



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

17 November 2022*

(Reference for a preliminary ruling – Common agricultural policy (CAP) – European Agricultural Fund for Rural Development (EAFRD) – Regulation (EC) No 1698/2005 – Article 40 – National rural development programme 2007-2013 – Animal welfare payments – Calculation errors – Reductions in payments by the national authorities – Principle of the protection of legitimate expectations – Principle of legal certainty)

In Case C-443/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Pitești (Court of Appeal, Pitești, Romania), made by decision of 5 July 2021, received at the Court on 19 July 2021, in the proceedings

SC Avicarvil Farms SRL

v

Ministerul Agriculturii și Dezvoltării Rurale,

Agencia pentru Finanțarea Investițiilor Rurale,

Agencia de Plăți și Intervenție în Agricultură (APIA),

Agencia de Plăți și Intervenție în Agricultură (APIA) – Centrul Județean Vâlcea,

THE COURT (Tenth Chamber),

composed of M. Ileșič, acting as President of the Chamber, I. Jarukaitis and Z. Csehi (Rapporteur), Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– SC Avicarvil Farms SRL, by C.S. Strățulă and O. Strățulă, avocati,

* Language of the case: Romanian.

- the Ministerul Agriculturii și Dezvoltării Rurale, by A.I. Chesnoiu, acting as Agent,
- the Romanian Government, by L.-E. Bațagoi and E. Gane, acting as Agents,
- the European Commission, by A. Biolan and A. Sauka, 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 Article 143 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320, and corrigendum OJ 2016 L 200, p. 140), read in conjunction with Article 310 TFEU, Article 40(3) of 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, and corrigendum OJ 2012 L 206, p. 23), as amended by Council Regulation (EC) No 74/2009 of 19 January 2009 (OJ 2009 L 30, p. 100) ('Regulation No 1698/2005'), and the principles of the protection of legitimate expectations and legal certainty.
- 2 The request has been made in proceedings between SC Avicarvil Farms SRL ('Avicarvil Farms'), as the successor to Avicarvil SRL, and the Ministerul Agriculturii și Dezvoltării Rurale (Ministry of Agriculture and Rural Development, Romania), the Agenția pentru Finanțarea Investițiilor Rurale (Agency for the financing of rural investments, Romania), the Agenția de Plăți și Intervenție în Agricultură (APIA) (Agency for Payments and Intervention in Agriculture (APIA), Romania) and the APIA – Centrul Județean Vâlcea (APIA – Vâlcea District Centre, Romania; 'the APIA Vâlcea'), concerning a reduction in animal welfare payments.

European Union law

Regulation No 1698/2005

- 3 Article 40 of Regulation No 1698/2005, entitled 'Animal welfare payments', provided:
 1. Animal welfare payments provided for in Article 36(a)(v) shall be granted to farmers who make on a voluntary basis animal welfare commitments.
 2. Animal welfare payments cover only those commitments going beyond the relevant mandatory standards established pursuant to Article 4 of and Annex III to [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)] and other relevant mandatory requirements established by national legislation and identified in the programme.

These commitments shall be undertaken as a general rule for a period between five and seven years. Where necessary and justified, a longer period shall be determined according to the procedure referred to in Article 90(2) for particular types of commitments.

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

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

Regulation (EU, Euratom) No 966/2012

4 Article 59 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1), entitled 'Shared management with Member States', provides:

'1. Where the Commission implements the budget under shared management, implementation tasks shall be delegated to Member States. The Commission and the Member States shall respect the principles of sound financial management, transparency and non-discrimination ... To [that] end, the Commission and Member States shall fulfil their respective control and audit obligations and assume the resulting responsibilities laid down in this Regulation. ...

2. When executing tasks relating to the implementation of the budget, Member States shall take all the necessary measures, including legislative, regulatory and administrative measures, to protect the Union's financial interests, namely by:

(a) ensuring that actions financed from the budget are implemented correctly and effectively and in accordance with the applicable sector-specific rules and, for that purpose, designating in accordance with paragraph 3, and supervising bodies responsible for the management and control of Union funds;

...'

