



## Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

5 May 2022\*

(Reference for a preliminary ruling – Common agricultural policy (CAP) – Regulation (EU) No 1306/2013 – Annex II – Statutory management requirement 10 – Regulation (EU) No 1107/2009 – Article 55, first paragraph and first sentence of second paragraph – Direct support schemes – Common rules – Reduction or exclusion of support received under the CAP in whole or in part – Non-compliance with the cross-compliance rules – Use of a plant protection product which is not or is no longer authorised in the Member State concerned and, in the latter scenario, the use-by date of which has expired)

In Case C-189/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands), made by decision of 23 March 2021, received at the Court on 26 March 2021, in the proceedings

**R. en R.**

v

**Minister van Landbouw, Natuur en Voedselkwaliteit,**

THE COURT (Tenth Chamber),

composed of I. Jarukaitis, President of the Chamber, D. Gratsias and Z. Csehi (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Netherlands Government, by C.S. Schillemans and M.K. Bulterman, acting as Agents,
- the Greek Government, by E. Tsaousi and I.-E. Krompa, acting as Agents,

\* Language of the case: Dutch.

– the European Commission, by H. van Vliet, A. Sauka and F. Castilla Contreras, acting as Agents,

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 concerns the interpretation of the statutory management requirement 10, as provided for in Annex II to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549, and corrigendum OJ 2016 L 130, p. 6; ‘SMR 10’), in so far as it refers to the first paragraph and the first sentence of the second paragraph of Article 55 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1).
- 2 The request has been made in proceedings between R. en R. and the Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality; ‘the Minister’) concerning the reduction of the amount of direct payments to be granted to R. en R. for 2018 pursuant to Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608).

### **Legal context**

#### *European Union law*

##### *Regulation No 1306/2013*

- 3 Regulation No 1306/2013 concerns the financing, management and monitoring of the common agricultural policy (CAP).
- 4 Recital 53 of that regulation states:

‘Council Regulation (EC) No 1782/2003 [of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1)], which was replaced by [Council] Regulation (EC) No 73/2009 [of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005,

(EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16)], established the principle that the full payment to beneficiaries of some supports under the CAP should be linked to compliance with rules relating to land management, agricultural production and agricultural activity. ...

Under the resulting “cross-compliance” system Member States are to impose penalties in the form of the reduction or exclusion of support received under the CAP in whole or in part.’

5 Recital 54 of Regulation No 1306/2013 states:

‘That cross-compliance system incorporates in the CAP basic standards concerning the environment, climate change, good agricultural and environmental condition of land, public health, animal health, plant health and animal welfare. Cross-compliance aims to contribute to the development of sustainable agriculture through better awareness on the part of beneficiaries of the need to respect those basic standards. It aims also to contribute to make the CAP more compatible with the expectation of society through improving consistency of that policy with the environment, public health, animal health, plant health and animal welfare policies. The cross-compliance system forms an integral part of the CAP and should therefore be maintained. Its scope, however, which consists so far in separate lists of statutory management requirements and standards of good agricultural and environmental condition of land should be streamlined so that consistency of the cross-compliance system is ensured and made more visible. For this purpose, the requirements and standards should be organised in a single list and grouped by areas and issues. ...’

6 The rules set out in Title VI of that regulation relate to cross-compliance, with Chapter I of that title defining the scope of cross-compliance. Article 91 of that regulation, entitled ‘General principle’, provides, in paragraph 1 thereof:

‘Where a beneficiary referred to in Article 92 does not comply with the rules on cross-compliance as laid down in Article 93, an administrative penalty shall be imposed on that beneficiary.’

7 Article 91(3)(b) of Regulation No 1306/2013 provides:

‘For the purpose of this Title the following definitions shall apply:

...

(b) “requirement” means each individual statutory management requirement under Union law referred to in Annex II within a given act, differing in substance from any other requirements of the same act.’

8 The first paragraph of Article 92 of that regulation, entitled ‘Beneficiaries concerned’, provides:

‘Article 91 shall apply to beneficiaries receiving direct payments under Regulation [No 1307/2013] ...’

