



## Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

19 December 2019\*

(Reference for a preliminary ruling — Common fisheries policy — Regulations (EU) Nos 1303/2013, 1379/2013 and 508/2014 — Fishery and aquaculture producer organisations — Production and marketing plans — Financial support for the preparation and implementation of those plans — Conditions of eligibility of costs — Discretion of the Member States — No possibility under national law to apply for financial support)

In Case C-386/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands), made by decision of 5 June 2018, received at the Court on 11 June 2018, in the proceedings

**Coöperatieve Producentenorganisatie en Beheersgroep Texel UA**

v

**Minister van Landbouw, Natuur en Voedselkwaliteit**

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, P.G. Xuereb (Rapporteur) and T. von Danwitz, Judges,

Advocate General: M. Bobek,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 10 April 2019,

after considering the observations submitted on behalf of:

- the Netherlands Government, by M.K. Bulterman and M.L. Noort, acting as Agents,
- the European Commission, by H. van Vliet and F. Ronkes Agerbeek and by K. Walkerová and F. Moro, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 June 2019,

gives the following

\* Language of the case: Dutch.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 28 of Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ 2013 L 354, p. 1; ‘the CMO Regulation’), of Article 65(6) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320; ‘the CSC Regulation’), and of Article 66(1) of Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ 2014 L 149, p. 1; ‘the EMFF Regulation’).
- 2 The request has been made in proceedings between Coöperatieve Producentenorganisatie en Beheersgroep Texel UA (‘PO Texel’) and the minister van Landbouw, Natuur en Voedselkwaliteit (Minister of Agriculture, Nature and Food Quality), concerning a decision of the latter dismissing his application for a grant under the European Maritime and Fisheries Fund (EMFF).

### Legal context

#### *European Union law*

##### *The CMO Regulation*

- 3 Recitals 7 and 14 of the CMO Regulation state:

‘(7) Fishery producer organisations and aquaculture producer organisations (“producer organisations”) are the key to achieving the objectives of the [common fisheries policy (“CFP”)] and of the [common organisation of the markets in fishery and aquaculture products (“CMO”)]. It is therefore necessary to enhance their responsibilities and to provide the necessary financial support to allow them to play a more meaningful role in the day-to-day management of fisheries, whilst respecting the framework defined by objectives of the CFP. ...

...

(14) In order to be able to steer their members towards sustainable fishery and aquaculture activities, producer organisations should prepare and submit to the competent authorities of their Member States a production and marketing plan containing the measures necessary for them to fulfil their objectives.’

- 4 According to Article 6(1) of that regulation:

‘Producer organisations ... may be established on the initiative of producers of fishery or aquaculture products in one or more Member States ...’

5 Article 28 of the regulation, entitled ‘Production and marketing plan’, provides:

‘1. Each producer organisation shall submit a production and marketing plan for, at least, its main marketed species to its competent national authorities for approval. ...

...

3. The competent national authorities shall approve the production and marketing plan. Once the plan is approved, the producer organisation shall immediately implement it.

...

5. The producer organisation shall prepare an annual report of its activities under the production and marketing plan and shall submit it to its competent national authorities for approval.

6. Producer organisations may receive financial support for the preparation and implementation of production and marketing plans in accordance with a future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the period 2014-2020.

...’

#### *The CFP Regulation*

6 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ 2013 L 354, p. 22; ‘the CFP Regulation’), provides, in Article 35 thereof:

‘1. A [CMO] shall be established ...

...

3. The [CMO] shall include, in particular:

...

(b) the production and marketing plans of producer organisations ...;

...’

#### *The CSC Regulation*

7 Article 2(14) of the CSC Regulation defines the concept of ‘completed operation’ as ‘an operation that has been physically completed or fully implemented and in respect of which all related payments have been made by beneficiaries and the corresponding public contribution has been paid to the beneficiaries’.

8 According to Article 4(4) of that regulation:

‘Member States, at the appropriate territorial level, in accordance with their institutional, legal and financial framework, and the bodies designated by them for that purpose shall be responsible for preparing and implementing programmes and carrying out their tasks, ... in compliance with this Regulation and the ... rules [specific to the European Structural and Investment Funds (‘ESI Funds’)].’