5 That regulation was repealed and replaced, with effect from 2 August 2018, by Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation No 966/2012 (OJ 2018 L 193, p. 1), Article 63(1) and (2)(a) and (b) of which corresponds to Article 59(1) and (2)(a) of Regulation No 966/2012.

Regulation (EU) No 1303/2013

- 6 Article 1 of Regulation No 1303/2013, entitled ‘Subject-matter’, provides:

‘This Regulation lays down the common rules applicable to the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF), which operate under a common framework (the “European Structural and Investment [Funds]” – “ESI Funds”). It also lays down the provisions necessary to ensure the effectiveness of the ESI Funds and their coordination with one another and with other Union instruments. The common rules applying to the ESI Funds are set out in Part Two.

Part Three lays down the general rules governing the ERDF, the ESF (together referred to as the “Structural Funds”) and the Cohesion Fund concerning the tasks, priority objectives and organisation of the Structural Funds and the Cohesion Fund (the “Funds”), the criteria that Member States and regions are required to fulfil in order to be eligible for support from the Funds, the financial resources available and the criteria for their allocation.

Part Four lays down general rules applicable to the Funds and the EMFF on management and control, financial management, accounts and financial corrections.

...’

- 7 Article 143 of Regulation No 1303/2013, entitled ‘Financial corrections by Member States’, forms part of Part Four of that regulation, itself entitled ‘General provisions applicable to the Funds and the EMFF’. Article 143(1) and (2) is worded as follows:

‘1. The Member States shall in the first instance be responsible for investigating irregularities and for making the financial corrections required and pursuing recoveries. In the case of a systemic irregularity, the Member State shall extend its investigation to cover all operations potentially affected.

2. Member States shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes. Financial corrections shall consist of cancelling all or part of the public contribution to an operation or operational programme. The Member States shall take into account the nature and gravity of the irregularities and the financial loss to the Funds or the EMFF and shall apply a proportionate correction. Financial corrections shall be recorded in the accounts by the managing authority for the accounting year in which the cancellation is decided.’

Regulation (EU) No 1305/2013

- 8 Article 33 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, and corrigendum OJ 2016 L 130, p. 1), entitled ‘Animal welfare’, provides in paragraph 3:

‘The payments shall be granted annually and shall compensate farmers for all or part of the additional costs and income foregone resulting from the commitment made. Where necessary, they may also

cover transaction costs to the value of up to 20% of the premium paid for the animal welfare commitments.

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

- 9 Article 88 of that regulation, entitled ‘Regulation (EC) No 1698/2005’, provides:

‘Regulation [No 1698/2005] is hereby repealed.’

Regulation [No 1698/2005] shall continue to apply to operations implemented pursuant to programmes approved by the Commission under that Regulation before 1 January 2014.’

Regulation (EU) No 1306/2013

- 10 Article 3 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), entitled ‘Funds financing agricultural expenditure’, provides:

‘1. In order to achieve the objectives of the [common agricultural policy (CAP)] as set out in the TFEU, the financing of the various measures falling under that policy, including rural development shall be made by:

(a) the European Agricultural Guarantee Fund (EAGF);

(b) the European Agricultural Fund for Rural Development (EAFRD).

2. The EAGF and the EAFRD ... shall come under the general budget of the European Union (the Union’s budget).’

- 11 Article 5 of that regulation, entitled ‘EAFRD expenditure’, provides:

‘The EAFRD shall be implemented in shared management between the Member States and the Union. It shall finance the Union’s financial contribution to rural development programmes implemented in accordance with the Union law on support for rural development.’

- 12 Article 52 of that regulation, under the heading ‘Conformity clearance’, provides in paragraph 1:

‘Where it finds that expenditure falling within the scope of Article 4(1) and Article 5 has not been effected in conformity with Union law and, in respect of the EAFRD, has not been effected in conformity with the applicable Union and national law referred to in Article 85 of Regulation [No 1303/2013], the Commission shall adopt implementing acts determining the amounts to be excluded from Union financing. ...’

