



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

16 December 2021 \*

(Reference for a preliminary ruling – Agriculture – Common agricultural policy – Delegated Regulation (EU) No 640/2014 – Area-related aid scheme – Single area payment – Eligibility criteria – Concession agreement for agricultural land – Change of use of that land without the agreement of the grantor – Agricultural use of areas intended for aquaculture use – Difference between the area declared and the area determined – Over-declaration – Administrative penalties)

In Case C-225/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Constanța (Court of Appeal, Constanța, Romania), made by decision of 7 May 2020, received at the Court on 29 May 2020, in the proceedings

**Euro Delta Danube SRL**

v

**Agencia de Plăți și Intervenție pentru Agricultură – Centrul Județean Tulcea,**

THE COURT (Sixth Chamber),

composed of L. Bay Larsen (Rapporteur), Vice-President of the Court, acting as President of the Sixth Chamber, N. Jääskinen and M. Safjan, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Romanian Government, by E. Gane and A. Wellman, acting as Agents,
- the European Commission, by G.-D. Balan and A. Sauka, acting as Agents,

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

\* Language of the case: Romanian.

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(1)(23) and Article 19 of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ 2014 L 181, p. 48, and corrigendum OJ 2015 L 209, p. 48), as amended by Commission Delegated Regulation (EU) 2016/1393 of 4 May 2016 (OJ 2016 L 225, p. 41) ('Regulation No 640/2014').
- 2 The request has been made in proceedings between Euro Delta Danube SRL and the Agenția de Plăți și Intervenție pentru Agricultură – Centrul Județean Tulcea (Agency for Payments and Interventions in Agriculture – Tulcea Provincial Centre, Romania; 'the APIA'), concerning the refusal of the APIA to grant a single area payment to that company.

### **Legal context**

#### ***European Union law***

##### *Regulation (EU) No 1306/2013*

- 3 Under Article 63(1) and (2) 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 corrigendum OJ 2016 L 130, p. 13):

'1. Where it is found that a beneficiary does not comply with the eligibility criteria, commitments or other obligations relating to the conditions for the granting of the aid or support, as provided for in the sectoral agricultural legislation, the aid shall not be paid or shall be withdrawn in full or in part and, where relevant, the corresponding payment entitlements as referred to in Article 21 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 (OJ 2013 L 347, p. 608)] shall not be allocated or shall be withdrawn.

2. Moreover, where sectoral agricultural legislation so provides, Member States shall also impose administrative penalties, ...'

*Regulation No 1307/2013*

4 Recital 4 of Regulation No 1307/2013 states:

‘It is necessary to clarify that [Regulation 1306/2013] and the provisions adopted pursuant to it are to apply in relation to the measures set out in this Regulation. ...’

5 Article 4 of Regulation No 1307/2013 provides:

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

...

(c) “agricultural activity” means:

(i) production, rearing or growing of agricultural products, ...

...

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

(f) “arable land” means land cultivated for crop production or areas available for crop production but lying fallow ...

...’

6 Article 32(2) of that regulation provides:

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

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

...’

*Delegated Regulation No 640/2014*

7 Recitals 2 and 19 of Delegated Regulation No 640/2014 state:

‘(2) In particular, rules should be established to supplement certain non-essential elements of Regulation [No 1306/2013] in relation to the functioning of the integrated administration and control system (integrated system), the time limits for the submission of aid applications or payment claims, the conditions for the partial or total refusal of aid and the partial or total withdrawal of undue aid or support and the determination of administrative penalties to deal with non-compliances related to conditions for receiving aid under schemes established by Regulation [No 1307/2013] ...

...

(19) Administrative penalties should be established ... They should take into account the particularities of the various aid schemes or support measures with regard to the eligibility criteria, commitments and other obligations ... The administrative penalties under this Regulation should be considered dissuasive enough to discourage intentional non-compliance.'

8 Article 2 of Delegated Regulation No 640/2014, entitled 'Definitions', provides in paragraph 1(23):

' ...