9 Under the heading ‘Eligibility’, Article 65(1), (2) and (6) of that regulation states:

‘1. The eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, this Regulation or the Fund-specific rules.

2. Expenditure shall be eligible for a contribution from the ESI Funds if it has been incurred by a beneficiary and paid between the date of submission of the programme to the Commission or from 1 January 2014, whichever is earlier, and 31 December 2023. ...

...

6. Operations shall not be selected for support by the ESI Funds where they have been physically completed or fully implemented before the application for funding under the programme is submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary.’

#### *The EMFF Regulation*

10 Article 6 of the EMFF Regulation, entitled ‘Union priorities’, provides, in paragraph 5 thereof:

‘The EMFF shall contribute to the Europe 2020 strategy and to the implementation of CFP. It shall pursue the following Union priorities for the sustainable development of fisheries and aquaculture and related activities, which reflect the relevant thematic objectives referred to in [the CSC Regulation]:

...

5. Fostering marketing and processing by pursuing the following specific objectives:  
(a) the improvement of market organisation for fishery and aquaculture products;  
(b) the encouragement of investment in the processing and marketing sectors.

...’

11 Entitled ‘Production and marketing plans’, Article 66 of the EMFF Regulation reads as follows:

‘1. The EMFF shall support the preparation and implementation of production and marketing plans referred to in Article 28 of [the CMO Regulation].

2. Expenditure related to production and marketing plans shall be eligible for support from the EMFF only after approval by the competent authorities in the Member State of the annual report referred to in Article 28(5) of [the CMO Regulation].

3. Support granted per producer organisation per year under this Article shall not exceed 3% of the average annual value of the production placed on the market by that producer organisation during the preceding three calendar years. ...

4. The Member State concerned may grant an advance of 50% of the financial support after approval of the production and marketing plan in accordance with Article 28(3) of [the CMO Regulation].

5. The support referred to in paragraph 1 shall only be granted to producer organisations and associations of producers organisations.'

- 12 Article 68 of the EMFF Regulation, entitled 'Examination of opposition', provides, in paragraph 1 thereof:

'The EMFF may support marketing measures for fishery and aquaculture products ...'

*Implementing Regulation (EU) No 1418/2013*

- 13 Commission Implementing Regulation (EU) No 1418/2013 of 17 December 2013 concerning production and marketing plans pursuant to Regulation No 1379/2013 (OJ 2013 L 353, p. 40) states, in Article 2(1) thereof:

'Producer organisations shall submit their first plans to their competent national authorities by end of February 2014. ...'

*Legislative Decree No 2014/2*

- 14 Point 3.3 of Guidelines No 2014/2 of the Commission of 13 June 2014 on the integration of market size into the EMFF's operational programmes, indicates inter alia:

'The content, validation and decision on the level of funding of [production and marketing plans] fall within the competence of the Member States: Member States must approve [production and marketing plans] and determine the amount of funding for each of them. ...'

*Netherlands law*

*The General Administrative Law Act*

- 15 By virtue of Article 4:23(1) of the wet houdende algemene regels van bestuursrecht (Algemene wet bestuursrecht) [Act setting out the general rules of administrative law (General Administrative Law Act), of 4 June 1992 (*Stb.* 1992, No 315), an administrative authority may issue grants only under a statutory provision specifying the activities for which a grant may be issued.

*The Decree on European grants in the field of economic affairs*

- 16 On 1 July 2015, the Regeling van de Staatssecretaris van Economische Zaken, nr. WJZ/15083650, houdende vaststelling van subsidie-instrumenten in het kader van de Europese structuur- en investeringsfondsen op het terrein van Economische Zaken (Regeling Europese EZ-Subsidies) [Decree of the State Secretary for Economic Affairs No WJZ/15083650 establishing grant instruments within the framework of the European Structural and Investment Funds in the field of economic affairs (Decree on European grants in the field of economic affairs)], of 28 June 2015 (*Stcrt.* 2015, No 18094), entered into force.
- 17 According to Article 2.2 of that decree, the activities referred to in the EMFF Regulation may be subsidised by the Minister of Agriculture, Nature and Food Quality, on request.