- 13 Article 58 of Regulation No 1306/2013, entitled ‘Protection of the financial interests of the Union’, provides in paragraph 1:

‘Member States shall, within the framework of the CAP, adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Union, in particular to:

- (a) check the legality and regularity of operations financed by [the EAGF and the EAFRD];
- (b) ensure effective prevention against fraud, especially in areas with a higher level of risk, and which will act as a deterrent, having regard to the costs and benefits as well as the proportionality of the measures;
- (c) prevent, detect and correct irregularities and fraud;
- (d) impose penalties which are effective, dissuasive and proportionate in accordance with Union law, or failing this, national law, and bring legal proceedings to that effect, as necessary;
- (e) recover undue payments plus interest, and bring legal proceedings to that effect as necessary.’

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

- 14 Following the adoption of Commission Decision C(2008) 3831 of 16 July 2008 approving the Rural Development Programme for Romania for the 2007 to 2013 programming period (‘the RDP 2007-2013’), that Member State adopted provisions for improving animal welfare. By Decision C(2012) 3529 of 25 May 2012, the Commission, at the request of that Member State, included in the RDP 2007-2013 an aid measure in the form of payments intended to compensate for income foregone and additional costs borne by farmers who had voluntarily committed to implementing animal welfare standards (‘Measure 215’). As regards poultry, that measure provides for an annual payment of EUR 14.29 per ‘livestock unit’ (LU) by way of aid for improving animal welfare during transport (‘aid for the improvement of transport’) and an annual payment of EUR 29.49/LU by way of aid for the correction of the level of nitrites and nitrates in the water used (‘aid for the improvement of water’).
- 15 On 14 November 2012, Avicarvil applied to the APIA Vâlcea for non-repayable aid for the improvement of transport and improvement of water, in return for its commitment to comply with poultry welfare measures on its holdings for a minimum period of five years.
- 16 On 14 November 2014, Avicarvil submitted an application to the APIA Vâlcea for payment of the non-repayable aid for the period from 16 October 2014 to 15 October 2015, corresponding to the third year of its commitment. On 10 February 2015, Avicarvil lodged a partial statement of account with the APIA Vâlcea relating to the first quarter of that third year, in the amount of EUR 806 544.72.
- 17 On 16 February 2015, Avicarvil informed the APIA Vâlcea of the transfer to Avicarvil Farms of two of its holdings covered by its aid application.
- 18 An audit carried out in Romania between 18 and 29 May 2015 by the European Court of Auditors revealed the existence of errors that had led to overpayments of aid disbursed under Measure 215.

- 19 On account of those errors and in order to reduce the risk of undue payments, the Ministry of Agriculture and Rural Development proposed, by a note of 20 January 2016, to make partial payments calculated on the basis of provisional amounts, reduced to EUR 3.92/LU for aid for the improvement of transport, and EUR 10.91/LU for aid for the improvement of water.
- 20 In accordance with that note, the APIA Vâlcea reduced the amount owed to Avicarvil Farms for the third year of its commitment to 4 175 442.65 Romanian lei (RON) (approximately EUR 844 700) by two decisions dated 25 February 2016 and 2 March 2016.
- 21 After its administrative appeal against those decisions was rejected, Avicarvil Farms brought an action before the Tribunalul Vâlcea (Regional Court, Vâlcea, Romania) seeking, inter alia, the annulment of those decisions and of that rejection decision and compensation for damage in an amount equivalent to the difference between the amount which it considered to be due to it and that which was actually awarded to it, namely RON 1 285 221.42 (approximately EUR 286 700).
- 22 By judgment of 15 February 2019, the Tribunalul Vâlcea (Regional Court, Vâlcea) dismissed Avicarvil Farms' action.
- 23 That court found that the aid rates established by the RDP 2007-2013 were almost three times higher than the costs and losses borne by Avicarvil Farms in order to comply with the animal welfare commitment. In addition, it considered that the correction of that error did not undermine Avicarvil Farms' legitimate expectations. It observed that the principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of EU law and that the conduct of a national authority cannot give rise to a legitimate expectation on the part of a trader of beneficial treatment contrary to EU law. In that regard, that court held that Article 40 of Regulation No 1698/2005, relating to payments for animal welfare, is very clear.
- 24 Avicarvil Farms brought an appeal against that judgment before the referring court, which has doubts as to the compatibility with EU law of the outcome arrived at by the court of first instance. In particular, the referring court questions the lawfulness of the reduction by the Romanian authorities of the amount of payments provided for by the RDP 2007-2013, on the basis of which the recipient had committed, for a period of five years, to incur certain expenditure, before the adoption of Commission Implementing Decision (EU) 2018/873 of 13 June 2018 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2018 L 152, p. 29), including that relating to aid for the improvement of transport and aid for the improvement of water.
- 25 In those circumstances, the Curtea de Apel Pitești (Court of Appeal, Pitești, Romania) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article 143 of Regulation No 1303/2013, read in conjunction with Article 310 TFEU (principle of sound financial management) and Article 40(3) of Regulation (EC) No 1698/2005 (reproduced in Article 33(3) of Regulation (EU) No 1305/2013), together with the principles of the protection of legitimate expectations and of legal certainty, preclude an administrative practice of the national authorities involved in the implementation of a non-repayable financial support measure which, as a result of a calculation error found by the European Court of Auditors, have issued acts ordering a reduction in the amount of the financial support granted in the [RDP 2007-2013], approved by European Commission Decision C(2012) 3529 of 25 May 2012,

