



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

7 September 2023 *

(Reference for a preliminary ruling – Common agricultural policy – European Agricultural Fund for Rural Development (EAFRD) – Rural development support measures – Animal welfare payments – Regulation (EC) No 1974/2006 – Article 44(1) and (2)(a) – Article 47(1) – Transfer of an agricultural holding to a new beneficiary – Subsequent cessation, by that beneficiary, of agricultural activities – ‘*Force majeure* or exceptional circumstances’ – Obligation to reimburse all or part of the aid received – Principle of proportionality)

In Case C-169/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel București (Court of Appeal, Bucharest, Romania), made by decision of 19 November 2020, received at the Court on 4 March 2022, in the proceedings

Fractal Insolvență SPRL, acting as liquidator of Groenland Poultry SRL,

v

Agencia de Plăți și Intervenție pentru Agricultură – Centrul Județean Dâmbovița,

THE COURT (Sixth Chamber),

composed of P.G. Xuereb, President of the Chamber, T. von Danwitz (Rapporteur) and A. Kumin, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Fractal Insolvență SPRL, acting as liquidator of Groenland Poultry SRL, by A. Rusu, avocat,
- the Agenția de Plăți și Intervenție pentru Agricultură – Centrul Județean Dâmbovița, by C.A. Gârleanu, acting as Agent,
- the Romanian Government, by R. Antonie, E. Gane and O.-C. Ichim, acting as Agents,

* Language of the case: Romanian.

- the Greek Government, by E.E. Krompa, E. Leftheriotou and M. Tassopoulou, acting as Agents,
- the European Commission, by T. Isacu de Groot and A. Sauka, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 March 2023,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 44(2)(a) and Article 47(1) of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2006 L 185, p. 15), as amended by Commission Implementing Regulation (EU) No 679/2011 of 14 July 2011 (OJ 2011 L 185, p. 57) ('Regulation No 1974/2006').
- 2 The request has been made in proceedings between Fractal Insolvență SPRL, acting as liquidator of Groenland Poultry SRL, and the Agenția de Plăți și Intervenție pentru Agricultură – Centrul Județean Dâmbovița (Agency for Payments and Interventions in Agriculture – Dâmbovița Provincial Centre, Romania) ('the APIA') concerning the latter's decisions requiring Groenland Poultry, on account of the cessation of its agricultural activities, to reimburse all the aid granted for animal welfare over that company's five-year commitment period.

Legal context

European Union law

Regulation No 1698/2005

- 3 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), as amended by Council Regulation (EC) No 74/2009 of 19 January 2009 (OJ 2009 L 30, p. 100) ('Regulation No 1698/2005'), was repealed by Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ 2013 L 347, p. 487). However, in accordance with Article 88 of Regulation No 1305/2013, Regulation No 1698/2005 was to continue to apply to operations implemented pursuant to programmes approved by the Commission under that regulation before 1 January 2014.
- 4 Article 36(a)(v) of Regulation No 1698/2005, provided that support under the section 'Improving the environment and the countryside' was to concern measures targeting the sustainable use of agricultural land through animal welfare payments.

5 Article 40 of that regulation provided:

‘1. Animal welfare payments provided for in Article 36(a)(v) shall be granted to farmers who make on a voluntary basis animal welfare commitments.

2. Animal welfare payments cover only those commitments going beyond the relevant mandatory standards established ... and other relevant mandatory requirements established by national legislation and identified in the programme.

These commitments shall be undertaken as a general rule for a period between five and seven years. ...

3. The payments shall be granted annually and shall cover additional costs and income foregone resulting from the commitment made. Where necessary, they may cover also transaction cost.

Support shall be limited to the maximum amount laid down in Annex I.’

6 Under Article 74(1) of Regulation No 1698/2005:

‘Member States shall adopt all the legislative, statutory and administrative provisions ... in order to ensure that the Community’s financial interests are effectively protected.’

Regulation No 1974/2006

7 Regulation No 1974/2006 was repealed by Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions (OJ 2014 L 227, p. 1). However, in accordance with Article 19 of Regulation No 807/2014, Regulation No 1974/2006 was to continue to apply to operations implemented pursuant to programmes approved by the Commission under Regulation No 1698/2005 before 1 January 2014.

8 Under Article 1 of Regulation No 1974/2006:

‘This Regulation lays down detailed rules for the application of Regulation (EC) No 1698/2005 as regards principles and general rules for rural development support, specific and common provisions for rural development measures, and eligibility and administrative provisions, except provisions on controls.’