- 18 Under Article 2.3(1) of that decree, that minister may grant a subsidy only if he has made provision for the possibility of submitting a subsidy application, and setting a subsidy threshold and a deadline for submitting the application.

*The Decree providing for the subsidy module relating to production and marketing plans*

- 19 By the Regeling van de Staatssecretaris van Economische Zaken, nr. WJZ/16105576, houdende wijziging van de Regeling Europese EZ-subsidies en de Regeling openstelling EZ-subsidies 2016 in verband met de subsidiemodule inzake productie- en afzetprogramma's en andere wijzigingen in het kader van het Europees Fonds voor Maritieme Zaken en Visserij (Decree of the Secretary of State for Economic Affairs No WJZ/16105576 amending the Decree on European grants in the field of economic affairs and the Decree initiating the 2016 round of European grants in the field of economic affairs as regards the subsidy module relating to production and marketing plans and making further amendments within the framework of the European Maritime and Fisheries Fund), of 25 August 2016 (*Stcrt.* 2016, No 43926; 'Decree laying down the subsidy module relating to production and marketing plans'), the Kingdom of the Netherlands laid down the subsidy module relating to production and marketing plans for the period from 29 August to 16 September 2016.

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

- 20 PO Texel is a producer organisation within the meaning of Article 6(1) of the CMO Regulation, the purpose of which is the adoption of measures to promote rational fishing practices and improve the conditions of sale for fishery products.
- 21 On 29 April 2014, that organisation, in accordance with Article 28(1) of the CMO Regulation, submitted its 2014 production and marketing plan to the Minister of Agriculture, Nature and Food Quality for approval.
- 22 By decision of 9 July 2014, that minister, in accordance with Article 28(3) of the CMO Regulation, approved the plan, which PO Texel then immediately implemented in accordance with that same provision.
- 23 In October 2014, the Kingdom of the Netherlands submitted an operational programme to the Commission for the period from 1 January 2014 to 31 December 2020.
- 24 Following the Commission's approval, on 25 February 2015, of the operational programme submitted by the Kingdom of the Netherlands, PO Texel addressed, on 19 May 2015, a grant application to the Minister of Agriculture, Nature and Food Quality, on the basis of its 2014 production and marketing plan, in order to be eligible for EMFF support for the expenditure it had incurred both for the preparation and implementation of that plan as well as for the marketing measures it had adopted.
- 25 By decision of 10 July 2015, that minister dismissed PO Texel's application. It considered that, at the date on which the grant application was submitted, the Kingdom of the Netherlands had not yet provided for the possibility for such an application to be submitted, either for the preparation and implementation of production and marketing plans under Article 66 of the EMFF Regulation or for the marketing measures for fishery and aquaculture products taken by producer organisations in accordance with Article 68 of that regulation. It also considered that it was only after it had drawn up the 2014 production and marketing plan and after, following the minister's approval, it had implemented it, that PO Texel submitted its grant application.
- 26 The complaint made by PO Texel against that decision was rejected as unfounded by the Minister of Agriculture, Nature and Food Quality by decision of 13 November 2015.

