Reports of Cases

OPINION OF ADVOCATE GENERAL
RANTOS
delivered on 2 September 2021 [1]

Case C-176/20

SC Avio Lucos SRL
v
Agenția de Plăți și Intervenție pentru Agricultură – Centrul județean Dolj,
Agenția de Plăți și Intervenție pentru Agricultură (APIA) – Aparat Central

(Request for a preliminary ruling from the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania))

(Reference for a preliminary ruling – Agriculture – Common agricultural policy (CAP) – Direct support schemes – Common rules – Single area payment scheme – Regulation (EU) No 1307/2013 – Article 4(1)(a) and (c) – National legislation making direct support conditional on the farmer keeping his own animals – Article 9(1) – Concept of 'active farmer' – Regulation (EU) No 1306/2013 – Article 60 – Circumvention clause – Concept of 'artificially created conditions')

I. Introduction

1. This request for a preliminary ruling concerns the interpretation, first, of Article 4(1)(a) and (c) and of Article 9(1) of Regulation (EU) No 1307/2013, [2] which establishes rules for direct payments to farmers under support schemes within the framework of the common agricultural policy ('the CAP'), and, second, of Article 60 of Regulation (EU) No 1306/2013 [3] on the financing, management and monitoring of the CAP.

2. The request has been made in proceedings between, on the one hand, SC Avio Lucos SRL ('Avio Lucos') and, on the other hand, the Agenția de Plăți și Intervenție pentru Agricultură – Centrul județean Dolj (Agency for payments and measures for agriculture – Dolj District Centre, Romania, 'the APIA, Dolj') and the Agenția de Plăți și Intervenție pentru Agricultură (APIA) – Aparat Central (Agency for payments and measures for agriculture, Romania, 'the APIA') concerning an application for annulment of a decision of the APIA, Dolj, rejecting Avio Lucos' application for payment under the single area payment scheme for the 2015 marketing year.

1 Original language: French.

2 Regulation of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608, and corrigendum OJ 2016 L 130, p. 8).

3 Regulation of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the [CAP] 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 corrigendum OJ 2016 L 130, p. 6).

3. Although the Court has already had the opportunity to interpret the two abovementioned regulations,[4] inter alia in the context of disputes involving the APIA,[5] this case relates to unresolved questions concerning the interpretation of the EU legislation on direct support measures under the CAP. More specifically, the present case, which is being dealt with in coordination with Case C-116/20,[6] *Avio Lucos*, asks the Court, in essence, to clarify to what extent EU law, and in particular Regulation No 1307/2013, precludes national legislation adopted in the context of the single area payment scheme which provides, as a condition of eligibility for payments, that the grazing activities carried out on certain agricultural areas must be undertaken by animals reared by the farmer himself, thus preventing the grant of financial support to a person (natural or legal) who carries out such activities through an intermediary. In that context, the referring court also seeks to obtain clarifications on the concept of an 'active farmer', contained in that regulation, and on the circumvention clause provided for in Article 60 of Regulation No 1306/2013.

II. Legal context

A. EU law

1. Regulation No 1306/2013

4. Article 60 of Regulation No 1306/2013, which is entitled 'Circumvention clause', provides:

'Without prejudice to specific provisions, no advantage provided for under sectoral agricultural legislation shall be granted in favour of a natural or legal person in respect of whom it is established that the conditions required for obtaining such advantages were created artificially, contrary to the objectives of that legislation.'

2. Regulation No 1307/2013

5. Recitals 3, 7 and 10 of Regulation No 1307/2013 state:

'(3) All the basic elements pertaining to the payment of Union support to farmers should be included in this Regulation, which should also fix the conditions of access to payments which are inextricably linked to those basic elements.

…

[4] With regard to the case-law on Regulation No 1307/2013, see, inter alia, judgments of 17 December 2020, *Land Berlin (Droits au paiement liés à la PAC)* (C-216/19, EU:C:2020:1046), and of 10 March 2021, *Staatliches Amt für Landwirtschaft und Umwelt Mittleres Mecklenburg* (C-365/19, EU:C:2021:189). In relation to Regulation No 1306/2013, see, inter alia, judgments of 7 August 2018, *Argo Kalda Mardi talu* (C-435/17, EU:C:2018:637); of 8 May 2019, *Järvelaev* (C-580/17, EU:C:2019:391); and of 27 January 2021, *De Ruiter* (C-361/19, EU:C:2021:71).

[5] See judgment of 29 April 2021, *Piscicola Tulcea and Ira Invest* (C-294/19 and C-304/19, EU:C:2021:340), which concerns the concept of an 'agricultural area' within the meaning, inter alia, of Article 4(1)(e) of Regulation No 1307/2013.

[6] While Case C-116/20 relates to the 2014 marketing year and the questions raised concern in particular the provisions of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the [CAP] 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), this case is concerned with the 2015 marketing year, in respect of which the provisions of Regulation No 1307/2013, which replaced Regulation No 73/2009, apply.

(7) In order to ensure legal certainty, the power to adopt certain acts should be delegated to the Commission in respect of establishing the framework within which Member States are to define … the minimum activities to be carried out on areas naturally kept in a state suitable for grazing or cultivation …

…

(10) Experience acquired in the application of the various support schemes for farmers has shown that support was in a number of cases granted to natural or legal persons whose business purpose was not, or was only marginally targeted at an agricultural activity. To ensure that support is better targeted, Member States should refrain from granting direct payments to certain natural and legal persons unless such persons can demonstrate that their agricultural activity is not marginal. Member States should also have the possibility of not granting direct payments to other natural or legal persons whose agricultural activity is marginal. However, Member States should be allowed to grant direct payments to smaller part-time farmers, since those farmers contribute directly to the vitality of rural areas. Member States should also refrain from granting direct payments to natural or legal persons whose agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and who do not carry out a certain minimum activity.'

6. Article 4 of that regulation, which is entitled 'Definitions and related provisions', provides:

'1. For the purposes of this Regulation, the following definitions shall apply:

(a) "farmer" means a natural or legal person, or a group of natural or legal persons, regardless of the legal status granted to such group and its members by national law, whose holding is situated within the territorial scope of the Treaties, as defined in Article 52 TEU in conjunction with Articles 349 and 355 TFEU, and who exercises an agricultural activity;

(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;

…

2. Member States shall:

…

(b) where applicable in a Member State, define the minimum activity to be carried out on agricultural areas naturally kept in a state suitable for grazing or cultivation, as referred to in point (c)(iii) of paragraph 1;

…

3. In order to ensure legal certainty, the Commission shall be empowered to adopt delegated acts in accordance with Article 70 establishing:

…

(b) the framework within which Member States shall define the minimum activity to be carried out on agricultural areas naturally kept in a state suitable for grazing or cultivation, as referred to in point (c)(iii) of paragraph 1;

…'

7. Article 9 of the Regulation, which is entitled 'Active farmer', provides, in paragraphs 1 to 3:

'1. No direct payments shall be granted to natural or legal persons, or to groups of natural or legal persons, whose agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and who do not carry out on those areas the minimum activity defined by Member States in accordance with point (b) of Article 4(2).

