



Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 4 February 2021¹

Case C-830/19

C.J.

v

Région wallonne

(Request for a preliminary ruling
from the Tribunal de première instance de Namur (Court of First Instance, Namur, Belgium))

(Reference for a preliminary ruling – Agriculture – EAFRD – Regulation (EU) No 1305/2013 – Delegated Regulation (EU) No 807/2014 – Start-up aid for young farmers – Young farmer setting up in business with other farmers who are not young – Conditions – Calculation of the upper threshold – Principle of equality)

1. The rural development support scheme established by Regulation (EU) No 1305/2013² provides for the aid available under that scheme to be granted to, inter alia, young farmers with adequate occupational skills and competence who are setting up for the first time as head of an agricultural holding.³

2. Member States may impose conditions on access to such start-up aid. In particular, Regulation No 1305/2013 authorises them to set a maximum production threshold whereby heads of agricultural holdings who exceed that threshold are not eligible for support.

3. In Belgium, the rules of the Région wallonne (Walloon Region, Belgium) set that upper threshold at EUR 1 million of standard gross output ('SGO') for agricultural holdings situated in its territory, 'in the case where the person setting up in business is a young farmer'.⁴

4. In the present case, a young farmer applied for start-up aid in connection with an agricultural holding the SGO of which exceeded the upper threshold but which he jointly owned (in the ratio of one third) on a *pro indiviso* basis with his father and mother. He claimed that he and his father formed an 'unincorporated association' and that they both managed the holding, over which they exercised effective control.

¹ Original language: Spanish.

² Regulation of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ 2013 L 347, p. 487); corrigendum (OJ 2016 L 130, p. 1).

³ Applied to young farmers, the expression 'head of a holding', within the meaning of Regulation No 1305/2013, refers to the person who has effective and long-term control of both the farm and its management.

⁴ The threshold is raised to EUR 1 500 000 where two or more young farmers are setting up in business at the same time.

5. The Department of Agriculture of the Walloon Region refused to grant the support, on the ground that the holding exceeded the SGO upper threshold. The referring court wishes to ascertain, in essence, whether EU law precludes national legislation which sets that upper threshold on the basis of the agricultural holding as a whole rather than on the basis of the share owned by the young farmer.

I. Legislative framework

A. EU law

1. Regulation No 1305/2013

6. Recital 17 states:

‘... A farm and business development measure should facilitate the initial establishment of young farmers and the structural adjustment of agricultural holdings after the initial setting up. ... The development of small farms which are potentially economically viable should also be encouraged. ... Support for a business start-up should cover only the initial period of the life of such a business and should not become an operating aid. ...

...’

7. According to paragraph 1(n) of Article 2 (‘Definitions’),⁵ a ‘young farmer’ means a ‘person who is no more than 40 years of age at the moment of submitting the application, possesses adequate occupational skills and competence and is setting up for the first time in an agricultural holding as head of that holding’.

8. Article 2(3) states:

‘In order to ensure a coherent approach in the treatment of beneficiaries and to take into account the need for an adaptation period, as regards the definition of young farmer laid down in paragraph 1(n), the Commission shall be empowered to adopt delegated acts ... concerning the conditions under which a legal person may be considered to be a ‘young farmer’, and the setting of a grace period for the acquisition of occupational skills.’

9. In accordance with Article 5 (‘Union priorities for rural development’):

‘The achievement of the objectives of rural development, which contribute to the Europe 2020 strategy for smart, sustainable and inclusive growth, shall be pursued through the following six Union priorities for rural development, which reflect the relevant Thematic Objectives of the CSF [Common Strategic Framework]:

...

⁵ According to the wording applicable at the time when the application was submitted in the present case.

- (2) enhancing farm viability and competitiveness of all types of agriculture in all regions and promoting innovative farm technologies and the sustainable management of forests, with a focus on the following areas:

...

- (b) facilitating the entry of adequately skilled farmers into the agricultural sector and, in particular, generational renewal.

...'

10. Article 19 ('Farm and business development') provided:

'1. Support under this measure shall cover:

- (a) business start-up aid for:

- (i) young farmers;

...

- (iii) the development of small farms;

...

2. Support under point (a)(i) of paragraph 1 shall be granted to young farmers.

...

Support under point (a)(iii) of paragraph 1 shall be granted to small farms as defined by Member States.

...

4. Support under point (a) of paragraph 1 shall be conditional on the submission of a business plan. Implementation of the business plan must start within nine months from the date of the decision granting the aid.

For young farmers receiving support under point a(i) of paragraph 1, the business plan shall provide that the young farmer complies with Article 9 of Regulation (EU) No 1307/2013, regarding active farmers within 18 months from the date of setting-up.

