



## Reports of Cases

### JUDGMENT OF THE COURT (Eighth Chamber)

18 January 2024\*

(Reference for a preliminary ruling – Agriculture – Common agricultural policy (CAP) – European Agricultural Fund for Rural Development (EAFRD) – Rural development support measures – Regulation (EC) No 1974/2006 – Lease or letting agreement – Lease agreement concluded between a municipal authority and an aid beneficiary – Commitments over five years – Termination of the lease agreement further to a legislative amendment – Obligation to reimburse the aid received in part or in full – Not possible to adapt those commitments to a new situation for the holding – Definition of ‘*force majeure*’ and ‘exceptional circumstances’ – Definition of ‘expropriation of the holding’)

In Case C-656/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decision of 28 September 2022, received at the Court on 19 October 2022, in the proceedings

**Askos Properties EOOD**

v

**Zamestnik izpalnitelen direktor na Darzhaven fond ‘Zemedelie’,**

THE COURT (Eighth Chamber),

composed of M. Safjan, acting as President of the Chamber, N. Jääskinen and M. Gavalec (Rapporteur), Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Zamestnik izpalnitelen direktor na Darzhaven fond ‘Zemedelie’, by Y. Kancheva,
- the European Commission, by G. Koleva and A. Sauka, acting as Agents,

\* Language of the case: Bulgarian.

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

### Judgment

- 1 This request for a preliminary ruling relates to the interpretation of Article 2(2)(f) 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 of Article 47(3) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ 2013 L 347, p. 487).
- 2 The request has been made in proceedings between Askos Properties EOOD, a Bulgarian company, and the Zamestnik izpalnitelen direktor na Darzhaven fond ‘Zemedelie’ (Deputy Executive Director of the State Agricultural Fund, Bulgaria) concerning a decision requiring that that company reimburse 50% of a subsidy received by that company under Measure 211 of the 2007-2013 Rural Development Programme.

### Legal context

#### *European Union law*

##### *Regulation (EC) 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) was repealed by Regulation No 1305/2013. 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 of Regulation No 1698/2005, entitled ‘Measures’, provided:  
‘Support under this section shall concern:  
(a) measures targeting the sustainable use of agricultural land through:  
(i) natural handicap payments to farmers in mountain areas;  
(ii) payments to farmers in areas with handicaps, other than mountain areas;  
...  
...’

5 Article 37 of that regulation, headed ‘Natural handicap payments in mountain areas and payments in other areas with handicaps’, provided:

‘1. Payments provided for in Article 36(a)(i) and (ii) shall be granted annually per hectare of utilised agricultural area ... within the meaning of Commission Decision 2000/115/EC of 24 November 1999 relating to the definitions of the characteristics, the list of agricultural products, the exceptions to the definitions and the regions and districts regarding the surveys on the structure of agricultural holdings [(OJ 2000 L 38, p. 1)].

Payments should compensate for farmers’ additional costs and income forgone related to the handicap for agricultural production in the area concerned.

2. Payments shall be granted to farmers who undertake to pursue their farming activity in areas designated pursuant to Article 50(2) and (3) for at least five years from the first payment.

...’

#### *Regulation No 1974/2006*

6 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 368, p. 15), as amended by Commission Regulation (EC) No 434/2007 of 20 April 2007 (OJ 2007 L 104, p. 8) (‘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 Delegated 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.

7 Recital 37 of Regulation No 1974/2006 stated:

‘Rules common to several measures should be laid down, in particular regarding the implementation of integrated operations, investments measures, the transfer of a holding during the period for which a commitment is given as a condition for the grant of assistance, the increase of the area of the holding and the definition of different categories of *force majeure* or exceptional circumstances.’

8 That regulation comprised a Chapter III, entitled ‘Rural development measures’, Section 2 of which, headed ‘Common provisions for several measures’, contained Articles 42 to 47 thereof.

9 Under Article 45(4) of that regulation:

‘Where a beneficiary is unable to continue to comply with commitments given because the holding is reparcelled or is the subject of public land-consolidation measures or of land-consolidation measures approved by the competent public authorities, Member States shall take the measures necessary to allow the commitments to be adapted to the new situation of the holding. If such adaptation proves impossible, the commitment shall expire and reimbursement shall not be required in respect of the period in which the commitment was effective.’

