



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

7 August 2018*

(Reference for a preliminary ruling — Common agricultural policy — Direct payments — Regulation (EU) No 1306/2013 — Articles 93 and 94 — Annex II — Cross-compliance — Agricultural and environmental conditions — Minimum requirements — Implementation by a Member State — Obligation to conserve ‘burial grounds’ — Scope)

In Case C-435/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tartu Halduskohus (Tartu Administrative Court, Estonia), made by decision of 7 July 2017, received at the Court on 18 July 2017, in the proceedings

Argo Kalda Mardi talu

v

Põllumajanduse Registrite ja Informatsiooni Amet (PRIA),

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, M. Safjan, D. Šváby and M. Vilaras (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Argo Kalda Mardi talu, by M. Kõiva, vandeadvokaat,
- the Estonian Government, by N. Grünberg, acting as Agent,
- the European Commission, by A. Sauka and E. Randvere, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 June 2018,

gives the following

* Language of the case: Estonian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 72(1)(a), Article 93(1) and (2), Article 94 and Annex II to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549, and corrigenda, OJ 2016 L 130, p. 6, OJ 2017 L 327, p. 83), and of Article 4(1)(b), (c) and (e) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608).
- 2 The request has been made in the context of proceedings between Argo Kalda Mardi talu and Põllumajanduse Registre ja Informatsiooni Amet (Agricultural Registers and Information Office, Estonia) ('PRIA') concerning the reduction of direct payments granted to the applicant in the main proceedings, for the breach of requirements relating to maintaining land in good agricultural and environmental condition.

Legal context

European Union law

Regulation No 1306/2013

- 3 According to recital 54 of Regulation No 1306/2013:

'... Cross-compliance aims to contribute to the development of sustainable agriculture through better awareness on the part of beneficiaries of the need to respect those basic standards. ... Experience has also shown that a number of the requirements within the scope of cross-compliance are not sufficiently relevant to farming activity or the area of the holding or concern national authorities rather than beneficiaries. ...'

- 4 Article 2(1)(c) and (d) of that regulation provides:

'For the purpose of this Regulation:

...

- (c) "agricultural area" means an agricultural area within the meaning of Article 4 of Regulation (EU) [No] 1307/2013;
- (d) "holding" means holding within the meaning of Article 4 of Regulation (EU) [No] 1307/2013, save as provided for in Article 91(3).'

5 Article 72(1)(a) of Regulation No 1306/2013 provides:

‘Each year, a beneficiary of the support referred to in Article 67(2) shall submit an application for direct payments or a payment claim for the relevant area and animal-related rural development measures respectively indicating, where applicable:

(a) all the agricultural parcels on the holding, as well as the non-agricultural area for which support referred to in Article 67(2) is claimed.’

6 Title VI of that regulation, entitled ‘Cross-compliance’, includes Chapter I, entitled ‘Scope’, in which are included Articles 91 to 94.

7 Article 91 of that regulation provides:

‘1. Where a beneficiary referred to in Article 92 does not comply with the rules on cross-compliance as laid down in Article 93, an administrative penalty shall be imposed on that beneficiary.

2. The administrative penalty referred to in paragraph 1 shall only apply where the non-compliance is the result of an act or omission directly attributable to the beneficiary concerned; and where one, or both, of the following additional conditions are met:

(a) the non-compliance is related to the agricultural activity of the beneficiary;

(b) the area of the holding of the beneficiary is concerned.

...

3. For the purpose of this Title the following definitions shall apply:

(a) “holding” means all the production units and areas managed by the beneficiary referred to in Article 92 situated within the territory of the same Member State;

(b) “requirement” means each individual statutory management requirement under Union law referred to in Annex II within a given act, differing in substance from any other requirements of the same act.’

8 Article 93(1) of Regulation No 1306/2013 is worded as follows:

‘The rules on cross-compliance shall consist of the statutory management requirements under Union law and the standards for good agricultural and environmental condition of land established at national level as listed in Annex II, relating to the following areas:

(a) environment, climate change and good agricultural condition of land;

(b) public, animal and plant health;

(c) animal welfare.’

9 Under Article 94 of that regulation:

‘Member States shall ensure that all agricultural area, including land which is no longer used for production purposes, is maintained in good agricultural and environmental condition. Member States shall define, at national or regional level, minimum standards for beneficiaries for good agricultural

and environmental condition of land on the basis of Annex II, taking into account the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use, crop rotation, farming practices, and farm structures.