9 Article 93 of Regulation No 1306/2013, entitled ‘Rules on cross-compliance’, provides, in paragraph 1 thereof:

‘The rules on cross-compliance shall consist of the statutory management requirements under Union law and the standards for good agricultural and environmental condition of land established at national level as listed in Annex II, relating to the following areas:

- (a) environment, climate change and good agricultural condition of land;
- (b) public, animal and plant health;
- (c) animal welfare.’

10 Annex II to the same regulation, entitled ‘Rules on cross-compliance pursuant to Article 93’, reads as follows:

‘SMR: Statutory management requirement

...

Area	Main Issue	Requirements and standards		
...	...	...		
Public health, animal health and plant health	Plant protection products	SMR 10	Regulation [No 1107/2009]	Article 55, [first paragraph and first sentence of second paragraph]’

11 Chapter II of Title VI of Regulation No 1306/2013, entitled ‘Control system and administrative penalties in relation to cross-compliance’, contains Articles 96 to 101 thereof.

12 Article 99 of that regulation, entitled ‘Calculation of the administrative penalty’, provides:

‘1. The administrative penalty provided for in Article 91 shall be applied by means of reduction or exclusion of the total amount of the payments listed in Article 92 granted or to be granted to the beneficiary concerned in respect of aid applications he has submitted or will submit in the course of the calendar year of the finding.

...

2. ...

However, cases of non-compliance which constitute a direct risk to public or animal health shall always lead to a reduction or exclusion.

...’

*Regulation No 1107/2009*

- 13 Regulation No 1107/2009 concerns the placing of plant protection products on the market. Recitals 24 and 35 of that regulation specify:

‘(24) The provisions governing authorisation must ensure a high standard of protection. In particular, when granting authorisations of plant protection products, the objective of protecting human and animal health and the environment should take priority over the objective of improving plant production. Therefore, it should be demonstrated, before plant protection products are placed on the market, that they present a clear benefit for plant production and do not have any harmful effect on human or animal health, including that of vulnerable groups, or any unacceptable effects on the environment.

...

(35) To ensure a high level of protection of human and animal health and the environment, plant protection products should be used properly, in accordance with their authorisation ...’

- 14 Article 1 of that regulation states:

‘1. This Regulation lays down rules for the authorisation of plant protection products in commercial form and for their placing on the market, use and control within the [European] Community.

...

3. The purpose of this Regulation is to ensure a high level of protection of both human and animal health and the environment and to improve the functioning of the internal market through the harmonisation of the rules on the placing on the market of plant protection products, while improving agricultural production.

...’

- 15 In subsection 1, entitled ‘Requirements and contents’, of Section 1, itself entitled ‘Authorisation’, of Chapter III of Regulation No 1107/2009, itself entitled ‘Plant protection products’, Article 28 thereof, entitled ‘Authorisation for placing on the market and use’, provides, in paragraph 1 thereof:

‘A plant protection product shall not be placed on the market or used unless it has been authorised in the Member State concerned in accordance with this Regulation.’

- 16 Article 32 of that regulation, entitled ‘Duration’, provides, in paragraph 1 thereof:

‘1. The period of authorisation shall be laid down in the authorisation.

Without prejudice to Article 44, the duration of an authorisation shall be set for a period not exceeding 1 year from the date of expiry of the approval of the active substances, safeners and synergists contained in the plant protection product and thereafter for as long as the active substances, safeners and synergists contained in the plant protection product are approved.

...’

- 17 Article 46 of that regulation, entitled ‘Grace period’, is worded as follows:

‘Where a Member State withdraws or amends an authorisation or does not renew it, it may grant a grace period for the disposal, storage, placing on the market and use of existing stocks.

Where the reasons for withdrawal, amendment or non-renewal of the authorisation are not related to the protection of human and animal health or the environment, the grace period shall be limited and shall not exceed 6 months for the sale and the distribution and an additional maximum of 1 year for the disposal, storage, and use of existing stocks of the plant protection products concerned.’

- 18 In Section 2 of Chapter III of that regulation, entitled ‘Use and information’, Article 55 thereof, itself entitled ‘Use of plant protection products’, provides, in the first paragraph and the first sentence of the second paragraph thereof:

‘Plant protection products shall be used properly.

