



Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 30 May 2018¹

Case C-120/17

Administratīvā rajona tiesa
v
Ministru kabinets

(Request for a preliminary ruling from the Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia))

(Reference for a preliminary ruling — Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) — Agriculture — Support for rural development — Early retirement support — Possibility for a Member State of adopting a provision providing for the right to inherit the support — Approval by the European Commission — Subsequent change in the Commission's position — Legitimate expectations)

1. In this case the Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia), seeks clarification from the Court of Justice concerning the scope of Articles 10 to 12 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain regulations,² and in particular concerning whether those provisions allow Member States to adopt, when implementing that regulation, a measure providing for the transfer by inheritance of early retirement support.

2. If the answer is in the negative, the Court is asked to rule on the limits of the principle of protection of legitimate expectations. In particular, the Court is requested to clarify the value to be given, in the context of the assessment of the creation of those expectations, to a decision by which the European Commission approves a rural development plan pursuant to Article 44(2) of Regulation No 1257/1999 and the value to be attributed to subsequent decisions of the Commission Committee on Rural Development³ in the appraisal relating to the termination of such expectations.

¹ Original language: French.

² OJ 1999 L 160, p. 80.

³ That committee was established by Article 84 of Regulation (EU) 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).

I. Legal context

A. *European Union law*

3. Implementation of the European Union's rural development policy is based on the principle of shared management between the European Union and the Member States, under which EU law establishes a general legal framework that is to be supplemented by national laws. In that context, Regulation No 1257/1999 lays down the general rules governing support for rural development financed by the EAGGF.

4. According to recital 23 of Regulation No 1257/1999, '... early retirement from farming should be encouraged in order to improve the viability of agricultural holdings, taking into account the experience acquired in the implementation of Regulation (EEC) No 2079/92'.⁴

5. Chapter IV, entitled 'Early retirement', in Title II ('Rural development measures') of Regulation No 1257/1999 contains Articles 10 to 12. Article 10(1) of that regulation provides:

'Support for early retirement from farming shall contribute to the following objectives:

- to provide an income for elderly farmers who decide to stop farming,
- to encourage the replacement of such elderly farmers by farmers able to improve, where necessary, the economic viability of the remaining agricultural holdings,
- to reassign agricultural to non-agricultural uses where it cannot be farmed under satisfactory conditions of economic viability'.

6. Article 11(1) and (5) of that regulation provides:

'1. A transferor of a farm shall:

- stop all commercial farming activity definitively; he may, however, continue non-commercial farming and retain the use of the buildings,
- be not less than 55 years old but not yet of normal retirement age at the time of transfer, and
- have practised farming for the 10 years preceding transfer.

...

5. The conditions laid down in this Article shall be applied throughout the period during which the transferor receives early retirement support.'

7. Under Article 12(2) of that regulation:

'The duration of early retirement support shall not exceed a total period of 15 years for the transferor and 10 years for the farm worker. It shall not go beyond the 75th birthday of a transferor and not go beyond the normal retirement age of a worker.

⁴ Council Regulation of 30 June 1992 instituting a Community aid scheme for early retirement from farming (OJ 1992 L 215, p. 91).

Where in the case of a transferor a normal retirement pension is paid by the Member State, early retirement support shall be granted as a supplement taking into account the amount of the national retirement pension.’

8. Articles 35 to 50 of Regulation No 1257/1999 form part of Title III, which is entitled ‘General principles, administrative and financial provisions’. Under Article 39 of the regulation:

‘1. Member States shall take all necessary steps to ensure the compatibility and consistency of rural development support measures pursuant to the provisions laid down in this Chapter.

2. The rural development plans submitted by Member States shall include an appraisal of the compatibility and the consistency of the support measures envisaged and an indication of the measures taken in order to ensure compatibility and consistency.

Support measures shall, where necessary, be subsequently revised to ensure compatibility and consistency.’

9. Article 44(2) provides:

‘The Commission shall appraise the proposed plans to determine whether they are consistent with this Regulation. On the basis of the plans, it shall approve rural development programming documents in accordance with the procedure referred to in Article 50(2) of Regulation (EC) No 1260/1999⁵ within six months after the submission of the plans.’

B. Latvian law

10. The Ministru kabineta 2004. gada 30. novembra noteikumi Nr. 1002 ‘Kārtība, kādā ieviešams programmdokuments “Latvijas Lauku attīstības plāns Lauku attīstības programmas īstenošanai 2004.-2006.gadam”’ (Council of Ministers Decree No 1002 laying down detailed rules for the application of the programming document ‘Latvian rural development plan for the implementation of the rural development programme for the years 2004 to 2006 [“the Rural Development Plan”]’ of 30 November 2004 (‘Decree No 1002’) approved that programming document. Decree No 1002 entered into force on 7 December 2004.

11. Sub-chapter 9.3 of the Rural Development Plan grants elderly proprietors of agricultural holdings the right to transfer, sell or give as a gift their agricultural holding, or part thereof, and to receive in return support for early retirement (‘early retirement support’), the eligibility requirements for which broadly correspond to those of Article 11(1) of Regulation No 1257/1999.

12. Point (a) of the section headed ‘Early retirement’ in sub-chapter 12.3.2 of the Rural Development Plan provided inter alia that, if the recipient of the support should die during the period when the agreement granting the pension in respect of early retirement from farming is in force, the monthly early retirement pension for the remainder of the period is to be paid to those persons whose inheritance rights have been established in accordance with national law.

13. On the basis of that Rural Development Plan, the Lauku atbalsta dienests (Rural Support Service, Latvia) concluded the aforementioned administrative agreement with farmers who wished to receive early retirement support.