2. No direct payments shall be granted to natural or legal persons, or to groups of natural or legal persons, who operate airports, railway services, waterworks, real estate services, permanent sport and recreational grounds.

Where appropriate, Member States may, on the basis of objective and non-discriminatory criteria, decide to add to the list in the first subparagraph any other similar non-agricultural businesses or activities, and may subsequently decide to withdraw any such additions.

A person or group of persons falling within the scope of the first or second subparagraph shall, however, be regarded as an active farmer if it provides verifiable evidence, in the form that is required by Member States, which demonstrates any of the following:

(a) that the annual amount of direct payments is at least 5% of the total receipts that it obtained from non-agricultural activities in the most recent fiscal year for which such evidence is available;

(b) that its agricultural activities are not insignificant;

(c) that its principal business or company objects consist of exercising an agricultural activity.

3. In addition to paragraphs 1 and 2, Member States may decide, on the basis of objective and non-discriminatory criteria, that no direct payments are to be granted to natural or legal persons, or to groups of natural or legal persons:

(a) whose agricultural activities form only an insignificant part of their overall economic activities; and/or

(b) whose principal activity or company objects do not consist of exercising an agricultural activity.

…'

8. Under Article 74 of Regulation No 1307/2013, that regulation became applicable on 1 January 2015.

3. Delegated Regulation No 639/2014

9. Recitals 4, 6, 10 and 16 of Delegated Regulation (EU) No 639/2014[7] state:

'(4) In line with the case-law of the Court of Justice of the European Union …, it is appropriate to clarify that Member States, when adopting measures to implement Union law, should exercise their discretion in compliance with certain principles, including in particular the principle of non-discrimination.

…

(6) In accordance with Article 4(1)(c) of Regulation [No 1307/2013], an "agricultural activity" does not require production, rearing or growing of agricultural products. Farmers may instead maintain an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries or, on agricultural areas naturally kept in a state suitable for grazing or cultivation, carry out a certain minimum activity. As the latter two activities both require a certain action on the part of the farmer, it is necessary to establish a Union framework within which Member States are to establish the further criteria for those activities.

…

(10) Article 9(1) of Regulation [No 1307/2013] requires that no direct payments are granted to natural or legal persons, or to groups of natural or legal persons, whose agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and who do not carry out on those areas the minimum activity defined by Member States. For this purpose, it is necessary to determine when such areas are to be considered as the main part of a farmer's agricultural land and to clarify the scope of application of that provision.

…

(16) In line with the case-law of the Court of Justice of the European Union …, payment entitlements should be allocated to the person enjoying decision-making power, benefits and financial risks in relation to the agricultural activity on the land for which such allocation is requested. It is appropriate to clarify that this principle applies in particular where an eligible hectare is subject to an application for allocation of payment entitlements by more than one farmer.'

[7] Commission Delegated Regulation of 11 March 2014 supplementing Regulation No 1307/2013 and amending Annex X to that Regulation (OJ 2014 L 181, p. 1).

10. Article 4 of that delegated regulation, which is entitled 'Framework for criteria on maintaining the agricultural area in a state suitable for grazing or cultivation', provides:

'1. For the purposes of the point (ii) of Article 4(1)(c) of Regulation [No 1307/2013], the criteria that farmers are to meet in order to fulfil the obligation to maintain the agricultural area in a state suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries shall be established by Member States in either or both of the following ways:

(a) Member States require at least one annual activity to be carried out by a farmer. Where justified for environmental reasons, Member States may decide to recognise also activities that are carried out only every second year;

(b) Member States set out the characteristics to be met by an agricultural area in order to be deemed maintained in a state suitable for grazing or cultivation.

2. When establishing criteria referred to in paragraph 1, Member States may distinguish between different types of agricultural areas.'

11. Article 5 of the Delegated Regulation, which is entitled 'Framework for minimum activities on agricultural areas naturally kept in a state suitable for grazing or cultivation', provides:

'For the purposes of the point (iii) of Article 4(1)(c) of Regulation [No 1307/2013], the minimum activity to be established by the Member States that is to be carried out on agricultural areas naturally kept in a state suitable for grazing or cultivation shall be at least one annual activity to be carried out by a farmer. Where justified for environmental reasons, Member States may decide to recognise also activities that are carried out only every second year.'

12. Article 10 of the same delegated regulation, which appears in Section 3 – entitled 'Active farmer' – of that delegated regulation, is itself entitled 'Cases where agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation' and reads as follows:

'1. For the purposes of Article 9(1) of Regulation [No 1307/2013], a natural or legal person, or a group of natural or legal persons, shall be considered as having agricultural areas which are mainly areas naturally kept in a state suitable for grazing or cultivation, where such areas represent more than 50% of all agricultural area declared in accordance with Article 72(1)(a) of Regulation [No 1306/2013].

2. Article 9(1) of Regulation [No 1307/2013] shall not apply to a natural or legal person, or a group of natural or legal persons who carry out, on areas naturally kept in a state suitable for grazing or cultivation, an agricultural activity within the meaning of the point (i) of Article 4(1)(c) of Regulation [No 1307/2013].'

B. Romanian law

1. Civil Code

13. Article 2.146 of the Civil Code, adopted by legea nr. 287 privind Codul civil (Law No 287 of 17 July 2009),[8] on loans for use provides that 'a loan for use is an agreement concluded free of charge by which one party, referred to as the "lender", hands over movable or immovable property to the other party, referred to as the "borrower", in order that the latter may use it, subject to the obligation to return it after a certain period of time.'