Member States shall define upper and lower thresholds for allowing agricultural holdings access to support under points (a)(i) and (a)(iii) of paragraph 1. The lower threshold for support under point (a)(i) of paragraph 1 shall be higher than the upper threshold for support under point (a)(iii) of paragraph 1. Support shall be limited to holdings coming under the definition of micro and small enterprises.

...

8. In order to ensure the efficient and effective use of EAFRD resources, the Commission shall be empowered to adopt delegated acts ... laying down the minimum content of business plans and the criteria to be used by Member States for setting the thresholds referred to in paragraph 4 of this Article.’

2. *Delegated Regulation (EU) No 807/2014*⁶

11. Recital 2 states:

‘Member States should establish and apply specific conditions for access to support for young farmers in case they are not setting up as sole head of the holding. In order to ensure equal treatment of beneficiaries irrespective of the legal form under which they choose to set up in an agricultural holding, it should be provided that the conditions under which a legal person or other form of partnership may be considered to be a “young farmer” should be equivalent to those of a natural person. A grace period, sufficiently long to allow young farmers to acquire the needed qualifications, should be provided for.’

12. According to recital 5:

‘... In order to ensure equal treatment among beneficiaries across the Union and to facilitate monitoring, the criterion to be used for setting the thresholds referred to in Article 19(4) of [Regulation No 1305/2013] should be production potential of the agricultural holding.’

13. Article 2 (‘Young farmer’) provides:

‘1. Member States shall establish and apply specific conditions for access to support where a young farmer as defined in Article 2(1)(n) of [Regulation No 1305/2013] is not setting up as a sole head of the holding, irrespective of its legal form. These conditions shall be equivalent to those required for a young farmer setting up as a sole head of a holding. In all cases, control over the holding shall be held by young farmers.

2. Where the application for support concerns a holding owned by a legal person, a young farmer within the meaning of Article 2(1)(n) of [Regulation No 1305/2013] shall exercise effective and long-term control over the legal person in terms of decisions related to management, benefits and financial risks. Where several natural persons, including person(s) who are not young farmer(s), participate in the capital or management of the legal person, the young farmer shall be capable of exercising such effective and long-term control either solely or jointly together with other farmers.

Where a legal person is solely or jointly controlled by another legal person, requirements laid down in the first subparagraph shall apply to any natural person having control over that other legal person.

...’

⁶ Commission Regulation of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions (OJ 2014 L 227, p. 1).

14. Paragraph 2 of Article 5 ('Farm and business development') provides:

'Member States shall define the thresholds referred to in the third subparagraph of Article 19(4) of [Regulation No 1305/2013] in terms of production potential of the agricultural holding, measured in standard output, as defined in Article 5 of Commission Regulation (EC) No 1242/2008 [⁷ ...], or an equivalent.'

3. Regulation (EU) 2017/2393⁸ (Omnibus Regulation)

15. Recital 1 states:

'... experience from the negotiation of the programmes has shown that the rules for the joint setting up of young farmers and the thresholds for access to support required under Article 19(4) of [Regulation No 1305/2013] should be clarified, and that the provisions on the duration of the business plan should be streamlined.'

16. Pursuant to Article 1, the definition of the concept of 'young farmer' that was contained in Article 2(1)(n) of Regulation No 1305/2013 reads as follows:

'... person who is no more than 40 years of age at the moment of submitting the application, possesses adequate occupational skills and competence and is setting up for the first time in an agricultural holding as head of that holding; the setting up may be done solely or jointly with other farmers, irrespective of the legal form.'

17. Article 1 also amends the third subparagraph of Article 19(4) of Regulation No 1305/2013, which becomes the fifth subparagraph, worded as follows:

'Member States shall define upper and lower thresholds per beneficiary or holding for allowing access to support under points (a)(i) and (a)(iii) of paragraph 1. The lower threshold for support under point (a)(i) of paragraph 1 shall be higher than the upper threshold for support under point (a)(iii) of paragraph 1. The lower threshold for support under point (a)(i) of paragraph 1 shall be higher than the upper threshold for support under (a)(iii) of paragraph 1. Support shall be limited to holdings falling within the definition of micro and small enterprises.'

⁷ Commission Regulation of 8 December 2008 establishing a Community typology for agricultural holdings (OJ 2008 L 335, p. 3).

⁸ Regulation of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (OJ 2017 L 350, p. 15; 'the Omnibus Regulation').

4. Delegated Regulation (EU) 2019/94⁹

18. Article 1 amends Article 2(1) of Delegated Regulation No 807/2014, the new content of which reads:

‘The conditions for access to support for a young farmer, within the meaning of Article 2(1)(n) of [Regulation No 1305/2013], setting up in an agricultural holding as head of that holding jointly with other farmers shall be equivalent to the conditions required for a young farmer setting up as sole head of a holding. In all cases, young farmers shall hold control over the holding as defined by the provisions in force in the Member State.’