Member States shall not define minimum requirements which are not established in Annex II.’

10 Annex II to that regulation, entitled ‘Rules on cross-compliance pursuant to Article 93’, establishes a list of statutory management requirements and standards for good agricultural and environmental condition of land.

11 The standard for good agricultural and environmental conditions called ‘GAEC 7’, the main topic of which is entitled ‘Landscape, minimum level of maintenance’, is defined as follows:

‘Retention of landscape features, including where appropriate, hedges, ponds, ditches, trees in line, in group or isolated, field margins and terraces ...’

Regulation No 1307/2013

12 Article 4 of Regulation No 1307/2013, entitled ‘Definitions and related provisions’, provides in paragraph (1)(b), (c) and (e):

‘For the purposes of this Regulation, the following definitions shall apply:

...

(b) “holding” means all the units used for agricultural activities and managed by a farmer situated within the territory of the same Member State;

(c) “agricultural activity” means:

- (i) production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes,
- (ii) maintaining an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries, based on criteria established by Member States on the basis of a framework established by the Commission, or
- (iii) carrying out a minimum activity, defined by Member States, on agricultural areas naturally kept in a state suitable for grazing or cultivation;

...

(e) “agricultural area” means any area taken up by arable land, permanent grassland and permanent pasture, or permanent crops.’

Estonian law

13 Under Paragraph 32(3) of the Euroopa Liidu põllumajanduspoliitika rakendamise seadus (Law implementing the common agricultural policy of the European Union):

‘The requirements for maintaining land in a good agricultural and environmental state shall be set out in a regulation of the minister responsible for that matter.’

- 14 Paragraph 3(9) of the põllumajandusministri määrus No 4 'Maa heas põllumajandus- ja keskkonnaseisundis hoidmise nõuded' (Regulation No 4 of the Minister for Agriculture — Requirements for maintaining land in a good agricultural and environmental state) of 14 January 2015 ('Regulation No 4'), is worded as follows:

'On agricultural land, an immovable monument within the meaning of Paragraph 3(2) of the muinsuskaitseeadus [Law on heritage conservation] which is a burial ground, ancient field, cup-marked stone, place of worship, road or bridge must be preserved.'

- 15 Under Article 8(1) of the maaeluministri määrus No 32 'Otsetoetuste saamise üldised nõuded, ühtne pindalatoetus klimaa- ja keskkonnatoetus ning noore põllumajandustootja toetus' (Regulation No 32 of the Minister for Rural Affairs — General requirements for obtaining direct payments, single area payment, climate and environment support and support for young farmers) of 17 April 2015:

'A recipient of the payment mentioned in Article 92 of Regulation ... No 1306/2013 ... shall comply, in his agricultural activity and on all the land of his holding, with the requirements laid down in Regulation No 4 ..., and with the mandatory operational requirements published in accordance with Paragraph 32(2) of the Law implementing the common agricultural policy of the European Union.'

- 16 Paragraph 3 of the muinsuskaitseeadus (Law on heritage conservation), entitled 'Classes of monuments' provides, in paragraph (2) thereof:

'The following things and combinations of things may be immovable monuments:

- (1) sites of ancient, medieval and modern settlements, fortresses, refuges, places of worship, burial grounds, ancient fields, cup-marked stones, roads, bridges, harbour sites, and sites related to early industry ...'

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

- 17 The applicant in the main proceedings applied, with respect to 2016, for a single area payment and a payment for agricultural practices beneficial to the climate and the environment.
- 18 Following a check, on 24 November 2016, PRIA informed the applicant in the main proceedings that it had infringed Paragraph 4 of Regulation No 4, on the ground that the stones of an archaeological monument, namely a cairn, situated at the edge of an agricultural plot, had been moved to the edge of the field and the existing brushwood had been removed. PRIA consequently proposed to reduce the payment applied for by 3%.
- 19 On 7 December 2016, PRIA replied to the objections of the applicant in the main proceedings, by pointing out to it that the breached requirement resulted, in reality, from Paragraph 3 of Regulation No 4 and that it should have been complied with for the part of the land which lies outside the boundaries of the field area and for which no payment had been requested.
- 20 By two decisions of 15 December 2016, PRIA reduced by 3% the single payment granted to the applicant in the main proceedings and the payment for agricultural practices beneficial for the climate and the environment, that is by EUR 2 554.94 and EUR 1 161.34, respectively.
- 21 By a decision of 20 February 2017, PRIA dismissed the complaint presented by the applicant in the main proceedings, considering that it was competent to find a breach of the obligation to preserve an immovable monument situated in a field, that the requirements had to be complied with on the whole

of a holding, including land in respect of which a payment had not been requested, that it had evaluated the facts for reducing the payments as a whole and that there had been no infringement of the right to be heard.