Proper use shall include the application of the principles of good plant protection practice and compliance with the conditions established in accordance with Article 31 and specified on the labelling.’

- 19 The second paragraph of Article 83 of Regulation No 1107/2009 provides:

‘References to the repealed Directives shall be construed as references to this Regulation. In particular, references in other Community legislation, such as Regulation [No 1782/2003], to Article 3 of [Council] Directive 91/414/EEC [of 15 July 1991 concerning the placing of plant protection products on the market (O) 1991 L 230, p. 1)] shall be construed as references to Article 55 of this Regulation.’

*Directive 91/414*

- 20 Directive 91/414 was repealed by Regulation No 1107/2009 and was applicable until 13 June 2011.

- 21 Article 3 of that directive was worded as follows:

‘1. Member States shall prescribe that plant protection products may not be placed on the market and used in their territory unless they have authorised the product in accordance with this Directive, except where the intended use is covered by Article 22.

...

3. Member States shall prescribe that plant protection products must be used properly. Proper use shall include compliance with the conditions established in accordance with Article 4 and specified on the labelling, and the application of the principles of good plant protection practice as well as, whenever possible, the principles of integrated control.

...’

***Netherlands law***

- 22 Article 20 of the *Wet gewasbeschermingsmiddelen en biociden* (Law on plant protection products and biocides) of 17 February 2007 (Stb. 2007, 125), in the version applicable to the dispute in the main proceedings, is worded as follows:

‘Infringement of the Regulation

1. Acting in breach of Article 28(1), Article 52(1) and (5), Article 55, Article 56(1), Article 58(1) and Article 64 of Regulation [No 1107/2009] or of the regulations adopted pursuant thereto shall be prohibited. ...’

- 23 The *Uitvoeringsregeling rechtstreekse betalingen GLB nr. WJZ/14194346* (Implementing Ministerial Decree No WJZ/14194346 for CAP direct payments and cross-compliance) of 11 December 2014 (Stcrt. 2014, 36127), in the version applicable to the dispute in the main proceedings (‘the Implementing Ministerial Decree’), provides, in Article 3.1(1) thereof:

‘Cross-compliance:

1. A farmer who has submitted an application for direct payments ... must comply with the following provisions:

a. the management requirements referred to in Article 93(1) of Regulation [No 1306/2013], listed in Annex 3. ...’

- 24 Annex 3 to Article 3.1(1)(a) of the Implementing Ministerial Decree is worded as follows:

‘Management requirements referred to in Article 93(1) of Regulation No 1306/2013

...

Main Issue: Plant protection products

SMR 10. Article 55 [first paragraph and first sentence of second paragraph] of Regulation [No 1107/2009]:

10.1	Article 55 [first paragraph and first sentence of second paragraph] of Regulation [No 1107/2009]’
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**The dispute in the main proceedings and the question referred for a preliminary ruling**

- 25 On 20 March 2018, R. en R. submitted to the Minister a combined declaration in which it requested the making of direct payments under the CAP.
- 26 On 11 October 2018, an inspector from the *Nederlandse Voedsel- en Warenautoriteit* (Food and Consumer Product Safety Authority, Netherlands) found that one of R. en R.’s associates was using the plant protection product MECOP PP-2 (authorisation number 12678N) to control bitter dock (*Rumex obtusifolius*). That plant protection product has mecoprop-P as its active

ingredient. The authorisation of that plant protection product had expired on 30 January 2016. The sell-by date for that product had been set at 30 July 2016 and its use-by date at 30 January 2017.