⁵ Council Regulation (EC) No 1260/1999, of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

14. Point 1 of Ministru kabineta 2015. gada 14. aprīļa noteikumi Nr 187 ‘Grozījumus Ministru kabineta 2004. Gada 30. Novembra noteikumos Nr. 1002 Kārtība, kādā ieviešams programmdokuments “Latvijas Lauku attīstības plāns Lauku attīstības programmas īstenošanai 2004.-2006.gadam”’ (Council of Ministers Decree No 187 of 14 April 2015, amending Decree No 1002 (‘Decree No 187’), deleted from point (a) the right to inherit that support. In accordance with point 2 thereof, Decree No 187 entered into force on 30 April 2015.

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

15. By decision of 30 July 2004, the Commission approved the programming document ‘Latvian rural development plan for the implementation of the rural development programme for the years 2004 to 2006’, which provided for the transfer by inheritance of early retirement support.

16. A number of individuals applied to the administratīvā rajona tiesa (District Administrative Court, Latvia) for a declaration of the validity of the administrative agreement concerning the receipt of an early retirement pension in circumstances in which the Rural Support Service, Latvia had ceased, on the basis of Decree No 187, to fulfil its commitments in respect of those individuals.

17. Since it considered that point 1 of Decree No 187 was not compatible with Article 105 of the Latvijas Republikas Satversme (Constitution of the Republic of Latvia), which enshrines the right to property, the administratīvā rajona tiesa (District Administrative Court, Latvia) referred the matter to the Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia).

18. In that regard, the administratīvā rajona tiesa (District Administrative Court, Latvia) maintains that the conclusion of an administrative agreement concerning the receipt of an early retirement pension created, for the transferor and his heirs, a legitimate expectation that the latter could inherit the support if the commitments made under the agreement continued to be met.

19. On the other hand, the Ministru kabinets (Council of Ministers) considers that Decree No 187, which it adopted, is compatible with Article 105 of the Constitution of the Republic of Latvia. In that regard, it notes that, at its meeting of 19 October 2011, the Commission Committee on Rural Development concluded that EAGGF financing did not apply to the transfer by inheritance of early retirement support. That did not, in the Committee’s view, correspond to the objective fixed by Regulation No 1257/1999 and resulted in a waste of the financial resources of the European Union and the Republic of Latvia.

20. The national court is also uncertain whether Regulation No 1257/1999 prohibits the inclusion in Latvian law of a provision concerning the transfer by inheritance of early retirement support. It points out that, if that were the case, the right of the heirs of the transferor of a farm to receive the support pursuant to Decree No 1002 cannot be considered to be a property right, and, therefore, Decree No 187 cannot create a limitation of that right.

21. Since Decree No 1002 implements a regulation, the answer will depend, according to the national court, on whether that regulation allowed the Member States a measure of discretion. In that regard, the referring court points out that the requirements for early retirement support set out in Articles 10 to 12 of Regulation No 1257/1999 imply that that right is personal in nature, that is to say, only the person who has himself transferred his farm to a third party has the right to receive that support. Consequently, Member States cannot supplement those requirements by providing that the right to receive early retirement support may be transferred to the heirs of the transferor farmer, since they are not party to the administrative agreement relating to the receipt of the early retirement pension in question.

22. The referring court observes in that regard that, in the area of agriculture, the Treaty establishes a competence shared between the European Union and the Member States. It draws attention to the fact that Article 41(1) of Regulation No 1257/1999 requires Member States to submit rural development plans to the Commission, which examines them in order to determine whether they are compatible with that regulation. If a plan is approved, the national court points out that it must be considered to be definitive so that the Member State concerned has the right to adopt it. On 30 July 2004, the Commission did indeed approve a programming document in respect of rural development for Latvia for the programming period 2004 — 2006, which included inter alia the provision relating to the right to inherit early retirement support.

23. The referring court also points out that doubts concerning the interpretation of Articles 10 to 12 of Regulation No 1257/1999 arise from the letter sent to the Council of Ministers by the Commission on 11 May 2015, according to which it must be clear to all Member States that payments under the early retirement scheme cannot be transferred to the heirs of the transferor and that it has not been possible to rely on legitimate expectations since 19 October 2011, which must be regarded as the final date for signing new support agreements including a lawful inheritance clause. Furthermore, it wonders whether the case before it is a situation in which the practice of a Member State which is not compatible with EU law may have produced legal effects, since, when they signed the administrative agreement relating to receipt of an early retirement pension, the farmers concerned could not have been aware of any error on the part of the Member State and the Commission with regard to the possibility of transferring by inheritance the support in question.

24. In those circumstances, the national court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) In view of the shared competences of the European Union and the Member States in the area of agriculture, are the provisions of Regulation No 1257/1999 to be interpreted, in the light of one of the objectives of that regulation (that farmers should participate in the early retirement measure), as precluding a Member State, in the context of measures implementing that regulation, from enacting legislation pursuant to which support for early retirement from farming may be inherited?
- (2) If the answer to the first question is in the affirmative, that is, if the provisions of Regulation No 1257/1999 prohibit the inheritance of early retirement support, is it possible, in a situation in which a legal provision of a Member State has been held by the European Commission, under the appropriate procedure, to be compatible with the provisions of Regulation No 1257/1999 and farmers have participated in the early retirement measure in accordance with national practice, for an individual right to inherit the support granted under that measure to have been acquired?
- (3) If the answer to the second question is in the affirmative, that is, if it is possible for such an individual right to have been acquired, can the conclusion reached at the meeting of the Commission Committee on Rural Development of 19 October 2011, to the effect that support for early retirement from farming cannot be passed on to the heirs of the transferor of a farm, be regarded as a ground for the early termination of the acquired individual right referred to above?’