The following definitions shall also apply:

...

(23) "area determined" means:

(a) for area-related aid schemes, the area for which all eligibility criteria or other obligations relating to the conditions for the granting of the aid have been met, regardless of the number of the payment entitlements at the beneficiary's disposal; ...

...'

9 Article 17(1) of that regulation is worded as follows:

'For the purposes of this Section, the following crop groups shall be distinguished as appropriate:

(a) areas declared for the purposes of activation of payment entitlements under the basic payment scheme or for the purpose of being granted the single area payment;

...'

10 The first paragraph of Article 18(6) of that regulation provides:

'Without prejudice to administrative penalties in accordance with Article 19, in the case of aid applications and/or payment claims under area-related aid schemes or support measures, if the area declared exceeds the area determined for a crop group as referred to in Article 17(1), the aid shall be calculated on the basis of the area determined for that crop group.'

11 Article 19 of that regulation is worded as follows:

'1. If, in respect of a crop group as referred to in Article 17(1), the area declared for the purposes of any area-related aid schemes or support measures exceeds the area determined in accordance with Article 18, the aid shall be calculated on the basis of the area determined ...

...

2. If the difference is more than 50%, no area-related aid or support shall be granted for the crop group concerned. Moreover, the beneficiary shall be subject to an additional penalty equal to the

amount of aid or support corresponding to the difference between the area declared and the area determined in accordance with Article 18.

...’

### **Romanian law**

#### *OUG No 3/2015*

- 12 The Ordonanța de urgență a Guvernului nr. 3/2015 pentru aprobarea schemelor de plăți care se aplică în agricultură în perioada 2015-2020 și pentru modificarea articolului 2 din Legea nr. 36/1991 privind societățile agricole și alte forme de asociere în agricultură (Government Emergency Order No 3/2015 approving the payment schemes applicable to agriculture in the period 2015 to 2020 and amending Article 2 of Law No 36/1991 on agricultural companies and other forms of associations in agriculture), of 18 March 2015 (*Monitorul Oficial al României*, No 191, of 23 March 2015) in the version applicable to the dispute in the main proceedings (‘OUG No 3/2015’), provides in Article 2:

‘1. For the purposes of this Emergency Order, the following terms are defined as follows:

...

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

...

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

- 13 Article 8(1)(n) of that order provides:

‘In order to receive the direct payments provided for in Article 1(2), farmers must:

...

- (n) produce, when submitting an application for a single payment or the amendments made thereto, the necessary documents proving that the agricultural land, including ecological focus areas, is available to them or, where necessary, a copy of Annex No 24 issued by the civil register of administrative territorial units. The documents showing that the agricultural land is available to the farmer must be signed before the single payment application is submitted and must be valid on the date on which the application is submitted.’

*Decree No 476/2016*

- 14 The Ordinul ministrului agriculturii și dezvoltării rurale nr. 476/2016 privind sistemul de sancțiuni aplicabil schemelor de plăți directe și ajutoarelor naționale tranzitorii în sectoarele vegetal și zootehnic, aferente cererilor unice de plată depuse la Agenția de Plăți și Intervenție pentru Agricultură, începând cu anul de cerere 2015 (Decree of the Minister for Agriculture and Rural Development No 476/2016 on the penalty scheme applicable to direct payment schemes and transitional State aid in the agricultural and livestock sectors, relating to single payment applications lodged with the Agency for Payments and Intervention in Agriculture with effect from the claim year 2015), of 7 April 2016, in the version applicable to the dispute in the main proceedings, provides in Article 2(2)(s):

“Over-declaration” means the difference between the area claimed for payment and the area determined for payment.’

- 15 Article 6(e) of that decree is worded as follows:

‘The penalties for over-declaration of areas in the case of the payment schemes provided for in Article 1(2)(a), (b), (d) to (f) and (3) of [OUG No 3/2015] are as follows:

...

- (e) If the area declared for payment exceeds the area determined by more than 50% of the area determined, the farmer shall be excluded from the payment for the payment group concerned. Moreover, the farmer shall incur an additional penalty equal to the amount of aid or support corresponding to the difference between the area declared and the area determined. ...’

