



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

29 April 2021 *

(References for a preliminary ruling – Agriculture – Common agricultural policy (CAP) – Direct support schemes – Eligible hectare – Aquaculture facility – Land use – Actual use for agricultural purposes – Use complying with the entries in the land register)

In Joined Cases C-294/19 and C-304/19,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Constanța (Court of Appeal, Constanța, Romania), made by decisions of 27 and 29 March 2019, received at the Court on 10 and 12 April 2019, respectively, in the proceedings

Agencia de Plăți și Intervenție pentru Agricultură – Centrul Județean Tulcea

v

SC Piscicola Tulcea SA (C-294/19),

and

Ira Invest SRL

v

Agencia de Plăți și Intervenție pentru Agricultură – Centrul Județean Tulcea (C-304/19),

THE COURT (Sixth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, C. Toader and M. Safjan, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– SC Piscicola Tulcea SA, by D. Damgalin, avocată,

* Language of the case: Romanian.

- the Romanian Government, initially by E. Gane, O.-C. Ichim, S.-A. Purza and C.-R. Canțăr, and subsequently by E. Gane, O.-C. Ichim and S.-A. Purza, acting as Agents,
- the European Commission, by A. Sauka and G.-D. Balan, acting as Agents,

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

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of Article 2 and Article 34(2) of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16), Article 2 of Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation (EC) No 73/2009 (OJ 2009 L 316, p. 1) and Article 4(1)(a) to (c), (e) and (f), Article 10, Article 21(1) and Article 32(2) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Regulation No 73/2009 (OJ 2013 L 347, p. 608, corrigendum OJ 2016 L 130, p. 8).
- 2 The requests have been made in two sets of proceedings between, first, the Agenția de Plăți și Intervenție pentru Agricultură – Centrul Județean Tulcea (Paying and Intervention Agency for Agriculture – Tulcea Provincial Centre, Romania) ('the APIA') and SC Piscicola Tulcea SA and, second, Ira Invest SRL and the APIA, concerning single area payments for use as arable land of areas registered for aquaculture use.

Legal context

European Union law

Regulation No 73/2009

- 3 Regulation No 73/2009 was repealed by Regulation No 1307/2013.
- 4 Recital 3 of Regulation No 73/2009 stated:

'[Council] Regulation (EC) No 1782/2003 [of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1, corrigendum OJ 2004 L 94, p. 70)] established the principle that farmers who do not comply with certain requirements in the areas of public, animal and plant health, environment and animal welfare are

subject to reductions of or exclusion from direct support. This “cross compliance” system forms an integral part of Community support under direct payments and should therefore be maintained. However, experience has shown that a number of the requirements within the scope of cross compliance are not sufficiently relevant to farming activity or farm land or concern national authorities rather than farmers. It is therefore appropriate to adjust the scope of cross compliance.’

5 Article 2 of Regulation No 73/2009 provided:

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

...

(c) “agricultural activity” means the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition as established in Article 6;

...

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

6 Article 34 of that regulation provided:

‘1. Support under the single payment scheme shall be granted to farmers upon activation of a payment entitlement per eligible hectare. Activated payment entitlements shall give a right to the payment of the amounts fixed therein.

2. For the purposes of this Title, “eligible hectare” shall mean:

(a) any agricultural area of the holding, and any area planted with short rotation coppice (CN code ex 0602 90 41) that is used for an agricultural activity or, where the area is used as well for non-agricultural activities, predominantly used for agricultural activities ...

...’

Regulation No 1120/2009

7 Article 2 of Regulation No 1120/2009, repealed by Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation No 1307/2013 and amending Annex X to that Regulation (OJ 2014 L 181, p. 1), was worded as follows:

‘For the purposes of Title III of Regulation ... No 73/2009 and of this Regulation, the following definitions shall apply:

(a) “arable land” means land cultivated for crop production or maintained in good agricultural and environmental condition in accordance with Article 6 of Regulation ... No 73/2009, irrespective of whether or not that land is under greenhouses or under fixed or mobile cover;

...'

Regulation (EC) No 1122/2009

- 8 Article 80 of Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Regulation No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for [by] that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ 2009 L 316, p. 65), and repealed by Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ 2014 L 181, p. 48), provided:

'1. If undue payment is made, the farmer shall repay the amount in question plus interest calculated in accordance with paragraph 2.