B. National law

1. Arrêté du Gouvernement wallon (AGW) du 10 septembre 2015 relatif aux aides au développement et à l’investissement dans le secteur agricole¹⁰

19. Article 25 provides, with respect to the grant of support:

‘The holding taken over or set up shall fulfil the following conditions:

...

6. Its standard gross output within the meaning of Article 5 of ... Regulation No 1242/2008 ... shall fall within a lower threshold and an upper threshold defined by the Minister. ...

...’

2. Arrêté ministériel du 10 septembre 2015 exécutant l’AGW¹¹

20. The second subparagraph of Article 7(2), in the version applicable to the present case, provides:

‘The upper threshold referred to in the first subparagraph of Article 25(6) of the [AGW] shall be EUR 1 000 000 in the case the person setting up in business is a young farmer and EUR 1 500 000 in the case where two or more young farmers are setting up in business at the same time.’

C. Facts, dispute and question referred for a preliminary ruling

21. C.J. acquired ownership of a third of the agricultural holding which had hitherto belonged in its entirety to his parents.

⁹ Commission Delegated Regulation of 30 October 2018 amending Delegated Regulation (EU) No 807/2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions (OJ 2019 L 19, p. 5).

¹⁰ Decree of the Walloon Government of 10 September 2015 on support for development and investment in the agricultural sector (Moniteur Belge of 25 October 2015; ‘the AGW’).

¹¹ Ministerial Decree of 10 September 2015 implementing the AGW (‘the AME’), as amended by the Ministerial Decree of 21 March 2016. Moniteur Belge of 4 April 2016.

22. Through his acquisition, C.J. sought to continue to run the family holding as a young farmer, and to manage it as part of an ‘unincorporated association’ with his father.

23. The other two thirds of the agricultural holding were owned by C.J.’s father and mother.

24. On 27 January 2016, C.J. applied to the Department of Agriculture of the Walloon Region for start-up aid (first start-up) on behalf of the unincorporated association he had formed with his father.

25. On 28 October 2016, the application was turned down because the holding’s SGO exceeded the upper threshold authorised by the national legislation (EUR 1 million).

26. On 2 November 2016, C.J. lodged an appeal against the decision refusing to grant the support, on the ground that, when the upper threshold for SGO was set, account should have been taken of the fact that the holding is owned by three persons and that the SGO had been calculated without consideration of the labour factor. In his view, it would be more logical to set the upper threshold by reference to the number of work units present on the holding.

27. By decision of 17 February 2017, The Department of Agriculture (Directorate for Agricultural Structures) of the Walloon Region dismissed the appeal.

28. C.J. brought an action against that decision before the Tribunal de première instance de Namur (Court of First Instance, Namur, Belgium), claiming that the Walloon Region should be ordered to pay EUR 70 000, by way of start-up aid, plus interest.

29. It is against that background that that court has referred the following question to the Court of Justice for a preliminary ruling:

‘Do Articles 2, 5 and 19 of Regulation (EU) No 1305/2013 ..., read in conjunction with Article 2 of ... Delegated Regulation (EU) No 807/2014 ..., preclude, in the implementation of those provisions, Member States from taking account of the entire holding and not only the share of the young farmer in it and/or of work units in order to determine the upper and lower thresholds where the agricultural holding is operated in the form of an unincorporated association in which the young farmer acquires an undivided share and exercises joint control over the holding?’

30. In the order for reference, the national court expresses its uncertainty as regards:

- the interpretation of Article 2 of Delegated Regulation No 807/2014, in so far as it concerns the conditions of access to support specifically applicable to a young farmer who is not setting up as sole head of the holding, and the concept of ‘conditions equivalent to those required for a young farmer who is setting up as sole head of a holding’;
- the compatibility with that provision of a national rule (Article 7 of the AME) ‘which does not take account only of the share of the young farmer in the holding or of work units in order to determine the SGO to be used in relation to the upper threshold’.

II. Procedure before the Court of Justice

31. The request for a preliminary ruling was registered at the Court of Justice on 15 November 2019.

32. Written observations have been submitted by C.J., the Walloon Region and the Commission. The hearing, held on 25 November 2020, was attended only by the Walloon Region and the Commission.

III. Positions of the parties

33. C.J. submits, in the first place, that, in the context of the assessment of the specific conditions laid down in Article 2 of Delegated Regulation No 807/2014, the form in which farmers choose to manage their holding – in the present case, as an unincorporated association – should not be prejudicial to them or entail any differences of treatment. He cites in support of that submission the judgment of the Court of Justice of 14 October 2010, *Landkreis Bad Dürkheim*.¹²

34. He goes on to claim that Article 7 of the AME does not distinguish between the situation of a young farmer who is not setting up as the sole head of a holding and that of another young farmer who is taking over a holding as its sole head.

