



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

10 March 2021*

(Reference for a preliminary ruling – Common agricultural policy – Direct payments – Regulation (EU) No 1307/2013 – Article 24 – Young farmer having received an initial allocation of payment entitlements – Article 30(6) – Delegated Regulation (EU) No 639/2014 – Article 28(2) – Further allocation of payment entitlements from the national reserve)

In Case C-365/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Schwerin (Administrative Court, Schwerin, Germany), made by decision of 16 April 2019, received at the Court on 8 May 2019, in the proceedings

FD

v

Staatliches Amt für Landwirtschaft und Umwelt Mittleres Mecklenburg,

THE COURT (Sixth Chamber),

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

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- FD, by R. Krüger, Rechtsanwalt,
- the German Government, by D. Klebs and J. Möller, acting as Agents,
- the European Commission, by B. Hofstötter and A. Sauka, acting as Agents,

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

* Language of the case: German.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 30(6) 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 of Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608, and corrigendum OJ 2016 L 130, p. 23) and Article 28(2) of 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).
- 2 The request has been made in proceedings between FD and the Staatliches Amt für Landwirtschaft und Umwelt Mittleres Mecklenburg (Public Office for Agriculture and the Environment of Central Mecklenburg; ‘the Office’) concerning an application for a further allocation of payment entitlements from the national reserve following an initial allocation of basic payment entitlements.

European Union law

Regulation No 1307/2013

- 3 Recital 24 of Regulation No 1307/2013 states:

‘The experience gained through applying the single payment scheme has shown that some of its main elements should be kept, including the determination of national ceilings to ensure that the total level of support does not exceed current budgetary constraints. Member States should also continue to operate a national reserve, or should be allowed to establish regional reserves. Such national or regional reserves should be used, as a matter of priority, to facilitate the participation of young farmers and farmers commencing their agricultural activity in the scheme and using them should be allowed in order to take account of certain other specific situations. Rules on the transfer and use of payment entitlements should be retained.’

- 4 Article 24 of that regulation, entitled ‘First allocation of payment entitlements’, provides in paragraph 1:

‘Payment entitlements shall be allocated to farmers who are entitled to be granted direct payments in accordance with Article 9 of this Regulation ...’

- 5 Article 30 of that regulation, entitled ‘Establishment and use of the national reserve or regional reserves’, is worded as follows:

‘1. Each Member State shall establish a national reserve. In order to do so, Member States shall proceed, in the first year of implementation of the basic payment scheme, to a linear percentage reduction of the basic payment scheme ceiling at national level.

...

3. The reduction referred to in paragraphs 1 and 2 shall not be higher than 3%, unless a higher percentage is required to cover any allocation needs pursuant to paragraph 6 or to points (a) and (b) of paragraph 7 for the year 2015 or, for Member States applying Article 36, for the first year of implementation of the basic payment scheme.

4. Member States shall allocate payment entitlements from their national or regional reserves in accordance with objective criteria and in such a way as to ensure the equal treatment of farmers and to avoid distortions of the market and of competition.

...

6. Member States shall use their national or regional reserves to allocate payment entitlements, as a matter of priority, to young farmers and to farmers commencing their agricultural activity.

7. Member States may use their national or regional reserves to:

- (a) allocate payment entitlements to farmers in order to prevent land from being abandoned, including in areas subject to restructuring or development programmes relating to a form of public intervention;
- (b) allocate payment entitlements to farmers in order to compensate them for specific disadvantages;
- (c) allocate payment entitlements to farmers who were prevented from being allocated payment entitlements under this Chapter as a result of force majeure or exceptional circumstances;
- (d) allocate, in cases where they apply Article 21(3) of this Regulation, payment entitlements to farmers whose number of eligible hectares that they declared in 2015 in accordance with point (a) of the first subparagraph of Article 72(1) of Regulation (EU) No 1306/2013 [of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549)] and that are at their disposal on a date fixed by the Member State, which shall be no later than the date fixed in that Member State for amending such an aid application, is higher than the number of owned or leased-in payment entitlements established in accordance with Regulation (EC) No 1782/2003 and with Regulation (EC) No 73/2009 that they hold on the final date for submission of applications to be set in accordance with point (b) of the first subparagraph of Article 78 of Regulation (EU) No 1306/2013;
- (e) linearly increase, on a permanent basis, the value of all payment entitlements under the basic payment scheme at national or regional level if the relevant national or regional reserve exceeds 0,5% of the annual national or regional ceiling for the basic payment scheme, provided that sufficient amounts remain available for allocations under paragraph 6, under points (a) and (b) of this paragraph and under paragraph 9 of this Article;
- (f) cover the yearly needs for payments to be granted in accordance with Article 51(2) and Article 65(1), (2) and (3) of this Regulation.