...

3. The repayment obligation referred to in paragraph 1 shall not apply if the payment was made by error of the competent authority or of another authority and if the error could not reasonably have been detected by the farmer.

However, where the error relates to factual elements relevant for the calculation of the payment concerned, the first subparagraph shall only apply if the decision to recover was not communicated within 12 months of the payment.'

Regulation (EU) No 1306/2013

- 9 Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and No 485/2008 (OJ 2013 L 347, p. 549) states in recitals 53 and 54 that, under the cross-compliance system which should be maintained, Member States are to impose penalties in the form of the reduction or exclusion of support received under the common agricultural policy (CAP) in whole or in part.

Regulation No 1307/2013

- 10 Recital 4 of Regulation No 1307/2013 states:

'It is necessary to clarify that Regulation [No 1306/2013] and the provisions adopted pursuant to it are to apply in relation to the measures set out in this Regulation. For the sake of consistency with other legal instruments relating to the CAP, some rules currently provided for in Regulation ... No 73/2009 are now laid down in Regulation ... No 1306/2013, in particular the rules to guarantee compliance with the obligations laid down by direct payment provisions, including

checks and the application of administrative measures and administrative penalties in the case of non-compliance, the rules related to cross-compliance such as the statutory management requirements, the good agricultural and environmental condition, the monitoring and evaluation of relevant measures and the rules related to the payment of advances and the recovery of undue payments.’

11 Article 4(1) of Regulation No 1307/2013 provides:

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

...

- (b) “holding” means all the units used for agricultural activities and managed by a farmer situated within the territory of the same Member State;
- (c) “agricultural activity” means:
 - (i) production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes,
 - (ii) maintaining an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries, based on criteria established by Member States on the basis of a framework established by the Commission, or
 - (iii) carrying out a minimum activity, defined by Member States, on agricultural areas naturally kept in a state suitable for grazing or cultivation;
- (d) “agricultural products” means the products, with the exception of fishery products, listed in Annex I to the Treaties as well as cotton;
- (e) “agricultural area” means any area taken up by arable land, permanent grassland and permanent pasture, or permanent crops;
- (f) “arable land” means land cultivated for crop production or areas available for crop production but lying fallow, including areas set aside in accordance with Articles 22, 23 and 24 of [Council] Regulation (EC) No 1257/1999 [of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80)], with Article 39 of [Council] Regulation (EC) No 1698/2005 [of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1)] and with Article 28 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 Regulation No 1698/2005 (OJ 2013 L 347, p. 487)], irrespective of whether or not that land is under greenhouses or under fixed or mobile cover ...’

12 Article 10 of Regulation No 1307/2013 provides:

‘1. Member States shall decide in which one of the following cases not to grant direct payments to a farmer:

- (a) where the total amount of direct payments claimed or due to be granted before the application of Article 63 of Regulation ... No 1306/2013 in a given calendar year is less than EUR 100;
- (b) where the eligible area of the holding for which direct payments are claimed or due to be granted before the application of Article 63 of Regulation ... No 1306/2013 is less than one hectare.

2. In order to take account of the structure of their agricultural economies, Member States may adjust the thresholds set out in points (a) and (b) of paragraph 1 within the limits set out in Annex IV.

3. Where a Member State has decided to apply an area threshold pursuant to point (b) of paragraph 1, it shall nevertheless apply point (a) of that paragraph to those farmers receiving the animal-related coupled support referred to in Title IV who hold fewer hectares than the area threshold.

4. The Member States concerned may decide not to apply paragraph 1 to the outermost regions and to the smaller Aegean Islands.

5. In Bulgaria and Romania, for the year 2015, the amount claimed or due to be granted as referred to in point (a) of paragraph 1 shall be calculated on the basis of the relevant amount set out in point A of Annex V.

In Croatia, for the years 2015-2021, the amount claimed or due to be granted as referred to in point (a) of paragraph 1 shall be calculated on the basis of the amount set out in point A of Annex VI.’