*Decree No 619/2015*

- 16 L’Ordinul ministrului agriculturii și dezvoltării rurale nr. 619/2015 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 (Decree of the Minister for Agriculture and Rural Development No 619/2015 approving the eligibility criteria, specific conditions and detailed rules for the application of the payment schemes set out in Article 1(2) and (3) of OUG No 3/2015 and the specific conditions for implementing the rural development countervailing measures applicable to agricultural land set out in the National Rural Development Plan 2014-2020), of 6 April 2015, in the version applicable to the dispute in the main proceedings, provides in Article 2(u):

‘...

- (u) the “area determined” means, for area-related aid schemes, the area for which all eligibility criteria or other obligations relating to the conditions for the granting of the aid have been met; ...’

17 Article 10(5) of that decree provides:

‘The following areas shall not be eligible for payment:

...

(o) areas with aquaculture facilities as provided for in Article 23(20) of the technical standards supplementing the agricultural register for the period 2015-2019 ...’

*Law No 283/2015*

18 Under Article I(1) of *Legea nr. 283/2015 pentru modificarea Legii nr. 82/1993 privind constituirea Rezervației Biosferei ‘Delta Dunării’ (Law No 283/2015 amending Law No 82/1993 on the establishment of the Danube Delta Biosphere Reserve), of 18 November 2015, (Monitorul Oficial al României, Part I, No 863 of 19 November 2015):*

‘Throughout the territory of the reserve, the change of use of agricultural land used as productive agricultural land or as aquaculture facilities shall be made with the agreement of the administrator, solely on the basis of technical studies carried out by experts.’

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

19 Euro Delta Danube is a legal person under Romanian law whose business concerns aquaculture and cereal cultivation.

20 Under a concession agreement concluded with Consiliul Local Maliuc (the Maliuc Municipal Council, Romania) on 1 October 2002 and an amendment to that agreement signed on 4 May 2011, it was agreed that Euro Delta Danube would use a total area of 142.2632 hectares (ha) for the purposes of aquaculture.

21 By a decision of 13 May 2016, the Maliuc Municipal Council authorised, for a period of five years, the performance of agricultural activities in that area.

22 Under another concession agreement, concluded with Consiliul Județean Tulcea (the Tulcea Provincial Council, Romania) on 16 February 2006, Euro Delta Danube was awarded the use of an area of 315 ha, for the purposes of aquaculture.

23 In accordance with an amendment to that agreement, concluded on 20 May 2014, aquaculture and crop rotation works for the mineralisation of the land and other works were to be carried out in an area of 200 ha.

24 Following a request for information made by Euro Delta Danube to the Tulcea Provincial Council, the latter stated that those works concerned aquaculture and crop rotation, consisting of the temporary cessation of aquaculture production in an aquaculture facility or part thereof, for a period of six months to three years, with a view to ensuring the restoration of productivity in the soil through the cultivation of cereals, where the land concerned must be used for the purposes of aquaculture.