- 27 In support of the action it has brought against that decision before the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands), PO Texel claims *inter alia* that it is eligible for EMFF support, under Article 66 of the EMFF regulation, for expenditure incurred in the preparation and implementation of the 2014 production and marketing plan that it adopted. It states in that respect that it had to submit a production and marketing plan pursuant to Article 28(1) of the CMO Regulation.
- 28 For his part, the Minister of Agriculture, Nature and Food Quality submits, in essence, that he could not act on PO Texel's grant application because, at the date on which it was submitted, the Kingdom of the Netherlands had not provided for the possibility of lodging such an application and, in any event, the chapter of the EMFF Regulation to which Article 66 thereof applies leaves a wide margin of discretion to the Member States.
- 29 It is in those circumstances that the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:
- '(1) (a) Does Article 66(1) of [the EMFF Regulation], given that it provides that the EMFF 'shall' support the preparation and implementation of production and marketing plans referred to in Article 28 of [the CMO Regulation], preclude a Member State from responding to a producer organisation which has submitted an application for such a grant, by arguing that the Member State concerned had not made available, either in its operational programme approved by the European Commission, or in the national rules for determining the eligibility of expenditure, the possibility of making such an application at the time of the submission of the application for a certain category of expenditure (in the present case: the costs of the preparation and implementation of production and marketing plans) or for a certain period (in the present case: the year 2014)?
- (b) Is it relevant to the answer to question 1(a) that the producer organisation is obliged, under Article 28(1) of [the CMO Regulation], to draw up a production and marketing plan and, after approval of the production and marketing plan by the Member State, to implement that production and marketing plan?
- (2) If the answer to question 1(a) is that Article 66(1) of [the EMFF Regulation] precludes a Member State from responding to a producer organisation which has submitted an application for a grant for the preparation and implementation of production and marketing plans by arguing that the Member State concerned had not made available the possibility of making such an application at the time of the submission of the application, can the grant applicant concerned then rely directly on Article 66(1) of [the EMFF Regulation] as the legal basis for a claim against his Member State on the provision of the grant in question?
- (3) If the answer to question 2 is that, in the case referred to in question 2, the grant applicant concerned can rely directly on Article 66(1) of [the EMFF regulation] as the legal basis for a claim against his Member State on the provision of the grant in question, does Article 65(6) of [the CSC regulation] then preclude the provision of a grant for the preparation and implementation of a production and implementation plan in a situation where the grant application is submitted after the production and marketing plan has been prepared and implemented?'

## Consideration of the questions referred

### *Preliminary observations*

- 30 It should be borne in mind, as a preliminary remark, that the most recent reform in the field of the CFP took place with the entry into force of the CMO, CFP and EMFF Regulations, taking effect on 1 January 2014.
- 31 In order to achieve the effects of that reform, the EU legislature explicitly highlighted the need to provide producer organisations with the financial support necessary to do so, while putting at their disposal a special support tool, namely production and marketing plans.
- 32 The conditions governing the preparation and implementation of those plans are set out in Article 28 of the CMO Regulation, which subjects producer organisations to a number of obligations, such as, first, to submit such a plan for approval by the competent national authorities, second, once that plan is approved by those authorities, to implement it immediately and, third, to prepare an annual report of their activities under the plan and to submit it to the competent national authorities. It is only after those authorities have approved that annual report that the expenditure incurred by producer organisations in preparing and implementing their respective production and marketing plans becomes eligible for EMFF support.
- 33 The financing arrangements for those plans are governed by the EMFF Regulation, which is the CFP's financial instrument for the programming period from 1 January 2014 to 31 December 2020 and, in particular, by Article 66 of that regulation.
- 34 In that respect, it should be noted that EMFF funding is implemented on the basis of the single operational programmes drawn up by each Member State and covering the entire programming period. Those programmes, which are to be submitted to the Commission, must contain a financing plan and a description of the strategy to be followed, in order to demonstrate that the allocation of financial resources to the EU priorities referred to in Article 6 of that regulation is capable of duly contributing to the achievement of the objectives set by those programmes. Once those same programmes are approved by the Commission, it is for the Member States to set the national criteria for eligibility of expenditure and to provide for the possibility of submitting an application for a grant under the EMFF. In the case at hand, that possibility was provided for by the Kingdom of the Netherlands only on 25 August 2016, by the decree laying down the subsidy module relating to production and marketing plans.
- 35 It is also important to note that, due to the late adoption of the EMFF Regulation, which took place only on 15 May 2014, with retroactive application from 1 January 2014, and the fact that the operational programmes could therefore be submitted by the Member States to the Commission only after that date, producer organisations had to prepare and implement their 2014 production and marketing plans when the possibility of receiving the financial support referred to in Article 66 of that regulation had not yet been formally provided for. Those organisations were required, in accordance with Article 2 of Implementing Regulation No 1418/2013, to submit their respective plans for 2014 before the end of the month of February of that year. In the case at hand, PO Texel did not submit its plan to the competent national minister until 29 April 2014.
- 36 In that respect, although Implementing Regulation No 1418/2013 obliges producer organisations to submit their 2014 production and marketing plans before the end of the month of February of that year, given that that regulation did not prescribe any consequences in the event of non-compliance with that time requirement, the Netherlands authorities had not seen fit to attach importance to the



late submission of Texel PO's plan. That Government has confirmed that, in any event, that delay could not have any consequences for the producer organisation, such as depriving it of its right to qualify for a grant under the EMFF.