25. The Latvian Government and the Commission submitted written observations on these questions. Those interested parties also presented oral argument at the hearing held on 17 January 2018.⁶

III. Legal assessment

A. *The first question referred*

26. By its first question, the national court is asking, in essence, whether Articles 10 to 12 of Regulation No 1257/1999 preclude Member States, when implementing those provisions, from adopting a measure allowing early retirement support to be inherited.

27. I think it is necessary, first of all, to recall the conditions laid down by the case-law of the Court for Member States to adopt measures implementing a regulation.

28. According to the Court, Member States may adopt those measures provided that they do not thereby obstruct the direct applicability of the regulation concerned, that they do not conceal its Community nature; that they specify that they are acting in the exercise of a discretion granted to them by that regulation and that they adhere to the parameters laid down therein.⁷

29. It is therefore necessary to refer to the relevant provisions of Regulation No 1257/1999, interpreted in the light of its objectives, in order to determine, first of all, whether they prohibit, require or allow Member States to adopt measures providing for the inheritance of early retirement support and, in the latter case, whether the implementing measure actually adopted by the Republic of Latvia comes within the scope of discretion that each Member State is recognised as having.⁸

30. I would point out that the provisions of Regulation No 1257/1999 do not address the matter of transfer by inheritance. In particular, they neither expressly allow nor prohibit the transfer of early retirement support to the heirs of retiring farmers.

31. However, the question whether those provisions are to be interpreted as meaning that they allow Member States to adopt such an implementing measure seems to me to be much less clear.

32. In that regard, I think it should be pointed out that the early retirement support scheme, as defined by the regulation in question, does not, *prima facie*, preclude the interpretation that a national provision providing for transfer of the support by inheritance falls within the limits of the discretion enjoyed by Member States when implementing that regulation.

33. Several factors may support that conclusion.⁹

⁶ In that regard, I think it is necessary to emphasise a particular aspect of the procedure before the *Satversmes tiesa* (Constitutional Court, Latvia). It is apparent from reading the *Satversmes tiesas likums* (Law on the Constitutional Court) that the parties to the case before the *administratīvā rajona tiesa* (District Administrative Court), with the exception of the public authority which has adopted the contested measure, have the right to present observations in the constitutional legitimacy proceedings only if the *Satversmes tiesa* (Constitutional Court, Latvia) considers that they may facilitate a comprehensive and objective adjudication of the matter (Article 22(3) of the Constitutional Court Law). Since they are not 'necessary parties' to those proceedings, they are not allowed to present observations in preliminary ruling proceedings before the Court of Justice (Article 96 of the Rules of Procedure of the Court of Justice). That is why in the present case there are no observations from the parties in the main proceedings.

⁷ Judgment of 15 May 2014, *Szatmári Malom* (C-135/13, EU:C:2014:327, paragraph 55).

⁸ See judgment of 25 October 2012, *Ketelä* (C-592/11, EU:C:2012:673, paragraph 37).

⁹ The argument put forward by the Republic of Latvia in its written observations that such a conclusion cannot be accepted since Article 37(4) of Regulation No 1257/1999 allows Member States to lay down only 'further restrictive conditions' for granting EU support for rural development, and therefore cannot grant more favourable conditions to farmers in receipt of the support in question, seems to me to be irrelevant in the present case. There is no question that transfer by inheritance cannot be classified as a 'condition' for the grant of early retirement support.

34. It may, first of all, be the result of the adoption of a purposive interpretive approach. Looking at the objective of the early retirement support mechanism, the latter, as the Commission itself points out, constitutes an ‘economic incentive’ to farmers, designed, in the last analysis, to improve the viability of agricultural holdings.¹⁰ In those circumstances, however, the support measure can act as an incentive, and thus achieve the objective of improving viability, only if it is sufficiently attractive in the eyes of farmers fulfilling the requirements set out in Articles 11 and 12 of Regulation No 1257/1999.

35. I have not the slightest doubt that national legislation granting farmers the possibility of transferring the support to their own heirs helps to achieve that objective. It might be assumed that that possibility has a significant, even decisive, influence in Member States with a certain economic and social fabric, on the decision of those farmers to stop farming before reaching retirement age in order to receive the support in question. Accordingly, that interpretive approach might lead Member States to consider that national legislation providing for that possibility is not incompatible with the provisions of Regulation No 1257/1999.

36. Article 12 of Regulation No 1257/1999 might also lead Member States to draw that conclusion. First of all, the first paragraph thereof imposes limits on the amount of Community support, by reference to the maximum amounts fixed in the annex.¹¹ In that regard, it seems to me that the absence of an express prohibition of transfer of the support to heirs, combined with the presence of maximum amounts, may be interpreted as meaning that those maximum amounts constitute the only instrument necessary for ensuring the protection of the general interest in an effective use of EU resources, whilst the EU legislature left Member States free to provide or not provide for transfer of the support by inheritance.¹²

37. Article 12(2) of Regulation No 1257/1999, which imposes limits relating to the duration of payment of the support, may also be considered to support a finding that transfer of the support by inheritance is compatible with that regulation. Although it is true that one of the limits that the regulation imposes is based on the age of the transferor farmer (‘It shall not go beyond the 75th birthday of a transferor’) and therefore cannot be applied to his heirs, the fact remains that the limit does not refer to any intrinsic characteristic of the person of the transferor farmer (‘The duration of ... support shall not exceed a total period of 15 years for the transferor’). Although the former limit is applicable only to transferor farmers, the latter could be understood by Member States as being applicable to their heirs.¹³

10 The Court has clearly indicated that the aim of offering an income to farmers is not an independent objective, but has the function of serving the macroeconomic objective of improving the viability of agricultural holdings. See, in that regard, the judgments of 11 April 2013, *Soukupová* (C-401/11, EU:C:2013:223, paragraphs 24 to 25), and of 25 February 2015, *Poland v Commission* (T-257/13, not published, EU:T:2015:111, paragraphs 47 to 49). See also point 32 of the Opinion of Advocate General Jääskinen in *Soukupová* (C-401/11 EU:C:2012:658), which reads as follows: ‘Early retirement support is not directed at supplying a supplement to the retirement pension for social reasons. Nor does it directly aim at providing additional income for elderly farmers. These consequences are inherent in Regulation No 1257/1999 as a *means of achieving the primary aim of the early retirement support scheme* which is to create an economic incentive to older farmers to cease their activities early, and in circumstances in which they would not ordinarily do so’ (emphasis added).