13 Article 21(1) of Regulation No 1307/2013 provides:

‘1. Support under the basic payment scheme shall be available to farmers:

- (a) who obtain payment entitlements under this Regulation through allocation pursuant to Article 20(4), through first allocation pursuant to Article 24 or Article 39, through allocation from the national reserve or regional reserves pursuant to Article 30 or through transfer pursuant to Article 34; or
- (b) who comply with Article 9 and hold owned or leased-in payment entitlements in a Member State which has decided, in accordance with paragraph 3, to keep its existing payment entitlements.’

14 Article 32 of that regulation provides:

‘1. Support under the basic payment scheme shall be granted to farmers, by means of [a] declaration ..., upon activation of a payment entitlement per eligible hectare in the Member State where it has been allocated. ...

2. For the purposes of this Title, “eligible hectare” means:

- (a) any agricultural area of the holding, including areas that were not in good agricultural condition on 30 June 2003 in Member States acceding to the Union on 1 May 2004 that opted upon accession to apply the single area payment scheme, that is used for an agricultural activity or, where the area is also used for non-agricultural activities, is predominantly used for agricultural activities; or

...

3. For the purposes of point (a) of paragraph 2:

- (a) where an agricultural area of a holding is also used for non-agricultural activities, that area shall be considered to be used predominantly for agricultural activities provided that those agricultural activities can be exercised without being significantly hampered by the intensity, nature, duration and timing of the non-agricultural activities;

...’

- 15 Under the second paragraph of Article 74 of Regulation No 1307/2013, that regulation is to apply from 1 January 2015.

Romanian law

Law No 18/1991

- 16 Article 2 of Legea nr. 18/1991 a fondului funciar (Law No 18/1991 on land ownership, *Monitorul Oficial al României*, Part I, No 1 of 5 January 1998), in the version applicable to the disputes in the main proceedings, is worded as follows:

‘Depending on its use, land is:

- (a) agricultural land, that it is to say, productive agricultural land – arable land, vineyards, orchards, vine and tree nurseries, hops and mulberry plantations, pasture, grassland, greenhouses, photovoltaic greenhouses, seedbeds and similar – land with coppice vegetation where it does not form part of silvicultural operations (silvicultural undertakings), afforested pasture, land occupied by agriculture and livestock constructions and facilities, aquaculture and soil improvement facilities, roads of the rural road network, farm/agricultural roads and those connecting estates, platforms and storage areas necessary for agricultural production, and non-productive land which can be given over to, and used for, agricultural production;

...

- (c) permanently submerged land, that is to say: the lower riverbed of water courses, the basins of lakes at maximum levels of flooding, the bottom of inland maritime waters and the territorial sea’.

Order No 534/2001

- 17 The Normele tehnice pentru introducerea cadastrului general (technical standards for the introduction of the general land register), approved by the Ordinul ministrului administrației publice nr. 534/2001 (order of the Minister for Public Administration No 534/2001) (*Monitorul Oficial al României*, Part I, No 744 of 21 November 2001), provide:

‘7. The criteria for subdividing land by use

...

7.2. Agricultural land

7.2.1. The following shall belong to the category of agricultural land: arable land, ... aquaculture facilities, ...

...

8. Criteria for classifying and identifying categories of use of land and constructions

8.1. General provisions

8.1.1. The category of land use, individually identified by a code, shall constitute one of the attributes of the parcel. Showing the use category, together with the other attributes, in the technical part of the general land register is necessary for ... drawing up the land register ...

...

8.2. Criteria for identifying the categories of land use

8.2.1. Arable land (A). This category includes land which is ploughed ... and used to grow annual or perennial plants, such as: cereals, ...

...’

Government Emergency Decree No 125/2006

- 18 Article 5 of the Ordonanță de urgență a Guvernului nr. 125/2006 din 21 decembrie 2006 pentru aprobarea schemelor de plăți directe și plăți naționale directe complementare, care se acordă în agricultură începând cu anul 2007, și pentru modificarea articolului 2 din Legea nr. 36/1991 privind societățile agricole și alte forme de asociere în agricultură (Government Emergency Decree No 125/2006 of 21 December 2006 approving the scheme of direct payments and complementary national direct payments granted for agriculture as from 2007 and amending Article 2 of Law No 36/1991 on agricultural companies and other forms of association in agriculture) (*Monitorul Oficial al României*, Part I, No 1043 of 29 December 2006), in the version applicable to 2007-2014:

‘(1) The single area payment scheme shall consist of the grant of an equal amount per hectare, payable once a year, altogether unconnected with production.