9 Article 44 of Regulation No 1974/2006 provided:

‘1. Where all or part of a holding of the beneficiary is transferred to another person during the period for which a commitment given as a condition for the grant of assistance runs, that other person may take over the commitment for the remainder of the period. If the commitment is not taken over, the beneficiary shall reimburse the assistance granted.

2. Member States may choose not to require the reimbursement referred to in paragraph 1 in the following cases:

- (a) where a beneficiary who has already honoured a significant part of the commitment concerned definitively ceases agricultural activities and it is not feasible for a successor to take over the commitment;
- (b) where the transfer of a part of the holding of a beneficiary occurs during a period of extension of the commitment in accordance with the second subparagraph of Article 27(12) and the transfer does not concern more than 50% of the area covered by the commitment before the extension;
- (c) where the holding of a beneficiary is entirely or partly transferred to an organisation having the main objective of nature management in view of conservation of the environment, provided that the transfer aims at a permanent change of land use into nature conservation and that this is associated with a significant benefit to the environment.

3. In the event of minor changes to the situation of a holding, Member States may take specific measures to ensure that the application of paragraph 1 does not lead to inappropriate results as regards the commitment entered into.

A reduction in the area of the holding of up to 10% of the area under commitment shall be considered as a minor change for the purpose of the first subparagraph.'

10 Article 47 of that regulation provided:

'1. Member States may recognise, in particular, the following categories of *force majeure* or exceptional circumstances in which they will not require the partial or full reimbursement of aid received by the beneficiary:

- (a) death of the beneficiary;
- (b) long-term professional incapacity of the beneficiary;
- (c) expropriation of a large part of the holding if that could not have been anticipated on the day on which the commitment was given;
- (d) a severe natural disaster seriously affecting land on the holding;
- (e) the accidental destruction of livestock buildings on the holding;
- (f) an epizootic disease affecting all or part of the farmer's livestock.

2. Cases of *force majeure* or exceptional circumstances shall be notified in writing by the beneficiary, or any person entitled through or under him to the competent authority, together with relevant evidence to the satisfaction of that authority, within 10 working days from the date on which the beneficiary, or the person entitled through or under him, is in a position to do so.'

Regulation (EU) No 65/2011

11 Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ 2011 L 25, p. 8), was repealed, with effect from 1 January 2015, by Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ 2014 L 181, p. 48). However, in accordance with Article 43 of Delegated Regulation No 640/2014, Regulation No 65/2011 was to continue to apply to payment claims made and applications for support relating to the year 2014 and earlier years.

12 Under Article 18 of Regulation No 65/2011:

‘1. The aid claimed shall be reduced or refused where the following obligations and criteria are not met:

(a) for the measures referred to in Article 36(a) ... (v) ... of Regulation [No 1698/2005], the relevant mandatory standards as well as minimum requirements for fertiliser and plant protection product use, other relevant mandatory requirements as referred to in [Article] ... 40(2) ... of Regulation [No 1698/2005], and commitments that go beyond such standards and requirements; or

(b) eligibility criteria other than those related to the size of area or number of animals declared.

In case of multiannual commitments, aid reductions, exclusions and recoveries shall also apply to the amounts already paid in the previous years for that commitment.

2. The Member State shall recover and/or refuse the support or determine the amount of the reduction of the aid, in particular on the basis of the severity, extent and permanent nature of the non-compliance found.

...’

Implementing Regulation (EU) No 809/2014

13 Under Article 8 of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ 2014 L 227, p. 69):

‘1. For the purposes of this Article:

(a) “transfer of a holding” means the sale, lease or any similar type of transaction in respect of the production units concerned;

(b) “transferor” means the beneficiary whose holding is transferred to another beneficiary;

(c) “transferee” means the beneficiary to whom the holding is transferred.

2. Where a holding is transferred in its entirety from one beneficiary to another beneficiary following the submission of an aid application, application for support or payment claim and before all the conditions for granting the aid or support have been fulfilled, no aid or support shall be granted to the transferor in respect of the transferred holding.

3. The aid applied for or the payment claimed by the transferor shall be granted to the transferee where:

(a) within a period to be determined by the Member States the transferee informs the competent authority of the transfer and requests payment of the aid and/or support;

(b) the transferee presents any evidence required by the competent authority;

(c) all the conditions for granting the aid and/or support are fulfilled in respect of the holding transferred.

4. Once the transferee informs the competent authority and requests payment of the aid and/or support in accordance with paragraph 3(a):

(a) all rights and obligations of the transferor resulting from the legal relationship between the transferor and the competent authority generated by the aid application, application for support or payment claim shall be conferred on the transferee;

(b) all actions necessary for the granting of the aid and/or support and all declarations made by the transferor prior to the transfer shall be attributed to the transferee for the purposes of applying the relevant Union rules;

...’