- 22 On 23 March 2017, the applicant in the main proceedings brought proceedings before the Tartu Halduskohus (Tartu Administrative Court, Estonia) for annulment of the decisions of 15 December 2016 and the decision of 20 February 2017, as well as for PRIA to be ordered to pay the sums which, under those decisions, had not been paid to it.
- 23 The applicant in the main proceedings claims that the stones at issue did not constitute a cairn and that PRIA lacked competence to assess the state of an immovable monument. It claims that PRIA failed to evaluate whether it was guilty of the act alleged and whether there existed facts excluding the fault asserted. It notes that the way the amount of the administrative penalty was arrived at is not comprehensible, since PRIA made use of an evaluation matrix, failing to give reasons for the administrative act at issue, which is formally unlawful.
- 24 It also claims that the area of the alleged breach is outside the field area concerned and is not part of its agricultural cultivation. By concluding however that there was a breach, PRIA infringed Paragraphs 23 and 32 of the Estonian Constitution, since the authorising provision is not sufficiently clear and precise. According to it, the administrative penalty imposed on it infringes the principle *ne bis in idem*. Finally, its right to be heard was infringed, since PRIA did not take its arguments into account.
- 25 PRIA contends that the action should be dismissed, by asserting, first, that the applicant in the main proceedings was not unaware, when the check was carried out, of the existence of a breach of its obligations, since there was an exchange of letters on that topic, secondly, that the administrative act at issue is formally lawful, explanations having been provided in that regard to the applicant in the main proceedings, which was also heard, and, thirdly, that the conclusions which led to the adoption of that act were based on evidence gathered during that check.
- 26 PRIA notes that the archaeological monument concerned, which consists of a cairn marked by stones, is entered in the national register, which features on the Muinsuskaitseamet internet site (Heritage Protection Office, Estonia). In that regard, provision is made for a right of pre-emption in favour of the State, registered in the land register. It states that it also relied on that evidence in order to adopt the contested decisions. It adds that the applicant in the main proceedings had observed, in its request for payment, that it holds a landscape element that was to be preserved. It considers that there was no infringement of the principle *ne bis in idem*, in the absence of duplication of administrative and criminal proceedings.
- 27 According to PRIA, the reduction of the payments is justified by its assessment and by the evaluation matrix included in the control document, since the rate of 3% was fixed by taking into account the amount of the payments, the seriousness and the permanence of the breach.
- 28 Moreover, since the land concerned is part of the agricultural area, the requirements relating to good agricultural and environmental conditions should have been complied with there.
- 29 First of all, the referring court notes that the cairn at issue in the main proceedings was classified as an immovable monument by Regulation No 59 of the Minister for Culture of 1 September 1997.
- 30 That court considers that the objective pursued by Paragraph 3(9) of Regulation No 4 consists in protecting cairns marked by stones as monuments, but that it cannot be clearly deduced from EU law that Article 93(1) of Regulation No 1306/2013 also pursues such an objective. The heading ‘Retention of landscape features’, included in Annex II to that regulation, could concern the protection of the environment only as an ecological and biological system and not as a cultural and historical system.

- 31 That court notes that the applicant in the main proceedings did not use the land on which the cairn was situated as an agricultural area and that it did not request payment in respect of it.
- 32 Finally, it is not possible to determine clearly whether the requirements relating to good agricultural and environmental conditions of land apply to all agricultural holdings.
- 33 In those circumstances, the Tartu Halduskohus (Tartu Administrative Court) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:
- ‘(1) Is a requirement to preserve cairns, established by a Member State for an applicant for a single area payment and a payment for agricultural practices beneficial for the climate and the environment, for the breach of which a reduction of the payment by 3% is imposed as an administrative penalty laid down by Article 39 of Commission Delegated Regulation [(EU) No 640/2014 of 11 March 2014 supplementing Regulation No 1306/2013 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)], compatible with Article 93(1) and Article 94 of Regulation No 1306/2013 and the minimum standards laid down in Annex II to that regulation?
- (2) If the answer to Question 1 is No, must, in accordance with Article 72(1)(a), Article 91(1) and (2), Article 93(1) and Article 94 of Regulation No 1306/2013 ... and Article 4(1)(b), (c) and (e) of Regulation No 1307/2013 ..., an applicant for a single area payment and a payment for agricultural practices beneficial for the climate and the environment comply with the requirements of good agricultural and environmental condition on the whole of his holding or solely on the agricultural area in respect of which the payment is specifically applied for, in order to exclude the imposition of an administrative penalty?’