2. OUG No 34/2013

14. Article 2 of Ordonanța de urgență nr. 34 privind organizarea, administrarea și exploatarea pajiștilor permanente și pentru modificarea și completarea Legii fondului funciar nr. 18/1991 (Government Emergency Order No 34/2013 on the organisation, management and exploitation of permanent grassland, amending and supplementing Law No 18/1991 on land ownership),[9] of 23 April 2013, provides:

'For the purposes of this Emergency Order:

…

(c) "livestock unit (LSU)" means a standard unit of measurement established according to the feed requirements of each animal species, which allows for conversion between the various categories of animals

…'

3. OUG No 3/2015

15. Article 2 of Ordonanța de urgență a Guvernului (OUG) nr. 3 pentru aprobarea schemelor de plăți care se aplică în agricultură în perioada 2015-2020 și pentru modificarea articolului 2 din Legea nr. 36/1991 privind societățile agricole și alte forme de asociere în agricultură (Government Emergency Order No 3 approving the payment schemes applicable in the field of agriculture for the period 2015-2020 and amending Article 2 of Law No 36/1991 on agricultural companies and other forms of association in the field of agriculture), of 18 March 2015, in the version thereof in force on 1 July 2015,[10] provides:

'(1) For the purposes of this Emergency Order:

…

(f) "farmer" means a natural or legal person or a form of association of natural or legal persons, regardless of their legal status, whose holding is situated in the territory of Romania and who exercises an agricultural activity;

8 *Monitorul Oficial al României*, No 505 of 15 July 2011.

9 *Monitorul Oficial al României*, No 267 of 13 May 2013, 'OUG No 34/2013'.

10 *Monitorul Oficial al României*, No 191 of 23 March 2015, 'OUG No 3/2015'.

…

(2) Within the meaning of paragraph 1(f), the expression "agricultural activity" shall mean, as the case may be:

…

(d) carrying out a minimum activity on agricultural areas normally kept in a state suitable for grazing or cultivation, with a guarantee of a minimum grazing density of 0.3 LSU/[hectare] by the animals reared by the farmer or annual mowing on the permanent grassland, in accordance with the provisions of the specific legislation in the pasture sector. …'

16. Article 7 of OUG No 3/2015 provides:

'(1) The beneficiaries of payments shall be active farmers, natural or legal persons who carry out an agricultural activity as users of areas of agricultural land and/or lawful keepers of animals, in accordance with the legislation in force. …

…'

17. Article 8 of OUG No 3/2015 reads as follows:

'(1) In order to benefit from the direct payments provided for in Article 1(2), farmers must:

…

(c) exploit agricultural land of an area of at least one hectare; the area of the agricultural parcels must be at least 0.3 hectare and, in the case of greenhouses, solar greenhouses, vineyards, orchards, crops of hops, nurseries and fruit bushes, the area of the agricultural parcel must be at least 0.1 hectare and/or, as the case may be, hold a minimum number of animals. …

…

(n) present, when submitting a single payment application or amendments thereto, the necessary documents proving the use of the agricultural land, including land containing areas of ecological interest, and of animals. …

…

(6) The documents showing the use of the agricultural land and the keeping of livestock shall be determined by order of the ministrul agriculturii, pădurilor și dezvoltării rurale (Minister for Agriculture and Rural Development, Romania) and shall be presented, as appropriate, by all applicants when submitting single payment applications. The areas or livestock for which such documents are not presented shall not be eligible for the payment.'

4. Order No 619/2015

18. Article 2 of Ordinul ministrului agriculturii și dezvoltării rurale nr. 619 pentru aprobarea criteriilor de eligibilitate, condițiilor specifice și a modului de implementare a schemelor de plăți prevăzute la articolul 1 alineatele (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 articolului 2 din Legea nr. 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 of the Minister for Agriculture and Rural Development No 619 approving the eligibility criteria, the specific conditions and the detailed rules governing implementation of the payments schemes provided for in Article 1(2) and (3) of [OUG No 3/2015] as well as the specific conditions governing the implementation of rural development countervailing measures applicable to agricultural land, as laid down in the National Rural Development Programme 2014-2020), of 6 April 2015, in the version thereof in force on 1 July 2015,[11] provides:

'For the purposes of this Order:

…

(m) "animal keeper" means a person who permanently possesses animals, as the owner of animals and/or owner of a holding, or temporarily possesses animals, as a person into whose custody they have been entrusted for the entire period of the year of application, which are kept pursuant to an act concluded under the conditions laid down by the legislation in force;

…'

19. Article 7(3) of that order provides:

'Users of permanent grassland, natural or legal persons governed by private law, other than those mentioned in paragraph 1 and in Article 6(1), who carry out at least a minimum agricultural activity on the permanent grassland at their disposal under the conditions laid down by law, as defined in Article 2(2)(d) of [OUG No 3/2015], as active farmers, shall present, when submitting a single payment application to the APIA, the documents provided for in Article 5(1) and (2)(a), (b)(i), (c) and (d), as well as, where applicable:

(a) a copy of the identification document of the farm holding to which the animals are registered or a certificate issued by an authorised veterinarian stating the code of the holding registered in the National Register of Holdings valid on the date on which the single payment application is submitted, where the owner of the permanent grassland keeps animals such that a minimum grazing density of 0.3 LSU/[hectare] is guaranteed;

…'

20. Article 8(1) of the order reads as follows:

'The documents relating to the lawful keeping of animals which shall be submitted pursuant to Article 8(1)(n) of [OUG No 3/2015] shall be stipulated by order of the Autoritatea Națională Sanitară Veterinară și pentru Siguranța Alimentelor (National Veterinary Health and Food Safety Authority) No 40/2010.

…'

[11] *Monitorul Oficial al României*, No 234 of 6 April 2015, 'Order No 619/2015'.

III. The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

21. Avio Lucos is a company governed by Romanian law. Its principal activity is 'activities in support of crops'.

22. On 1 July 2015, Avio Lucos submitted to the APIA, Dolj, an application for payment under the single area payment scheme for the 2015 marketing year in respect of an area of 170.36 hectares of pastureland (municipal permanent grassland for individual use).

23. To that end, it submitted a series of documents, which included a concession contract, concluded on 28 January 2013 with the Municipal Council of the Municipality of Podari (Romania), concerning a pasture situated within that municipality [12] ('the concession contract'), together with six loan-for-use contracts which it concluded in April 2015 with various animal owners, under which Avio Lucos allowed those owners to graze their animals free of charge on the land received under the concession ('the loan-for-use contracts'). In addition, in its single payment application, Avio Lucos stated that it kept animals which contributed to its agricultural activity: 24 cows over the age of two years, one cow under the age of six months, 60 goats and 20 *equidae* (horses) over the age of six months.