...

(3) The eligible agricultural area may have the following categories of use:

(a) arable land – land cultivated for the production of cereals, ...'

19 Article 7(1) of that Government Emergency Decree provides:

'To receive payments under the single area payment schemes, applicants must be registered in the Register of Farmers, managed by the [APIA], must submit an application for payment within the time limit, and must satisfy the following general conditions:

(a) agricultural land with an area of at least 1 hectare must be used ...;

(b) all the agricultural parcels must be declared;

...

(e) good agricultural and environmental conditions governed by national law over the whole agricultural area of the holding must be complied with;

(f) the necessary documents demonstrating the right of use must be submitted and it must be possible to demonstrate that the land in respect of which the application has been submitted is used;

...'

Law No 122/2014

20 Article 3 of Legea nr. 122/2014 pentru completarea Legii nr. 82/1993 privind constituirea Rezervației Biosferei « Delta Dunării » (Law No 122/2014 supplementing Law No 82/1993 on the establishment of the 'Danube Delta' Biosphere Reserve) (*Monitorul Oficial al României*, Part I, No 541 of 22 July 2014) provides as follows:

'From 15 September 2014, no agricultural grant shall be granted for land relating to former aquaculture facilities situated in the Danube Delta Biosphere Reserve.'

GED No 3/2015

21 Article 2 of the Ordonanța de urgență a guvernului nr. 3/2015 pentru aprobarea schemelor de plăți care se aplică în agricultură în perioada 2015-2020 și pentru modificarea art. 2 din Legea nr. 36/1991 privind societățile agricole și alte forme de asociere în agricultură (Government Emergency Decree No 3/2015 approving the payment schemes applicable to agriculture in the period 2015-2020 and amending Article 2 of Law No 36/1991 on agricultural companies and

other forms of associations in agriculture), of 18 March 2015 (*Monitorul Oficial al României*, Part I, No 191 of 23 March 2015, ‘GED No 3/2015’), in the version applicable to one of the disputes in the main proceedings (C-304/19), provides:

‘1. For the purposes of the present emergency decree, the following terms are defined as follows ...

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

(o) “arable land” means land cultivated for crop production or areas available for crop production but lying fallow, irrespective of whether or not that land is taken up by crops under greenhouses, photovoltaic greenhouses or under other fixed or mobile protective devices;

...

(r) “land use” means use for agricultural activities of the area of agricultural land within the holding which is available to the farmer at the time the application is submitted, in the year of the application’.

- 22 Under Article 8(1)(n) of GED No 3/2015, in order to receive direct payments, farmers must produce, when submitting an application for a single payment or the amendments made thereto, the necessary documents proving that the agricultural land, including ecological focus areas, is available to them.

Order No 619/2015

- 23 Article 5(2) of Ordinul nr. 619/2015 ministrului agriculturii și dezvoltării rurale pentru aprobarea criteriilor de eligibilitate, condițiilor specifice și a modului de implementare a schemelor de plăți prevăzute la art. 1 alin. (2) și (3) din Ordonanța de urgență a Guvernului nr. 3/2015 pentru aprobarea schemelor de plăți care se aplică în agricultură în perioada 2015-2020 și pentru modificarea art. 2 din Legea No 36/1991 privind societățile agricole și alte forme de asociere în agricultură, precum și a condițiilor specifice de implementare pentru măsurile compensatorii de dezvoltare rurală aplicabile pe terenurile agricole, prevăzute în Programul Național de Dezvoltare Rurală 2014-2020 (Order No 619/2015 of the Minister for Agriculture and Rural Development approving the eligibility criteria, specific conditions and detailed rules for the application of the payment schemes set out in Article 1(2) and (3) of Government Emergency Decree No 3/2015 approving the payment schemes applicable to agriculture in the period 2015-2020 and the specific conditions for implementing the rural development countervailing measures applicable to agricultural land set out in the National Rural Development Plan 2014-2020), in the version applicable to one of the disputes in the main proceedings (C-304/19), provides:

‘As from the claim year 2015, documents which show the lawful use of the land and which are submitted to the APIA, pursuant to Article 8(1)(n) of the order shall be those which concern:

- (a) the holding in which the agricultural activity is exercised: the attesting document must be completed in accordance with the framework model ... and be accompanied by a certified copy of the original pages on which the data were entered ... in the 2015-2019 agricultural register, in accordance with the framework model ...