Consideration of the questions referred

The first question

- 34 By its first question, the referring court asks, in essence, whether Article 93(1), Article 94 and Annex II to Regulation No 1306/2013 must be interpreted as precluding a Member State from requiring, as a standard for good agricultural and environmental conditions referred to in that Annex II, the preservation, on an agricultural area, of cairns marked by stones, the removal of which breaches such a requirement and, consequently, the reduction of payments owed to the farmer concerned.
- 35 It should be noted that the Court has held that it is the Member States which are to ensure that all agricultural land is maintained in good agricultural and environmental condition and which, to that end, are to define, at national or regional level, minimum requirements on the basis of the framework set up in the relevant annex to the regulation then in force, taking into account the specific characteristics of the areas concerned (see, by analogy, judgment of 16 July 2009, *Horvath*, C-428/07, EU:C:2009:458, paragraph 25).
- 36 While the Member States are therefore bound, when defining those requirements, to comply with that annex, it nevertheless leaves them, by using general concepts and terms, a certain discretion with regard to the actual determination of those requirements (see, by analogy, judgment of 16 July 2009, *Horvath*, C-428/07, EU:C:2009:458, paragraph 26).
- 37 Moreover, it is apparent from the wording itself of ‘good agricultural and environmental conditions’ that the Member States may adopt good agricultural and environmental conditions for environmental purposes (see, by analogy, judgment of 16 July 2009, *Horvath*, C-428/07, EU:C:2009:458, paragraph 27).

- 38 Those principles, which are established for the interpretation of Article 5(1) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1), apply in respect of the interpretation of Article 94 of Regulation No 1306/2013, the contents of which are similar.
- 39 According to Article 93 of that regulation, the standards for good agricultural and environmental conditions are part of the rules on cross-compliance, which, as is provided by Article 91 of that regulation, must be complied with subject to an administrative penalty. Those standards are established at national level, listed in Annex II to that regulation and concern in particular the environment.
- 40 Article 94 of Regulation No 1306/2013 obliges the Member States to define, at national or regional level, minimum standards that beneficiaries of aid must apply with regard to good agricultural and environmental conditions, on the basis of Annex II to that regulation.
- 41 As was provided for in Annex IV to Regulation No 1782/2003, the GAEC 7 standard, included in Annex II to Regulation No 1306/2013 and whose main topic is entitled ‘Landscape, minimum level of maintenance’, includes the retention of landscape features amongst the requirements and standards to be complied with in that regard. Among the landscape features referred to in Annex II to that regulation are hedges, ponds, ditches, trees in line, in group or isolated, field margins and terraces.
- 42 In the present case, it is necessary to determine whether a cairn marked by stones is capable, as the Estonian Government and the European Commission consider, of being classified as a ‘landscape feature’, the retention of which is one of the standards set out in Annex II to Regulation No 1306/2013.
- 43 Since the concept of ‘landscape features’ is not defined by Regulation No 1306/2013, it is necessary to interpret it, as was noted by the Advocate General in point 26 of her Opinion, taking into account its usual meaning and the context in which it is generally used (see, to that effect, judgment of 16 July 2009, *Horvath*, C-428/07, EU:C:2009:458, paragraph 34).
- 44 In that regard, it should be noted that a restrictive interpretation of the concept of ‘landscape features’, which, in particular, would exclude features resulting from human intervention — would be inconsistent with the discretion which Member States enjoy, in accordance with Article 94 of that regulation, in order to define the minimum requirements relating to good agricultural and environmental conditions (see, to that effect, judgment of 16 July 2009, *Horvath*, C-428/07, EU:C:2009:458, paragraph 37).
- 45 In that regard, the Court has held that landscape features are physical elements of the environment and that the requirements relating to the retention of those features must contribute to their preservation as such (judgment of 16 July 2009, *Horvath*, C-428/07, EU:C:2009:458, paragraph 41).
- 46 The conservation of cairns marked by stones contributes to the safeguard of the cultural and historical heritage of Member States as physical elements of the environment.
- 47 In the light of the foregoing considerations, the answer to the first question is that Article 93(1), Article 94 and Annex II to Regulation No 1306/2013 must be interpreted as not precluding a Member State from requiring, as a standard for good agricultural and environmental conditions referred to in that Annex II, the preservation, on an agricultural area, of cairns marked by stones, the removal of which breaches such a requirement and, consequently, the reduction of payments owed to the farmer concerned.