24. By decision of 20 October 2017, the APIA, Dolj, rejected that single payment application for failure to comply with the eligibility conditions, on the ground that Avio Lucos had not guaranteed the minimum grazing density of 0.3 livestock units per hectare ('the minimum density requirement') for the entire area of pastureland of 170.36 hectares. According to the APIA, Dolj, the livestock grazing was in fact carried out by the animal owners referred to in the previous point of this Opinion and not by Avio Lucos, which did not keep a sufficient number of its own animals to be able to comply with the minimum density requirement.

25. Avio Lucos lodged a preliminary complaint against that decision, which was rejected by the APIA, Dolj, by decision of 4 January 2018.

26. Avio Lucos brought an action against those two decisions of the APIA, Dolj, before the Tribunalul Dolj – Secția de contencios administrativ și fiscal (Regional Court, Dolj – Division for Administrative and Tax Matters, Romania, 'the Regional Court, Dolj'), which the latter dismissed by judgment of 28 January 2018.

27. The Regional Court, Dolj, essentially based the rejection of the single payment application submitted by Avio Lucos on the failure to comply with the minimum density requirement for the entire area of pastureland of 170.36 hectares. More specifically, that court raised, of its own motion, two pleas of inadmissibility alleging, first, that the concession contract is void [13] and, secondly, that the loan-for-use contracts are void. [14] In essence, the court took the view that the concession contract had been concluded in breach of national law, since, inter alia, Avio Lucos did not hold the status of animal breeder on the date on which that contract was concluded and

[12] This contract was concluded for the concession of a grazing area of, initially, 341.70 hectares, which was subsequently reduced, following the amendment to the contract of 25 June 2015, to 170.36 hectares. This same concession contract is also at issue in Case C-116/20.

[13] The Regional Court, Dolj, found, inter alia, first, that Avio Lucos is not a local association/organisation headquartered in Podari which has as its company object the rearing of animals, but rather a commercial company headquartered in a different location from that where the pastureland awarded by concession is situated and, second, the concession contract concluded with the Municipal Council of the Municipality of Podari was unlawfully awarded directly without a call for tenders.

[14] According to the Regional Court, Dolj, it is not apparent from the National Register of Holdings that animals were in fact handed over, with the result that the loan-for-use contracts, in so far as they are genuine contracts, are invalid.

the minimum density requirement had to be satisfied on that date, and not subsequently. Since it is not entitled to take on concession the pastureland of the Municipality of Podari, its single payment application is inadmissible. Avio Lucos therefore created artificial conditions in order to be granted a payment under the financial support scheme, with the sole aim of obtaining an advantage contrary to that scheme. Accordingly, despite formal compliance with the criteria laid down in the national legislation, the documents submitted by Avio Lucos in support of its single payment application could not be taken into consideration to substantiate that application. Finally, a broad interpretation of the concept of 'animal breeder' is contrary to EU law, as the national authorities can rely solely on the data contained in a national system for the individual identification and registration of animals in order to refuse the aid sought, without carrying out other checks, in accordance with the judgment of 21 July 2011, *Nagy* (C-21/10, EU:C:2011:505).

28. Avio Lucos brought an appeal against that judgment, which is now pending before the referring court, the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania), in which it has claimed inter alia that the Regional Court, Dolj, was wrong to find that a condition of eligibility had not been met, namely the status of owner/animal breeder. It is irrelevant whether or not the status of animal breeder is held, and that cannot entail the rejection of its single payment application because that application was concerned not with the rearing of animals but the maintenance of land for grazing using animals. For its part, the APIA contended that that appeal should be dismissed.

29. The referring court observes that, under Article 4(1)(a) and (c) of Regulation No 1307/2013, a natural or legal person who exercises an 'agricultural activity', which – according to Article 4(1)(c)(iii) of that regulation – may consist in carrying out a minimum activity, defined by Member States, on agricultural areas naturally kept in a state suitable for grazing or cultivation, comes inter alia under the concept of a 'farmer'. Article 4(2) of the regulation affords the Member States the possibility of defining what constitutes such minimum activity. In that regard, the Romanian legislature provided that the agricultural activity must be carried out with the animals reared by the farmer himself, thus excluding from the grant of financial support any natural or legal person carrying out such an activity through an intermediary, which, according to the APIA, is the case with Avio Lucos.

30. That court wishes to ascertain whether Article 4 of Regulation No 1307/2013 precludes such national legislation which establishes that the minimum activity to be carried out on the agricultural areas consists in grazing by animals reared by the farmer. If EU law were not to preclude such legislation, the court asks whether Article 4(1)(a) and (c) and Article 9(1) of Regulation No 1307/2013 are to be interpreted as meaning that a legal person who has concluded a concession contract, as in the present case, and who keeps animals on the basis of loan-for-use contracts concluded with natural persons free of charge can be regarded as an 'active farmer'. In addition, since, from a formal perspective, Avio Lucos satisfied the eligibility criteria laid down in national law, the same court asks whether the conclusion of a concession contract and of loan contracts such as those at issue in the main proceedings can fall within the scope of the concept of 'artificially created conditions', as referred to in Article 60 of Regulation No 1306/2013.

31. In those circumstances, the referring court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does Regulation [No 1307/2013] preclude national legislation which establishes that the minimum activity to be carried out on agricultural areas normally kept in a state suitable for grazing is to consist in grazing with animals reared by a farmer?

(2) In so far as the abovementioned law [of the European Union] does not preclude the national legislation referred to in Question 1, may the respective provisions of Article 4(1)(a) and (c), and of Article 9(1), of Regulation [No 1307/2013] be interpreted as meaning that a legal person who has concluded a concession contract in circumstances such as those in the main proceedings and who keeps animals under loan-for-use contracts concluded with natural persons, by which the lenders entrust to the borrowers, free of charge, the animals which they keep as owners, for the purpose of use for grazing, on the pastureland made available to the borrowers and over the agreed periods of time, may be regarded as an 'active farmer'?

(3) Must Article 60 of Regulation [No 1306/2013] be interpreted as meaning that artificial conditions also cover the case of a concession contract and loan-for-use contracts such as those at issue in the main proceedings?'

32. Written observations have been lodged by Avio Lucos, the APIA and the APIA, Dolj, the Czech and Romanian Governments and the European Commission.

33. The Court decided, pursuant to Article 76(2) of its Rules of Procedure, to give a ruling without a hearing. By letters sent on 24 February 2021, the Court made a request for clarifications to the referring court, with which the latter complied, and it put questions for a written response to the parties to the main proceedings, the Romanian Government and the Commission, to which responses were received within the time limit specified.

IV. Analysis

A. The first question referred for a preliminary ruling

34. By its first question, the referring court asks whether Regulation No 1307/2013 precludes national legislation which establishes that the minimum activity to be carried out on agricultural areas normally kept in a state suitable for grazing is to consist in grazing with animals reared by the farmer.