(b) the agricultural land which is available to the farmer: certified copies of the title to the property or other acts proving ownership of the land or other documents ... such as the lease agreement relating to the land, the concession contract ...;

(c) unequivocal identification of the agricultural parcels used ...'

24 Article 10(5) of that order provides:

'The following areas are not eligible for the payments:

...

(o) the surfaces occupied by aquaculture facilities as set out in Article 23(20) of the technical rules supplementing the agricultural register for 2015-2019 ...'

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

Case C-294/19

25 Piscicola Tulcea is a company governed by Romanian law whose main activity in the period 2007-2014 consisted of freshwater aquaculture and whose authorised secondary activities included, inter alia, the growing of cereals.

26 Pursuant to a series of concession contracts concluded with the Consiliul Judeţean Tulcea (Tulcea Provincial Council, Romania) in 2004, 2005 and 2010, Piscicola Tulcea used a total area of 1 888 hectares (ha) of land for the aquaculture facilities of Rusca (Romania) and Litcov (Romania) situated in the Danube Delta Biosphere Reserve.

27 Although the concession contracts provide for the land to be used 'for the purposes of aquaculture', the parties agreed by the 2004 and 2005 addenda to the contracts to amend the initial price of the concession in the light of the fact that 'in connection with the programmes of aquaculture crop rotation required by aquaculture technology or outside of those programmes, the land within the aquaculture facilities [was] being used as agricultural land'. Similarly, the parties agreed by a 2010 addendum that Piscicola Tulcea was to carry out aquaculture crop rotation activities to mineralise the soil in respect of an area of 570 ha.

28 By a decision taken in 2005, Piscicola Tulcea was also authorised by the Tulcea Provincial Council to carry out agricultural cultivation activities at the Rusca aquaculture facility.

29 For the period from 2007 to 2014, Piscicola Tulcea submitted payment applications to the APIA in respect of, inter alia, the single area payment scheme.

30 Those applications were accompanied by documents showing the right to use the areas in respect of which support had been applied for, namely the concession contracts and the addenda and a certificate issued by the territorial administrative unit within whose territory the land is situated, stating that the land is entered in the agricultural register of the municipality as agricultural land.