35. In the view of C.J., Article 2 of Delegated Regulation No 807/2014 requires the conditions of access to support to be adjusted to each situation. As he is purchasing a share of the family holding, the upper threshold should be fixed on the sole basis of the upper threshold corresponding to that share.

36. In his opinion, even if Article 2 of Delegated Regulation No 807/2014 did not preclude the formula laid down in the national provision at issue, the latter would still be contrary to EU primary law, since the actual ‘work units’ are used to calculate the holding’s SGO for the purposes of determining [whether it falls above] the lower threshold but not for determining [whether it falls below] the upper threshold.

37. He maintains, lastly, that there are two forms of discrimination in the present case: that arising from the use of the abovementioned method for calculating the threshold and that to which he himself is exposed by comparison with another farmer having chosen, in the same circumstances, to split up the family holding.

38. The Walloon Region states at the outset that it did not refuse to grant support on account of the legal form chosen (an unincorporated association) but because the holding in question exceeds the SGO laid down in the national legislation.

39. It goes on to say that the objective of the European legislation is not to grant support to young farmers unconditionally, irrespective of the holding’s SGO, but to grant it only to those setting up in business on a holding the structure of which meets the SGO criterion.

40. According to the Walloon Region, start-up aid for a young farmer is not a right that is acquired regardless of the agricultural holding in question.

¹² Case C-61/09, EU:C:2010:606.

41. In that context, reliance on work units would be incompatible with the concept of SGO, which is established on the basis of the specific characteristics of the agricultural holding, not on the basis of work units.

42. The Walloon Region submits that, in suggesting that reliance be placed on the criterion of work units, the applicant is trying to artificially split up an agricultural holding that is indivisible.

43. The Commission argues that, even though the Omnibus Regulation entered into force after the application at issue was submitted, its provisions must be taken into account for the purposes of interpreting those mentioned in the order for reference.¹³

44. In its view, Articles 2, 5 and 19 of Regulation No 1305/2013, read in conjunction with Article 2 of Delegated Regulation No 807/2014, do not preclude Member States, when setting the lower and upper thresholds, from taking into account the agricultural holding as a whole rather than only the part that is owned by the young farmer or the work units, in the case where the holding in question is organised in the form of an unincorporated association in which the young farmer acquires an undivided share and becomes a head, but not the exclusive head, of the holding.

45. The Commission takes the view, however, that not taking into account the share which a young farmer acquires *pro indiviso* with other farmers who are not young farmers could, hypothetically, infringe the principle of equality. A young farmer setting up in business on a *pro indiviso* basis with a farmer who is not a young farmer is in a situation comparable to that of a young farmer setting up in business, again on a *pro indiviso* basis, with another young farmer.¹⁴

IV. Analysis

A. Preliminary clarifications

46. Before I turn to the substance of the questions, I must clarify two points.

47. The first concerns the national court's reference to the lower threshold applicable to agricultural holdings. As the sole purpose of these proceedings is to analyse the impact of the upper threshold for the agricultural holding's SGO, I agree with the Commission that the answer to be given by the Court of Justice must focus on this factor and not on the lower threshold.

48. The second clarification concerns the applicable rules of EU law.

49. The referring court's questions are confined to the interpretation of Regulation No 1305/2013 and Delegated Regulation No 807/2014. Both were in force at the time (27 January 2016) when the application the refusal of which gave rise to the present dispute was submitted.

¹³ In support of its proposition, it argues that, according to recital 1 of the Omnibus Regulation, the amendments introduced by that regulation are confined to 'clarifying' the legislation as it applies to joint start-ups by young farmers and the thresholds for access to the support provided for in Article 19(4) of Regulation No 1305/2013.

¹⁴ At the hearing, the Commission made it clear that this argument did not in practice affect the answer to be given to the question referred for a preliminary ruling. See points 105 and 106 of this Opinion, below.

50. The Commission considers, however, that those two regulations must be interpreted in the light of the clarifications relating to the first of them that were provided by the Omnibus Regulation, which entered into force on 1 January 2018 (that is to say, after the decision refusing to grant support was issued).