10 Article 47 of Regulation No 1974/2006 was worded as follows:

‘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 No 1305/2013*

11 Recital 36 of Regulation No 1305/2013 states:

‘Certain area-related measures under this Regulation require beneficiaries to undertake commitments for at least five years. During that period, it is possible that changes occur to the situation of either the holding or of the beneficiary. Rules should therefore be laid down in order to determine what should happen in such cases.’

12 Article 47 of that regulation, headed ‘Rules for area related payments’, provides, in paragraphs 3 and 4 thereof:

‘3. Where a beneficiary is unable to continue to comply with commitments given because the holding or part of the holding is re-parcelled or is the subject of public land consolidation measures or land consolidation measures approved by the competent public authorities, Member States shall take the measures necessary to allow the commitments to be adapted to the new situation of the holding. If such adaptation proves impossible, the commitment shall expire and reimbursement shall not be required in respect of the period during which the commitment was effective.

4. Reimbursement of the aid received shall not be required in cases of *force majeure* and exceptional circumstances as referred to in Article 2 of Regulation (EU) No 1306/2013.’

*Regulation No 1306/2013*

13 Recital 5 of Regulation No 1306/2013 states:

‘In order to ensure consistency between the practices of Member States and harmonised application of the *force majeure* clause by Member States, this Regulation should provide, where appropriate, for exemptions in cases of *force majeure* and exceptional circumstances, as well as for a non-exhaustive list of possible cases of *force majeure* and exceptional circumstances to be recognised by the national competent authorities. Those authorities should take decisions on *force majeure* or exceptional circumstances on a case by case basis, on the basis of relevant evidence and applying the concept of *force majeure* in the light of Union agricultural law including the case-law of the Court of Justice.’

14 Article 2 of that regulation, headed ‘Terms used in this Regulation’, provides, in paragraph 2 thereof:

‘For the purposes of the financing, management and monitoring of the [common agricultural policy (CAP)], “*force majeure*” and “exceptional circumstances” may, in particular, be recognised in the following cases:

- (a) the death of the beneficiary;
- (b) long-term professional incapacity of beneficiary;
- (c) a severe natural disaster gravely affecting the holding;
- (d) the accidental destruction of livestock buildings on the holding;
- (e) an epizootic or a plant disease affecting part or all of the beneficiary's livestock or crops respectively;
- (f) expropriation of all or a large part of the holding if that expropriation could not have been anticipated on the day of lodging the application.’

15 Under Article 121 of Regulation No 1306/2013:

‘1. This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2014.

2. However, the following provisions shall apply as follows:

- (a) Articles 7, 8, 16, 25, 26 and 43 from 16 October 2013;
- (b) Articles 18 and 40, for expenditure effected, from 16 October 2013;
- (c) Article 52 from 1 January 2015.’

## ***Bulgarian law***

### *The ZSPZZ*

- 16 Article 37i of the zakon za sobstvenostta i polzvaneto na zemedelskite zemi (Law on ownership and use of agricultural land) (DV No 17 of 1 March 1991; ‘the ZSPZZ’) is worded as follows:

‘(1) Pastures, grassland and meadows forming part of State land estates and municipal land estates shall be leased or let, in accordance with Article 24a(2), to the owners or users of holdings for the keeping of grazing animals recorded in the integrated information system of the Balgarska agentsia po bezopasnost na hranite [Bulgarian Food Safety Agency], on the basis of the number and type of livestock declared, at a price determined by a market mechanism. Pastures, grassland and meadows forming part of State land estates and municipal land estates shall be let or leased to persons who have neither tax debts nor debts owed to the national agricultural fund, State land estates or municipal land estates, nor any obligations vis-à-vis land under Article 37c(3)(2).

...

(4) Pastures, grassland and meadows shall be distributed between beneficiaries who have holdings registered in the respective land area, on the basis of the number and type of grazing livestock declared, in accordance with the pastures, grassland and meadows legally owned or used, but up to 15 decares per livestock unit on properties in the 1st to 7th categories and/or 30 decares per livestock unit on properties in the 8th to 10th categories. Eligible persons farming cattle for meat production and indigenous (native) breeds of animal shall be allocated up to 20 decares per livestock unit on properties in the 1st to 7th categories and up to 40 decares per livestock unit on properties in the 7th to 10th categories. Beneficiaries farming cattle for milk or meat, sheep and/or goats approved for support in the context of activities under the “Payments for conversion to organic farming” and “Payments for the maintenance of organic farming” sub-measures included under “Organic farming”, shall be allocated land at the rate of up to 0.15 livestock units per hectare, irrespective of the property category.’

