capital is held by one of the institutions referred to in points (a) and (b).'

Hungarian law

- 9 The Európai Mezőgazdasági Vidékfejlesztési Alapból a Natura 2000 erdőterületeken történő gazdálkodáshoz nyújtandó kompenzációs támogatás részletes szabályairól szóló 41/2012. (IV. 27.) VM rendelet [Decree 41/2012 of the Minister for Rural Development (IV. 27.) laying down detailed rules governing the compensatory support from the European Agricultural Fund for Rural Development granted in respect of the agricultural use of Natura 2000 forest areas; *Magyar Közlöny* 2012/51. (IV. 27.)] provides, in Article 4 thereof:

‘ ...

(4) Forest plots which satisfy the criteria set out in paragraph 1 but are owned by the State or by a municipality shall not be eligible for support.

(5) Support shall not be granted to municipalities, bodies managing part of the public budget, or economic operators in which the Hungarian State has a shareholding of 50% or more.

...’

- 10 Article 16(6) of the erdőről, az erdő védelméről és az erdőgazdálkodásról szóló 2009. évi XXXVII. törvény [Law XXXVII of 2009 on woodland, forest protection and forestry; *Magyar Közlöny* 2009/71 (V.25.)] provides:

‘Within a municipal forest area, the forest plot is the basic unit of forestry, forest administration and forest registration, which forms a continuous area and may be regarded as an homogeneous whole on the basis of the characteristics of the biotic communities found there and of the sustainable forestry activity carried out there.’

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

- 11 On 13 May 2013, the applicant submitted an application to the Office for Agriculture and Rural Development for compensatory support for Natura 2000 forests in respect of 29 forest plots, equivalent to 82 hectares. That application was rejected on the ground that the Hungarian State has property rights over part of those plots, equivalent to 0.182% of the total area.
- 12 The applicant in the main proceedings brought an action against the decision of that Office before the Budapest Környéki Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest, Hungary), which dismissed the action.
- 13 The referring court, ruling on the appeal against the judgment at first instance, has doubts as to whether the court of first instance’s interpretation of the provisions of national law transposing Article 46 of Regulation No 1698/2005 is consistent with the stated purpose of that provision.
- 14 In those circumstances, the Kúria (Supreme Court, Hungary) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is Article 42(1) of Regulation No 1698/2005 — also taking into account Article 46 thereof — to be interpreted as not wholly precluding individuals from aid for the sustainable use of forest land where the land is also partly State owned?’

- (2) If aid is not wholly precluded, is Article 46 of Regulation No 1698/2005 to be interpreted as meaning that, in relation to the land concerned — which is partly State owned — the private forester or private owner is entitled to aid in proportion to his share of ownership?’

Consideration of the questions referred

- 15 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether the first sentence of Article 42(1) of Regulation No 1698/2005 must be interpreted as precluding the complete exclusion of a Natura 2000 forest area from entitlement to the support provided for in Article 36(b)(iv) of that regulation on the ground that a small part of that area is owned by the State, irrespective of the ratio of the size of the part owned by the State to the size of the part owned by a private owner.
- 16 Since the Hungarian Government submits that the provisions mentioned in the previous paragraph empower it to adopt measures relating to the evaluation of the amount of Natura 2000 support to be granted, by determining, inter alia, the consequences in the event of mixed private and State ownership of a Natura 2000 forest area, it is appropriate, in the first place, to verify whether it has such power.
- 17 In this connection, it must be recalled that, although, by virtue of the very nature of regulations and of their function in the system of sources of EU law, the provisions of regulations generally have immediate effect in the national legal systems, without the need for the national authorities to adopt implementing measures, some of their provisions may nevertheless require, for their application, the adoption of implementing measures by the Member States (judgments of 25 October 2012, *Ketelä*, C-592/11, EU:C:2012:673, paragraph 35; of 15 May 2014, *Szatmári Malom*, C-135/13, EU:C:2014:327, paragraph 54, and of 7 July 2016, *Občina Gorje*, C-111/15, EU:C:2016:532, paragraph 34).
- 18 Furthermore, it is established that Member States may adopt implementing measures for a regulation provided that they do not thereby obstruct its direct applicability or conceal its nature as an act of EU law; that they specify that they are acting in exercise of a discretion conferred on them under that regulation; and that they adhere to the parameters laid down thereunder (judgments of 25 October 2012, *Ketelä*, C-592/11, EU:C:2012:673, paragraph 36; of 15 May 2014, *Szatmári Malom*, C-135/13, EU:C:2014:327, paragraph 55; and of 7 July 2016, *Občina Gorje*, C-111/15, EU:C:2016:532, paragraph 35).
- 19 It is by referring to the relevant provisions of the regulation concerned, interpreted in the light of the objectives of that regulation, that it may be determined whether they prohibit, require or allow Member States to adopt certain implementing 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 (judgments of 25 October 2012, *Ketelä*, C-592/11, EU:C:2012:673, paragraph 37, and of 7 July 2016, *Občina Gorje*, C-111/15, EU:C:2016:532, paragraph 36).
- 20 In the present case, Regulation No 1698/2005 and Regulation No 1974/2006 do not lay down rules on the payment of the support provided for in Article 36(b)(iv) of Regulation No 1698/2005 when a Natura 2000 forest area is owned both by the State and by private owners. Article 42(1) of Regulation No 1698/2005 establishes the principle that Natura 2000 support payments are to be granted for forests and wooded areas owned by private owners or their associations or by municipalities or their associations. Regulation No 1974/2006 laying down detailed rules for the application of Regulation No 1698/2005 sets out, in Article 30(4)(a) thereof, the limits of that principle, stating that forests and other wooded land owned by central or regional governments, or by government-owned corporations are to be excluded from the scope of Article 42(1) of Regulation No 1698/2005.