For the purpose of this paragraph, Member States shall decide on the priorities between the different uses referred to herein.

...

11. For the purposes of this Article, the following definitions shall apply:

(a) “young farmers” means farmers fulfilling the conditions laid down in Article 50(2) and, where relevant, the conditions referred to in Article 50(3) and (11);

...’

6 Article 31(1) of that regulation provides:

‘The national reserve or regional reserves shall be replenished by amounts resulting from:

...

(g) where Member States consider it necessary, a linear reduction of the value of payment entitlements under the basic payment scheme at national or regional level to cover cases referred to in Article 30(6) of this Regulation.

...’

7 Article 35(1) of Regulation No 1307/2013 provides:

‘In order to ensure legal certainty and to clarify the specific situations that may arise in the application of the basic payment scheme, the Commission shall be empowered to adopt delegated acts in accordance with Article 70 concerning:

...

(c) rules on the establishment and calculation of the value and number of payment entitlements received from the national reserve or regional reserves;

...’

8 According to Article 50(2) of that regulation:

‘For the purposes of this Chapter, “young farmers”, means natural persons:

(a) who are setting up for the first time an agricultural holding as head of the holding, or who have already set up such a holding during the five years preceding the first submission of an application under the basic payment scheme or the single area payment scheme referred to in Article 72(1) of Regulation [No 1306/2013]; and

(b) who are no more than 40 years of age in the year of submission of the application referred to in point (a).’

Delegated Regulation No 639/2014

9 Recitals 29 and 32 of Delegated Regulation No 639/2014 state:

‘(29) Article 30 of Regulation [No 1307/2013] provides for compulsory and optional cases of allocation of payment entitlements from the national or regional reserve. It is appropriate to lay down rules for the calculation of the number and value of the payment entitlements to be allocated in such a way and to provide that priorities established in Article 30(6) of that Regulation are not undermined by the decisions Member States are allowed to take under Article 30(7) and (10) of Regulation [No 1307/2013]. Similarly, application of Article 30(6) of Regulation [No 1307/2013] should be coherent with Article 24(6) and (7) of that Regulation and with the rules on hardship in this Regulation. ...

...

(32) Article 24(3) to (7) of Regulation [No 1307/2013] provides Member States with several possibilities to limit the number of payment entitlements to be allocated to farmers. Certain farmers may thus have a high proportion of eligible hectares not covered by payment entitlements which may lead to hardship cases as certain support schemes accessory to the basic payment scheme, in particular the payment for agricultural practices beneficial for the climate and environment, are based on the eligible hectares declared for the purpose of activation of payment entitlements. Therefore, it should be clarified that Member States have the possibility to allocate payment entitlements from the national or regional reserve when a farmer is significantly affected by the limitations provided for in Article 24(3) to (7) of Regulation [No 1307/2013]. As certain areas are not subject to greening obligations or only involve limited costs of compliance with greening, Member States should further be allowed to decide not to include such areas when determining hardship cases.’

10 Article 28 of that delegated regulation, entitled ‘Establishment of payment entitlements from the national or regional reserve under Article 30(6) of Regulation [No 1307/2013]’, provides in paragraphs 1 and 2:

‘1. For the purposes of Article 30(6) of Regulation [No 1307/2013], where a young farmer or a farmer who commences his agricultural activity applies for payment entitlements from the national or regional reserve while he does not hold any payment entitlement (owned or leased-in), he shall receive a number of payment entitlements equal to the number of eligible hectares he holds (owned or leased-in) at the latest date for lodging his application for the allocation or increase of the value of payment entitlements fixed by the Commission on the basis of Article 78(b) of Regulation [No 1306/2013].

2. Where a young farmer or a farmer who commences his agricultural activity applies for payment entitlements from the national or regional reserve while he already holds payment entitlements (owned or leased-in), he shall receive a number of payment entitlements equal to the number of eligible hectares he holds (owned or leased-in) at the latest date for lodging his application referred to in paragraph 1 for which he does not hold any payment entitlement (owned or leased-in).’