### *Question 1*

- 37 By its first question, the national court asks, in essence, whether Article 66(1) of the EMFF Regulation must be interpreted as precluding a Member State from refusing to act on a subsidy application from a producer organisation in respect of the expenditure it has incurred preparing and implementing a production and marketing plan, on the ground that, at the date on which it submitted its application, that State had not yet provided, in its internal legal order, for the possibility for such an application to be processed. It questions whether the fact that Article 28 of the CMO Regulation requires those organisations to draw up such plans and implement them once they have been approved by the competent national authorities is liable to affect the answer to be given to that question.
- 38 In that respect, it must be determined at the outset whether, by stating in Article 66(1) of the EMFF Regulation that the EMFF is to 'support' the preparation and implementation of production and marketing plans, the EU legislature intended to introduce an obligation for Member States to take the measures necessary to ensure that producer organisations can benefit from EMFF support for the preparation and implementation of such plans.
- 39 Under Article 66(1) of the EMFF Regulation, the EMFF 'shall support' the preparation and implementation of the production and marketing plans referred to in Article 28 of the CMO Regulation.
- 40 The use of the mandatory wording 'shall support' militates in favour of an interpretation of Article 66(1) of the EMFF Regulation obliging the Member States, in compliance with the conditions set out in that article, to provide for the grant of support for the preparation and implementation of the production and marketing plans referred to in Article 28 of the CMO Regulation.
- 41 That interpretation is supported both by the background of Article 66(1) of the EMFF Regulation and by the context and the objectives pursued by the rules of which it forms part.
- 42 First of all, as far as the background of that provision is concerned, it should be pointed out, first, that, as the Advocate General observed in point 46 of his Opinion and as the Commission has noted in its written observations, the EU legislature deliberately chose to word Article 66(1) of the EMFF Regulation in mandatory terms. Indeed, it is apparent from the preparatory work for that provision that, while, in the Commission's proposal for a Regulation on the EMFF (COM(2011) 804 final), the formulation whereby the EMFF 'may support' was suggested, it was nevertheless not used in the provision's final text. The European Parliament had insisted that the expression 'the EMFF shall support' be used in order to ensure that financial support was granted to producer organisations under the EMFF for the preparation and implementation of production and marketing plans.
- 43 Second, that same interpretation is reflected both in point 3.3 of Guidelines No 2014/2, according to which Member States 'must' approve production and marketing plans and determine the amount of funding for each of them, and in the indications provided by the Commission in the FAQ section of its website where it is indicated, in essence, that national authorities 'must support' the preparation and implementation of production and marketing plans by means of funding under the EAMF, provided that those plans have been approved by the competent national authority and that that support comes within the limit prescribed by Article 66(3) of the EAMF Regulation.