35. First of all, I consider it appropriate to provide some clarifications as to the scope of that first question.

36. It should be observed, first, that, having regard to the wording of the question, and notwithstanding the fact that the referring court refers in generic terms to Regulation No 1307/2013, it appears that that question concerns the interpretation of Article 4 of that regulation and, in particular, of paragraphs 1(c)(iii) and 2(b) of that article. In addition to the fact that that court specifically refers to those provisions in the grounds of its request for a preliminary ruling, the applicable national legislation, under which grazing must be carried out whilst satisfying a minimum density requirement with animals reared by the farmer, was – according to the information provided by the referring court and the Romanian Government – adopted within the context of Romania's definition of the minimum activity to be carried out on agricultural land, in accordance with Article 4(2) of the regulation.

37. Next, as has been confirmed by the Romanian Government, the words 'agricultural areas normally kept', which appear in the first question and reproduce the wording of Article 2(2)(d) of OUG No 3/2015, must be understood as synonymous with the words 'agricultural areas naturally kept' contained in Article 4(1)(c)(iii) and 2(b) of Regulation No 1307/2013.

38. Finally, it should be noted that the words 'animals reared by the farmer', which appear in the first question and refer to the concept of 'rearing' mentioned in Article 2(2)(d) of OUG No 3/2015, is not defined in national law. According to the explanations provided by the Romanian Government, the concept of 'animals reared by the farmer' overlaps both with the concept of 'keeping' animals, as laid down in Article 8(6) of OUG No 3/2015, and that of 'animal keeper', as provided for in Article 2(m) of Order No 619/2015. Accordingly, in using those words, emphasis is placed not on the process of rearing animals but on 'keeping' them. Under national law, an 'animal keeper' is a person who 'permanently possesses animals, as the owner of animals and/or owner of a holding, or temporarily possesses animals, as a person into whose custody they have been entrusted for the entire period of the year of application …', [15] which has a broader meaning than the concept of an 'animal breeder'.

39. It follows that, by its first question referred for a preliminary ruling, the referring court asks, in essence, whether Article 4(1)(c)(iii) and Article 4(2)(b) of Regulation No 1307/2013 preclude national legislation under which the minimum grazing activity to be carried out on agricultural areas naturally kept in a state suitable for grazing must be undertaken by animals kept by the farmer himself. [16]

40. 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. [17]

41. In the first place, with regard to the *wording* of the provisions of Regulation No 1307/2013 referred to in point 39, those provisions do not specifically state that, in order to be covered by the concept of 'agricultural activity', the activity thus exercised (here: grazing) must be carried out using animals reared or kept by the farmer himself. [18] Nor do they expressly prohibit this.

42. Under Article 4(1)(c)(iii) of Regulation No 1307/2013, 'agricultural activity' means, inter alia, 'carrying out a minimum activity, defined by Member States, on agricultural areas naturally kept in a state suitable for grazing or cultivation'. Similarly, pursuant to Article 4(2) of that regulation, Member States are to define, 'where applicable', the minimum activity to be carried out on such areas. Article 5 of Delegated Regulation No 639/2014 establishes the framework for such minimum activities, and specifies that 'at least one annual activity [must] be carried out by a farmer'.

43. Aside from that condition, no restrictions are laid down as regards the scope of the concept of the 'minimum agricultural activity' carried out on agricultural areas naturally kept in a state suitable for grazing or cultivation; that concept is defined by the Member State concerned. Therefore, although the wording of the provisions of Regulation No 1307/2013 cited above do undeniably afford some leeway to Member States in defining the minimum activity to be carried

15 See Article 2(m) of Order No 619/2015 (point 18 of this Opinion).

16 The first question referred for a preliminary ruling in the present case is similar to the second question referred in Case C-116/20. That said, whereas the first question in the present case concerns the possibility of a Member State imposing, in connection with carrying out a minimal activity, an obligation on the farmer to graze his own animals, the second question in Case C-116/20 seeks to determine whether such a condition can be imposed for the purposes of concluding a concession contract such as that at issue in the main proceedings.

17 See, to that effect, judgment of 10 March 2021, *Staatliches Amt für Landwirtschaft und Umwelt Mittleres Mecklenburg* (C-365/19, EU:C:2021:189, paragraph 27).

18 That consideration also applies in respect of the concept of 'agricultural activity', within the meaning of Article 2(c) of Regulation No 73/2009, which was replaced by Regulation No 1307/2013 (see point 78 of the Opinion in Case C-116/20, *Avio Lucos*).

out, it does not allow a conclusive answer to be given to the question of whether such leeway goes as far as allowing them to impose a condition concerning the ownership, keeping or rearing of the animals used for the grazing. [19]

44. In the second place, some guidance may be inferred from the *context* of Article 4(1)(c)(iii) of Regulation No 1307/2013. Thus, I note that that regulation establishes, under Article 1(b)(i) thereof, specific rules concerning the single area payment scheme, with recital 3 of that regulation clarifying that 'all the basic elements' pertaining to the payment of Union support to farmers should be included in the regulation. That regulation also fixes the conditions of access to payments which are inextricably linked to those basic elements. The condition that, in order to receive single area payments, the minimum agricultural activity must be carried out using animals reared by the farmer himself could be regarded as an additional requirement not laid down in EU law.

45. In that regard, it should be observed that Article 4(3)(b) of Regulation No 1307/2013 provides that, in order to ensure legal certainty, the Commission is to be empowered to adopt delegated acts in accordance with Article 70 establishing the framework within which Member States are to define such minimum activity; this is also echoed in recital 7 of the regulation. It is, in particular, on that legal basis that the Commission adopted Delegated Regulation No 639/2014. However, as I have stated above, Article 5 of that delegated regulation specifies that the minimum activity 'shall be at least one annual activity to be carried out by a farmer', which appears to support the interpretation that the minimum activity must relate to the area itself or to the way in which the grazing (or cultivation) is carried out, such as the imposition of a minimum livestock density or annual mowing, [20] whilst clarifying from the outset that the activity must be carried out 'by a farmer'.