14 In accordance with Article 76 of Implementing Regulation No 809/2014, that regulation is to apply to aid applications, applications for support or payment claims relating to claim years or premium periods starting as from 1 January 2015.

Romanian law

15 Article 17 of ordonanță de urgență a Guvernului nr. 66/2011 privind prevenirea, constatarea și sancționarea neregulilor apărute în obținerea și utilizarea fondurilor europene și/sau a fondurilor publice naționale aferente acestora (Government Emergency Order No 66/2011 regarding prevention, ascertainment and penalisation of irregularities associated with the collection and use of European funds and/or national public funds relating thereto), of 29 June 2011 (*Monitorul Oficial al României*, Part I, No 461 of 30 June 2011), in the version applicable to the dispute in the main proceedings, provides:

‘Any action taken with a view to ascertaining an irregularity and determining the budgetary claims resulting from such an irregularity shall be undertaken in accordance with the principle of proportionality, taking into account the nature and gravity of the irregularity ascertained as well as its scale and financial implications.’

- 16 Article 30(1) of ordonanță de urgență a Guvernului nr. 3/2015 pentru aprobarea schemelor de plăți care se aplică în agricultură în perioada 2015-2020 și pentru modificarea art. 2 din Legea nr. 36/1991 privind societățile agricole și alte forme de asociere în agricultură (Government Emergency 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*, Part I, No 191 of 23 March 2015), in the version applicable to the dispute in the main proceedings, provides:

‘For the purposes of the financing, management and monitoring of the common agricultural policy, the following cases in particular may be recognised as cases of *force majeure* or exceptional circumstances:

...

(f) expropriation of all or a large part of the holding if that could not have been anticipated on the day on which the application was lodged.’

- 17 Under Article 31 of that order:

‘1. Cases of *force majeure* and exceptional circumstances shall be notified in writing to the APIA, together with evidence that the situations referred to in Article 30(1) have occurred, within 15 working days from the day on which the beneficiary or its successor in title is in a position to do so.

2. If the beneficiary or its successor in title exceeds the time limit set out in paragraph 1, the notification shall not be taken into account.’

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

- 18 By an aid application submitted to the APIA on 18 January 2013, Avicola Crevedia SA, operating a poultry slaughterhouse, voluntarily took on, under Article 40 of Regulation No 1698/2005, an animal welfare commitment for a period of five years.
- 19 During the five-year period of that commitment, the holding at issue in the main proceedings was transferred in its entirety for the first time to Abator Avicola Crevedia SRL, which took over that commitment on 15 November 2013, and for the second time to Groenland Poultry, which also took over that commitment and registered it with the APIA on 2 April 2015.
- 20 Groenland Poultry had concluded two agreements to that end on 30 March 2015. First, it had concluded an agreement to transfer the agricultural holding and to take over the commitments with Abator Avicola Crevedia, which refrained from receiving payment of the aid it had requested from the APIA on 13 November 2014, while Groenland Poultry undertook to honour the commitments signed by Abator Avicola Crevedia in the aid application form and to demonstrate that the eligibility conditions for receiving the aid had been fulfilled.