### *The Law amending the ZSPZZ*

- 17 Paragraph 15 of the transitional and final provisions of the Law amending the ZSPZZ provides:

‘(1) Beneficiaries who concluded agreements for the leasing or letting of pastures, grassland and meadows forming part of State land estates and municipal land estates before 24 February 2015 are required to bring those agreements into line with the requirements of Article 37i(1) and (4) by 1 February 2016.

(2) Beneficiaries approved under the part referred to in Article 3(3) of Regulation No 4 of 24 February 2015 concerning the implementation of Measure 11, “Organic Farming”, of the 2014-2020 Rural Development Programme ... who concluded agreements for the leasing or letting of pastures, grassland and meadows forming part of State land estates and municipal land estates before 24 February 2015, and whose grazing animals and pastures have been approved for support, are required to bring those agreements into line with the requirements of Article 37i(1) by 1 February 2016, by complying with the ratio of at least 0.15 animal units per hectare, irrespective of the category.

(3) Agreements for the leasing or letting of pastures, grassland and meadows forming part of State land estates and municipal land estates which are not brought into line within the time period laid down in paragraphs 1 or 2 shall be terminated by the mayor of the municipality or by the director of the regional Agriculture Directorate.'

*Decree No 11/2008*

- 18 Naredba No 11 za usloviata i reda za prilagane na myarka 211 'Plashtania na zemedelski stopani za prirodni ogranichenia v planinskite rayoni' i myarka 212 'Plashtania na zemedelski stopani v rayoni s ogranichenia, razlichni ot planinskite rayoni' ot Programata za razvitie na selskite rayoni za perioda 2007-2013 (Decree No 11 laying down conditions and detailed rules for the implementation of Measure 211, 'Payments to farmers in mountain areas facing natural handicaps', and of Measure 212, 'Payments for farmers in areas facing natural handicaps other than mountain areas' of the Rural Development Programme for the 2007-2013 period) of 3 April 2008 (DV No 40 of 18 April 2008; 'Decree No 11/2008'), adopted by the Minister for Agriculture and Food, provides in Article 1(1) thereof:

'The present decree governs the conditions and details rules for the implementation of the following measures under the 2007-2013 Rural Development Programme, financed by the European Agricultural Fund for Rural Development:

1. "natural handicap payments to farmers in mountain areas";
2. "payments to farmers in areas with handicaps, other than mountain areas".'

- 19 Under Article 2 of that decree, farmers who have submitted an application for support for one of the measures referred to in Article 1(1) thereof are to engage in agricultural activities in mountain areas or areas with handicaps, other than mountain areas, for the duration of the support [received].

- 20 Article 4 of that decree provides, in paragraph 1 thereof:

'... Applicants for support under the present decree are required:

...

3. to submit every year following the first compensatory payment an application for support declaring land situated in the less-favoured area concerned;

...'

- 21 Under Article 14 of Decree No 11/2008:

'(1) Farmers who fail to submit an application for financial support during the five-year commitment period shall be ineligible for aid under the present decree and shall be required to reimburse the amounts received as part of the compensatory payments in respect of less-favoured areas until that point in time, or part of those amounts, on the basis of the year in which they ended their participation in the measures, as follows:

- 1) after the first year, 100%;

- 2) after the second year, 75%;
- 3) after the third year, 50%;
- 4) after the fourth year, 25%.

...

(3) The funds referred to in paragraph 1 shall be recovered, with statutory interest as of the notification to the farmer concerned of the obligation to reimburse that amount until the date of effective reimbursement or of the effective deduction of the amount.'

22 Article 15 of that decree is worded as follows:

'(1) In cases of *force majeure* or exceptional circumstances, Article 14 shall not apply, the commitment shall be terminated, and the partial or total reimbursement of the aid received by the farmer shall not be required.

(2) Cases of *force majeure* or exceptional circumstances and the relevant proof (documents issued by the competent administrative authority) shall be notified in writing to the national agricultural fund – Paying agency by the farmer concerned, any person appointed by him or her or by his or her successor within 10 working days from the date on which the farmer, his or her representative or his or her successor is able to do so'.