11 It is apparent from reading the annex, entitled ‘Table of amounts’, that the maximum amount per transferor and year is EUR 15 000 and the total amount per transferor is EUR 150 000. Moreover, the maximum annual amount may be increased up to twofold, subject to the total maximum, taking account of the economic structure of holdings in territories and the objective of speeding up the adjustment of agricultural structures.

12 From that perspective, Member States therefore have the right to allow farmers to transfer the benefit of the support to their own heirs and also to adjust the amount of support offered to each transferor within the limits set by the maximum amounts. If the national legislation were to grant the possibility of transfer by inheritance, the amount of the support should inevitably be lower than that which might be granted in the absence of that possibility.

13 Similarly, the second subparagraph of Article 12(2) of Regulation No 1257/1999 (‘Where in the case of a transferor a normal retirement pension is paid by the Member State, early retirement support shall be granted as a supplement taking into account the amount of the national retirement pension’) might simply be understood as inapplicable to heirs.

38. The last, but not the least, element, which strongly favours the conclusion that the Latvian national legislation is not incompatible with the regulation at issue, is that the Rural Development Plan including the provision which provides for transfer by inheritance of early retirement support, namely Decree No 1002, was approved by a Commission decision pursuant to Article 44(2) of Regulation No 1257/1999 which refers, as has been held,¹⁴ to the *content* of that plan.

39. Despite all the considerations set out above, the interpretation whereby those provisions allow Member States, when implementing Regulation No 1257/1999, to provide for the transfer by inheritance of early retirement support, even though based on sound evidence, does not convince me.

40. In that regard, I note that, in their observations, both the Latvian Government and the Commission consider that this question calls for a negative reply.

41. I agree with the legal reasoning which led the Commission to that conclusion. I shall therefore refer to it below.

42. The Commission observes that it is apparent from Article 10(1) of Regulation No 1257/1999, and from recital 23 thereof, that the objective of the mechanism for support for early retirement from farming is to provide an income to elderly farmers who decide to stop farming and to encourage the replacement of those farmers by farmers able to improve, where necessary, the economic viability of the remaining holdings. In other words, early retirement support constitutes, as the Commission points out, a financial incentive to encourage elderly farmers to stop farming definitively, earlier than they would do under normal circumstances and, thus, to facilitate structural change in the agricultural sector, with a view to ensuring the viability of holdings. To that end, the provisions of the regulation relating to early retirement support aim to identify, attract and provide support only to genuine farmers, whose occupation is farming and who are already elderly. Consequently, the conditions laid down by those provisions for receiving the support are, in the Commission's view, *personal* in nature and are therefore *inextricably linked* to the elderly farmer, a view with which the Republic of Latvia agrees.

43. In that regard, the Commission observes that Article 11(1) of Regulation No 1257/1999 provides that, in order to be able to claim the support, the transferor of a farm must be not less than 55 years old, have practised commercial farming for the 10 years preceding transfer of the holding and, following the transfer, must stop farming. Moreover, Article 11(5) of the regulation states that the conditions laid down in Article 11 apply throughout the period during which the 'transferor', and not his heir, receives support. Similarly, the personal nature of the obligations imposed on the transferor is apparent from Article 12(2) of the regulation at issue, since that provision establishes that the right to the support and the obligation to pay it terminate when the transferor reaches the threshold of 75 years and that the support is reduced taking into account the normal pension which is paid to him by the State.

44. In the light of those considerations, the Commission concludes that the personal nature of early retirement support, as follows from Articles 11 and 12 of Regulation No 1257/1999, does not permit the adoption of national legislation, such as Decree No 1002, which provides for the transfer of the support by inheritance.

¹⁴ Emphasis added. See, in particular, the judgment of 19 September 2002, *Huber* (C-336/00, EU:C:2002:509, paragraph 39). In that case, the Court replied to the second question referred for a preliminary ruling by stating that a Commission decision approving a national aid programme as referred to in Council Regulation (EEC) No 2078/1992 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ 1992 L 215, p. 85) referred to the content of those programmes, because that decision could be given only after the Commission had confirmed their compliance with the regulation and had determined the nature of the measures eligible for 'part financing' and the total amount of expenditure eligible for part-financing. Since Article 44(2) of Regulation No 1257/1999, in conjunction with Article 48 of Commission Regulation (EC) No 817/2004 laying down detailed rules for the application of Regulation (EC) No 1257/1999 (OJ 2004 L 153, p. 30), provide for an examination having the same characteristics, that conclusion seems to me to be applicable in the present case.

45. I find that interpretation, based on the strictly personal nature of the conditions laid down by the provisions of Regulation No 1257/1999, persuasive.

46. Therefore, although the provisions of Regulation No 1257/1999 relating to early retirement support do not seem to me to be unambiguous so far as concerns the power of the Member States to provide, when implementing those provisions, for the transfer of the support by inheritance, I consider, for the same reasons as those stated by the Commission and the Republic of Latvia, that such transfer is incompatible with those provisions of the regulation.