46. In that regard, while it is indeed true that, by providing a uniform definition of the concept of a 'farmer', Regulation No 1307/2013 does not distinguish between farmers who are owners and those who rear animals, or even those who use other people's animals under loan or leasing contracts, the fact remains that the activity must be carried out by the farmer himself (here: the 'animal breeder'). Furthermore, recital 16 of Delegated Regulation No 639/2014 reaffirms that payment entitlements should be allocated to the person enjoying decision-making power, benefits and financial risks in relation to the agricultural activity on the land for which such allocation is requested. [21]

47. Accordingly, the requirement that, when carrying out a minimum grazing activity, the minimum density must be guaranteed, inter alia, with 'animals reared by the farmer', within the meaning of Article 2(2)(d) of OUG No 3/2015, appears to me compatible with the provisions of Regulation No 1307/2013, since the 'rearing' element does not add, in essence, an additional requirement which would run counter to EU law. In the light of the concept of 'farmer', within the meaning of Regulation No 1307/2013 and of recital 16 of Delegated Regulation No 639/2014, it must be assumed that the animals made available for the grazing are normally kept by the farmer who occupies the pastureland at issue. However, since this involves an interpretation of

[19] The fact, mentioned by the Romanian Government and by the APIA, that minimum activities as defined in national legislation were notified to the Commission, or that Romania has been subject to an audit as part of an investigation covering inter alia direct payments under Regulations No 1306/2013 and No 1307/2013, does not appear to me to be decisive in this regard.

[20] In its judgment of 21 July 2011, *Nagy* (C-21/10, EU:C:2011:505), the Court found a condition relating to the density of livestock, which is laid down in national legislation with a view to the use as grassland of land in sensitive environments, with the aim of conserving the pastures' abundance in flora and fauna, to be compatible with EU law, because it was consistent with the objectives and requirements of the EU legislation at issue.

[21] Judgment of 14 October 2010, *Landkreis Bad Dürkheim* (C-61/09, EU:C:2010:606, paragraph 50).

national law, it is for the referring court, the only court with jurisdiction to interpret and apply national law, to determine whether the concept of 'animal rearing', within the meaning of Article 2(2)(d) of OUG No 3/2015, may be regarded as consistent with the concept of a 'farmer' within the meaning of Regulation No 1307/2013, when read in the light of recital 16 of Delegated Regulation No 639/2014.

48. In the third and final place, the *objectives* pursued by the rules at issue appear to lend weight to the view that the national legislation is compatible with the provisions of Regulation No 1307/2013. In that connection, it should be recalled that, under Article 39(1)(b) TFEU, one of the objectives of the CAP is to ensure a fair income for farmers, in particular by increasing the income of people undertaking agricultural activities.[22] The direct payments are granted to farmers because it is farmers' income which the CAP is intended to support. With that in mind, I would point out, firstly, that, in accordance with recital 10 of Regulation No 1307/2013, the aim of that regulation is to ensure that support is better targeted at farmers, so as to prevent support being granted to natural or legal persons whose business purpose is not, or is only marginally, targeted at an agricultural activity. Secondly, a further aim of that regulation is to allow direct payments to be granted to smaller, part-time farmers, since those farmers contribute directly to the vitality of rural areas. Indeed, it should be recalled that one of the CAP's objectives is to ensure a fair standard of living for the agricultural community and, in so doing, to contribute to the conservation of rural areas. Thirdly, pursuant to recital 2 of that regulation, one of the core objectives, and one of the key requirements, of the CAP reform is the reduction of the administrative burden.

49. It is therefore necessary to determine, in the light of those three objectives, whether the imposition of a criterion concerning the person in charge of rearing or keeping the animals can be established as a condition for receiving single area payments.

50. In that regard, firstly, with regard to the objective relating to the better targeting of the support for farmers, the Romanian Government has argued that, by adopting the national legislation at issue, the Romanian legislature had intended to make it easier for the greatest number of owners or keepers of animals possible, and not persons who carry out agricultural activities by way of an intermediary, to enjoy direct access to the pastureland in question. Viewed from that perspective, I consider it to be consistent with that objective for the farmer himself to have to keep his own animals, since, in the absence of evidence to the contrary, the redistributive aspect of the support is limited if a farmer who does not keep his own animals receives a single payment which is only of indirect benefit to the farmers who loan their animals. Furthermore, when a farmer uses animals belonging to lenders, he does not normally assume any risk or obligation that would normally arise from the activity of rearing animals.

51. Next, it should be noted that those same considerations likewise apply vis-à-vis the objective of ensuring a fair standard of living for the agricultural community and thus contributing to the conservation of rural areas, even if for that objective, such conservation could also be ensured where the aid applicant uses animals belonging to lenders.[23]

52. Finally, as for the objective of reducing the administrative burden, it should be recalled that the Court has already taken the view that neither Regulation No 1307/2013 nor any other EU legislation required the submission of a deed of title or any other proof of a right of use in support of an application to be allocated payment entitlements with a view to establishing that

[22] See Opinion of Advocate General Kokott in *Unió de Pagesos de Catalunya* (C-197/10, EU:C:2011:464, point 1).

[23] See, to that effect, point 78 of the Opinion in Case C-116-20, *Avio Lucos*.

the hectares found to be eligible are at the applicant's disposal. The Court held in that regard that the Member States enjoy a measure of discretion as regards the supporting documents and the evidence to be required from an aid applicant.[24] However, the exercise by Member States of their discretion vis-à-vis the evidence to be produced in support of an aid application, for example as regards the possibility of requiring an aid applicant to produce a valid legal document attesting to his right to use the areas covered by that application, must be consistent with the objectives pursued by the EU legislation concerned, as well as the general principles of EU law and, in particular, the principle of proportionality.[25] On that basis, and by analogy, the requirement to provide any evidence that the aid applicant is himself an animal breeder could be perceived as an 'administrative burden', which, however, seems to me entirely compatible with and proportionate to the two previous objectives, in particular that of making it easier for the greatest possible number of farmers who keep animals as possible to have direct access to the pastureland in question. There does not appear to me to be any less stringent means of determining whether an applicant is in reality acting as an intermediary and therefore as a commercial undertaking whose business is only marginally targeted at an agricultural activity.

53. In the light of the foregoing considerations, I propose that the Court answer the first question referred for a preliminary ruling to the effect that Article 4(1)(c)(iii) and Article 4(2)(b) of Regulation No 1307/2013 are to be interpreted as not precluding, in principle, national legislation under which the minimum grazing activity to be carried out on the agricultural areas naturally kept in a state suitable for such grazing must be carried out with animals kept by the farmer himself.

B. The second question referred for a preliminary ruling

54. By its second question referred for a preliminary ruling, which is submitted in the event that the first question is answered in the negative, the referring court asks, in essence, whether Article 4(1)(a) and (c) and Article 9(1) of Regulation No 1307/2013 are to be interpreted as meaning that a legal person who has concluded a concession contract relating to a grazing area belonging to a municipality and who, for the purposes of grazing that land, uses animals loaned, free of charge, by natural persons who own those animals comes under the concept of an 'active farmer' within the meaning of those provisions.