- 44 Admittedly, neither the Commission's guidelines nor the indications provided by that institution in the FAQ section of its website can bind the Court. However, they may be a useful source of guidance (see, by analogy, judgment of 17 March 2016, *Parliament v Commission*, C-286/14, EU:C:2016:183, paragraph 43 and the case-law cited).
- 45 Next, with regard to the context of Article 66(1) of the EMFF Regulation, that provision should be considered, on the one hand, to differ from the vast remainder of the provisions of the EMFF Regulation, such as Articles 48 and 68 of thereof, which indicate, in optional terms, that support 'may be granted' or that the EMFF 'may support' certain measures or operations.
- 46 On the other hand, it is important to note that Article 66(1) of the EMFF Regulation refers explicitly to Article 28 of the CMO Regulation, paragraph 6 of which seeks to ensure that, provided that the conditions laid down in paragraphs 1, 3 and 5 of that article are met, producer organisations must be able to receive financial support for the preparation and implementation of production and marketing plans.
- 47 The mandatory nature of the wording of Article 66(1) of the EMFF Regulation cannot be called into question by the Netherlands Government's observation that the wording used by the EU legislature in Article 28(6) of the CMO Regulation, to the extent that it provides that producer organisations 'may receive financial support ... in accordance with a future Union legal act', means, in essence, that it intended to leave it to the Member States to decide whether to provide such support to those organisations. Indeed, the reference to the verb 'may' in that provision should not be understood in its optional connotation but should be interpreted in a forward-looking manner, reading the provision in the light of the fact that those organisations were to receive financial support under a future EU act, which subsequently became the EMFF Regulation.
- 48 The mandatory nature of the wording of Article 66(1) of the EMFF Regulation must also be regarded as a logical consequence of that provision's relationship with the obligations imposed on producer organisations under Article 28(1), (3) and (5) of the CMO Regulation, as recalled in paragraph 32 of the present judgment.
- 49 Last, the mandatory nature of the wording of Article 66(1) of the EMFF Regulation is also necessary in view of the objectives pursued by the most recent CFP reform and given the purpose and general scheme of the EMFF Regulation.
- 50 In that regard, it should be recalled, in the first place, that the EU legislature explicitly highlighted, in recitals 7 and 14 of the CMO Regulation, the need to enhance the responsibilities of producer organisations and to provide them with the necessary financial support to allow them to play a more meaningful role in the day-to-day management of fisheries, so that they can steer their members towards sustainable fishery and aquaculture activities, in line with the framework defined by the objectives of the CFP. As the Advocate General noted, in essence, in points 49 to 51 of his Opinion, the objective pursued by the financial support provided for in Article 66(1) of the EMFF Regulation and, more generally, by the financing system introduced in the context of the most recent CFP reform, must be read in conjunction with the major role given to those organisations, in so far as they have been required to make a genuine contribution to the accomplishment of a task undertaken in the general interest.
- 51 In the second place, it is important to note that, according to Article 66(5) of the EMFF Regulation, the support referred to in paragraph 1 of that article may only be granted to producer organisations or to associations of such organisations. In that respect, as the Advocate General pointed out in point 50 of his Opinion, the financing system established under the EMFF differs significantly from that of other ESI Funds.

- 52 In the third place, it should be noted that the importance underpinning the need to provide EMFF support to those organisations for the preparation and implementation of production and marketing plans is supported by the fact that the EU legislature explicitly provided, in Article 66(4) of the EMFF Regulation — and primarily due to the fact that a minimum period of 1 year elapses between the date of the preparation of such plans and the date on which such organisations are eligible for EMFF funding following the approval of their annual report by the competent national authorities — for the possibility for Member States to grant them an advance of 50% of the financial support claimed under those plans.
- 53 It follows from all the foregoing elements that Article 66(1) of the EMFF Regulation must be understood as imposing an obligation on Member States to take the measures necessary to ensure that producer organisations can benefit from EMFF funding both for the preparation and for the implementation of production and marketing plans.
- 54 In order to fulfil that obligation, Member States are required to provide in their internal legal orders that producer organisations may submit their applications for EMFF grants for the preparation and implementation of their production and marketing plans. They must, moreover, in accordance with Article 66(2) and (3) of the EMFF Regulation, read in conjunction with Articles 4(4) and 65(1) of the CSC Regulation, adopt implementing measures for the EMFF Regulation as regards the eligibility of expenditure and, in particular, determine the criteria relating to the starting date of eligibility of such expenditure and the method for calculating the amount to be granted to each of those organisations.
- 55 In that regard, it is apparent from settled case-law that, when adopting measures to implement EU legislation, national authorities must exercise their discretion in compliance with the general principles of law, which include the principles of legal certainty and the protection of legitimate expectations (see, to that effect, judgment of 14 September 2006, *Slob*, C-496/04, EU:C:2006:570, paragraph 41). National authorities are also required to exercise their discretion in compliance with their general duty of care under Article 4(3) TEU.
- 56 In the case at hand, as is apparent from paragraphs 19 and 34 of the present judgment, it was only on 25 August 2016, when the decree laying down the subsidy module relating to production and marketing plans was adopted, that the Kingdom of the Netherlands provided, in its internal legal order, for the possibility for producer organisations to submit their EMFF grant applications. It is moreover apparent from the order for reference that the dismissal by the Minister of Agriculture, Nature and Food Quality of PO Texel's application for financial support under Article 66(1) of the EMFF Regulation for its 2014 production and marketing plan was motivated, in essence, by the fact that, at the time of that application's submission, namely, 19 May 2015, the Kingdom of the Netherlands had not yet provided for the possibility for such an application to be processed.
- 57 It should also be pointed out that, first, in the light of the information provided by the referring court, the prospect of supporting producer organisations had been provided for, at least as regards the preparation of production and marketing plans, in the operational programme submitted to the Commission by that Member State. Second, it is important to bear in mind that, when questioned on this point at the hearing, the Netherlands Government confirmed that the decree laying down the subsidy module relating to production and marketing plans did not have retroactive effect, such that it could not govern EMFF support applications submitted by producer organisations prior to its adoption.
- 58 In that context, it must be considered that inertia on the part of the national authorities such as that shown by the Netherlands authorities in the case in the main proceedings cannot fall within the margin of discretion enjoyed by the Member States in the implementation of their respective operational programmes, even though that implementation must be done, pursuant to Article 4(4) of the CSC Regulation, in accordance with their institutional, legal and financial framework.