- 21 Given that, first, under Article 7 of Regulation No 1698/2005, Member States are responsible for implementing rural development programmes and, secondly, in accordance with Article 50(1) and (7) of that regulation, the Natura 2000 forest areas eligible for the support provided for in Article 36(b)(iv) of that regulation are to be designated, in accordance with Directives 79/409 and 92/43, by the Member States, it must be determined whether, as the Hungarian Government submits, the national legislation at issue in the main proceedings merely establishes the rules for setting the amounts of the support available under that provision.
- 22 In this case, the interpretation of the first sentence of Article 42(1) of Regulation No 1698/2005 which follows from the national legislation leads, in particular in the circumstances of the main proceedings, to a reversal of the relationship between the rule laid down by that provision and the exception set out in Article 30(4)(a) of Regulation No 1974/2006. The principle established in Article 42(1) of Regulation No 1698/2005 is that Natura 2000 support is to be paid to private owners and their associations. However, in the circumstances of the main proceedings, even though only a negligible part of the forest area in question is owned by the State, the refusal to pay any support to the private owner who owns most of that area effectively makes the exception the rule.
- 23 Accordingly, an interpretation of those provisions that would lead to the complete exclusion of a forest area from the Natura 2000 support scheme on the ground that a part of that area is owned by the State would run counter to the very wording of Article 42(1) of Regulation No 1698/2005, which lays down the principle that support is to be granted for forests and wooded land owned by private owners or their associations.
- 24 Moreover, as is apparent from Article 30(4)(a) of Regulation No 1974/2006, forests and other wooded land owned, *inter alia*, by the State are excluded from the scope of the first sentence of Article 42(1) of Regulation No 1698/2005. However, since the application of the national legislation implementing Article 30(4)(a) of Regulation No 1974/2006 leads to the exclusion of a Natura 2000 forest area in its entirety from the scope of the first sentence of Article 42(1) of Regulation No 1698/2005, even though almost all of that area falls within that scope, that interpretation calls into question the very definition of that scope.
- 25 Since such a radical consequence of the mixed ownership of a Natura 2000 forest area is not expressly provided for by Regulation No 1698/2005 or Regulation No 1974/2006, such a measure cannot fall within the ambit of the discretion enjoyed by each Member State for the implementation of Natura 2000 payments.
- 26 As regards, in the second place, the inferences to be drawn from the mixed ownership of a Natura 2000 forest area, it must be borne in mind, first, that, in accordance with Article 46 of Regulation No 1698/2005, Natura 2000 support is intended to compensate for costs incurred and income foregone resulting from the restrictions on the use of forests and other wooded land due to the implementation of Directive 79/409 and Directive 92/43.
- 27 The fact that part of a plot of a Natura 2000 forest area does not fall within the scope of Natura 2000 support, on that ground that it is owned by the State, does not eliminate the need to compensate for the restrictions on the use of plots in that area belonging to a private owner as a result of the implementation of the requirements set out in those directives.
- 28 Accordingly, the complete exclusion of a Natura 2000 forest area owned both by a private owner and by the State from the scope of the first sentence of Article 42(1) of Regulation No 1698/2005 would necessarily eliminate the compensatory aim of the Natura 2000 payments system.

- 29 Secondly, the national provisions adopted by the Member State in the exercise of its power to implement EU legislation must observe the general principles of EU law, in particular that of proportionality (see, to that effect, as regards fraud prevention, judgment of 28 October 2010, *SGS Belgium and Others*, C-367/09, EU:C:2010:648, paragraph 40).
- 30 Although, by excluding land owned by the State from entitlement to Natura 2000 support, the national legislation at issue in the main proceedings and the interpretation of that legislation effectively implement the exception laid down in Article 30(4)(a) of Regulation No 1974/2006, completely excluding a forest area from Natura 2000 support because part of that area, irrespective of its size, is owned by the State does not reflect the actual ownership ratio proportionately.
- 31 It is apparent from the order for reference that, even though 99.818% of the forest area in question in the main proceedings falls within the scope of the first sentence of Article 42(1) of Regulation No 1698/2005, the entire area is excluded from Natura 2000 payments on the ground that 0.182% of that area does not fall within that scope.
- 32 In that respect, the Hungarian government refers to the indivisible nature of the Natura 2000 forest area in order to justify that outcome.
- 33 However, Article 46 of Regulation No 1698/2005 provides that Natura 2000 payments are to be made annually and per hectare of forest.
- 34 Moreover, Article 16(6) of Law XXXVII of 2009 provides that the forest plot is the basic unit of forest administration.
- 35 Consequently, the exclusion of only the plot or hectare owned in part by the State from Natura 2000 compensatory support for a forest area eligible for such support — or even no exclusion at all if that part is negligible — would comply with the principle of proportionality, unlike the complete exclusion of that area without any regard being had to the ratio of the size of the part of that area owned by the State to the size of the part owned by the private owner.
- 36 It follows from all the foregoing considerations that the answer to the questions referred is that the first sentence of Article 42(1) of Regulation No 1698/2005 must be interpreted as meaning that, when a forest area eligible for Natura 2000 support is owned in part by the State and in part by a private owner, account must be taken of the ratio of the size of the part owned by the State to the size of the part owned by that private owner in calculating the amount of support to be paid to the latter.

Costs

- 37 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 (Tenth Chamber) hereby rules:

- 1. The first sentence of Article 42(1) 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 meaning that, when a forest area eligible for Natura 2000 support is owned in part by the State and in part by a private owner, account must be taken of the ratio of the size of the part owned by the State to the size of the part owned by that private owner in calculating the amount of support to be paid to the latter.**

[Signatures]