- 21 Secondly, Groenland Poultry had concluded a lease for a period of five years with Agroli Group SRL, a company against which insolvency proceedings were opened on 6 March 2014, concerning the premises and production facilities of the holding belonging to that company, which was subject to a suspensive condition laid down in favour of the lessor whereby that lease had to be approved by the creditors' committee of Agroli Group in those insolvency proceedings.
- 22 By a payment decision of 4 December 2015, the APIA paid Groenland Poultry, in respect of the application of 13 November 2014, the amount of 1 506 915.86 Romanian lei (RON) (approximately EUR 337 000). Following its payment claims filed and amended on 13 November 2015 and 15 June 2016 respectively, the APIA also paid Groenland Poultry, on 5 October 2016, the amount of RON 850 673.62 (approximately EUR 190 000) and, on 29 March 2017, the amount of RON 375 941.35 (approximately EUR 82 000), by advance payment decision.
- 23 When Groenland Poultry did not file its payment claim in respect of the fifth year of the commitment, the APIA sent it a notification that it had failed to submit a claim. On 18 April 2017, the liquidator of Groenland Poultry informed the APIA that that company was subject to winding up proceedings.
- 24 On 21 April 2017, the APIA issued four reports pursuant to Article 8 of Implementing Regulation No 809/2014, ascertaining irregularities and determining budget claims, and ordering the recovery from Groenland Poultry of the amounts of RON 6 940 168.72 (approximately EUR 1 527 000), RON 4 562 717.78 (approximately EUR 1 004 000), RON 1 506 915.86 and RON 850 673.62 for the first four years of the commitment, respectively, on the ground that that company, being subject to winding up proceedings, was no longer active and could not therefore demonstrate that it would continue with that five-year commitment.
- 25 After the APIA dismissed the complaints brought by Groenland Poultry against those reports, that company brought an action for annulment of the APIA's decisions to dismiss its complaints before the Tribunalul București (Regional Court, Bucharest, Romania), claiming that it was unable to continue with the commitment in 2017 due to 'expropriation' within the meaning of Article 47(1)(c) of Regulation No 1974/2006, or an analogous situation, namely being notified by the lessor, on 26 July 2016, that the suspensive condition laid down in the lease had not been fulfilled, together with a request to leave the premises, as a result of the opening of winding up proceedings against Agroli Group on 9 May 2016. Groenland Poultry further claimed that Article 44(2)(a) of that regulation was applicable and alleged infringement of the principle of proportionality.
- 26 By judgment of 26 October 2018, that court dismissed that action. It first held that, under Article 44 of that regulation and Article 8 of Implementing Regulation No 809/2014, Groenland Poultry had acquired the rights and assumed the obligations of the transferor as well as, implicitly, the consequences of failing to fulfil the eligibility conditions for receiving the aid at issue. Next, that court considered that Article 47(1)(c) of Regulation No 1974/2006 was not applicable in the present case on the ground that the exonerating circumstances relied upon by Groenland Poultry did not constitute an expropriation, corresponding, under national law, to the State taking over assets in the public interest, and were not unforeseeable on the day on which the commitment was given. Furthermore, those circumstances were not notified within the time limit set out in Article 47(2) of that regulation. Lastly, the principle of proportionality was observed. That court stated, referring to Article 44(2)(a) of Regulation No 1974/2006, that Groenland

Poultry had failed to demonstrate that the condition of it not being possible to take over the commitment had been fulfilled and that the APIA had acted within the margin of discretion provided for by that article.

- 27 Hearing the appeal brought by Groenland Poultry against that judgment, the referring court, the Curtea de Apel București (Court of Appeal, Bucharest, Romania), adjudicating at last instance, notes that, following a literal interpretation of Article 47(1) of that regulation, the list of cases of ‘*force majeure* or exceptional circumstances’ set out in that provision is not exhaustive and that the concepts of ‘*force majeure*’ and ‘exceptional circumstances’, failing any reference to national law, cannot be defined by reference to national law. That court is uncertain whether, in the present case, the fact that insolvency proceedings had been opened in respect of the lessor when the lease was concluded precludes the application of that provision, while observing that the APIA did not consider that fact to be an obstacle to the transfer of the holding and the payment of the aid to Groenland Poultry.
- 28 That court also harbours doubts as to how Article 44(1) and (2)(a) of that regulation ought to be interpreted, in the light of the principle of proportionality, in a context where the APIA required Groenland Poultry to reimburse an amount totalling RON 14 236 417.32 (approximately EUR 2 900 000), when it had actually received only the amount of RON 2 658 185.04 (approximately EUR 540 000) and the difference between those two amounts was paid to the previous beneficiaries in respect of the first two years of the five-year commitment. Furthermore, that commitment had been honoured for the first four years and the cessation of Groenland Poultry’s activity in the last year of that commitment appears to have been for reasons beyond its control.
- 29 Lastly, the referring court notes that the condition that ‘it is not feasible for a successor to take over the commitment’, set out in that provision, seems to require the production of evidence, rather than abstract evidence that there are no interested successors. In that regard, that court specifies that Groenland Poultry produced evidence showing that Vitall SRL was interested in taking over that commitment, but that it had not obtained the sanitary and veterinary authorisations necessary to take over the agricultural activity, despite an agreement of the creditors’ committee of Agroli Group to lease the premises at issue in the main proceedings.
- 30 In those circumstances, the Curtea de Apel București (Court of Appeal, Bucharest) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must Article 47(1) of Regulation [No 1974/2006] be interpreted as meaning that cases of “*force majeure* or exceptional circumstances” also include the case where the beneficiary of the aid loses the right to use the leased assets following the termination of the lease on account of the insolvency of the owner of the leased assets (lessor)?
- (2) In the light of the principle of proportionality, must Article 44(2)(a) of [Regulation No 1974/2006] be interpreted as meaning that, where, during the period for which a commitment given as a condition for the grant of assistance runs, all or part of the holding of a beneficiary is transferred to another person, and that second beneficiary, although having honoured a significant part of the commitment concerned, [definitively] ceases agricultural activities, and it is not feasible for a successor to take over the commitment, the second beneficiary of the [aid] must reimburse the aid which it has received (in relation to the period for which it was the beneficiary of the aid), or must it also reimburse the aid received by the first beneficiary thereof?