23 Under the terms of the supplementary provisions, within the meaning of that decree '*force majeure*' or 'exceptional circumstances' are to mean:

- (a) the 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 gravely affecting the holding;

...'

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

24 From 2013 to 2015, Askos Properties lodged a number of applications for financial support with the national agricultural fund under Measure 211 of the 2007-2013 Rural Development Programme.

25 In that context, it undertook to maintain municipal agricultural land, leased in 2012 through agreements concluded for a term of five years with two Bulgarian municipalities, in good agricultural and environmental condition and engage in agricultural activities in the less-favoured area concerned for a period of at least five consecutive years.



- 26 Askos Properties received no subsidy for 2013. For 2014 and 2015, the amounts allocated to that company were 15 866 Bulgarian leva (BGN) (approximately EUR 8 112) and BGN 21 796 (approximately EUR 11 144), respectively.
- 27 In 2015, an amendment to Article 37i(1) and (4) of the ZSPZZ was adopted, to the effect that pastures, grassland and meadows forming part of State land estates or municipal land estates were to be leased or distributed exclusively to owners or users of holdings who owned herbivores, on the basis of the number and type of their declared livestock.
- 28 A time period expiring on 1 February 2016 was granted to land users who had concluded an agreement for the leasing or letting of pastures, grassland and meadows forming part of State land estates or municipal land estates before 24 February 2015, to bring those agreements into line with the new requirements in force laid down by that amendment.
- 29 Since Askos Properties had failed to meet those requirements, the two municipalities concerned terminated, in 2016, the agreements for the leasing of agricultural land concluded with that company.
- 30 On 23 January 2020, the Deputy Executive Director of the State Agricultural Fund issued a decision establishing a public State claim against Askos Properties, for an amount of BGN 18 831 (approximately EUR 9 628) corresponding to 50% of the total amount paid to Askos Properties under Measure 211 in respect of rural development campaigns from 2013 to 2015.
- 31 Since the action brought against that decision was dismissed by judgment of the Administrativen sad Sofia-grad (Administrative Court, Sofia City, Bulgaria), Askos Properties brought an appeal on a point of law against that judgment before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), the referring court.
- 32 In its appeal, Askos Properties submits that the termination of the lease agreements by the municipalities concerned constitutes '*force majeure*' and/or 'exceptional circumstances' within the meaning of Article 15 of Decree No 11/2008, with the result that it is not required to reimburse the subsidy received.
- 33 The referring court seeks to ascertain, first, whether the termination of the lease agreements, which occurred further to an amendment to national legislation which could not be anticipated by the beneficiary at the time when it gave its commitment can be categorised as '*force majeure*' or as 'exceptional circumstances', or even as 'expropriation', within the meaning of Article 2(2) of Regulation No 1306/2013.
- 34 Second, the referring court asks whether such a termination of lease agreements falls within the scope of Article 47(3) of Regulation No 1305/2013.
- 35 In those circumstances, the Varhoven administrativen sad (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) [The referring court asks] how to interpret Article 2(2)(f) of Regulation [No 1306/2013], according to which, for the purposes of the financing, management and monitoring of the CAP, "*force majeure*" and "exceptional circumstances" may, in particular, be recognised in the case of the expropriation of all or a large part of the holding if that expropriation could

not have been anticipated on the day of lodging the application, and, in particular, whether *force majeure* or exceptional circumstances in the form of an expropriation of all or a large part of the holding is present in the case where a contract for the use of municipal agricultural land (pastures, grassland and meadows) concluded between a municipal administration and a beneficiary under Measure 211, entitled “Payments to farmers in mountain areas facing natural handicaps”, of the Rural Development Programme for the period 2007-2013 is terminated in implementation of a change to the Bulgarian legislation which could not have been anticipated by the beneficiary on the day of lodging the application.

- (2) Is the situation provided for in Article 47(3) of Regulation [No 1305/2013] present in the case where an agreement for the lease of municipal land to the beneficiary under Measure [211], entitled “Payments to farmers in mountain areas facing natural handicaps”, is terminated as a result of a change to national legislation amending and supplementing the [ZSPZZ] so as to make the possession of a livestock holding and the declaration by the farmer of a certain number of livestock to the Bulgarian Food Safety Authority [(Balgarska agentsia po bezopasnost na hranite)] new conditions for the renting or leasing of municipal land, in accordance with Article [37i](4) of the [ZSPZZ], and that change could not have been anticipated either by the beneficiary or by the administrative authority on the day on which the application was lodged?