59 In the light of all the foregoing considerations, the answer to the first question is that Article 66(1) of the EMFF Regulation must be interpreted as precluding a Member State from refusing to act on a subsidy application from a producer organisation in respect of the expenditure it has incurred preparing and implementing a production and marketing plan, on the ground that, at the date on which it submitted its application, that State had not yet provided, in its internal legal order, for the possibility for such an application to be processed.

## Question 2

60 By its second question, the national court asks, in essence, whether Article 66(1) of the EMFF Regulation must be interpreted as directly creating for producer organisations, such as that at issue in the main proceedings, a right to financial support under the EMFF for the expenditure they have incurred in preparing and implementing a production and marketing plan.

61 In that regard, it is apparent from the case-law of the Court that a provision of an EU regulation is capable of giving rise to rights of which parties may avail themselves in a court of law only if it is clear, precise and unconditional and does not leave any margin of appreciation to the authorities by whom it is to be applied (see, to that effect, judgment of 24 October 1973, *Schlüter*, 9/73, EU:C:1973:110, paragraph 32).

62 It is also apparent from the case-law of the Court that a provision of European Union law is unconditional where it sets forth an obligation which is not qualified by any condition, or subject, in its implementation or effects, to the taking of any measure either by the institutions of the European Union or by the Member States (judgment of 26 May 2011, *Stichting Natuur en Milieu and Others*, C-165/09 to C-167/09, EU:C:2011:348, paragraph 95 and the case-law cited).

63 In the case at hand, it is important to bear in mind that, as the Advocate General observed in point 84 of his Opinion, it is apparent from the very wording of Article 66(1) of the EMFF Regulation that that provision alone does not go beyond setting out a principle of financing in very general terms and that it is necessary, therefore, to take account of the details provided by other provisions of that regulation and, in particular, of those of Article 66(2) and (3) of that regulation.

64 It should be noted that those paragraphs lay down certain conditions relating, on the one hand, to the fact that the expenditure incurred by producer organisations in connection with production and marketing plans is eligible for EMFF support only after approval, by the competent national authorities, of the annual report referred to in Article 28(5) of the CMO Regulation and, on the other hand, that the support granted per producer organisation per year must not exceed 3% of the average annual value of the production placed on the market by it during the preceding three calendar years. The precise amount of the support is therefore not determined by Article 66 of the EMFF Regulation. Accordingly, the grant of support is made subject *inter alia* to the determination of the exact amount of it by the Member States.

65 It follows that Article 66(1) of the EMFF Regulation does not meet the criterion of unconditionality following from the case-law cited in paragraph 62 of the present judgment.