- (3) What conditions must the national court take into consideration in interpreting Article 44(2)(a) of [Regulation No 1974/2006] for the purpose of assessing whether “it is not feasible for a successor to take over the commitment”?

Consideration of the questions referred

The first question

Admissibility

- 31 The APIA and the Romanian Government dispute the admissibility of the first question on the ground that Article 47(1) of Regulation No 1974/2006, referred to in that question, is not applicable to the dispute in the main proceedings. They submit that it is apparent from request for a preliminary ruling that Groenland Poultry did not notify the APIA that there were circumstances constituting a case of *force majeure* or exceptional circumstances within the time limit set out in Article 47(2) of that regulation.
- 32 According to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling. It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 21 March 2023, *Mercedes-Benz Group (Liability of manufacturers of vehicles fitted with defeat devices)*, C-100/21, EU:C:2023:229, paragraphs 52 and 53 and the case-law cited).
- 33 In the present case, the referring court indicated, in its request for a preliminary ruling, that the interpretation of Article 47(1) of Regulation No 1974/2006 was necessary in order to rule on the appeal before it, brought against the judgment of the Tribunalul București (Regional Court, Bucharest) referred to in paragraph 26 above. It is apparent from that request that, although, according to that regional court, Groenland Poultry had not notified the APIA of the circumstances constituting a case of *force majeure* or exceptional circumstances within the time limit set out in Article 47(2) of that regulation, a point which that company disputes, that regional court also held that Article 47(1) of that regulation was not applicable to the dispute in the main proceedings since the circumstances relied on by that company did not constitute an expropriation within the meaning of that provision.
- 34 It is therefore not obvious that the interpretation of that provision bears no relation to the actual facts of the main action or its purpose or that the problem in the main proceedings is hypothetical.
- 35 It follows that the first question is admissible.

Substance

- 36 As a preliminary point, it is apparent from the request for a preliminary ruling that Groenland Poultry's inability to complete its multiannual animal welfare commitment stemmed from the termination, by Agroli Group, of the lease at issue in the main proceedings as a result of being wound up. It is also clear from that request that, when the lease was concluded, Agroli Group was already subject to insolvency proceedings, for which reason that lease was subject to the suspensive condition referred to in paragraph 21 above, which allowed that company to terminate it.
- 37 By its first question, the referring court asks, in essence, whether Article 47(1) of Regulation No 1974/2006 must be interpreted as meaning that the loss of the right to use leased assets on account of the termination of the lease on those assets as a result of the lessor, which was subject to insolvency proceedings when that lease was concluded, being wound up, constitutes a case of '*force majeure* or exceptional circumstances', within the meaning of that provision.
- 38 In that regard, it must be noted that that provision does not contain an exhaustive list of events capable of constituting a case of '*force majeure* or exceptional circumstances, as is apparent from the term 'in particular' in that provision.
- 39 Furthermore, according to the case-law of the Court, '*force majeure* is any event resulting from abnormal and unforeseeable circumstances, outside the control of the operator concerned, the consequences of which, in spite of the exercise of all due care, could not have been avoided (judgment of 16 February 2023, *Zamestnik izpalnitelen direktor na Darzhaven fond 'Zemedelie'*, C-343/21, EU:C:2023:111, paragraph 58 and the case-law cited).
- 40 In so far as a beneficiary's inability to continue to honour a multiannual animal welfare commitment stems from the termination of a lease as a result of the winding up of the other party to the lease with that beneficiary, which was subject to insolvency proceedings when the parties concluded that lease, that inability cannot result from abnormal and unforeseeable circumstances, outside the control of the beneficiary, within the meaning of that case-law.
- 41 In light of the foregoing, the answer to the first question is that Article 47(1) of Regulation No 1974/2006 must be interpreted as meaning that the loss of the right to use leased assets on account of the termination of the lease on those assets as a result of the lessor, which was subject to insolvency proceedings when that lease was concluded, being wound up, does not constitute a case of '*force majeure* or exceptional circumstances', within the meaning of that provision.