B. The second and third questions

47. By its second question, the national court asks in essence whether, if the reply to the first question is that the possibility of transferring early retirement support by inheritance is not compatible with Regulation No 1257/1999, it is possible in a situation in which a national provision allowing that transfer has been held by the Commission, under the appropriate procedure, to be compatible with Regulation No 1257/1999 — and on the basis of which farmers have participated in an early retirement measure — for the heirs of those farmers to have legitimate expectations. If the answer is in the affirmative, by its third question the referring court asks, in essence, whether the conclusion referred to in the minutes of the meeting of the Commission Committee on Rural Development of 19 October 2011 to the effect that early retirement support cannot be inherited, may be regarded as terminating the legitimate expectations of the heirs of farmers who have participated in an early retirement measure.¹⁵

48. Since those questions require an interpretation of the principle of the protection of legitimate expectations, I think it is expedient to make some preliminary observations with the aim of defining the material scope of that principle.

49. The Court has consistently held that the principle of the protection of legitimate expectations is among the fundamental principles of the European Union¹⁶ and, as such, must be observed by the bodies of the European Union and by the Member States when implementing EU regulations.¹⁷

50. Given that its aim is to maintain existing legal situations, the principle of protection of legitimate expectations inevitably comes into conflict with other fundamental principles of EU law, in particular with the principle of legality. Its import is therefore defined by balancing the private interests underlying the maintenance of existing legal situations, on the one hand, and the public interest embodied by the principle of legality, on the other.¹⁸

51. In other words, in the assessment concerning observance of the principle of the protection of legitimate expectations, the Court must determine, by means of a specific analysis of the facts in each case, whether the expectations of the individuals concerned must take precedence over the effective application of EU law.

52. The protection of legitimate expectations can therefore be relied upon only if the individual is able to show that he is in a particular situation which, in a State governed by the rule of law, must be classified as *worthy of protection*.

¹⁵ In fact, both questions referred by the national court refer rather to an ‘individual right’ to inherit early retirement support. However, as is apparent from the observations of the referring court, recognition that the heirs have that right would be the consequence of a positive reply as to their possibility of relying on those legitimate expectations.

¹⁶ See judgment of 14 March 2013, *Agrargenossenschaft Neuzelle* (C-545/11, EU:C:2013:169, paragraph 23).

¹⁷ See judgments of 11 July 2002, *Marks & Spencer* (C-62/00, EU:C:2002:435, paragraph 44), and of 12 May 2011, *Enel Maritsa Iztok 3* (C-107/10, EU:C:2011:298, paragraph 29).

¹⁸ See, in particular, the judgment of 24 April 1996, *Industrias Pesqueras Campos and Others v Commission* (T-551/93 and T-231/94 to T-234/94, EU:T:1996:54, paragraph 76).

53. The issue is, therefore, whether the situation of the heirs of farmers¹⁹ who concluded with the Rural Support Service an administrative agreement relating to the receipt of an early retirement pension — which contains a clause conferring a right to inherit that support, on the basis of a rural development plan approved by the Commission and implemented by Decree No 1002 — constitutes a situation worthy of protection, where the Rural Support Service has ceased to make the payments due under those agreements as a consequence of the termination, by Decree No 187, of the possibility of transferring the support by inheritance.

54. I think it should be pointed out, first of all, that the referring court is not seeking to ascertain whether legitimate expectations may be relied upon against the effects of the legislative amendment concerning future payments to the heirs of farmers who signed administrative agreements, but rather is asking about payments made *before* its entry into force. Consequently, the well-established case-law, recalled by the Republic of Latvia in its written observations, according to which economic operators are not justified in having a legitimate expectation that an existing situation which is capable of being altered by the EU institutions (or national authorities implementing EU law) in the exercise of their discretion will be maintained²⁰ is not, in my view, applicable in the present case. For the same reason, the fact that the option of removing provisions relating to the transfer of the support by inheritance falls within the discretion which Article 39 of Regulation No 1257/1999 confers on the Member States, to which the Republic of Latvia also refers, is not relevant in the present case.

55. That said, I shall now examine the facts in this case, in the light of the relevant case-law in order to determine whether the situation in the present case is such as to justify giving priority to the protection of legitimate expectations over the effective application of EU law.

56. According to the case-law, for there to be a situation worthy of protection three cumulative conditions must be met. First, there must be objective conduct on the part of the administrative authorities. Second, the individual must act in good faith. Third, the conduct of the administration must be in accordance with the applicable rules.²¹

57. In order to ensure a logical line of argument, it is appropriate to start by analysing the third condition. If it were taken to mean that a national practice which is not in accordance with EU law, such as that in the present case, namely the conclusion by the Rural Support Service of administrative agreements including the inheritance clause, cannot be the source of legitimate expectations, it would have to be found, owing to the absence of that third condition, that the second question referred by the national court calls for a negative reply, without the need to analyse the other conditions.

¹⁹ As regards the identification of those justified in having legitimate expectations, I shall keep to the wording of the second question, which refers to the heirs of farmers, and not to the farmers themselves. Furthermore, the order of the referring court clearly states that the case before the administratīvā rajona tiesa (District Administrative Court), which itself referred the matter to the Latvijas Republikas Satversmes tiesa (Constitutional Court), has arisen from the failure of the Rural Development Service to fulfil its commitments to the applicants, which were given pursuant to administrative agreements relating to the receipt of early retirement pension. I think that it may easily be deduced that the reason for the failure to fulfil obligations was the removal of the possibility of transferring the support by inheritance, which means that the applicants in the proceedings before the administratīvā rajona tiesa (District Administrative Court) are the heirs.

²⁰ See the judgments of 7 September 2006, *Spain v Council* (C-310/04, EU:C:2006:521, paragraph 81), and of 1 June 2016, *Hungary v Commission* (T-662/14, EU:T:2016:328, paragraph 55).