51. Recital 1 of the Omnibus Regulation states that ‘the rules for the joint setting-up of young farmers and the thresholds for access to support required under Article 19(4) of Regulation (EU) No 1305/2013 should be *clarified*’.¹⁵

52. The Omnibus Regulation, however, far from being confined to ‘clarifying’ the provisions of Regulation No 1305/2013, made some quite significant amendments to the latter regulation, including the following:

- Regulation No 1305/2013 made it possible for Member States to set upper and lower thresholds by *holding* only, whereas the Omnibus Regulation now makes it possible for them to set such thresholds by *beneficiary* too.
- The Omnibus Regulation rewords the definition of ‘young farmer’ that was contained in Article 2(1)(n) of Regulation No 1305/2013, in allowing such farmers to set up ‘solely or jointly with other farmers, irrespective of [the] legal form [the setting up takes]’.

53. It is true that those amendments do not have a significant bearing on this dispute, since:

- the national legislation at issue had elected to apply the objective criterion of the holding (rather than the subjective criterion of the beneficiary), as it was permitted to do by Regulation No 1305/2013 and is still permitted to do by the Omnibus Regulation. From that point of view, therefore, the national rule is in conformity with the provisions of both regulations;
- the new feature in relation to the concept of young farmer was already contained in Article 2(1) of Delegated Regulation No 807/2014. In this regard, the Omnibus Regulation espoused the amendment of ‘certain non-essential elements’ of Regulation No 1305/2013 which had been adopted by Delegated Regulation No 807/2014.¹⁶

54. Irrespective of the material harmony between Regulation No 1305/2013 and the Omnibus Regulation from the point of view of the subject matter of this dispute, the legislation applicable to it *ratione temporis* is, technically, that contained in the first of those regulations and, by delegation, Delegated Regulation No 807/2014.

¹⁵ Italics added.

¹⁶ In adopting Delegated Regulation No 807/2014, the Commission acted in accordance with the delegation expressly granted to it by Regulation No 1305/2013 under Article 290 TFEU.

B. Substance

1. Purpose and subject matter of Regulation No 1305/2013

55. Regulation No 1305/2013 introduces a number of general rules intended to govern rural development support financed from the EAFRD. In addition, it lays down the objectives to which the rural development policy is intended to contribute and the Union's priorities in this regard, and provides for measures aimed at implementing that policy.

56. In that context, Article 5 of Regulation No 1305/2013 sets out six priorities for rural development. Of those, it is the second, relating to the enhancement of farm viability, which is of interest here.

57. That priority must, in accordance with Article 5(2)(a) and (b) of Regulation No 1305/2013, 'focus' on two objectives:

- 'improving the economic performance of all farms and facilitating farm restructuring and modernisation ...'; and
- 'facilitating the entry of adequately skilled farmers into the agricultural sector and, in particular, generational renewal'.

58. Having defined the Union's priorities for rural development, Regulation No 1305/2013 provides, in Title III, for the support that is to contribute specifically to the achievement of one or more of those priorities (Article 13).

(a) Support for farm and business development

59. Article 19(1) of Regulation No 1305/2013 governs support aimed at 'farm and business development', including, *inter alia*, 'business start-up aid ... for young farmers ... or for the development of small farms'.¹⁷

60. The support at issue in this dispute is business start-up aid for young farmers.

61. It is clear from reading Article 19(1)(a) of Regulation No 1305/2013 that that form of aid is not granted indiscriminately in order to support the setting-up of any agricultural undertaking, but only that of those undertakings that meet a number of conditions in relation to their owners, their activities and their size.

62. Article 19(1)(a) of Regulation No 1305/2013 explicitly reserves this form of support for: (i) young farmers; (ii) non-agricultural activities in rural areas; and (iii) the development of small farms.

¹⁷ This form of support includes aid to promote investment in the start-up and development of non-agricultural activities and payments to small farmers who transfer their holdings to other farmers.

63. The third subparagraph *in fine* of Article 19(4) provides that this form of support ‘shall be limited to holdings coming under the definition of micro and small enterprises’.¹⁸

64. In actual fact, all of the support provided for in Article 19 of Regulation No 1305/2013 is reserved for small holdings. This is the case, of course and by definition, with support in the form of payments to small farmers, but is also true of the support through investment in the set-up and development of non-agricultural activities which is to be granted to micro and small enterprises, in accordance with the fourth subparagraph of Article 19(2) of Regulation No 1305/2013.¹⁹

65. In any event, for the purposes of the present case, Article 19(4) of Regulation No 1305/2013 is restrictive inasmuch as it states that business start-up aid is to be confined to holdings coming under the definition of micro and small enterprises.²⁰

66. It may be inferred from this premiss that small farms are the sole beneficiaries of the support provided for in Regulation No 1305/2013 as part of the policy of improving farm viability.

(b) In particular, business start-up aid for young farmers

67. It follows from the structure of Article 19(4) of Regulation No 1305/2013 that support for young farmers is configured on the basis of the support available to agricultural holdings.