## Consideration of the questions referred

### *Preliminary observations*

- 36 According to settled case-law, 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 7 September 2023, *Groenland Poultry*, C-169/22, EU:C:2023:638, paragraph 47 and the case-law cited).
- 37 It is apparent from the request for a preliminary ruling that the application of Decree No 11/2008 to the dispute pending before the referring court is not contested. It should be recalled that that decree, under Article 1(1) thereof governs the conditions and detailed rules for the implementation, in particular, of Measure 211 under the 2007-2013 Rural Development Programme, financed by the European Agricultural Fund for Rural Development (EAFRD).
- 38 However, in accordance with Article 88 of Regulation No 1305/2013, which repealed Regulation No 1698/2005, the latter regulation continues to apply to operations implemented pursuant to programmes approved by the Commission under that regulation before 1 January 2014. Similarly, in accordance with Article 19 of Delegated Regulation No 807/2014, which repealed Regulation No 1974/2006, the latter regulation continues to apply to operations implemented pursuant to programmes approved by the Commission under Regulation No 1698/2005 before 1 January 2014.

- 39 Given that Measure 211 under the 2007-2013 Rural Development Programme constitutes such an operation, and that the issue in the main proceedings is obligations to maintain agricultural land and engage in agricultural activities, in a less-favoured area, for at least five consecutive years, the circumstances of the failure to comply with those obligations must be assessed in the light of the provisions of Regulations No 1698/2005 and No 1974/2006 (see, to that effect, judgment of 8 May 2019, *Järvelaev*, C-580/17, EU:C:2019:391, paragraphs 37, 38 and 42).
- 40 It must be added that, where the recovery of sums unduly paid in the context of an aid programme, approved and co-financed by the EAFRD for the 2007-2013 programming period, takes place after the programming period has come to an end, namely after 1 January 2014, recovery must be based on the provisions of Regulation No 1306/2013 (see, to that effect, judgment of 8 May 2019, *Järvelaev*, C-580/17, EU:C:2019:391, paragraph 42). However, the request for a preliminary ruling does not concern the detailed rules for the recovery of the amounts allocated to Askos Properties for the 2014 and 2015 campaigns.
- 41 In those circumstances, it should be held that the questions referred to the Court for a preliminary ruling in the present case refer to the provisions of Regulation No 1974/2006.

### *The first question*

- 42 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 termination, by a municipal authority, of a lease or letting agreement relating to agricultural land and concluded for a five-year term with the beneficiary of agricultural aid, which has been granted in the context of a Member State's rural development programmes to which the EAFRD has contributed part of the financing, and which termination arises further to an amendment to national legislation introducing new requirements governing the maintenance of such agreements, falls within the scope of '*force majeure*' or 'exceptional circumstances', within the meaning of Article 47(1), in particular a case of 'expropriation of the holding', within the meaning of Article 47(1)(c).
- 43 Article 47(1) of Regulation No 1974/2006 provides that Member States may recognise, in particular, the categories of *force majeure* or exceptional circumstances set out in points (a) to (f) of that paragraph 1, in which they are not to require the partial or full reimbursement of aid received by the beneficiary.
- 44 That provision lays down an optional exception to the principle of reimbursement of the aid by the beneficiary in the event of failure to comply with the commitment undertaken by that beneficiary as a condition for the grant of that aid during the period in which that commitment was effective.
- 45 In the present case, the information contained in the order for reference do not make it possible to determine unequivocally whether, in accordance with what is apparent from Article 15(1) of Decree No 11/2008, the exception laid down in Article 47(1) of Regulation No 1974/2006 has been implemented, in Bulgarian law, in such a way that all cases of *force majeure* or exceptional circumstances fall within the scope thereof, or whether the scope of that exception is confined solely to those scenarios referred to in the supplementary provisions of that decree, which include the 'expropriation of the holding' scenario.

