

3. In the event that the common flat-rate regime for farmers has, in principle, to be excluded for civil-law partnerships such as those at issue in the main proceedings, such an exclusion would apply to the period prior to the date on which the appraisal on which it is based took place, provided that that appraisal occurs within the limitation period for action on the part of the tax authority and its effects do not apply retroactively to a date earlier than that on which the legal and factual elements on which it is based occurred.

⁽¹⁾ OJ C 328, 5.10.2015.

**Request for a preliminary ruling from the Conseil d'État (France) lodged on 29 September 2016 —
Carrefour Hypermarchés SAS, Fnac Paris, Fnac Direct, Relais Fnac, Codirep, Fnac Périphérie v
Minister for Finance and Public Accounts**

(Case C-510/16)

(2016/C 462/12)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Carrefour Hypermarchés SAS, Fnac Paris, Fnac Direct, Relais Fnac, Codirep, Fnac Périphérie

Defendant: Minister for Finance and Public Accounts

Questions referred

1. In a situation in which an aid scheme is financed by allocated resources, where a Member State has regularly notified the Commission of legal changes having a significant impact on that scheme prior to their implementation, and in particular of changes relating to the method by which the scheme is financed, does a substantial increase in revenue from fiscal resources allocated to the scheme, compared to the projections submitted to the European Commission, constitute a significant change within the meaning of Article 88(3) of the EC Treaty, now Article 108 TFEU, which would require a new notification to be made?
2. In the same situation, how is Article 4 of Commission Regulation (EC) No 794/2004 ⁽¹⁾ to be applied, pursuant to which an increase in the original budget of an existing aid scheme exceeding 20 % constitutes a change to that aid scheme and, in particular:
 - (a) how does it combine with the obligation to notify the Commission in advance of an aid scheme, laid down in Article 88(3) of the EC Treaty, now Article 108 TFEU?
 - (b) if exceeding the 20 % threshold of the original budget of an existing aid scheme provided for under Article 4 of Commission Regulation (EC) No 794/2004 requires a new notification, must that threshold be assessed in relation to the amount of expenditure allocated or to the expenditure actually granted to the beneficiaries, excluding the sums placed in the reserve or those having been made subject to a levy for the benefit of the State?

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

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

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

(Case C-516/16)

(2016/C 462/13)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant: Erzeugerorganisation Tiefkühlgemüse e. Gen.

Respondent: Agrarmarkt Austria

Questions referred

- I.1. Do Articles 65, 66 and 69 of Commission Regulation (EC) No 1580/2007 (¹) of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector and (since 23 June 2011) Articles 64, 65 and 68 of Commission Implementing Regulation (EU) No 543/2011 (²) of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors require that the decision approving the operational programme and the amounts of funds, or any amendment of that decision, and the decision on the 'approved amount of aid' be adopted not merely as notifications but formally as (at least provisionally) binding decisions that can be challenged by the applicant at the outset, that is to say irrespective of any challenge to the final decision (pursuant to Article 70 of Regulation 1580/2007 or Article 69 of Regulation No 543/2011) on the application for (closing) payment of the aid?
- I.2. Are the provisions cited in Question I.1 to be interpreted as meaning that, at the time when such decisions are adopted, the value of the marketed production must also be fixed with binding effect (in the normative part of the decision)?
- I.3. Is EU law, in particular Articles 69 and 70 of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, to be interpreted as meaning that a court required to rule on an appeal brought against a decision by which an administrative authority, in connection with a particular annual segment of the operational programme, gave a final adjudication on an application for the payment of financial assistance under Article 103 g(5) of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), in the version of Council Regulation (EC) No 361/2008 of 14 April 2008 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('Single CMO Regulation'), is prevented from examining the question of the legality of the value-of-the-marketed-production calculation used as the basis for the ceiling on aid by a pre-existing final decision approving the operational programme and the amounts of funds and by the decision on the 'approved amount of aid'?