²¹ The wording of those conditions seems to vary somewhat depending on the area concerned. In the area of State aid, see the judgment of 16 October 2014, *Alcoa Trasformazioni v Commission* (T-177/10, EU:T:2014:897). In the area of customs, see the judgment 15 December 2011, *Afasia Knits Deutschland* (C-409/10, EU:C:2011:843, paragraph 47).

58. Moreover, the current trend in the case-law relating to errors or failings of a department or national authority in the application of EU law may be interpreted in that way. In that case-law the Court has repeatedly rejected pleas based on the infringement of the principle of protection of legitimate expectations holding that '[that principle] cannot be relied upon against an unambiguous provision of European Union law; nor can the conduct of a national authority responsible for applying European Union law, which acts in breach of that law, give rise to a legitimate expectation on the part of a trader of beneficial treatment contrary to European Union law'.²²

59. In the forthcoming ruling, the Court should, in my view, express its views on the interpretation of that case-law.

60. I, for my part, consider that it should not infer that an expectation worthy of protection can *under no circumstances* arise from a national practice which is incompatible with EU law. It seems to me that the idea underlying the case-law in question is rather that that legal matter must always be settled in the light of the text of EU law on which the unlawful practice of the national authorities is based. More specifically, the protection of legitimate expectations cannot be based on a national practice which disregards an 'unambiguous' provision of EU law.²³

61. I would reiterate that the legislation at issue in the present case is Regulation No 1257/1999, in particular Articles 10 to 12 of that regulation. As I have already stated in the analysis of the first question, those provisions may in principle be interpreted in different ways and are therefore not so clear that the heirs of the farmers who have concluded administrative agreements containing an inheritance clause with the (Rural Support Service) should not have relied on the legality of that clause.

62. That interpretation of the case-law seems to me also supported by the German version ('klare Bestimmung'), and even more so by the English version ('unambiguous provision') in the text of the judgments under consideration.

63. I am aware that, in its written observations, the Commission drew the conclusion that legitimate expectations cannot arise in the present case at the level of EU law, on the basis of an *obiter dictum* of the General Court of the European Union in *Poland v Commission* (T-257/13, not published, EU:T:2015:111), according to which '... Commission approval of the [rural development plan] does not accord that programming document greater legal value than that of Regulation No 1257/1999'.²⁴ However, I consider that the idea underlying that statement by the General Court was that the rule concerned, namely Article 11(1), first indent, of the regulation ('[A transferor of a farm shall] stop all commercial farming activity definitively ...'), left no room for any reasonable doubt concerning the obligation of the Member States to ascertain whether the farmers had practised commercial farming during the period preceding the cessation of that activity, and had therefore to be classified as an 'unambiguous provision'; this, as I have explained, is not the situation in the present case.

64. In any event, if the Commission decision cannot on its own give rise in the present case to legitimate expectations on the part of the heirs, account should, in my view, be taken of it in the assessment of the 'lack of ambiguity' of the relevant EU legislation. If the foregoing considerations were not considered sufficient to establish that Article 10, Article 11(1), second and third indents, and Article 12 of the regulation are not 'unambiguous provisions', I should point out that Decree No 1002

²² Judgment of 7 April 2011, *Sony Supply Chain Solutions (Europe)* (C-153/10, EU:C:2011:224, paragraph 47). See also judgments of 20 June 2013, *Agroferm* (C-568/11, EU:C:2013:407, paragraph 52), of 16 March 2006, *Emsland-Stärke* (C-94/05, EU:C:2006:185, paragraph 27), of 1 April 1993, *Lageder and Others* (C-31/91 to C-44/91, EU:C:1993:132, paragraph 35), and of 26 April 1988, *Krücken* (316/86, EU:C:1988:201, paragraph 23).

²³ I therefore agree with the interpretation given by Advocate General Stix-Hackl in her Opinion in *Elmeke* (C-181/04 to C-183/04, EU:C:2005:730, paragraph 43 to 45). See also, along the same lines, the Opinion of Advocate General Kokott in *Agroferm* (C-568/11, EU:C:2013:35, paragraph 59).

²⁴ See judgment in *Poland v Commission* (T-257/13, not published, EU:T:2015:111, paragraphs 53 to 55).

-- that is to say, the legal basis of the inheritance clause contained in the administrative agreements between the Rural Support Service and the farmers -- was adopted following approval, by the Commission, of the rural development plan for the period 2004–2006 of the Republic of Latvia, which contained the inheritance clause in point (a) of the 'Early retirement' section of sub-chapter 12.3.2. Even if the Commission's interpretation²⁵ of Articles 10 to 12 of Regulation No 1257/1999 acknowledges the possibility of transferring early retirement support by inheritance although that possibility is incompatible with those articles, I cannot see how they can be classified as 'unambiguous provisions' within the meaning of the case-law.

65. Consequently, the practice of the national administration of concluding administrative agreements that contain a clause conferring the right to inherit early retirement support may be the source of legitimate expectations, even though it is incompatible with Articles 10 to 12 of Regulation No 1257/1999, owing to the fact that those provisions are not unambiguous within the meaning of the case-law of the Court of Justice.

66. In those circumstances, in order to determine whether legitimate expectations are actually created for the heirs of farmers who have signed administrative agreements, it is necessary to ascertain whether the first two conditions set out in point 56 of this Opinion are also satisfied, that is to say, whether the legitimate expectations are based on conduct of the administrative authorities and whether the person holding the legitimate expectations was acting in good faith.

67. As regards the first condition, the individual's legitimate expectations must be created by conduct of the administrative authorities. More specifically, the conduct, by reason of its objective characteristics, must be liable to generate reasonable expectations on the part of the individual.