- 46 In order to give the referring court a useful answer in any event, the question should be answered in the light of both '*force majeure*' or 'exceptional circumstances' within the meaning of Article 47(1) of Regulation No 1974/2006, and the specific category of 'expropriation of the holding' set out in point (c) of that provision, it being understood that it will be for the referring court to determine the exact scope of the implementation of Article 47(1) in its national law.
- 47 As regards, in the first place, the question whether the termination of the lease agreements at issue in the main proceedings can constitute '*force majeure*' or 'exceptional circumstances', within the meaning of Article 47(1) of Regulation No 1974/2006, it must be recalled that, in the context of the EAFRD, the Court has already held that *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 (judgments of 17 December 2015, *Szemerey*, C-330/14, EU:C:2015:826, paragraph 58; of 16 February 2023, *Zamestnik izpalnitelen direktor na Darzhaven fond 'Zemedelie'*, C-343/21, EU:C:2023:111, paragraph 58; and of 7 September 2023, *Groenland Poultry*, C-169/22, EU:C:2023:638, paragraph 39).
- 48 It follows from recital 37 and Article 47(1) of Regulation No 1974/2006 that the list referred to in the latter provision is non exhaustive and that '*force majeure*' or 'exceptional circumstances', within the meaning of that provision, can therefore cover cases not included on that list. Thus, according to the circumstances of the case in the main proceedings, the conduct of the public authorities may also constitute '*force majeure*' or 'exceptional circumstances' (see, to that effect, judgment of 7 December 1993, *Huygen and Others*, C-12/92, EU:C:1993:914, paragraph 31).
- 49 It should be observed that, while that list contains objective facts only, the person concerned who relies on the existence of '*force majeure*' or 'exceptional circumstances' must also be in a position to establish that he or she guarded against the consequences of the abnormal event, in accordance with the case-law cited in paragraph 47 of the present judgment, by taking appropriate steps without making unreasonable sacrifices (see, to that effect, judgment of 19 June 2019, *RF v Commission*, C-660/17 P, EU:C:2019:509, paragraph 37 and the case-law cited).
- 50 It follows that it is for the referring court to assess whether (i) the amendment to the national legislation introducing new requirements in Article 37i of the ZSPZZ – compliance with which is a condition for maintaining lease or letting agreements such as those at issue in the main proceedings – and the termination, by the two municipalities concerned, of the lease agreements concluded with Askos Properties constitute, from the latter's point of view, abnormal and unforeseeable events outside its control, and (ii) Askos Properties took all possible steps, without making unreasonable sacrifices, to bring those agreements into line with those new requirements.
- 51 In that context, an assessment must be made as to whether, inter alia, the time period prescribed for compliance with the new requirements introduced by the amendment to Article 37i of the ZSPZZ was sufficient. It should also be determined whether, with a view to complying with those new requirements, Askos Properties had a real possibility of acquiring a livestock facility from, and declaring the number of animals required to, the competent authorities. The same applies to the question whether, in order to honour its commitments, Askos Properties had the possibility of using land other than that put at its disposal by the municipalities in question in the main proceedings, and whether it was possible for Askos Properties to obtain land eligible under Measure 211 of the 2007-2013 Rural Development Programme from private legal and natural persons.