- 27 On 4 April 2019, on the basis of the Implementing Ministerial Decree, the Minister imposed on R. en R. a reduction of 3% on the amount of direct payments to be granted to it for 2018, for non-compliance with the rules on cross-compliance, on the ground that R. en R. had used an unauthorised plant protection product.
- 28 By decision of 21 August 2019, the Minister rejected as unfounded the complaint lodged by R. en R. against that reduction. In that decision, the conduct at issue in the main proceedings was regarded as a case of non-compliance with the rules on cross-compliance, on the ground that the use of an unauthorised plant protection product falls within the scope of SMR 10, which refers to the first paragraph and the first sentence of the second paragraph of Article 55 of Regulation No 1107/2009.
- 29 R. en R. contests that decision before the referring court.
- 30 Before that court, R. en R. does not dispute that it used a plant protection product which was no longer authorised, but argues that that does not constitute an infringement of Article 55 of Regulation No 1107/2009, since that article provides only that plant protection products must be ‘used properly’. R. en R. submits that the use of an unauthorised plant protection product constitutes an infringement not of Article 55 of Regulation No 1107/2009 but of Article 28 thereof, according to which a plant protection product may not be placed on the market or used unless it has been authorised. Article 28 not being mentioned in Annex II to Regulation No 1306/2013, however, its infringement, according to R. en R., does not constitute a breach of the rules on cross-compliance. Before the referring court, R. en R. argues therefore that the Minister was wrong to conclude that SMR 10 had been infringed, meaning that she had no power to impose a reduction of 3% on the amount of direct payments to be granted to R. en R. for 2018, for non-compliance with the rules on cross-compliance.
- 31 According to the referring court, it follows from a literal interpretation of Article 55 of Regulation No 1107/2009, to which SMR 10 refers, that that article does not cover the situation in which an unauthorised plant protection product is used. However, the referring court notes that such an interpretation would lead to the ‘curious and possibly undesirable’ consequence that, in a situation in which a farmer has used an unauthorised plant protection product, no reduction for non-compliance with the rules on cross-compliance could be imposed on that farmer, whereas such a reduction would be possible in the event of improper use of an authorised plant protection product.
- 32 The referring court is uncertain whether the interpretation set out in the previous paragraph can be reconciled with the objectives of protecting human, animal and plant health and the environment pursued by Regulations No 1306/2013 and No 1107/2009.
- 33 The referring court also has doubts, in essence, as to the reasons behind the EU legislature’s choice, in Article 83 of Regulation No 1107/2009, to provide that the references made in other Community legislative texts to Article 3 of Directive 91/414 must be construed as references only to Article 55 of Regulation No 1107/2009 and not also to Article 28 of that regulation.



34 It is in those circumstances that the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must [SMR 10], which refers to [the first paragraph and the first sentence of the second paragraph of] Article 55 ... of [Regulation No 1107/2009] be interpreted as meaning that that management requirement also covers the situation in which use is made of a plant protection product which is not authorised in the Member State concerned pursuant to that latter regulation?’

### Consideration of the question referred

35 By its question, the referring court asks, in essence, whether SMR 10, which makes reference to the first paragraph and the first sentence of the second paragraph of Article 55 of Regulation No 1107/2009, must be interpreted as meaning that it covers also the use of a plant protection product which is not or is no longer authorised in the Member State concerned and, in the latter scenario, the use-by date of which has expired.

36 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 22 January 2020, *Ursa Major Services*, C-814/18, EU:C:2020:27, paragraph 49 and the case-law cited).

37 As a preliminary point, it should be observed that, according to the referring court, it is not disputed between the parties to the main proceedings that the authorisation for the plant protection product concerned had expired on 30 January 2016 and that, when that product was being used by the applicant in the main proceedings, its use-by date, set at 30 January 2017, had also expired.

38 In the first place, it must be observed that, pursuant to recital 35 of Regulation No 1107/2009, ‘proper use’ of plant protection products means use ‘in accordance with their authorisation’.

39 In that regard, the concept of ‘proper use’, as used in the first paragraph and the first sentence of the second paragraph of Article 55 of Regulation No 1107/2009, must be understood, as regards its first component, as referring to Article 28(1) of that regulation, which provides that a plant protection product may not be ‘used’ unless it has been ‘authorised’ in the Member State concerned.

40 It is also apparent from the first sentence of Article 32(1) of Regulation No 1107/2009 that the period of authorisation is to be laid down in the authorisation for a plant protection product and from Article 46 of that regulation that the withdrawal, amendment or expiry of an authorisation may include a grace period for, inter alia, the use of existing stocks.

41 It follows that the ‘proper use’ that must be made of plant protection products, in accordance with the first paragraph and the first sentence of the second paragraph of Article 55 of Regulation No 1107/2009, presupposes a use covered, both *ratione materiae* and *ratione temporis*, by an authorisation granted in accordance with Article 28(1) of that regulation and producing effects according to the requirements of Article 32(1) and, where applicable, of Article 46 thereof.