68. Informed by that rule of thumb, Member States must determine the upper and lower thresholds within which agricultural holdings may access the support provided for in Article 19(1)(a)(i) of Regulation No 1305/2013 (business start-up aid for young farmers).

69. In short, the EU legislature opted to promote access to farming for young people as a variable of the policy of promoting business set-ups to develop small farms.

70. This follows from the way in which Article 19(4) of Regulation No 1305/2013 attaches conditions to the freedom of Member States to introduce upper and lower thresholds for access to this type of support.

71. In accordance with that provision, the lower threshold for eligibility for aid as a young farmer must be higher than the upper threshold laid down as a condition of eligibility for aid for the development of small farms.

¹⁸ That definition is found in Article 2 of Annex I to Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ 2001 L 10, p. 33), as amended by Commission Regulation (EC) No 364/2004 of 25 February 2004 (OJ 2004 L 63, p. 22). In accordance with that provision, ‘the category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million’ (paragraph 1). Within the category of SMEs, paragraph 2 of that article defines a small undertaking as one which ‘employ[s] fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million’. Finally, paragraph 3 of that provision defines a micro-enterprise as one which ‘employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million’.

¹⁹ According to the same provision, the latter support is also granted to ‘natural persons in rural areas’ in general and to ‘farmers or members of a farm household’. However, recital 17 of Regulation No 1305/2013 lays emphasis on the need to promote ‘the setting up and development of non-agricultural SMEs in rural areas’, thus making clear, to my mind, the legislature’s intention also to focus on small farms financing efforts in connection with the setting up and development of non-agricultural activities.

²⁰ This provision was retained following the amendment of that regulation by the Omnibus Regulation.

72. Article 19(4) of Regulation No 1305/2013 promotes the establishment of young farmers by guaranteeing that the lower threshold for qualifying for aid will be higher for them than the upper threshold laid down for micro and small enterprises. In other words, it ensures that, if they set up in business on a small farm, they will qualify for aid on terms more favourable than those laid down for farmers who are not young.

73. I therefore agree with the Walloon Region that Regulation No 1305/2013 allows national laws to make autonomous and unconditional support available to young farmers not on the basis of their personal circumstances (age and skills) alone but on the basis of the characteristics of the farms on which they set up in business.

74. The support scheme under Regulation No 1305/2013, which allows Member States to set upper thresholds as a limit on the availability of the support for which it provides, may therefore give rise to national legislation which, in the case of young farmers, makes support conditional upon the characteristics of the agricultural holdings on which they set up in business.

75. To argue the contrary would be tantamount to denying that the conditions determining whether aid is granted to young farmers must be based on *objective* data (surface area, output and other factors) relating to the farms, and to advocating as the only criterion applicable the *subjective* qualities of the beneficiaries. As I have already said, Regulation No 1305/2013 is, on the contrary, conducive to national legislation that takes exclusive account of the (objective) criterion of the farm.²¹

76. Leaving the objective characteristics out of account would allow aid to be granted to farms of any kind: both those which, although falling within the definition of micro and small enterprise, exceed the SGO (which, in accordance with Article 5(2) of Delegated Regulation No 807/2014, is used to measure production potential for the purposes of establishing the upper threshold referred to in Article 19(4) of Regulation No 1305/2013) and those which do not satisfy that definition at all.

77. In that scenario, small farms – the development of which the regulation in question seeks to promote – would experience a fall in the volume of aid available, which they would have to share with counterparts less in need of support.

78. In short, the provisions of Regulation No 1305/2013, taken together, support the inference that the EU legislature wished to make support for young farmers conditional upon the setting up and development of small agricultural holdings.

79. This approach serves to meet demands from two sources: those typical of farms of this kind, on account of their economic size, and those generally associated with young farmers who decide to start up an economic activity, in particular in the agricultural sector.

80. The corollary of all of the foregoing is that the national provision (in the present case, Article 7(2) of the AME, read in conjunction with point 6 of the first paragraph of Article 25 of the AGW) is in conformity with Regulation No 1305/2013 in adopting as an objective criterion the SGO of the farm on which a young farmer wishes to set up in business.

²¹ Regulation 2017/2393, which is not applicable to the present case, allows the criterion of the beneficiary to be used, although without excluding the criterion of the farm, which the national legislature chose to employ in the legislation at issue.

(c) Impact of the ‘work units’ factor

81. In its appeal to the Walloon Region Administration, C.J. claimed that ‘it would be more logical to set the farm’s [upper] threshold by reference to the number of WUs [work units] present on the farm’.²²

82. In his written observations to the Court of Justice, C.J. emphasises that the regional legislation does not take work units into account for the purposes of calculating the upper threshold on the basis of the farm’s SGO. Work units are used, however, in order to set the lower threshold.