before the adoption of a new European Commission decision excluding from the financing the amounts exceeding the additional costs and income foregone resulting from the commitments made, as a result of those calculation errors?’

Consideration of the question referred

- 26 As a preliminary point, it should be noted, first, that the referring court is uncertain as to the compatibility with EU law of the Romanian authorities’ decision to reduce certain payments financed by the EAFRD for measures taken to improve animal welfare in the context of the implementation of the RDP 2007-2013, in the light of Article 143 of Regulation No 1303/2013 in particular. It is apparent from the third paragraph of Article 1 of that regulation that Part Four thereof, which includes Article 143, lays down the general rules applicable to the ERDF, the ESF, the Cohesion Fund and the EMFF as regards management and control, financial management, accounts and financial corrections. Article 143 of that regulation is therefore not applicable to the EAFRD. It follows that the interpretation of that provision is not relevant for the purposes of the dispute in the main proceedings.
- 27 Secondly, the referring court seeks an interpretation of Article 40(3) of Regulation No 1698/2005, which was repealed with effect from 1 January 2014 by Regulation No 1305/2013. However, it follows from Article 88 of Regulation No 1305/2013 that Regulation No 1698/2005 continues to apply to operations implemented pursuant to programmes approved by the Commission under that regulation before 1 January 2014.
- 28 In the present case, it is apparent from the order for reference that the animal welfare commitments which gave rise to the payment of the aid at issue in the main proceedings were made in 2012, pursuant to Measure 215, which was included in the RDP 2007-2013 following a Commission approval decision of 25 May 2012. Therefore, Regulation No 1698/2005 is applicable to the dispute in the main proceedings.
- 29 Furthermore, it should be remembered that, in accordance with the settled case-law of the Court, the Court may deem it necessary to consider provisions of EU law to which the national court has not referred in its question (judgment of 15 September 2022, *J. Sch. Omnibusunternehmen and K. Reisen*, C-416/21, EU:C:2022:689, paragraph 28 and the case-law cited). Article 58 of Regulation No 1306/2013 relates specifically to the protection of the financial interests of the European Union in connection with the financing of the CAP, paragraph 1 of which specifically lists certain obligations on the part of the Member States in that regard.
- 30 In those circumstances, it must be held that, by its question, the referring court asks, in essence, whether Article 40(3) of Regulation No 1698/2005 and Article 58(1) of Regulation No 1306/2013, read in conjunction with Article 310(5) TFEU, and the principles of the protection of legitimate expectations and legal certainty must be interpreted as precluding the national authorities involved in the implementation of a non-repayable financial support measure from deciding, on account of a calculation error found by the Court of Auditors, to reduce the amount of aid granted by the RDP 2007-2013, as approved by the Commission, without waiting for the Commission to adopt a decision excluding the amounts resulting from the calculation error from EU financing.