- 25 In the 2017 marketing year, Euro Delta Danube made partial use of the two areas under concession for agricultural purposes. Accordingly, on 15 May 2017, it submitted the single payment application to the APIA for a total area of 288.37 ha, including 100.58 ha held on the basis of the concession agreement concluded with the Maliuc Municipal Council and 187.79 ha held under the concession agreement concluded with the Tulcea Provincial Council.
- 26 By a payment notice of 25 September 2018, the APIA took the view that the part of the declared area covered by the concession agreement concluded with the Tulcea Provincial Council should, under national legislation and in the absence of an agreement by the grantor as to the change in the use of that part of the area, have been used for the purposes of aquaculture. In the absence of supporting documentation enabling Euro Delta Danube to use that land for agricultural purposes, the APIA concluded that the eligible area was 100.58 ha, corresponding to the area used under the concession agreement concluded with the Maliuc Municipal Council on a declared total area of 288.37 ha.
- 27 Consequently, a total amount to be paid was established for the area determined of 100.58 ha and additional penalties were imposed because of the over-declaration of the remaining area.
- 28 Euro Delta Danube submitted a complaint against the payment decision of 25 September 2018 before the APIA, which rejected it by decision of 20 December 2018.
- 29 On 10 January 2019 Euro Delta Danube brought an action before the Tribunalul Tulcea (Regional Court, Tulcea, Romania) seeking annulment of that decision as well as the partial annulment of that payment decision.
- 30 By judgment of 28 June 2019, that court dismissed that action as unfounded. In its view, in the absence of evidence of the change in use of the areas at issue, those areas were not eligible for the single payment requested by Euro Delta Danube. That court held that, since those areas had to be regarded, under national legislation, as forming part of a ‘aquaculture facility’, they did not satisfy the conditions to be regarded as arable areas and their declaration constituted an ‘over-declaration’ justifying the administrative penalties imposed.
- 31 On 13 August 2019 Euro Delta Danube brought an appeal against that judgment before the Curtea de Apel Constanța (Court of Appeal, Constanța, Romania).
- 32 That court questions the compatibility of national legislation with EU law excluding from the grant of aid a farmer who uses land for agricultural purposes that was granted for aquaculture purposes, without the consent of the grantor, and imposing on him or her, in addition, penalties for over-declaration, on the ground that the eligibility criteria for that aid are not fulfilled.
- 33 In those circumstances, the Curtea de Apel Constanța (Court of Appeal, Constanța) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Are the provisions of Article 2(1)(23) and of Article 19 of Delegated Regulation [No 640/2014] to be interpreted as precluding national legislation that, in circumstances such as those in the main proceedings, imposes administrative penalties on the farmer for over-declaration on the ground that he or she does not meet the eligibility criteria for the area considered over-declared,



inasmuch as he or she cultivates an area of land with aquaculture facilities, held under a concession agreement, without providing evidence of the grantor’s consent that the land be used for agricultural purposes?’

### **Consideration of the question referred**

- 34 By its question, the referring court asks, in essence, whether Article 2(1)(23) and Article 19(1) and (2) of Delegated Regulation No 640/2014 must be interpreted as providing, in the context of the single area payment scheme, for the imposition on an applicant for agricultural aid of administrative penalties for over-declaration, on the ground that he or she uses for agricultural purposes, areas which have been allocated to him or her for aquaculture use, without the agreement of the grantor as to such a change in use of those areas.
- 35 It is apparent from the first subparagraph of Article 19(1), and Article 19(2) of Delegated Regulation No 640/2014 that, where, for a crop group referred to in Article 17(1) of that regulation, the area declared for the purposes of an aid scheme or an area support scheme exceeds the area determined in accordance with Article 18 of that regulation and the difference found exceeds 50%, no area-related aid or support is to be granted for the crop group concerned. Furthermore, the beneficiary is to be subject to an additional penalty equal to the amount of aid or support corresponding to the difference between the area declared and the area determined in accordance with Article 18.
- 36 In that regard, it should be noted that the crop groups listed in Article 17(1)(a) of that regulation, to which reference is made in Article 19(1), include, in particular, areas declared for the purpose of being granted the single area payment.
- 37 Moreover, it should be noted that Article 2(1)(23)(a) of Delegated Regulation No 640/2014 defines an ‘area determined’ for area-related aid schemes as the area for which all the eligibility criteria or other obligations relating to the conditions for granting the aid are met, regardless of the number of payment entitlements at the beneficiary’s disposal.
- 38 The Court has already held that, in order to be eligible for the aid in question, the areas concerned must be agricultural areas, be part of a farmer’s holding and be used for agricultural activities or, where the areas are used as well for non-agricultural activities, predominantly used for agricultural activities (see, to that effect, judgment of 29 April 2021, *Piscicola Tulcea and Ira Invest*, C-294/19 and C-304/19, EU:C:2021:340, paragraph 64).
- 39 First of all, with regard to the concept of ‘agricultural area’, as defined in Article 4(1)(e) of Regulation No 1307/2013, that means, in particular, ‘any area taken up by arable land’, the latter defined in Article 4(1)(f) as being land cultivated for crop production or areas available for crop production by lying fallow.
- 40 Accordingly, an area must be classified as ‘agricultural’ where it is actually used as ‘arable land’ within the meaning of that provision, that classification cannot be called into question on the sole ground that such an area has been used as arable land contrary to provisions of a concession agreement such as that at issue in the main proceedings (see, to that effect, judgment of 29 April 2021, *Piscicola Tulcea and Ira Invest*, C-294/19 and C-304/19, EU:C:2021:340, paragraph 63).