- 52 As regards, in the second place, the question whether the termination of an agreement such as those at issue in the main proceedings can fall under the concept of ‘expropriation of the holding’, within the meaning of Article 47(1)(c) of Regulation No 1974/2006, it should be noted that that concept is not defined either in that regulation or, indirectly, by reference to the national laws of the Member States. Thus, that concept must be regarded as an autonomous concept of EU law, which must be interpreted in a uniform manner throughout the territory of the European Union, by considering not only the wording of that provision, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 22 June 2021, *Venezuela v Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 42 and the case-law cited).
- 53 In so far as concerns, first, the wording of Article 47(1)(c), this is confined to stating that ‘expropriation of a large part of the holding’, where it ‘could not have been anticipated on the day on which the commitment was given’ can, in particular, be recognised by the Member States, as a category of force majeure or exceptional circumstances in which they will not require full or partial reimbursement of the aid received by the beneficiary. The wording of that Article 47(1)(c) therefore does not furnish any elements of use in defining the concept of ‘expropriation of the holding’ within the meaning of that provision.
- 54 Second, as regards the context in which Article 47(1)(c) of Regulation No 1974/2006 occurs, it should be noted, first of all, that none of the provisions of that regulation contains the definition of ‘expropriation of the holding’, within the meaning of that article. Next, the specification that the ‘expropriation of a large part of the holding’ cannot be ‘anticipated on the day on which the commitment was given’ is intended to determine the situations in which reimbursement of the aid is not to occur, and not to clarify the meaning of that concept. Lastly, the other categories set out in Article 47(1) of Regulation No 1974/2006 do not contain any further elements making it possible to define that concept.
- 55 Third, as to the objective pursued, that regulation lays down, as is clear from its title, the detailed rules for the application of Regulation No 1698/2005 on support for rural development by the EAFRD. Under Article 37 of the latter regulation, natural handicap payments in mountain areas and payments in other areas with handicaps are in principle to be granted to farmers who undertake to pursue their farming activity in the areas concerned for at least five years from the first payment. The attainment of that objective therefore presumes that farmers who have entered into lease agreements for a period of at least five years in order to have the use of land situated in such areas with a view to engaging in their agricultural activity and collecting the revenue from it should be able to make use of that land during that period.
- 56 In that connection, it can be inferred from the case-law of the Court that the concept of ‘expropriation’, within the meaning of Article 47(1)(c) of Regulation No 1974/2006, includes measures involving deprivation of property rights and measures that may equate thereto (see, by analogy, judgment of 12 December 1990, *van der Laan-Velzeboer*, C-285/89, EU:C:1990:460, paragraphs 14 and 15).
- 57 Furthermore, the Court has already held that the cancellation of rights of usufruct, in a compulsory, complete and definitive manner, in so far as such rights constitute a fraction of ownership in the sense that they confer on their holders two essential attributes of the right to property, namely the right to use the property concerned and the right to collect the revenue from it, constitutes a deprivation of property within the meaning of Article 17(1) of the Charter of

Fundamental Rights of the European Union ('the Charter') (see, to that effect, judgment of 21 May 2019, *Commission v Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraphs 81 and 82).

- 58 Thus, where national legislation, be it by its content or by the implementation of that legislation by a national authority, cancels in a compulsory, complete and definitive manner, the right to use the land concerned and the right to collect the revenue from it on the part of an operator who has entered into a lease agreement for the purposes of using that land over a number of years as required in order to be eligible for EAFRD financing, it must be held that that legislation comprises a deprivation of the right to property, within the meaning of Article 17(1) of the Charter and thereby constitutes an 'expropriation of the holding', within the meaning of Article 47(1)(c) of Regulation No 1974/2006.
- 59 It is apparent from the information before the Court that paragraph 15 of the transitional and final provisions of the Law amending the ZSPZZ requires that lease or letting agreements be terminated only where these have not been brought into line with the new requirements laid down in Article 37i of the ZSPZZ within the time limit prescribed to that end. Subject to the matters which it is for the referring court to verify, the termination of a lease or letting agreement on the basis of such legislation therefore does not involve the cancellation, in a compulsory, complete and definitive manner, of the rights that a lessee draws from such an agreement.
- 60 However, according to the case-law of the Court, in order to establish the existence of such a deprivation of property, within the meaning of Article 17(1) of the Charter, it is necessary not only to examine whether a formal expropriation has taken place, but also to determine whether the situation at issue amounts to a de facto expropriation (see, to that effect, judgment of 5 May 2022, *BPC Lux 2 and Others*, C-83/20, EU:C:2022:346, paragraph 44).
- 61 It is for the referring court – which has given no indication as to whether Askos Properties had the possibility of taking such steps as to comply with the new requirements laid down by Article 37i of the ZSPZZ and whether it did indeed take steps in that regard – to examine the specific effects and actual impact of the introduction of those requirements on the situation of Askos Properties, together with all the relevant factors, in order to determine whether there has been deprivation of property in the case in the main proceedings. In that context, it is for that court to carry out, inter alia, the assessments mentioned in paragraph 51 above.
- 62 In the 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 termination, by a municipal authority, of a lease or letting agreement relating to agricultural land and concluded for a period of five years with the beneficiary of agricultural aid, which has been granted in the context of a Member State's rural development programmes to which the EAFRD has contributed part of the financing, and which termination arises further to an amendment to national legislation introducing new requirements governing the maintenance of such agreements, can constitute
- '*force majeure*' or 'exceptional circumstances', within the meaning of Article 47(1), where that termination constitutes abnormal and unforeseeable events outside the control of that beneficiary, and the latter has taken all possible steps, without making unreasonable sacrifices, to bring the lease agreement concerned into line with the new requirements introduced,

- ‘expropriation of the holding’, within the meaning of Article 47(1)(c), where that termination constitutes a measure involving deprivation of property which deprives that beneficiary of the right to use the leased agricultural land and the right to collect the revenue from it.