- 31 Under Article 3(1)(b) of Regulation No 1306/2013, in order to achieve the objectives of the CAP, the financing of the various measures falling within that policy, including rural development measures, is to be ensured by inter alia the EAFRD. Article 5 of that regulation provides that the EAFRD is to be implemented in shared management between the Member States and the European Union.
- 32 Article 59(1) of Regulation No 966/2012 provided that, where the Commission implements the budget by shared management, tasks relating to budget implementation are delegated to the Member States and the latter, as well as the Commission, are required, inter alia, to respect the principle of sound financial management and to fulfil their respective control and audit obligations. Under Article 59(2), Member States, when carrying out tasks related to the implementation of the budget, are to take all the legislative, regulatory and administrative measures necessary for the protection of the financial interests of the European Union, in particular by ensuring that actions financed from the budget are correctly implemented in accordance with the applicable sectoral rules.
- 33 In that regard, Article 52(1) of Regulation No 1306/2013 requires the Commission to adopt implementing acts determining the amounts to be excluded from EU financing where it finds that expenditure has not been effected in conformity with EU law. In addition, under Article 58(1) of that same regulation, Member States are required to adopt, within the framework of the CAP, all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the European Union, in particular to correct irregularities and to recover undue payments.
- 34 Those provisions implement the principle of sound financial management, as enshrined in Article 310(5) TFEU, under which the Member States and the European Union are to cooperate in order for appropriations entered in the budget to be used in accordance with that principle.
- 35 However, it must be noted that those provisions do not require Member States to await a Commission decision excluding from EU financing the amounts resulting from an error in the calculation of the aid before recovering undue payments. Such an obligation could, moreover, be difficult to reconcile with the tasks of protecting the financial interests of the European Union conferred by Article 59 of Regulation No 966/2012 on the Member States where the EU budget is implemented in shared management or with the obligations imposed on them by Article 58(1) of Regulation No 1306/2013
- 36 In that regard, it must be remembered that any exercise by a Member State of a discretion as to whether or not it would be expedient to demand repayment of EU funds unduly or irregularly granted would be incompatible with the obligation imposed, in the context of the CAP, on national administrations to recover funds unduly or irregularly paid (judgment of 20 December 2017, *Erzeugerorganisation Tiefkühlgemüse*, C-516/16, EU:C:2017:1011, paragraph 68 and the case-law cited).
- 37 That said, it should also be remembered that, in the absence of EU provisions, disputes relating to the recovery of amounts unduly paid under EU law must be decided by the national courts in accordance with their national law, subject to the limits imposed by EU law (judgment of 20 December 2017, *Erzeugerorganisation Tiefkühlgemüse*, C-516/16, EU:C:2017:1011, paragraph 96 and the case-law cited).

- 38 In that regard, according to the Court's case-law, where Member States adopt measures by which they implement EU law, they are required to respect the general principles of that law, which include, inter alia, the principles of legal certainty and protection of legitimate expectations (judgment of 26 May 2016, *Județul Neamț and Județul Bacău*, C-260/14 and C-261/14, EU:C:2016:360, paragraph 54 and the case-law cited).
- 39 As regards the principle of the protection of legitimate expectations, it must be borne in mind that the right to rely on that principle extends to any person in a situation in which a national administrative authority has caused him or her to entertain expectations which are justified by precise assurances provided to him or her (judgment of 7 August 2018, *Ministru kabinet*, C-120/17, EU:C:2018:638, paragraph 50 and the case-law cited).
- 40 In that regard, it is necessary to determine whether the conduct of the administrative authority in question gave rise to a reasonable expectation on the part of the person concerned and, if it did, it must then be established whether that expectation was legitimate (judgment of 7 August 2018, *Ministru kabinet*, C-120/17, EU:C:2018:638, paragraph 51 and the case-law cited).
- 41 However, it is settled case-law that the principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of EU law; nor can the conduct of a national authority responsible for applying EU 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 EU law (judgment of 7 August 2018, *Ministru kabinet*, C-120/17, EU:C:2018:638, paragraph 52 and the case-law cited).
- 42 In the present case, Article 40(3) of Regulation No 1698/2005 lays down rules on payments which must be granted annually to farmers for all or part of the additional costs and income foregone resulting from the commitment made by them to animal welfare. That provision provides expressly that 'the payments shall be granted annually and shall cover additional costs and income foregone resulting from the commitment made [and, where] necessary, they may cover also transaction cost'.
- 43 As is apparent from the wording of the question referred for a preliminary ruling, the referring court considers it established that there was overcompensation. Due to errors in the calculation of the compensatory payments found by the Court of Auditors in respect of aid under Measure 215 concerning poultry, those payments had initially been fixed at rates exceeding those necessary to offset the income foregone and additional costs caused by the implementation of Measure 215, contrary to Article 40(3) of Regulation No 1698/2005. In order to remedy that overcompensation, the APIA Vâlcea reduced the amounts initially set by the RDP 2007-2013.
- 44 Since those amounts were determined in a manner that was not in accordance with Article 40(3) of Regulation No 1698/2005, the Romanian authorities had no power to create, for Avicarvil Farms, irrespective of its good faith, legitimate expectations that it would benefit from treatment in a manner contrary to EU law (see, by analogy, judgments of 20 June 2013, *Agroferm*, C-568/11, EU:C:2013:407, paragraphs 53 to 56, and of 20 December 2017, *Erzeugerorganisation Tiefkühlgemüse*, C-516/16, EU:C:2017:1011, paragraphs 70 to 74).