- 31 The inspection reports drawn up in 2008 and 2009 by the Tulcea Provincial Council certified that the land covered by the concession was used exclusively for agriculture, with no areas being used for aquaculture.
- 32 In respect of each of the marketing years from 2007 to 2014, the APIA gave decisions granting payments under the area schemes.
- 33 In 2009, the APIA carried out an on-the-spot check. The irregularities found related to an incorrect declaration for 2007 of an uncultivated parcel of an insignificant area (80.56 ha). In respect of the marketing years from 2010 to 2014 there was a visual check prior to the approval of the payment applications which established that the applications were complete and valid.
- 34 In respect of the 2015 marketing year, the payment application submitted by Piscicola Tulcea was rejected by the APIA on the ground that Article 3 of Law No 122/2014 provided that no agricultural subsidies would be granted for land relating to former aquaculture facilities situated in the Danube Delta Biosphere Reserve, from 15 September 2014. Piscicola Tulcea appealed against a decision of the competent court at first instance before the Curtea de Apel Constanța (Court of Appeal, Constanța, Romania) which, by a decision of 31 October 2016 which has since become final, ordered the APIA to grant the payments claimed under the area support schemes in respect of the 2015 marketing year, relying on, inter alia, the definitions of ‘agricultural activity’, ‘agricultural products’ and ‘arable land’ in Regulation No 1307/2013.
- 35 During the period from 27 October 2015 to 13 April 2016, the APIA’s Anti-Fraud and Internal Control Directorate carried out a documentary inspection concerning the manner in which financial support had been granted to Piscicola Tulcea in respect of the marketing years from 2007 to 2014. That control agency found that, in the light of national law and the documents submitted by Piscicola Tulcea, the latter did not meet the eligibility conditions for obtaining the direct payments concerned.
- 36 Following that inspection, the APIA re-examined the payment applications submitted for the marketing years from 2007 to 2014. On 23 December 2016, it issued, in respect of each of those marketing years, reports finding that Piscicola Tulcea had received sums to which it was not entitled and setting the amount due to the State as a result of the irregularities found which was to be repaid to the APIA in respect of each marketing year.
- 37 By civil judgment of 1 February 2018, the Tribunalul Tulcea (Regional Court, Tulcea, Romania) upheld the action brought by Piscicola Tulcea on 15 March 2017 and annulled the contested acts. According to that judgment, although the concession contracts expressly stated that the land covered by the concession was occupied by an aquaculture facility and that that company was required to use it for the purposes of aquaculture, the non-compliance for which recovery of the amounts granted to that company had been ordered was not due to its negligence or intentional action. On the contrary, Piscicola Tulcea had provided sufficient specific factual information enabling the APIA employees to verify the eligibility conditions for obtaining the aid in question. That court therefore inferred that, in the present case, the rules of EU law excluding the reimbursement of payments made following an error of the authority, Article 80(3) of Regulation No 1122/2009 in particular, were applicable.
- 38 On 29 March 2018, an appeal was brought by the APIA before the Curtea de Apel Constanța (Court of Appeal, Constanța) claiming that the judgment under appeal should be varied in its entirety and that the action brought by Piscicola Tulcea should be dismissed.

- 39 The referring court is uncertain whether, in order to ascertain whether the farmer has the right to benefit from area support measures, the national court must take account only of the way in which the areas are actually used by the farmer or whether, on the contrary, it is necessary to take account of the characteristics of the areas as stated in the property advertising or documents by which the farmer demonstrates his right of use with regard to the land in respect of which a payment application has been submitted and the conformity of the land use with those characteristics.
- 40 In those circumstances, the Curtea de Apel Constanța (Court of Appeal, Constanța) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Articles 2 and 34(2) of ... Regulation ... No 73/2009 ... and Article 2 of ... Regulation ... No 1120/2009 ... be interpreted as precluding national legislation which, in the circumstances such as those in the main proceedings, excludes a farmer from payment of the entitlements on the ground that the aquaculture facilities used as arable land do not constitute an “agricultural area” for the purposes of Article 2 of Regulation No 1120/2009 and are not therefore regarded as eligible land under Article 34(2) of Regulation No 73/2009?’

Case C-304/19

- 41 Ira Invest is a company governed by Romanian law which engages in, as its principal activity, aquaculture and, as a secondary activity, inter alia, the growing of cereals, leguminous plants, oilseed-producing plants, rice and vegetables and auxiliary activities relating to the growing of crops.
- 42 In a single payment application submitted to the APIA, it declared, for the purposes of the support requested for 2016, the total agricultural parcels used, that is, 757.04 ha.
- 43 Ira Invest attached to that application the concession contract of 18 March 2002 concluded with the Tulcea Provincial Council under which it was entitled as concessionaire to use land with an overall surface of 1 344 ha for aquaculture purposes.
- 44 Ira Invest also submitted an addendum of 15 May 2014 to that concession contract, by which the parties agreed that the concessionaire would perform aquaculture crop rotation works to mineralise the soil on a surface of 950 ha of aquaculture land. That addendum specifies that aquaculture crop rotation consists in the temporary set-aside of aquaculture production to ensure the restoration of soil productivity by growing cereals and industrial plants.
- 45 By a decision of 27 March 2017, the APIA refused to grant the single payment application concerned, on the ground that there was no document qualifying as a certificate conforming with the agricultural register in the system, in particular no document proving legal use of the land in accordance with Article 5(2) of Order No 619/2015.
- 46 Ira Invest brought an initial complaint against that administrative decision, claiming, inter alia, that the ground for the rejection of its application based on the absence of a certificate conforming with the agricultural register was unlawful. In that regard, it submitted that Article 5(2)(a) of Order No 619/2015 did not comply with Article 8(1)(n) of GED No 3/2015, a

higher-ranking legal instrument adopted in accordance with Regulation No 1307/2013, which did not provide for the submission of a certificate but merely required proof of use of the agricultural land concerned.