- 42 In the second place, Article 1(1) of Regulation No 1107/2009 provides that that regulation lays down rules for the authorisation of plant protection products in commercial form and, inter alia, for their placing on the market, use and control within the European Community. Article 1(3) of that regulation provides that the purpose of that regulation is, in particular, to ensure a high level of protection of human and animal health and the environment.
- 43 As is set out in recital 24 of Regulation No 1107/2009, the provisions governing the grant of authorisations must ensure a high standard of protection of human and animal health and the environment. It is that objective which, according to recital 35 of the same regulation, is pursued by the proper use of plant protection products, in accordance with their authorisation. It should be recalled, in that context, that, according to Annex II to Regulation No 1306/2013, SMR 10, concerning compliance with the first paragraph and the first sentence of the second paragraph of Article 55 of Regulation No 1107/2009, seeks specifically to protect public health, animal health and plant health. SMR 10 is thus part of the basic CAP standards on public health, animal health and plant health integrated in the cross-compliance system, compliance with which is a condition for the full payment to beneficiaries of some supports under the CAP, in accordance with recitals 53 and 54 of Regulation No 1306/2013.
- 44 Thus, an interpretation that would exclude from the scope of SMR 10 the use of plant protection products which are not authorised in the Member State concerned, or which are no longer authorised there and the use-by date of which has expired, would contravene the objective of the principle of cross-compliance consisting in ensuring a high level of protection of human, animal and plant health and the environment. Such an interpretation would mean that a beneficiary which uses an unauthorised plant protection product would not be subject to an administrative penalty of reduction of the amount of direct payments, whereas a beneficiary using an authorised plant protection product, but in breach of the conditions attached thereto, would, in turn, be subject to such a penalty. An unauthorised plant protection product would therefore be excluded from the scope of the principle of cross-compliance of the CAP, which would be incompatible with the CAP's objectives.
- 45 It follows that the use of a plant protection product which is not authorised, or for which the authorisation and, as the case may be, the use-by date have expired, constitutes a case of non-compliance with SMR 10, which is part of Annex II to Regulation No 1306/2013, entitled 'Rules on cross-compliance pursuant to Article 93', resulting in an administrative penalty under Articles 91 and 99 of Regulation No 1306/2013.
- 46 That conclusion is not affected by the fact that, according to Article 83 of Regulation No 1107/2009, references in other legislative texts, such as Regulation No 1782/2003, to Article 3 of Directive 91/414 must be understood as being made to Article 55 of Regulation No 1107/2009 and not to Article 28 of that latter regulation. Article 3(1) of Directive 91/414 required Member States to prescribe that plant protection products may not be placed on the market and used in their territory unless they have been authorised. That provision corresponds to Article 28(1) of Regulation No 1107/2009. Article 3(3) of Directive 91/414, for its part, required Member States to prescribe that plant protection products must be used properly, and corresponds to Article 55 of Regulation No 1107/2009. For the reasons set out in paragraphs 39 and 40 of the present judgment, compliance with the first paragraph and the first sentence of the second paragraph of Article 55 of Regulation No 1107/2009 presupposes that the plant protection product used has an authorisation in force, in accordance with Articles 28 and 32 of that regulation. Consequently, no express reference to Article 28 of Regulation No 1107/2009 was necessary in Article 83 of that regulation.

- 47 In the light of all the foregoing considerations, the answer to the question referred is that SMR 10, which makes reference to the first paragraph and the first sentence of the second paragraph of Article 55 of Regulation No 1107/2009, must be interpreted as meaning that it covers also the use of a plant protection product which is not or is no longer authorised in the Member State concerned and, in the latter scenario, the use-by date of which has expired.

### **Costs**

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

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

**Statutory management requirement 10, as is provided for in Annex II to 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, which makes reference to the first paragraph and the first sentence of the second paragraph of Article 55 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, must be interpreted as meaning that it covers also the use of a plant protection product which is not or is no longer authorised in the Member State concerned and, in the latter scenario, the use-by date of which has expired.**

[Signatures]