68. In that regard, I wonder first of all whether the conduct which generated the legitimate expectations of the heirs in the main proceedings is that of the Commission (the decision approving the Rural Development Plan of the Republic of Latvia) or that of the Latvian national authority (the conclusion with farmers of administrative arrangements concerning the receipt of an early retirement pension).²⁶ In my view, the answer is that the legitimate expectations of the heirs that they are entitled to receive the amount relating to early retirement support arise from the commitments given to the farmers in the administrative agreements by the national authority. It is clear to me that the conduct of the Latvian national authority must be regarded as satisfying the requirements laid down by the case-law.

²⁵ The Commission's interpretation may be taken into account particularly because the wording of Articles 10 to 12 in the definitive version of Regulation No 1257/1999 is identical to that of the same rules which the Commission had included in the proposal for a regulation which it had put forward. See Proposal for a Council Regulation (EC) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1998 C 170, p. 67).

²⁶ In that regard, I note that the case-law is significantly more flexible when the source of the legitimate expectations is a measure of a national authority implementing EU law. In the cases in which the Court is called upon to establish whether legitimate expectations may arise from the conduct of a European institution, it requires that the conduct of that institution give rise to 'justified hopes' on the part of the individual, stating that 'information which is precise, unconditional and consistent and comes from authorised and reliable sources', in whatever form it is given, constitutes assurances capable of giving rise to such hopes. See the judgment of 14 March 2013 (*Agrargenossenschaft Neuzelle*, C-545/11, EU:C:2013:169, paragraph 25 and the case-law cited). By contrast, in cases, such as this one, in which legitimate expectations are claimed against a measure implementing EU law adopted by a national administration, the Court simply states that that measure must give rise to a 'reasonable expectation' on the part of the individual. See judgment of 14 September 2006, *Elmeka* (C-181/04 to C-183/04, EU:C:2006:563, paragraph 32).

69. Indeed it cannot be denied that the commitments given in the administrative agreements come from a competent authority invested with decision-making powers. As it is the public body designated by the Latvian State to administer the national early retirement support scheme, in order to give effect to the obligations of that State under Article 38(1)(a) of Regulation No 1260/99, the Rural Support Service is in fact authorised to bind the national administration in respect of the grant of that support.²⁷

70. Similarly, it is clear that the actual conduct of that body, namely the conclusion with farmers of administrative agreements containing an inheritance clause, was likely to leave their heirs with the reasonable assumption that the commitments made by the Rural Support Service would have been fulfilled, that is to say, that all payments of the support would have been duly made.

71. As regards the second condition, the existence of good faith may be established only if the change in the individual's legal situation was not foreseeable²⁸ in the light of the standard of the 'prudent and circumspect operator'.²⁹ However, the concept of foreseeability is not purely objective, but largely depends on a case-by-case assessment taking into account the individual's subjective personal situation.³⁰

72. In circumstances such as those of this case, in which the individual's legal situation was governed by a national provision which was replaced by another provision owing to its incompatibility with EU law, the foreseeability of that change is reflected, in my view, by the *perceptibility of the illegality* of the provision in question. It goes without saying that an individual cannot rely on the legality of a national provision which is clearly incompatible with EU law.

73. It is therefore necessary to ascertain whether the incompatibility with Regulation No 1257/1999 of the national practice of including a clause conferring the right to inherit early retirement support in administrative agreements was perceptible by the heirs of the farmers who signed those agreements, which would preclude from the outset the existence of good faith on the part of the heirs.

74. I think, in the light of the information in the documents in the case in the main proceedings, that that illegality was probably not perceptible.

75. It is true that the standard of the prudent and circumspect economic operator imposes stringent obligations on those heirs in terms of diligence, in accordance with the principle *nemo censitur ignorare legem*, which may in principle go as far as requiring those heirs to be aware that the inheritance clause was incompatible with Regulation No 1257/1999. However, we cannot overlook one of the core aspects of the factual context of this case, which is that the transfer by inheritance of early retirement support, as included in the Rural Development Plan, was expressly approved by the Commission. In the light of that approval, I consider that even an extremely circumspect economic operator would have trusted that the inheritance clause was compatible with EU law.³¹

27 In that regard, Article 4(1) of the atbalsta dienesta likums (Law on the Rural Support Service) provides: 'The Rural Support Service shall administer State and European Union aid for rural areas, agriculture, forestry and fisheries: [it shall receive and examine requests (projects) for aid, take a decision to grant or refuse financing, decide to make or to refuse payment of aid, keep an inventory of aid and monitor its use].'

28 See the judgment of 17 March 2011, *AJD Tuna* (C-221/09, EU:C:2011:153, paragraph 73 and the case-law cited). See also D. Simon, 'La confiance légitime en droit communautaire: vers un principe général de limitation de la volonté de l'auteur de l'acte?', in *Le rôle de la volonté dans les actes juridiques, Etudes à la mémoire du professeur Alfred Rieg*, Brussels, Bruylant, 2000, p. 740.

29 See, in the area of agriculture, the judgment of 7 September 2006, *Spain v Council* (C-310/04, EU:C:2006:521, paragraph 83). In other areas, see, for example, the judgments of 10 September 2009, *Plantanol* (C-201/08, EU:C:2009:539), and of 7 June 2005, *VEMW and Others* (C-17/03, EU:C:2005:362, paragraph 74).

30 See, for example, the judgment of 2 July 2015, *Demmer* (C-684/13, EU:C:2015:439, paragraph 92).

31 That approval decision, which was adopted in accordance with Article 44(2) of the regulation, refers in fact to the content of the Rural Development Plan. See, in that regard, point 38 of this Opinion.

76. In that regard, the fact, pointed out by the Republic of Latvia in its written observations, that, as the Court held in the judgment of 19 September 2002, *Huber* (C-336/00, EU:C:2002:509, paragraph 40), Commission approval of a rural development plan does not confer on that plan the nature of an act of EU law, does not, in my view, affect the weight to be given in the present case to the Commission's approval decision.