The second question

- 48 By its second question, the referring court asks whether Article 72(1)(a), Article 91(1) and (2), Article 93(1) and Article 94 of Regulation No 1306/2013, and Article 4(1)(b), (c) and (e) of Regulation No 1307/2013 must be interpreted as meaning that the requirements relating to good agricultural and environmental conditions must be complied with on the whole of the agricultural holding or solely on the agricultural area in respect of which the payment is specifically requested.
- 49 In that regard, Article 91(2) of Regulation No 1306/2013 provides for the imposition of an administrative penalty in the event of non-compliance with the rules on cross-compliance where, in particular, the area of the agricultural holding is concerned, a holding being defined, for the purposes of Title VI of that regulation in which that provision appears, in Article 91(3)(a) of that regulation as consisting of all the production units and areas situated within the territory of the same Member State and managed by the beneficiary, including direct payments.
- 50 Articles 93 and 94 of that regulation refer to all the agricultural areas of a holding. Thus, Article 93 sets out the contents of the rules on cross-compliance, citing, in particular, the good agricultural and environmental condition of land, which must be understood as all agricultural land of a holding. As regards Article 94 thereof, it requires Member States to ensure that all agricultural land, including land which is no longer used for production purposes, is maintained in good agricultural and environmental condition.
- 51 It should be noted that none of those provisions distinguish, as regards compliance with the rules on cross-compliance and, more particularly, good agricultural and environmental conditions, between the agricultural areas in respect of which a request for payment has been made and those in respect of which that is not the case.
- 52 It would moreover be contrary to the very purpose of the cross-compliance system, which, according to recital 54 of Regulation No 1306/2013, aims to contribute to the development of sustainable agriculture, to require compliance with the rules on cross-compliance solely concerning agricultural areas in respect of which aid has been requested.
- 53 First, the requirements derived from those rules must, in accordance with recital 54 of that regulation, be connected with agricultural activity or farming land, which translates into a requirement to comply with those rules also with regard to land which is no longer used for farming, as is provided for by Article 94 of that regulation.
- 54 Secondly, if non-compliance with those rules were penalised only where it concerned an agricultural area in respect of which aid was requested, there would exist a risk of circumvention of the rules on cross-compliance by farmers. As the Advocate General stated in point 58 of her Opinion, it suffices for those purposes that, for one year, a farmer does not include in his request for aid a parcel of land containing a landscape feature which is inconvenient for his activity, which he could move or dismantle before, the following year, including that area in his request for aid, without risking any administrative penalties.
- 55 In the light of the foregoing considerations, the answer to the second question is that Article 72(1)(a), Article 91(1) and (2), Article 93(1) and Article 94 of Regulation No 1306/2013 and Article 4(1)(b), (c) and (e) of Regulation No 1307/2013 must be interpreted as meaning that the requirements relating to good agricultural and environmental conditions, provided for by Regulation No 1306/2013 must be complied with on the whole of the agricultural holding and not solely on the agricultural area in respect of which the payment is specifically requested.

Costs

⁵⁶ 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 (Third Chamber) hereby rules:

- 1. Article 93(1), Article 94 and Annex II to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 must be interpreted as not precluding a Member State from requiring, as a standard for good agricultural and environmental conditions referred to in that Annex II, the preservation, on an agricultural area, of cairns marked by stones, the removal of which breaches such a requirement and, consequently, the reduction of payments owed to the farmer concerned.**
- 2. Article 72(1)(a), Article 91(1) and (2), Article 93(1) and Article 94 of Regulation No 1306/2013 and Article 4(1)(b), (c) and (e) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 must be interpreted as meaning that the requirements relating to good agricultural and environmental conditions, provided for by Regulation No 1306/2013 must be complied with on the whole of the agricultural holding and not solely on the agricultural area in respect of which the payment is specifically requested.**

[Signatures]