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

- 11 FD is a 'young farmer' within the meaning of Article 30(11)(a) of Regulation No 1307/2013, read in conjunction with Article 50(2) of that regulation. Upon her application, the Office granted her, pursuant to Article 24 of that regulation, for the 2015 claim year and having regard to the eligible hectares at her disposal on the date of submission of her application, 32.17 payment entitlements from the regional ceiling.
- 12 On 12 May 2016, she requested that a further 30.32 payment entitlements be allocated to her, as a young farmer, for the 2016 claim year on the ground that her farm now had an area of 62.777 hectares. By decision of 26 January 2017, the Office rejected that request.
- 13 By decision of 24 November 2017, the Office rejected the application for review that FD had lodged against the decision of 26 January 2017. That authority took the view that it could not grant her any further payment entitlements under Article 30(6) of Regulation No 1307/2013, despite her status as a young farmer, because she had already received payment entitlements under Article 24 of that regulation in respect of the 2015 claim year.
- 14 On 22 December 2017, FD brought proceedings before the referring court, the Verwaltungsgericht Schwerin (Administrative Court, Schwerin, Germany), seeking the annulment of the decisions of the Office of 26 January and 24 November 2017. She argues that she has a right to the allocation of 30.32 payment entitlements on the basis of Article 30(4) and (6) of Regulation No 1307/2013 or, in any event, Article 28(2) of Delegated Regulation No 639/2014. According to FD, the EU legislature did not provide that the allocation of payment entitlements under Article 24 of Regulation No 1307/2013 prevents their beneficiary from being able to claim the entitlements arising from the combined provisions of Article 30(6) of that regulation and Article 28(2) of Delegated Regulation No 639/2014.
- 15 Before the referring court, the Office submits that FD's action must be dismissed on the ground that FD makes an erroneous distinction between the national reserve and the regional ceiling from which she received payment entitlements in respect of the 2015 claim year. It is clear from the national legislation applying the direct support scheme that both the national reserve and the regional ceiling form part of the national ceiling fixed for the basic payment scheme referred to in Article 22 of Regulation No 1307/2013.
- 16 Thus, according to the Office, Article 30 of Regulation No 1307/2013 is intended to ensure that farmers who, having commenced their activity during the course of the year, have not fulfilled the conditions laid down in Article 24 of that regulation in 2015 nevertheless have the possibility of being allocated payment entitlements. That provision is not however intended to facilitate the participation of farmers who have already received payment entitlements from the regional ceiling, since they have already obtained an initial allocation of payment entitlements under Article 24 of that regulation.
- 17 In addition, the Office submits that it is apparent from recital 29 in the preamble to Delegated Regulation No 639/2014 that Article 28(2) of that regulation does not establish any payment entitlement, but merely determines the method for calculating the number and value of payment entitlements to be allocated compulsorily and on an optional basis from the national reserve. Moreover, Article 35(1)(c) of Regulation No 1307/2013, empowering the European Commission to adopt delegated acts, does not allow it to determine a basis for the right to payment under that regulation.

- 18 The referring court expresses doubts as to whether Article 30(6) of Regulation No 1307/2013 may be interpreted as constituting, in itself, a legal basis for a right to the allocation of payment entitlements in favour of young farmers. It also raises the question of the compatibility of the recognition of a right for a young farmer to be allocated payment entitlements under Article 30(6) of that regulation with the obligation to ensure equal treatment between farmers, laid down in Article 30(4) of that regulation.
- 19 In those circumstances, the Verwaltungsgericht Schwerin (Administrative Court, Schwerin) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Does Article 30(6) of [Regulation No 1307/2013] – possibly in conjunction with Article 28(2) of [Delegated Regulation No 639/2014] – establish a legal right to allocation of payment entitlements for the 2016 claim year for a young farmer even when, on the basis of Article 24 of [Regulation No 1307/2013], he or she has already been allocated payment entitlements free of charge from the national ceiling for the 2015 claim year corresponding to his or her area of land at that time?’

Consideration of the question referred

- 20 By its question, the referring court asks, in essence, whether Article 30(6) of Regulation No 1307/2013, read in conjunction, where relevant, with Article 28(2) of Delegated Regulation No 639/2014, must be interpreted as meaning that a young farmer, within the meaning of Article 30(11)(a) of Regulation No 1307/2013, read in conjunction with Article 50(2) of that regulation, who has already received, under Article 24 of that regulation, an initial allocation of payment entitlements in respect of the eligible hectares which he or she has declared at the time of his or her application is entitled to receive, subsequently, a further allocation of payment entitlements from the national reserve equal to the number of additional eligible hectares that he or she now holds and for which he or she has not received any payment entitlements.
- 21 It should be noted, as a preliminary point, first, that, in the context of the basic payment scheme, it is Article 24 of Regulation No 1307/2013 which governs, as a general rule, the detailed rules for the initial allocation of payment entitlements for farmers who have the right to be granted direct payments.
- 22 Furthermore, Article 30(1) of Regulation No 1307/2013 lays down the obligation for Member States to create a national reserve by applying a linear percentage reduction to the basic payment scheme ceiling at national level. In accordance with Article 30(4) of that regulation, Member States are to allocate payment entitlements from their national reserve in accordance with objective criteria and in such a way as to ensure the equal treatment of farmers and to avoid distortions of the market and of competition.
- 23 Article 30(6) of that regulation provides that ‘Member States shall use their national ... reserves to allocate payment entitlements, as a matter of priority, to young farmers and to farmers commencing their agricultural activity’. Article 30(7) of that regulation provides for a series of subsidiary uses for which Member States ‘may’ use their national reserve.