The second question

Admissibility

- 42 The APIA and the Romanian Government dispute the admissibility of the second question on the ground that it concerns the interpretation of Article 44(2) of Regulation No 1974/2006, which is not applicable to the dispute in the main proceedings. They submit that the Romanian legislature elected not to reproduce, in national law, the cases provided for in that provision in which Member States may choose not to require the reimbursement referred to in paragraph 1 of that article.

- 43 In that regard, it is apparent from that question and from the request for a preliminary ruling that, by that question, the referring court is uncertain as to the interpretation of paragraphs 1 and 2 of Article 44 of that regulation, read in the light of the principle of proportionality, which is one of the general principles of EU law, and in particular as to the interaction between the principle laid down in that paragraph 1 and the exceptions provided for in that paragraph 2.
- 44 The referring court has also specified that the outcome of the appeal before it depends to a large extent on the interpretation of Article 44(2) of that regulation.
- 45 It is therefore not obvious that the interpretation of EU law sought by the referring court bears no relation to the actual facts of that action or its purpose or that the problem in the main proceedings is hypothetical.
- 46 In accordance with the case-law cited in paragraph 32 above, the second question is therefore admissible.

Substance

- 47 It should be noted as a preliminary point that, according to the settled case-law of the Court, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 31 and the case-law cited).
- 48 In that regard, taking account of the matters raised by the referring court, as set out in paragraph 43 above, it must be considered that, by its second question, that court asks, in essence, whether Article 44(1) and (2)(a) of Regulation No 1974/2006, read in the light of the principle of proportionality, must be interpreted as meaning that, where, during the period for which a commitment given as a condition for the grant of assistance runs, the holding of a beneficiary is transferred to another person who voluntarily takes over that commitment and who, subsequently, definitively ceases agricultural activities, that last beneficiary of the aid must reimburse the aid received in relation to the whole of that commitment, including the amounts received by the previous beneficiaries of that aid, even if the last beneficiary has already honoured a significant part of the commitment concerned and it is not feasible for a successor to take over the commitment.
- 49 In their written observations, the Romanian Government, the APIA and the Greek Government also referred to Article 18 of Regulation No 65/2011 which, like Regulation No 1974/2006, laid down the detailed rules for the implementation of Regulation No 1698/2005, but, unlike that regulation, not as regards the application, inter alia, of specific and common provisions for rural development support measures, but the implementation of control procedures as well as cross-compliance in respect of those measures. However, Article 44 of Regulation No 1974/2006, the application of which to the dispute in the main proceedings is not disputed, governs specific situations which do not concern that Article 18, namely those in which the holding of a beneficiary is transferred during the period for which a commitment given as a condition for the grant of assistance runs. Thus, that Article 18 does not appear to be relevant to that dispute.

- 50 According to settled case-law, for the purposes of interpreting a provision of EU law, it is necessary to consider not only its wording, but also its context and the objectives of the rules of which it is part (judgment of 14 October 2021, *José Cánovas Pardo*, C-186/18, EU:C:2021:849, paragraph 23 and the case-law cited).
- 51 In that regard, Article 44(1) of Regulation No 1974/2006 provides that, where a holding of the beneficiary is transferred to another person during the period for which a commitment given as a condition for the grant of assistance runs, ‘that other person may take over the commitment for the remainder of the period’ and that, ‘if the commitment is not taken over, the beneficiary shall reimburse the assistance granted’.
- 52 It is apparent from the wording of that provision that it sets out, in clear and precise terms, the principle that the beneficiary must reimburse the aid received if the holding is transferred to another person during the commitment period unless that other person takes over the commitment.
- 53 It also follows, as the Advocate General observed in point 42 of his Opinion, that the person who takes over the holding and who decides also to take over the commitment given by the beneficiary of the aid is substituted for the latter in respect of all the commitments and obligations for the remainder of the period. Therefore, in accordance with the logic of that provision, that person in turn becomes the beneficiary and must, if that holding is subsequently transferred to another person, reimburse the aid received unless the latter takes over that commitment for the remainder of the period, thus freeing the former from those commitments and obligations.
- 54 Article 44(2) of Regulation No 1974/2006 also provides that ‘Member States may choose not to require the reimbursement referred to in paragraph 1 in the following cases’ specified in points (a) to (c) of that paragraph 2. Thus, according to that Article 44(2), that reimbursement may not be required, as is apparent from point (a), ‘where a beneficiary who has already honoured a significant part of the commitment concerned definitively ceases agricultural activities and it is not feasible for a successor to take over the commitment’, as indicated in point (b), where a partial transfer of the holding occurs during a period of extension of the commitment and, as referred to in point (c), where the holding is transferred to a nature management organisation.
- 55 Article 44(3) of Regulation No 1974/2006 also allows Member States to take specific measures, in the event of minor changes to the situation of a holding, to ensure that the application of Article 44(1) does not lead to inappropriate results as regards the commitment entered into.
- 56 It follows that Article 44(2) and (3) of Regulation No 1974/2006 provides optional exceptions to the principle that the beneficiary is to reimburse the aid if the holding is transferred without the transferee taking over the multiannual commitment, which must, as such, be interpreted strictly.
- 57 It is also apparent from the literal and contextual interpretation of Article 44(1) of that regulation that, where, during the period for which a commitment given as a condition for the grant of assistance runs, the holding of a beneficiary is transferred to another person who voluntarily takes over that commitment and who, subsequently, definitively ceases agricultural activities, that last beneficiary of the aid must reimburse the aid received in relation to the whole of that commitment, including the amounts received by the previous beneficiaries of that aid, unless the Member State concerned has chosen not to require that reimbursement under the exceptions set out in Article 44(2) and (3) of that regulation.