83. The disparity in the determination of the factors used to set the upper and lower thresholds may, potentially, be open to criticism from other points of view but it does not infringe Regulation No 1305/2013, Article 19(4) of which gives the Member States the freedom to specify the factors for determining the upper and lower thresholds within which the farms on which young farmers plan to set up in business must fall.

2. A young farmer who is not setting up as sole head of an agricultural holding

84. Article 2(1) of Delegated Regulation No 807/2014 provides that ‘Member States shall establish and apply specific conditions for access to support where a young farmer ... is not setting up as a sole head of the holding, irrespective of its legal form. These conditions shall be equivalent to those required for a young farmer setting up as sole head of a holding’.

85. The *equivalence* of the conditions forms the subject of one of the points of uncertainty as to interpretation that have been raised by the referring court, and boils down ultimately to a question of equality. Before we analyse that question, we must therefore identify the persons whose situations are being compared.

86. Article 2(1) of Delegated Regulation No 807/2014 deals, on the one hand, with a young farmer setting up in business with other persons, and, on the other hand, with a young farmer setting up in business on his own as sole head of the holding.

87. Article 2(3) of Regulation No 1305/2013 empowers the Commission to establish the conditions under which a legal person may be regarded as a ‘young farmer’. On that basis, Article 2(2) of Delegated Regulation No 807/2014 recognises that, where the application for support concerns a holding owned by a legal person, a ‘young farmer ... shall exercise effective and long-term control over the legal person in terms of decisions related to management, benefits and financial risks’.

88. In the present case, the person who applied for support was not a legal person such as to merit the description of ‘young farmer’ but a natural person pursuing his business on an agricultural holding through an unincorporated association with his father.

89. If that association could be classified under Belgian law as a legal person (which the Walloon Region and the Commission say that it cannot), it would necessarily be the owner of the holding and C.J. would exercise ‘effective control’ over that (presumed) legal person.

²² Article 1(26) of the AGW defines the work unit as ‘the ratio between the number of hours’ work completed per annum on the farm (this being no more than 1 800 hours, not taking into account the number of hours’ work completed during the same period off the farm), on the one hand, and the value of 1 800 hours’ work, on the other’.

90. Although these are matters which fall ultimately to be verified by the referring court, the information contained in the documents before the Court appear to support the inference: (a) that the farm is owned not by a legal person but by three natural persons; and (b) that C.J. does not exercise effective control but is one of the heads of that holding.²³

91. In any event, as the Walloon Region has noted, the application for aid was turned down not on account of the legal form selected by C.J. for the purposes of setting up in business on the agricultural holding shared with his parents, but because the SGO of that holding exceeded the prescribed upper threshold.

92. The uncertainty would therefore appear to boil down to a comparison of two sets of conditions:

- those applicable to a young farmer (natural person) who, as here, is setting up in business with other farmers;
- those applicable to a young farmer who is setting up in business on his own.

93. In accordance with Article 2(1) of Delegated Regulation No 807/2014, the two sets of conditions must be *equivalent*. It therefore falls to be analysed whether the system adopted by the Walloon Region fulfils that requirement of equivalence.

94. As has already been said, the upper threshold laid down in the national provision as a condition of access to support is EUR 1 million in the form of SGO from the farm on which a young farmer sets up in business (subject to what I am immediately about to go on to say).

95. That objective criterion, which is based exclusively on the farm's output, leaves out of account the person and the number of heads of the holding in respect of which support is being applied for. Consequently, it does not rule out the possibility that such support may benefit a number of heads of the holding, in whatever legal form, although the reference criterion for setting the threshold will always be the holding's SGO.

96. Thus, a young farmer not setting up as the sole head of a holding (like C.J.) is subject to the same condition as a young farmer setting up on his own: in both cases, the upper threshold for access to support is the SGO of the holding on which they are each setting up in business.

97. Consequently, the conditions applicable to C.J. are not just 'equivalent' to those applicable to a young farmer setting up on his own but the same.

98. The position argued by C.J. is based on the proposition that the equivalence sought by the EU legislature makes it necessary to dispense with the single criterion of the farm and to replace it, in cases where a young farmer is setting up in business with others, with the criterion of the young farmer's share of the farm as a whole.

99. That approach would call for the criterion of the farm to be replaced by the criterion of the beneficiary. Whatever the SGO of the farm on which C.J. has set up in business might be, C.J. would be entitled to support if his own share in the ownership of that farm did not exceed the SGO laid down in the national provision.

²³ C.J.'s written observations, paragraph 1, in which he refers to the *addenda* of 22 December 2015 to the agreement signed with his father on 1 March 2015.