- 45 That assessment cannot be called into question by the fact that Avicarvil, the legal predecessor of the applicant, had initially committed to complying with specific requirements for a minimum period of five years in return for aid under Measure 215 (see, by analogy, judgments of 26 April 1988, *Krücken*, 316/86, EU:C:1988:201, paragraphs 22 to 24, and of 20 June 2013, *Agroferm*, C-568/11, EU:C:2013:407, paragraph 56).
- 46 As regards the principle of legal certainty, it should be borne in mind that that principle requires that legal rules be clear and precise and that their application be foreseeable by those subject to them, so that those concerned may know precisely the extent of the obligations which the legislation in question imposes on them and that they may be able to ascertain unequivocally what their rights and obligations are and take steps accordingly (see, to that effect, judgments of 25 July 2018, *Teglgaard and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraph 52 and the case-law cited, and of 16 February 2022, *Poland v Parliament and Council*, C-157/21, EU:C:2022:98, paragraph 319).
- 47 As is apparent from paragraph 42 above, the wording of Article 40(3) of Regulation No 1698/2005 is unambiguous, since it indicates clearly and precisely the additional costs and income foregone which the animal welfare payments provided for in Article 40 are intended to cover. Accordingly, it must be held that the principle of legal certainty does not preclude national authorities, such as the Romanian authorities at issue in the main proceedings, from adopting, on account of calculation errors found by the Court of Auditors that led to overcompensation for those costs and losses, acts ordering an amendment to the amount of financial aid granted under the RDP 2007-2013 pursuant to that provision, even though the Commission has not yet adopted a decision excluding the amounts exceeding those costs and losses arising as a result of those errors from EU financing.
- 48 In the light of the foregoing considerations, the answer to the question referred is that Article 40(3) of Regulation No 1698/2005 and Article 58(1) of Regulation No 1306/2013, read in conjunction with Article 310(5) TFEU, and the principles of the protection of legitimate expectations and legal certainty must be interpreted as not precluding the national authorities involved in the implementation of a non-repayable financial support measure from adopting, on account of a calculation error found by the Court of Auditors, acts ordering a reduction in the amount of financial aid granted under the RDP 2007-2013, as approved by the Commission, without waiting for the Commission to adopt a decision excluding the amounts resulting from that calculation error from EU financing.

Costs

- 49 Since these proceedings are, for the parties to the main proceedings, a step in the action brought 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:

Article 40(3) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), as amended by Council Regulation (EC) No 74/2009 of 19 January 2009, and Article 58(1) 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, read in conjunction with Article 310(5) TFEU, and the principles of the protection of legitimate expectations and legal certainty,

must be interpreted as not precluding the national authorities involved in the implementation of a non-repayable financial support measure from adopting, on account of a calculation error found by the European Court of Auditors, acts ordering a reduction in the amount of financial aid granted under the European Agricultural Fund for Rural Development (EAFRD) Rural Development Programme for Romania for the 2007 to 2013 programming period, as approved by the European Commission, without waiting for the Commission to adopt a decision excluding the amounts resulting from that calculation error from EU financing.

[Signatures]