- 47 By decision of 8 May 2017, the APIA informed Ira Invest that the latter had not attached to the payment application file for the 2016 marketing year any document proving its status as an active farmer. That decision refers to Article 8(1)(n) of GED No 3/2015 relating to the farmer's obligation to produce, when submitting an application for a single payment, the necessary documents proving that the agricultural land is available to him or her, including the certificate conforming with the agricultural register in the year of the application.
- 48 By judgment of 27 February 2018, the Tribunalul Tulcea (Regional Court, Tulcea) rejected Ira Invest's action seeking the annulment of the contested administrative acts as unfounded. That court found that the decision to reject was based on the absence of a certificate conforming with the agricultural register pursuant to Article 5 of Order No 619/2015 and the absence of proof of that company's status as an active farmer. Given that, under Romanian law, change in use of land is carried out according to a specific procedure – which was, allegedly, not followed by Ira Invest – the mere use of the land for agricultural purposes during a specific period does not allow it to be regarded as eligible hectares, since the mere intention of the concessionaire cannot transform an aquaculture facility into an agricultural holding.
- 49 Ira Invest brought an appeal against that judgment before the referring court, the Curtea de Apel Constanța (Court of Appeal, Constanța), on 29 March 2018. In the context of those proceedings, Ira Invest claimed, in essence, that, in the light of Regulation No 1307/2013, the relevant factor is only the use of the land for agricultural purposes, not the category of use of the land. Thus, pursuant to that regulation, it is irrelevant that the land belongs to a particular category of use, provided that the land is used for the purpose of harvesting crops during a calendar year.
- 50 According to the referring court, the particular circumstances of the present case consist of the fact that the applicant in the main proceedings uses, for agricultural purposes, land entered in the administrative registers as falling within another use category and thus expressly excluded from the grant of financial support under national law. This raises, more specifically, the question of the interpretation of Article 32(2) of Regulation No 1307/2013 regarding the definition of 'eligible hectare', which refers to any agricultural area of the holding.
- 51 The referring court is uncertain as to the application, in the present circumstances, of the case-law resulting from the judgments of 2 July 2015, *Wree*, C-422/13, EU:C:2015:438, and of 2 July 2015, *Demmer*, C-684/13, EU:C:2015:439, in which the Court held that, in order to be eligible for the aid in question, the area at issue in the main proceedings had to be an agricultural area, be part of a farmer's holding and be used for agricultural activities or, where the area is used as well for non-agricultural activities, predominantly used for agricultural activities.

52 In those circumstances, the Curtea de Apel Constanța (Court of Appeal, Constanța) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 4(1)(b), (c), (e) and (f), Article 10, Article 21(1) and Article 32(1) to (5) of [Regulation No 1307/2013] be interpreted as precluding national legislation which, in the circumstances of the main proceedings, excludes a farmer from payment of entitlements on the ground that land with aquaculture facilities used as arable land does not constitute an “agricultural area” within the meaning of Article 4 of the regulation?’

Procedure before the Court

53 By decision of the President of the Court of Justice of 12 June 2019, Cases C-294/19 and C-304/19 were joined for the purposes of the written procedure and the judgment.

Consideration of the questions referred

54 Regarding Case C-294/19, it should be noted at the outset that the relevant period relating to the facts in the main proceedings is from 2007 to 2014 and, before 1 January 2009, the applicable regulation during the period from 2007 to that date was Regulation No 1782/2003 (see, to that effect, judgment of 2 July 2015, *Demmer*, C-684/13, EU:C:2015:439, paragraphs 49 and 50).

55 Nevertheless, the Court held that the concept of ‘eligible hectare’ as defined in Article 34(2)(a) of Regulation No 73/2009 is the same as that of ‘eligible hectare’ within the meaning of Article 44(2) of Regulation No 1782/2003 and that, therefore, the interpretation of that first provision also applies to the second (see, to that effect, judgment of 2 July 2015, *Demmer*, C-684/13, EU:C:2015:439, paragraphs 52 and 53).