55. It is clear from the wording of Article 9 of Regulation No 1307/2013, which is entitled 'Active farmer', and in particular from paragraph 1 thereof,[26] that no direct payments are to be granted to natural or legal persons whose agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and who do not carry out on those areas the minimum activity defined by Member States in accordance with Article 4(2)(b) of that regulation, to which reference is likewise made in recital 10 of the regulation.

56. It is established, in the present case, that the agricultural areas at issue are primarily areas naturally kept in a state suitable for grazing or cultivation in accordance with Article 4(2)(b) of Regulation No 1307/2013. In addition, it is clear from the wording of that provision that a farmer

[24] See, to that effect, judgment of 17 December 2020, *Land Berlin (Rights to payment in connection with the CAP)* (C-216/19, EU:C:2020:1046, paragraphs 34 to 37).

[25] Judgment of 24 June 2010, *Pontini and Others* (C-375/08, EU:C:2010:365, paragraphs 82 and 86).

[26] It is true that Article 9(3) of Regulation No 1307/2013 does, moreover, provide that Member States may decide, on the basis of objective and non-discriminatory criteria, that no direct payments are to be granted to persons whose agricultural activities form only an insignificant part of their overall economic activities and/or whose principal activity or company objects do not consist of exercising an agricultural activity. However, the referring court does not ask the Court about the interpretation of that provision.

who does not carry out on those areas the minimum activity defined by Member States, pursuant to Article 4(1)(c)(iii) of that regulation, would not be regarded as an 'active farmer' and, therefore, should be refused any direct payments.

57. The question does arise, however, whether a person who does not himself carry out the minimum activity at issue with his own animals but rather uses for those purposes animals loaned to him free of charge by other farmers may be regarded as an 'active farmer'.

58. In the first place, it must be observed that, as in the case of the first question referred for a preliminary ruling, the answer is not clear from the *wording* of the provisions cited above. The purpose of Article 9 of Regulation No 1307/2013 is, admittedly, to ensure that, inter alia, natural or legal persons '(a) whose agricultural activities form only an insignificant part of their overall economic activities; and/or (b) whose principal activity or company objects do not consist of exercising an agricultural activity' are not granted direct payments, in accordance with paragraph 3 of that article. However, that paragraph cannot be interpreted as excluding from the grant of direct payments natural or legal persons who use loaned animals for the purposes of a minimum grazing activity.

59. In the second place, the *context* of that paragraph provides some useful guidance. Thus, under Article 4(1)(a) of Regulation No 1307/2013, the concept of a 'farmer' refers to a person 'whose *holding* is situated within the territorial scope of the Treaties … and who exercises an agricultural activity'.[27]

60. The concept of a 'holding' is defined in Article 4(1)(b) of that regulation as 'all the units used for agricultural activities and *managed by a farmer* …'.[28] In that regard, the Court has clarified, in relation to agricultural areas, that they form part of a farmer's holding 'where the farmer has the power to manage those areas for the purposes of an agricultural activity, that is to say, where the farmer enjoys a degree of autonomy with regard to those areas sufficient for the carrying-out of his agricultural activity'.[29]

61. In that context, it is an open question whether animals loaned, free of charge, by natural persons who own those animals to a legal person, who simply makes grazing areas available to them for the purpose of grazing, can be regarded as falling within that farmer's 'holding'.

62. I take the view that the correct answer to that question varies according to the facts of the matter, and in particular whether such a legal person has a genuine decision-making power by assuming the financial risks in relation to the agricultural activity concerned.[30]

27 Emphasis added.

28 Emphasis added.

29 Judgment of 9 June 2016, *Planes Bresco* (C-333/15 and C-334/15, EU:C:2016:426, paragraph 37 and the case-law cited). I would also note that, in its judgment of 5 February 2015, *Agrooikosystimata* (C-498/13, EU:C:2015:61, paragraph 34), the Court stated that the concepts of 'agricultural landholder' and 'farmer' are equivalent in meaning in the context of the application of Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ 1992 L 125, p. 85). That said, in that judgment, the Court also pointed to the 'totally different' context of, on the one hand, the provisions of that regulation and, on the other hand, the provisions of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the [CAP] 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), which preceded Regulation No 1307/2013.

30 See, to that effect, recital 16 of Delegated Regulation No 639/2014.

63. In the present case, since this involves an analysis of a purely factual nature, it is for the referring court, the only court with jurisdiction to establish and assess the relevant national law, to determine whether the loan-for-use contracts allow Avio Lucos to maintain its decision-making power, receive benefits and assume financial risks in relation to the minimum grazing activity on the 170.36 hectares of pastureland.[31] However, an applicant carrying out an agricultural activity with 'borrowed' animals can, in principle, be regarded as an 'active farmer'. In that connection, it should be noted that the activity of an 'active farmer' is subject to the condition that the applicant possesses eligible hectares which are at his disposal, as provided for in Article 36(5) of Regulation No 1307/2013. In other words, the farmer must enjoy a degree of autonomy sufficient for the carrying-out of his agricultural activity,[32] such that carrying out an activity with borrowed animals should not have the effect of depriving that farmer of any decision-making power in relation to the agricultural activity.

64. In the third and final place, with regard to the *objective* laid down in Article 4(1)(a) and (c) and Article 9(1) of Regulation No 1307/2013, it should be recalled that one of the aims of the CAP is to ensure a fair income for farmers, for example by increasing the income of people exercising agricultural activities. The direct payments are granted to farmers because it is farmers' income which the CAP is intended to support. On that basis, the definition of an 'active farmer', which may also include persons who carry out an activity as part of which animals are used under a loan-for-use contract, is not, in principle, contrary to those objectives.

65. There are grounds for asking whether such an objective can be achieved if, *in fine*, the beneficiary of the direct support measures is not a farmer who himself carried out the minimum activity with his animals but rather the intermediary who concluded a concession agreement for pastureland with municipal authorities.

66. In that regard, in the light of the objectives set out in recital 10 of Regulation No 1307/2013, it is my view that, if the agricultural activity does not prove to be marginal, which is for the referring court to determine, it is irrelevant whether the farmer carried out the minimum activity with his animals or whether he borrowed them.