100. Such an approach – which has been rejected by the Walloon Region and the Commission – is not consistent with the national provision or with the purpose of Regulation No 1305/2013, which I have looked at in previous points of this Opinion.

101. It is true, however, that the legislation in force in the Walloon Region provides for an exception in the case where a young farmer is setting up in business with another young farmer or other young farmers. In that event, the upper threshold is not EUR 1 million but EUR 1 500 000.

102. This is a relative exception, since the upper threshold does not increase by a factor equal to the number of young farmers setting up in business on the same farm. Whether there are two or five, the increase is confined to EUR 500 000 (in other words, it is not multiplied by the number of beneficiaries). Once again, the criterion of the farm forms the basis of the system, whether or not an adjustment is applied because there is more than one beneficiary.

103. The information contained in the documents before the Court supports the inference that the SGO from the farm (a third of which is owned by the applicant) far exceeds EUR 1 500 000. There would therefore appear to be no need to examine the application of that SGO to the present case.

104. The foregoing would seem to bring this Opinion to a close, since the refusal to grant the support at issue is the result of applying a national provision which, in the light of EU law, has legitimately opted to apply the objective criterion of a farm's SGO.

105. In its written observations, the Commission had taken the matters under debate to a more abstract level, positing the potentially discriminatory outcome to which that national provision might lead in various scenarios, none of them consistent, however, with the circumstances at issue.

106. The fact nonetheless remains that the Commission itself confirmed at the hearing what it had already stated in writing: that the objective criterion adopted by Article 25 of the AGW (and by the provisions implementing it in the AME) is compatible with EU law and, in the circumstances of the present case, led directly to the approach taken by the Walloon Region.

107. The following reflections are therefore presented merely in the alternative, in the event that the Court takes the view that, notwithstanding the fact that the Commission itself concurs with the clear-cut resolution of the dispute, there is some value in considering the (as I have said, more theoretical) issue raised in the second part of its written observations.

108. That issue has to do with whether the different treatment afforded to (1) a young farmer setting up with farmers who are not young, as compared with that afforded to (2) a young farmer setting up with young farmers, may properly be regarded as equal. Its resolution calls for a determination of whether the situations of the two young farmers are equivalent.

109. In my opinion, they are not, meaning that the national provision would be entitled to treat them differently.

110. A young farmer setting up in business with other farmers who are not young (and who, as here, are already managing an agricultural holding) benefits from a number of advantages not enjoyed by a young farmer doing so with another young farmer.

111. The most significant advantage is the assistance he is able to obtain from the farmers who are not young, in the form of the benefit of their knowledge of the market and their presence in business circles. A young farmer setting up in business for the first time with another farmer in the same situation as him, on the other hand, does not generally benefit from that support at the outset, a fact which justifies his exemption (to a limited extent) from the conditions applicable to the grant of aid.

112. I would reiterate in this regard too that the support provided for in Article 19(4) of Regulation No 1305/2013 is intended for business start-ups. As recital 17 of that regulation states, that support is meant to cover the initial period of the life of the business and is not to become an operating aid.

113. The aim, in short, is to help young farmers, and, if the national legislation so provides, to help them more if they set up in business with other young farmers. That additional assistance serves to distinguish the situation of those young farmers from that of young farmers setting up in business with farmers who are not young, inasmuch as farmers who are not young are able to use their experience to help ease the start-up of their young counterparts.²⁴

114. Setting up in business with farmers who are not young confers on the young farmer, as I have said, a number of advantages not enjoyed by a young farmer setting up in business with other young farmers. By the same token, a young farmer's share in the ownership of a holding on which other farmers who are not young are in business is able to draw on the synergy generated by all of the parts that make up the whole of that holding.

115. A young farmer's *pro indiviso* share in the ownership of a holding is not, ultimately, entirely autonomous. It would not therefore be unreasonable or contrary to the principle of equality to leave it out of account for the purposes of setting the upper threshold applicable as a condition of granting the support at issue.

V. Conclusion

116. In the light of the foregoing, I suggest that the Court's reply to the Tribunal de première instance de Namur (Court of First Instance, Namur, Belgium) should be as follows:

Articles 2, 5 and 19 of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, read in conjunction with Article 2 of Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 ... and introducing transitional provisions, must be interpreted as meaning that:

- they do not preclude Member States from using the 'standard gross output' of an agricultural holding in order to determine the upper threshold allowing access to support intended to help young farmers set up in business;

²⁴ In circumstances such as those of C.J., the young farmer has the advantage that his share in the totality of the farm represents participation in a whole the output from which cannot fail to benefit any of its parts.

- they do not preclude national legislation from taking into account, for the purposes of determining the abovementioned upper threshold, the agricultural holding as a whole rather than the young farmer's share in its ownership thereof or the work units.