- 24 It should also be noted that, although Article 30(11)(a) of Regulation No 1307/2013 defines a young farmer as ‘farmers fulfilling the conditions laid down in Article 50(2) and, where relevant, the conditions referred to in Article 50(3) and (11)’ of that regulation, the provisions of Article 50 thereof, other than those referred to in Article 30(11)(a) of that regulation, are not applicable in the present case.
- 25 The case in the main proceedings concerns the additional allocation of basic payment entitlements from the national reserve or regional reserves, which is governed by Article 30(6) of Regulation No 1307/2013.
- 26 The referring court’s doubts arise, in particular, from the fact that Article 24(1) of that regulation, which provides that ‘payment entitlements shall be allocated to farmers’, more clearly sets out the basis for a right to an allocation of payment entitlements than Article 30(6) of that regulation.
- 27 In that respect, it should be borne in mind that, according to settled case-law of the Court, in interpreting a provision of EU law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 26 September 2018, *Baumgartner*, C-513/17, EU:C:2018:772, paragraph 23 and the case-law cited).
- 28 As regards, in the first place, the wording of Article 30(6) of Regulation No 1307/2013, it should be noted that the use of the present indicative in certain language versions of that provision supports an interpretation of that provision according to which Member States are required to use their national reserve or their regional reserves to allocate payment entitlements to young farmers and to farmers commencing their agricultural activity. Therefore, such an obligation on the part of the Member States implies the existence of a right for the farmers concerned.
- 29 Moreover, it should be noted that the use, in Article 30(6) of Regulation No 1307/2013, of the words ‘as a matter of priority’ refers to the reciprocal relationship between paragraphs 6 and 7 of that Article 30. Accordingly, it is only if sufficient funds remain in the national or regional reserve after the priority allocation to young farmers, in accordance with Article 30(6), that the Member States ‘may’ use the funds for subsidiary purposes, such as those referred to in Article 30(7).
- 30 It follows, therefore, from its wording that Article 30(6) of that regulation provides a framework which is binding on the Member States in the allocation, as a priority, to young farmers of payment entitlements from the national reserve or regional reserves.
- 31 As regards, in the second place, the context of that provision, it is necessary to have regard to the relevant provisions of Delegated Regulation No 639/2014, which supplements the framework laid down by the regulation as regards, inter alia, the basic payment scheme. That delegated regulation was adopted by the Commission on the basis, inter alia, of Article 35(1)(c) of Regulation No 1307/2013, which empowers the Commission to adopt delegated acts concerning the rules on the establishment and calculation of the value and number of payment entitlements received from the national reserve or regional reserves.
- 32 Recital 29 of Delegated Regulation No 639/2014 notes that Article 30 of Regulation No 1307/2013 provides for compulsory and optional cases of allocation of payment entitlements from the national or regional reserve. That recital also states that it is appropriate for the Delegated Regulation to lay down rules for the calculation of the number and value of the payment

entitlements to be allocated in that way and to provide that priorities established in Article 30(6) of Regulation No 1307/2013 are not undermined by the decisions Member States are allowed to take under Article 30(7) and (10) of that article.