### *The second question*

- 63 By its second question, the referring court asks, in essence, whether Article 45(4) of Regulation No 1974/2006 must be interpreted as applying to a situation in which it is impossible for the beneficiary of agricultural aid to continue to honour the commitments given as a result of the termination, by a municipal authority, of the lease or letting agreement relating to agricultural land, concluded for a term of five years with that beneficiary, which termination occurs further to an amendment to national legislation introducing new requirements, pursuant to which that beneficiary is required to have a livestock facility and to declare a certain number of livestock units to the competent national authorities, compliance with which is a condition for maintaining such an agreement.
- 64 In order to answer that question, it must be borne in mind that Article 45(4) of Regulation No 1974/2006 covers the case of a beneficiary who is unable to continue to comply with commitments given because his or her holding is reparable or is the subject of public land-consolidation measures or of land-consolidation measures approved by the competent public authorities.
- 65 The Court has already held that any operation which has as its purpose the reconfiguration and rearrangement of agricultural parcels in order to form more rational agricultural holdings in terms of land use and which is decided upon or approved by the competent public authorities is likely to fall within the concepts of ‘reparcelling and public land-consolidation measures’ or of ‘land-consolidation measures’ approved by the competent public authorities (judgment of 16 February 2023, *Zamestnik izpalnitelen direktor na Darzhaven fond ‘Zemedelie’*, C-343/21, EU:C:2023:111, paragraph 39).
- 66 That provision does not apply where a beneficiary of agricultural aid is unable to continue to honour commitments given as a result of the fact that, since that beneficiary does not meet the new requirements under which he or she must have a livestock facility and to declare a certain number of livestock units to the competent national authorities, the municipal authority is required, under national law, to terminate the lease or letting agreement, concluded for a five-year term with that beneficiary, in relation to the land necessary to his or her holding.
- 67 In such a situation, the fact that it is not possible, for the beneficiary concerned, to continue to honour his or her commitments on account of the loss of the right to use the land necessary to his or her holding during the period for which those commitments run, is the result of a change in the conditions for granting agricultural aid and not of land-consolidation measures.
- 68 Consequently, the answer to the second question is that Article 45(4) of Regulation No 1974/2006 must be interpreted as not applying to a situation in which the beneficiary of agricultural aid is unable to continue to honour the commitments given as a result of the termination, by a municipal authority, of the lease or letting agreement relating to agricultural land, concluded for a term of five years with that beneficiary, which termination occurs further to an amendment to national legislation introducing new requirements, pursuant to which that beneficiary is required to have a livestock facility and to declare a certain number of livestock units to the competent national authorities, compliance with which is a condition for maintaining such an agreement.

## Costs

- 69 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 (Eighth 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 Regulation (EC) No 434/2007 of 20 April 2007,**

**must be interpreted as meaning that the termination, by a municipal authority, of a lease or letting agreement relating to agricultural land and concluded for a period of five years with the beneficiary of agricultural aid, which has been granted in the context of a Member State's rural development programmes to which the EAFRD has contributed part of the financing, and which termination arises further to an amendment to national legislation introducing new requirements governing the maintenance of such agreements, can constitute**

- **'force majeure' or 'exceptional circumstances', within the meaning of Article 47(1), where that termination constitutes abnormal and unforeseeable events outside the control of that beneficiary, and the latter has taken all possible steps, without making unreasonable sacrifices, to bring the lease agreement concerned into line with the new requirements introduced,**
- **'expropriation of the holding', within the meaning of Article 47(1)(c), where that termination constitutes a measure involving deprivation of property which deprives that beneficiary of the right to use the leased agricultural land and the right to collect the revenue from it.**

2. **Article 45(4) of Regulation No 1974/2006, as amended by Regulation No 434/2007,**

**must be interpreted as not applying to a situation in which the beneficiary of agricultural aid is unable to continue to honour the commitments given as a result of the termination, by a municipal authority, of the lease or letting agreement relating to agricultural land, concluded for a term of five years with that beneficiary, which termination occurs further to an amendment to national legislation introducing new requirements, pursuant to which that beneficiary is required to have a livestock facility and to declare a certain number of livestock units to the competent national authorities, compliance with which is a condition for maintaining such an agreement.**

[Signatures]