56 As a result, it is sufficient, in the context of Case C-294/19, to examine the question referred in the light of Article 34(2)(a) and Article 2(h) of Regulation No 73/2009 for the whole of the period from 2007 to 2014.

57 It follows that, by its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2(h) and Article 34(2) of Regulation No 73/2009 and Article 4(1)(e) and Article 32(2) of Regulation No 1307/2013 must be interpreted as meaning that areas categorised under national law as intended for aquaculture activities, but that are or have been actually used for agricultural purposes, are agricultural areas.

58 As specified in Article 34(2)(a) of Regulation No 73/2009 and Article 32(2)(a) of Regulation No 1307/2013, the concept of ‘eligible hectare’ includes any agricultural area of the holding that is used for an agricultural activity or, where the area is used as well for non-agricultural activities, predominantly used for agricultural activities.

59 The concept of ‘agricultural area’ as defined in Article 2(h) of Regulation No 73/2009 and Article 4(1)(e) of Regulation No 1307/2013 includes, inter alia, ‘any area taken up by arable land’.

- 60 In the cases in the main proceedings, it is apparent from the orders for reference that, although they are entered in the property register as aquaculture facilities, the areas concerned have been, in the context of agricultural and aquaculture works, used as arable land for obtaining agricultural products.
- 61 ‘Arable land’ is defined in Article 2(a) of Regulation No 1120/2009 as, inter alia, land which is cultivated for crop production or maintained in good agricultural and environmental conditions. In Article 4(1)(f) of Regulation No 1307/2013, it is defined as, inter alia, land cultivated for crop production or areas available for crop production but lying fallow.
- 62 It is settled case-law that classification as ‘arable land’ and, consequently, as an ‘agricultural area’, for the purposes of those provisions, depends on the actual use of the land in question (see, to that effect, judgments of 14 October 2010, *Landkreis Bad Dürkheim*, C-61/09, EU:C:2010:606, paragraph 37; of 2 July 2015, *Wree*, C-422/13, EU:C:2015:438, paragraph 36; and of 2 July 2015, *Demmer*, C-684/13, EU:C:2015:439, paragraph 56).
- 63 It follows that an area must be classified as ‘agricultural’ where it is actually used as ‘arable land’ within the meaning of the provisions recalled in paragraph 61 of the present judgment (see, by analogy, judgment of 14 October 2010, *Landkreis Bad Dürkheim*, C-61/09, EU:C:2010:606, paragraph 37) and that that classification cannot be called into question on the sole ground that such an area has been used as arable land contrary to national law relating to the classification of land.
- 64 In addition, it should be borne in mind that, in order to be eligible for the aid in question, the areas at issue in the main proceedings must be agricultural areas, be part of a farmer’s holding and be used for agricultural activities or, where the areas are used as well for non-agricultural activities, predominantly used for agricultural activities (see, to that effect, judgment of 2 July 2015, *Demmer*, C-684/13, EU:C:2015:439, paragraph 54).
- 65 The fact remains that, as stated in essence by the Commission in its submissions and as is apparent from recital 3 of Regulation No 73/2009, recitals 53 and 54 of Regulation No 1306/2013 and recital 4 of Regulation No 1307/2013, it is for the competent national authorities to determine whether the recipient has complied with the requirements related to cross-compliance and to apply any administrative penalties in the case of non-compliance with those requirements, which can consist in a reduction or exclusion of the amount of the aid concerned.
- 66 Having regard to all the foregoing considerations, the answer to the questions referred is that Article 2(h) and Article 34(2) of Regulation No 73/2009 and Article 4(1)(e) and Article 32(2) of Regulation No 1307/2013 must be interpreted as meaning that areas categorised under national law as intended for aquaculture activities, but that are or have been actually used for agricultural purposes, are agricultural areas.

Costs

- 67 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 (Sixth Chamber) hereby rules:

Article 2(h) and Article 34(2) of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 and Article 4(1)(e) and Article 32(2) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Regulation No 73/2009 must be interpreted as meaning that areas categorised under national law as intended for aquaculture activities, but that are or have been actually used for agricultural purposes, are agricultural areas.

[Signatures]