77. There is no doubt that, in adopting the decision approving the Rural Development Plan proposed by the Member State concerned, the Commission also ruled on the legality of the inheritance clause, as I pointed out in point 39 of this Opinion.

78. In my view, it is clear that the heirs acted in good faith, especially because the Commission did not take a contrary view until the meeting of the Committee on Rural Development of 19 October 2011, that is, about seven years after the adoption of that approval decision.³²

79. Therefore, there is nothing in the file to suggest that those heirs did not have the right to put their faith in the maintenance of the legal situation, that is to say, in the fact that the Rural Support Service would have fulfilled its payment obligations under those administrative agreements.

80. In conclusion, the three conditions needed to generate legitimate expectations on the part of the heirs concerning the legality of transfer by inheritance of early retirement support are, in my view, satisfied in the present case.

81. Accordingly, the heirs in question would, in principle, be entitled to receive all the payments relating to the support granted on the basis of the administrative agreements concluded between the dates on which Decree No 1002 and Decree No 187 entered into force (7 December 2004 and 30 April 2015 respectively). By eliminating the source of transfer by inheritance of early retirement support, the latter decree also removes justification for the legitimate expectations of the heirs.

82. In that context, the referring court, by its third question, asks the Court to determine whether those legitimate expectations should not rather be regarded as being brought to an end at a date prior to the date of adoption of Decree No 187, namely the date on which the conclusions of the Commission Committee on Rural Development were adopted at its 52nd meeting. Those conclusions stated that transfer by inheritance of early retirement support did not comply with Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD),³³ which replaced Regulation No 1257/1999 and governs rural development measures for the period 2007-2013.

83. In my view, the reply to that question should be in the negative.

84. That is not because the conclusions in question relate not to Regulation No 1257/1999, but to Regulation No 1698/2005. The content of Article 23 of Regulation No 1698/2005 is clearly very similar in all respects to that of Articles 10 to 12 of Regulation No 1257/1999.

85. I consider that that reply is justified, instead, by the fact that the conditions for the existence of legitimate expectations do not cease to be fulfilled as a result of the adoption of those conclusions.

86. Although it might be maintained that those conclusions have the effect of precluding fulfilment of the second condition, that relating to the good faith of the heirs, I think nevertheless that that interpretation would be wrong.

³² With regard to taking into account the failure of the authorities to make a prompt correction the purposes of assessing good faith, see the Opinion of Advocate General Stix-Hackl in *Elmeke* (C-181/04 to C-183/04, EU:C:2005:730, point 54).

³³ OJ 2005 L 277, p. 1.

87. In order to refute it, I shall therefore examine that interpretation briefly.

88. It should be recalled that, in points 75 to 77 of this Opinion, I stated that the Commission decision approving the Rural Development Plan presented by the Republic of Latvia for the period 2004-2006, which included a provision allowing for transfer by inheritance of early retirement support, is a decisive factor in concluding that the heirs of the farmers who signed the administrative agreements relating to the receipt of an early-retirement pension were not in a position to perceive the illegality of the inheritance clause, and that they were therefore acting in good faith. That decision in fact mitigates the demanding requirements for the existence of good faith arising from application of the standard of the prudent and circumspect economic operator.

89. In those circumstances, it might be thought that the conclusions of the Commission Committee on Rural Development that transfer by inheritance of early retirement support does not comply with EU law may remove the effects on good faith produced by the Commission's approval decision. If that were the case, the conduct of the heirs should be evaluated in the light of the *purely objective* version of the standard of the prudent and circumspect economic operator, and the illegality of the inheritance clause would therefore be regarded as perceptible by the heirs.

90. I do not agree with the crux of that argument.

91. In my view, the conclusions of the Committee on Rural Development cannot be taken into account in the assessment of the existence of the good faith of the heirs in the present case.

92. This is because those individuals were unaware of the content of the minutes of the meeting of the Committee on Rural Development. It is apparent from the information available in the file that the content of those minutes had not been communicated to the heirs. Moreover, their duty of diligence does not mean that they should have been informed of that content. It is clear to me that it is not possible to impose on the heirs the same requirements concerning their duty to obtain information as those imposed on large companies in the area of competition law.³⁴

93. Since the conclusions of the Committee on Rural Development were neither known nor accessible to the heirs, it goes without saying that they cannot preclude the existence of good faith on the part of the heirs.

94. Consequently, those conclusions cannot serve as a basis for ending the legitimate expectations of the heirs concerning their right to receive early retirement support on the basis of the inheritance clause in the administrative agreements relating to the period 2004-2006. Those legitimate expectations must therefore be regarded as established up until the date on which Decree No 187 was adopted, namely 30 April 2015.

IV. Conclusion

95. In the light of the foregoing considerations, I propose that the Court reply as follows to the request for a preliminary ruling from the Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia):

- (1) Articles 10 to 12 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations precludes Member States, when implementing those provisions, from adopting a measure allowing for the transfer by inheritance of early retirement support.

³⁴ See the judgment of 19 September 2002, *Huber* (C-336/00, EU:C:2002:509, paragraph 58), and the Opinion of Advocate General Alber in that case (C-336/00, EU:C:2002:175, points 117-121).

- (2) It is possible in a situation in which a national provision allowing the transfer by inheritance of early retirement support has been held by the European Commission, under the appropriate procedure, to be compatible with Regulation No 1257/1999 — on the basis of which farmers have participated in an early retirement measure — for the heirs of those farmers to have legitimate expectations under EU law.
- (3) The conclusions of the Commission Committee on Rural Development of 19 October 2011 cannot be regarded as a ground for the early ending of legitimate expectations since, as the heirs neither knew of nor had access to those conclusions, the latter cannot preclude the existence of good faith on the part of the heirs.