- 33 In that regard, Article 28(2) of Delegated Regulation No 639/2014 provides that where, as in the present case, a young farmer applies for payment entitlements from the national or regional reserve while he or she already holds payment entitlements, ‘he shall receive a number of payment entitlements equivalent to the number of eligible hectares he owns ... and for which he does not hold any payment entitlements ...’.
- 34 It follows that, where a young farmer already holds payment entitlements, the Member State concerned is required, pursuant to Article 30(6) of Regulation No 1307/2013, to allocate additional payment entitlements to that young farmer in accordance with the method described in Article 28(2) of Delegated Regulation No 639/2014.
- 35 The latter provision does not, however, in itself provide the basis for the allocation of a payment entitlement under the national reserve, since the sole purpose of Article 28 of Delegated Regulation No 639/2014 is to implement the rules relating to the establishment and calculation of the number of payment entitlements received from the national reserve or regional reserves under Article 30(6) of Regulation No 1307/2013.
- 36 It should also be noted that a first allocation of payment entitlements under Article 24 of Regulation No 1307/2013 does not preclude the allocation of such entitlements from the national reserve on the basis of Article 30(6) of that regulation.
- 37 The only condition laid down in Article 30(6) of Regulation No 1307/2013 for entitlement to a priority allocation of payment entitlements is that of being a young farmer or a farmer commencing his or her agricultural activity.
- 38 In that regard, recital 32 of Delegated Regulation No 639/2014 states that ‘Article 24(3) to (7) of [Regulation No 1307/2013] provides Member States with several possibilities to limit the number of payment entitlements to be allocated to farmers’. The preclusion of the further allocation of payment entitlements from the national reserve following an initial allocation is not among those limitations.
- 39 As a result, it does not follow either from Regulation No 1307/2013 or from Delegated Regulation No 639/2014 that the EU legislature intended to exclude the allocation of payment entitlements from the national reserve on the basis of Article 30(6) of that regulation after an initial allocation of such entitlements under Article 24 of that regulation.
- 40 Article 30(6) of Regulation No 1307/2013, read in conjunction with Article 28(2) of Delegated Regulation No 639/2014, must therefore be interpreted as meaning that a young farmer who already holds payment entitlements relating to eligible hectares he or she holds, and who makes an application for an additional allocation of payment entitlements from the national reserve, is entitled to receive an additional allocation of basic payment entitlements equal to ‘the number of eligible hectares he holds ... for which he does not hold any payment entitlement’.

- 41 That interpretation is consistent, in the third place, with the objective of the EU legislature, set out in recital 24 of Regulation No 1307/2013, according to which ‘national or regional reserves should be used, as a matter of priority, to facilitate the participation of young farmers and farmers commencing their agricultural activity in the scheme and using them should be allowed in order to take account of certain other specific situations’.
- 42 In the fourth place, it must be borne in mind that, for the claim years subsequent to the first year of implementation of the basic payment scheme, the allocation of payment entitlements from the national reserve is subject to the availability of funds within the national reserve. Article 31(1)(g) of Regulation No 1307/2013 leaves to the discretion of the Member States the option of funding the national reserve in order to cover the cases referred to in Article 30(6) of that regulation.
- 43 If the funds available in the national reserve are not sufficient to satisfy all the rights of young national farmers, the allocation must be made in such a way as to ensure the equal treatment of farmers eligible for entitlements under Article 30(6) of Regulation No 1307/2013 and to avoid distortions of the market and of competition, in accordance with Article 30(4) of that regulation.
- 44 It follows from all the foregoing considerations that the answer to the question referred is that Article 30(6) of Regulation No 1307/2013, read in conjunction with Article 28(2) of Delegated Regulation No 639/2014, must be interpreted as meaning that a young farmer, within the meaning of Article 30(11)(a) of Regulation No 1307/2013, read in conjunction with Article 50(2) of that regulation, who has already received, under Article 24 of that regulation, an initial allocation of payment entitlements in respect of the eligible hectares which he or she has declared at the time of his or her application is entitled to receive, subsequently, a further allocation of payment entitlements from the national reserve equal to the number of additional eligible hectares that he or she now holds and for which he or she has not received any payment entitlement. That right is subject to the existence of sufficient available funds in the national or regional reserves. If that is not the case, the allocation must be made in such a way as to ensure the equal treatment of farmers eligible for entitlements under Article 30(6) of Regulation No 1307/2013 and to avoid distortions of the market and of competition.

Costs

- 45 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 30(6) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, read in conjunction with Article 28(2) of Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation No 1307/2013 and amending Annex X to that regulation, must be interpreted as meaning that a young farmer, within the meaning of Article 30(11)(a) of Regulation No 1307/2013, read in conjunction with Article 50(2) of that regulation, who has already received, under Article 24 of that regulation, an initial allocation of payment entitlements in respect of the eligible hectares which he or she has declared at

the time of his or her application is entitled to receive, subsequently, a further allocation of payment entitlements from the national reserve equal to the number of additional eligible hectares that he or she now holds and for which he or she has not received any payment entitlement. That right is subject to the existence of sufficient available funds in the national or regional reserves. If that is not the case, the allocation must be made in such a way as to ensure the equal treatment of farmers eligible for entitlements under Article 30(6) of Regulation No 1307/2013 and to avoid distortions of the market and of competition.

[Signatures]