- 58 Otherwise, that last beneficiary of the aid must reimburse all the aid received, including the aid received by the previous beneficiaries, even if the last beneficiary has already honoured a significant part of the commitment concerned and it is not feasible for a successor to take over the commitment.
- 59 To the extent that Groenland Poultry relied, in the dispute in the main proceedings, on the application of Article 44(2)(a) of Regulation No 1974/2006, while the Romanian Government and the APIA submitted, in their observations to the Court, that the Romanian legislature had decided not to reproduce, in domestic law, the exception laid down by that provision, it must be observed that the implementation of Article 44(2)(a) in national law is not obligatory. It follows that, in relation to that optional exception, the Member States must make the specific choice to implement that exception in national law. While they may choose, to that end, the legislative technique which they regard as most appropriate, the national measures implementing such a provision must have an unquestionable binding force and comply with the requirements that they be precise and clear so as to guarantee legal certainty (see, by analogy, judgment of 4 June 2009, *SALIX Grundstücks-Vermietungsgesellschaft*, C-102/08, EU:C:2009:345, paragraphs 52, 55 to 57 and the case-law cited).
- 60 Thus, in the absence of national rules which fulfil those conditions, the beneficiary of aid, such as Groenland Poultry, cannot rely on that provision before national courts.
- 61 The interpretation of Article 44 of Regulation No 1974/2006 in paragraphs 57 and 58 above is consistent with the objectives of the rules of which Article 44 is part.
- 62 As the Advocate General observed in point 46 of his Opinion, for the purposes of the objective for which the aid was received, namely, in accordance with Article 36(a)(v) and Article 40 of Regulation No 1698/2005, promoting animal welfare, it is essential that the multiannual commitment be carried out to completion.
- 63 The Court has also previously emphasised the importance of carrying out multiannual commitments to completion, stating that the conditions for the grant of aid must be complied with throughout the commitment period. In particular, it held that, if one of those conditions, such as the filing of an annual payment claim, was not complied with, even once, the aid could not be granted, and the principle of proportionality does not preclude the beneficiary from being required to reimburse the whole amount (see, to that effect, judgments of 24 May 2012, *Hehenberger*, C-188/11, EU:C:2012:312, paragraphs 35 to 37; of 7 February 2013, *Pusts*, C-454/11, EU:C:2013:64, paragraphs 35 to 37; and of 26 May 2016, *Ezernieki*, C-273/15, EU:C:2016:364, paragraphs 41 to 46).
- 64 The objective of effectively protecting the financial interests of the European Union, which the Member States must ensure, as is apparent from Article 74(1) of Regulation No 1698/2005, also tends to support the interpretation of Article 44 of Regulation No 1974/2006 as set out in paragraphs 57 and 58 above. The principle of reimbursement set out in Article 44(1) of that regulation might easily be circumvented if the first beneficiary of aid were to transfer its commitment to another beneficiary and that other beneficiary immediately abandoned the multiannual commitment before completing it, without financial consequences for either of them.
- 65 As regards the principle of proportionality, it should be recalled that, according to settled case-law, that principle requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary

in order to achieve those objectives; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 16 February 2022, *Poland v Parliament and Council*, C-157/21, EU:C:2022:98, paragraph 353 and the case-law cited). In the present case, it should be noted that, where the holding of a beneficiary of aid is transferred to another person who does not take over the multiannual commitment for the remainder of the period, not only may Member States choose, in accordance with Article 44(2) and (3) of Regulation No 1974/2006, not to require the reimbursement provided for in Article 44(1) of that regulation, but the reimbursement obligation stemming from that provision is appropriate and necessary in order to achieve the objective of promoting animal welfare for which the aid was granted. That reimbursement obligation is intended to guarantee that the beneficiary will do everything in its power to honour the multiannual commitment until it is completed, which also contributes to the effective protection of the financial interests of the European Union.