66 That being said, it should be added that, in the event that the referring court is unable to interpret the provisions of its national law in such a way as to enable it to reach a solution compatible with the objectives pursued by the most recent reform of the CFP and thereby ensure the full effectiveness of EU law, in such a situation, a party adversely affected as a result of domestic law not being in conformity with EU law could however rely on the case-law arising from the judgment of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428), in order to obtain, if appropriate, compensation for the loss sustained (see, to that effect, judgment of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 56 and the case-law cited).

67 In view of the foregoing considerations, the answer to the second question is that Article 66(1) of the EMFF Regulation must be interpreted as not directly creating for producer organisations a right to financial support under the EMFF for the expenditure they have incurred in preparing and implementing a production and marketing plan.

### *Question 3*

68 By its third question, the referring court asks, in essence, whether Article 65(6) of the CSC Regulation must be interpreted as precluding the issuance of a grant under the EMFF for the preparation and implementation of a production and marketing plan where the grant application has been submitted after the preparation and implementation of such a plan.

69 According to that provision, operations will not be selected for support by the ESI Funds where they have been physically completed or fully implemented before the application for funding under the programme is submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary.

70 In that respect, it should be noted, on the one hand, that the preparation and implementation of production and marketing plans must be considered as a continuous action, lasting throughout the programming period from 1 January 2014 to 31 December 2020. In accordance with Article 28 of the CMO Regulation, the preparation of such a plan is not considered as a series of isolated actions implemented separately, but as a single continuous action with continuous operational costs. Even though, pursuant to Article 28(5) of that regulation, such a plan must be the subject of an annual report, it lasts only until the end of that programming period. Accordingly, the preparation and implementation of a production and marketing plan during the programming period in question cannot be regarded as 'fully implemented' within the meaning of Article 65(6) of the CSC Regulation.

71 On the other hand, in the light of the definition provided by the EU legislature in Article 2(14) of the CSC Regulation, a given operation is not considered to have been 'completed' until, inter alia, all related payments have been made by beneficiaries and the corresponding public contribution has been paid to them. Under Article 28(1) and (3) of the CMO Regulation, however, producer organisations are required to submit production and marketing plans to the competent national authorities for approval and must, once those plans have been approved, immediately implement them. Pursuant to paragraph 5 of that article, those organisations must prepare an annual report of their activities under their respective plans and submit it to their competent national authorities. It is only after the approval of that annual report by the latter that the expenditure incurred by producer organisations in the preparation and implementation of their respective production and marketing plans becomes eligible for support from the EMFF, by virtue of Article 66(2) of the EMFF Regulation.

72 Moreover, an interpretation of Article 65(6) of the CSC Regulation whereby it precludes the issuance of a grant under Article 66(1) of the EMFF Regulation for the preparation and implementation of a production and marketing plan where the grant application has been submitted after the preparation and implementation of such a plan would make it materially impossible for those organisations to receive such support. It would therefore have the effect of depriving Article 66(1) of the EMFF Regulation of its effectiveness.

73 In view of the foregoing considerations, the answer to the third question is that Article 65(6) of the CSC Regulation must be interpreted as not precluding the issuance of a grant under the EMFF for the preparation and implementation of a production and marketing plan where the grant application has been submitted after the preparation and implementation of such a plan.

## Costs

<sup>74</sup> 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 (Second Chamber) hereby rules:

- 1. Article 66(1) of Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council must be interpreted as precluding a Member State from refusing to act on a subsidy application from a producer organisation for fishery and aquaculture products in respect of the expenditure it has incurred preparing and implementing a production and marketing plan, on the ground that, at the date on which it submitted its application, that State had not yet provided, in its internal legal order, for the possibility for such an application to be processed.**
- 2. Article 66(1) of Regulation No 508/2014 must be interpreted as not directly creating for producer organisations for fishery and aquaculture products a right to financial support under the European Maritime and Fisheries Fund for the expenditure they have incurred in preparing and implementing a production and marketing plan.**
- 3. Article 65(6) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 must be interpreted as not precluding the issuance of a grant under the European Maritime and Fisheries Fund for the preparation and implementation of a production and marketing plan where the grant application has been submitted after the preparation and implementation of such a plan.**

[Signatures]