67. In the light of the foregoing, I propose that the Court answer the second question referred for a preliminary ruling to the effect that Article 4(1)(a) and (c) and Article 9(1) of Regulation No 1307/2013 are to be interpreted as meaning that a natural or legal person who has concluded a concession contract relating to pastureland belonging to a municipality and who, for the purposes of grazing that land, uses animals loaned by natural persons who own those animals comes under the concept of an 'active farmer' within the meaning of those provisions where that person acts as a farmer, within the meaning of Article 4(1)(a) of that regulation, by retaining control of the holding vis-à-vis that area in terms of management, benefits and financial risks.

[31] In that connection, without wishing to encroach upon the jurisdiction of the referring court, I would simply state, first, that, under the concession contract, which was not concluded free of charge, Avio Lucos was required to ensure that the land received on concession was put to use for grazing effectively and on a continuous and permanent basis. Similarly, Avio Lucos could neither assign under a sub-concession nor lease the land forming the subject matter of the concession and was required to implement a minimum density requirement. Second, under the loan-for-use agreements, Avio Lucos was required, at its expense, to clean up the pastureland, remove weeds and get rid of excess water from the land, thus ensuring optimum conditions for the restoration of the pastures. It therefore appears that, if Avio Lucos had received the benefits of the single area payment, it would assume some financial risk. Nevertheless, facts revealed by the APIA, such as the failure to produce animal movement forms or the failure to register animals in the National Register of Holdings, are not without relevance. This is particularly so since Article 68(2) of Regulation No 1306/2013 provides that, where applicable, the integrated management and control system set up and managed by each Member State is to include a system for the identification and registration of animals.

[32] Judgment of 14 October 2010, *Landkreis Bad Dürkheim* (C-61/09, EU:C:2010:606, paragraphs 62 and 63).

C. The third question referred for a preliminary ruling

68. By its third question referred for a preliminary ruling, the referring court asks, in essence, whether the conclusion of a concession contract and of loan contracts such as those at issue in the main proceedings can fall within the concept of 'artificially created conditions', as provided for in Article 60 of Regulation No 1306/2013.

69. Under Article 60 of that regulation, without prejudice to specific provisions, no advantage provided for under sectoral agricultural legislation is to be granted in favour of a natural or legal person in respect of whom it is established that the conditions required for obtaining such advantages were created artificially, contrary to the objectives of that legislation.

70. On its wording, Article 60 of the regulation essentially repeats Article 29 of Regulation No 1782/2003, which continues the codification of existing case-law according to which it is not possible to rely on Union law fraudulently or abusively. [33]

71. In its judgment in *Slancheva sila*, [34] which provides guidance that, in my view, can be transposed to the present case, the Court made clear that, if an activity formally meets the eligibility criteria required for the grant of support, [35] evidence of an abusive practice on the part of the potential beneficiary requires, first, a combination of objective circumstances in which, despite formal observance of the conditions laid down by the relevant rules, the purpose of those rules has not been achieved and, second, a subjective element consisting in the intention to obtain an advantage from the European Union rules by creating artificially the conditions laid down for obtaining it. It is ultimately for the national court to make the necessary determinations.

72. I am of the view that that well-established principle of that case-law can be applied by analogy in the present case.

73. First, with regard to the objective element, it is necessary to consider once more the purpose of the aid at issue and to determine whether that purpose has been achieved or not. In that regard, both the APIA and the Romanian Government have stated that the national legislation sought to ensure that the agricultural activity is carried out in the person's own name rather than through an intermediary, which corresponds to one of the objectives of the CAP. [36] The conclusion of a concession contract and loan-for-use contracts such as those in the main proceedings by a person who does not keep the number of animals necessary for grazing purposes does not in itself constitute an 'artificially created' condition, within the meaning of Article 60 of Regulation No 1306/2013, but is liable to divert the direct payments at issue from a section of the agricultural community, that is to say, from natural persons who have grazed their own animals on the pastureland concerned.

74. Second, as for the subjective element, account must be taken of all of the relevant facts of the present case in order to determine whether it was Avio Lucos' intention to obtain an advantage under the European Union rules by 'artificially' creating the conditions laid down for obtaining it. Those facts could include the conclusion, in breach of the applicable national law, of the

[33] See Opinion of Advocate General Kokott in *Planes Bresco* (C-333/15 and C-334/15, EU:C:2016:159, point 43 and the case-law cited).

[34] Judgment of 12 September 2013, *Slancheva sila* (C-434/12, EU:C:2013:546, paragraphs 29 and 30).

[35] The case concerned support for the creation and development of micro-enterprises under Article 52(a)(ii) 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).

[36] See point 50 of this Opinion.

concession contract or even the conclusion of the loan-for-use contracts, from which it is apparent that it is ultimately the pastureland that is loaned, since the grazing is performed by the natural persons who own the animals and not by Avio Lucos.

75. In the light of the foregoing, I propose that the Court answer the third question referred for a preliminary ruling to the effect that the conclusion, by a natural or legal person, of a concession contract for pastureland with a municipality and the sub-contracting of the grazing activity in order to receive a direct payment under the single area payment scheme does not, in itself, constitute an 'artificially created' condition, within the meaning of Article 60 of Regulation No 1306/2013, unless it is shown, on the basis of all the relevant facts, that the objective behind the conclusion of such contracts was contrary to the objectives pursued by the sectoral agricultural legislation.

V. Conclusion

76. In the light of the foregoing, I propose that the Court answer the questions referred by the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania) for a preliminary ruling as follows:

(1) Article 4(1)(c)(iii) and Article 4(2)(b) 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 are to be interpreted as not precluding, in principle, national legislation under which the minimum grazing activity to be carried out on the agricultural areas naturally kept in a state suitable for such grazing must be carried out with animals kept by the farmer himself.

(2) Article 4(1)(a) and (c) and Article 9(1) of Regulation No 1307/2013 are to be interpreted as meaning that a natural or legal person who has concluded a concession contract relating to pastureland belonging to a municipality and who, for the purposes of grazing that land, uses animals loaned by natural persons who own those animals comes under the concept of an 'active farmer' within the meaning of those provisions where that person acts as a farmer, within the meaning of Article 4(1)(a) of that regulation, by retaining control of the holding vis-à-vis that area in terms of management, benefits and financial risks.

(3) The conclusion, by a natural or legal person, of a concession contract for pastureland with a municipality and the sub-contracting of the grazing activity in order to receive a direct payment under the single area payment scheme does not, in itself, constitute an 'artificially created' condition, within the meaning of Article 60 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, unless it is shown, on the basis of all the relevant facts, that the objective behind the conclusion of such contracts was contrary to the objectives pursued by the sectoral agricultural legislation.