- 66 That reimbursement obligation does not go beyond what is necessary to achieve the objectives it pursues, as set out in the preceding paragraph, either. In that regard, it should be noted that, as the Advocate General observed in point 51 of his Opinion, the wording of Article 44(1) of that regulation and its meaning are sufficiently clear and unconditional to allow the transferee of the holding to understand that, if it decides to take over the multiannual commitment of the transferor, it must reimburse all of the aid paid, including that which was paid to the previous beneficiaries.
- 67 Next, Article 8(4) of Implementing Regulation No 809/2014, also referred to by the decisions of the APIA that are contested in the present case, expressly provides that, once the transferee of the holding informs the competent authority and requests payment of the aid and/or support, all rights and obligations of the transferor resulting from the legal relationship between the transferor and the competent authority generated by the aid application, application for support or payment claim are to be conferred on the transferee.
- 68 Since the transferee thus has the option of choosing whether or not to take over the multiannual commitment as well as the obligations of the transferor at the same time as the holding, the transferee of that holding is free to weigh up the advantages and disadvantages of such a commitment, among which is the possibility of having to reimburse all of the aid, including the amounts received by the previous beneficiaries. Moreover, the transferee has the possibility of contractually agreeing with the transferor, in advance, which responsibilities each party may bear should the competent national authority seek to recover all of the aid from the transferee, as the last beneficiary, if the transferee cannot complete that commitment on account of the definitive cessation of agricultural activities.
- 69 It should be added that the last beneficiary benefits from the investments already made as a result of the aid granted for animal welfare, which is scheduled for the multiannual period initially set.
- 70 It follows that the obligation to reimburse all of the aid, which is imposed, in accordance with Article 44(1) of Regulation No 1974/2006, following the transfer of a holding, on the last beneficiary of aid forced definitively to cease agricultural activities, is proportional to the objective of promoting animal welfare and to that of assuring effective protection of the financial interests of the European Union.

71 In light of the foregoing, the answer to the second question is that Article 44(1) and (2)(a) of Regulation No 1974/2006, read in the light of the principle of proportionality, must be interpreted as meaning that, where, during the period for which a commitment given as a condition for the grant of assistance runs, the holding of a beneficiary is transferred to another person who voluntarily takes over that commitment and who, subsequently, definitively ceases agricultural activities, that last beneficiary of the aid must reimburse the aid received in relation to the whole of that commitment, including the amounts received by the previous beneficiaries of that aid, unless the Member State concerned has chosen not to require that reimbursement under the exception provided for in that Article 44(2)(a) and the conditions for that exception are fulfilled.

The third question

72 By its third question, the referring court asks, in essence, in what circumstances the condition according to which ‘it is not feasible for a successor to take over the commitment’, as set out in Article 44(2)(a) of Regulation No 1974/2006, may be considered to be fulfilled.

73 As is apparent from paragraph 60 above, in the absence of national rules which fulfil the conditions referred to in paragraph 59 above, the beneficiary of aid, such as Groenland Poultry, cannot rely on that provision before national courts.

74 Accordingly, and in view of the answer given to the second question, there is no need to answer the third question.

Costs

75 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

1. Article 47(1) of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), as amended by Commission Implementing Regulation (EU) No 679/2011 of 14 July 2011,

must be interpreted as meaning that the loss of the right to use leased assets on account of the termination of the lease on those assets as a result of the lessor, which was subject to insolvency proceedings when that lease was concluded, being wound up, does not constitute a case of ‘force majeure or exceptional circumstances’, within the meaning of that provision.

2. Article 44(1) and (2)(a) of Regulation No 1974/2006, as amended by Implementing Regulation No 679/2011, read in the light of the principle of proportionality,

must be interpreted as meaning that, where, during the period for which a commitment given as a condition for the grant of assistance runs, the holding of a beneficiary is

transferred to another person who voluntarily takes over that commitment and who, subsequently, definitively ceases agricultural activities, that last beneficiary of the aid must reimburse the aid received in relation to the whole of that commitment, including the amounts received by the previous beneficiaries of that aid, unless the Member State concerned has chosen not to require that reimbursement under the exception provided for in that Article 44(2)(a) and the conditions for that exception are fulfilled.

[Signatures]