- 41 Next, it should be recalled that an agricultural area is part of the holding of a farmer where he or she has the power to manage that holding for the purpose of carrying out an agricultural activity, that is to say, where the farmer enjoys a degree of autonomy with regard to that area sufficient for the carrying out of his or her agricultural activity (judgment of 2 July 2015, *Demmer*, C-684/13, EU:C:2015:439, paragraph 58).
- 42 Since the restrictions applicable to the use of the areas at issue, such as, in particular, those relating to the nature of the activities which may be carried out there, arising from the concession agreement under which those areas were made available to the farmer concerned, do not hamper his or her agricultural activity on those areas, which it is for the referring court to ascertain, there are no grounds for considering that those areas do not form part of the farmer's holding (see, to that effect, judgment of 2 July 2015, *Demmer*, C-684/13, EU:C:2015:439, paragraph 60).
- 43 In that regard, it must be stated that, although the concept of management does not imply the existence, for the farmer in question, of unlimited power over the areas concerned when using it for agricultural purposes, it is important, however, that that farmer is not, under that concession agreement, completely subject to the instructions of the grantor and that accordingly he or she enjoys a certain discretion in the conduct of his or her agricultural activity on those areas (see, to that effect, judgment of 2 July 2015, *Demmer*, C-684/13, EU:C:2015:439, paragraphs 61 and 62).
- 44 Finally, as regards the criterion relating to the use of agricultural areas for agricultural purposes, as referred to in paragraph 38 of the present judgment, the term 'agricultural activity' is defined in Article 4(1)(c) of Regulation No 1307/2013 as being, in particular, the production, rearing or growing of agricultural products.
- 45 It follows that, since, in the present case, the areas at issue were cultivated, the activity thus carried out by Euro Delta Danube on those areas must be regarded as constituting an agricultural activity within the meaning of that provision and, therefore, fulfilling that criterion.
- 46 It is, however, for the referring court to determine, in the light of all the circumstances of the dispute in the main proceedings, whether all the eligibility criteria or other obligations relating to the conditions for granting the aid have been fulfilled.
- 47 In the light of all the foregoing considerations, the answer to the question referred is that Article 2(1)(23) and Article 19(1) and (2) of Delegated Regulation No 640/2014 must be interpreted as not providing for, in the context of the single area payment scheme, the imposition of administrative penalties for over-declaration on an applicant for agricultural aid, on the ground that he or she uses for agricultural purposes areas which have been granted to him or her for aquaculture use, without the agreement of the grantor to such a change of use of those areas, since that applicant enjoys a degree of autonomy with regard to that area sufficient for the carrying-out of his or her agricultural activity.

## Costs

- 48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

**Article 2(1)(23) and Article 19(1) and (2) of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014, supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance, as amended by Commission Delegated Regulation (EU) 2016/1393 of 4 May 2016 must be interpreted as not providing for, in the context of the single area payment scheme, the imposition of administrative penalties for over-declaration on an applicant for agricultural aid, on the ground that he or she uses for agricultural purposes areas which have been granted to him or her for aquaculture use, without the agreement of the grantor to such a change of use of those areas, since that applicant enjoys a degree of autonomy with regard to that area sufficient for the carrying-out of his or her agricultural activity.**

[Signatures]