



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

17 September 2014*

(Reference for a preliminary ruling — Structural funds — Regulations (EC) Nos 1083/2006 and 1080/2006 — European Regional Development Fund (ERDF) — Operational programme aiming to promote European territorial cooperation between the Republic of Estonia and the Republic of Latvia — Decision of the monitoring committee rejecting a subsidy — Provision that the decisions of that committee cannot be subject to legal review — Article 267 TFEU — Act adopted by an institution, organ or body of the European Union — Charter of Fundamental Rights of the European Union — Implementation of EU law — Article 47 — Right to effective judicial protection — Right of access to the courts — Determination of which Member State's courts have jurisdiction to rule on an action)

In Case C-562/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tartu ringkonnakohus (Estonia), made by decision of 23 November 2012, received at the Court on 5 December 2012, in the proceedings

Liivimaa Lihaveis MTÜ

v

Eesti-Läti programmi 2007-2013 Seirekomitee,

intervening parties:

Eesti Vabariigi Siseministeerium,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Safjan (Rapporteur), J. Malenovský, A. Prechal and K. Jürimäe, Judges,

Advocate General: N. Jääskinen,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 4 December 2013,

after considering the observations submitted on behalf of:

- Liivimaa Lihaveis MTÜ, by A. Sander, vandeadvokaat,
- the Estonian Government,, by K. Kraavi-Käerdi, acting as Agent,

* Language of the case: Estonian.

— the Latvian Government, by I. Kalniņš and A. Nikolajeva, acting as Agents,
— the European Commission, by A. Steiblytė and L. Naaber-Kivisoo, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 13 March 2014,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 256(1) TFEU, the second sentence of the first paragraph of Article 263 TFEU, the first paragraph, (b), of Article 267 TFEU, Article 274 TFEU, Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 63(2) of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).
- 2 The request has been made in proceedings between Liivimaa Lihaveis MTÜ ('Liivimaa Lihaveis'), an association of cattle breeders, and the Eesti-Läti programmi 2007-2013 Seirekomitee (Monitoring Committee of the Estonia-Latvia Programme for 2007 to 2013; 'the Seirekomitee'), concerning the latter's rejection of an application for subsidies made by that association in the context of the implementation of that programme.

Legal context

EU law

Regulation No 1083/2006

- 3 The first and second paragraphs of Article 1 of Regulation No 1083/2006 state:

‘This Regulation lays down the general rules governing the European Regional Development Fund (ERDF), the European Social Fund (ESF) (hereinafter referred to as the Structural Funds) and the Cohesion Fund, without prejudice of the specific provisions laid down in Regulations (EC) No 1080/2006 [of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) 1783/1999 (OJ 2006 L 210, p. 1)], (EC) No 1081/2006 and (EC) No 1084/2006.

This Regulation defines the objectives to which the Structural Funds and the Cohesion Fund ... are to contribute, the criteria for Member States and regions to be eligible under those Funds, the financial resources available and the criteria for their allocation.’
- 4 Article 2(1) of Regulation No 1083/2006 contains the following definition:

“‘operational programme”: document submitted by a Member State and adopted by the Commission setting out a development strategy with a coherent set of priorities to be carried out with the aid of a Fund, or, in the case of the Convergence objective, with the aid of the Cohesion Fund and the ERDF’.

- 5 Article 32 of that regulation, entitled ‘Preparation and approval of operational programmes’, provides, in paragraphs 1 and 5:

‘1. The activities of the [Structural] Funds [and Cohesion Fund] in the Member States shall take the form of operational programmes within the national strategic reference framework. Each operational programme shall cover a period between 1 January 2007 and 31 December 2013. An operational programme shall cover only one of the three objectives referred to in Article 3, save as otherwise agreed between the Commission and the Member State.

...

5. The Commission shall adopt each operational programme as soon as possible but no later than four months following its formal submission by the Member State and not before 1 January 2007.’

- 6 Article 59 of that regulation, entitled ‘Designation of authorities’, provides:

‘1. For each operational programme the Member State shall designate the following:

- (a) a Managing Authority: a national, regional or local public authority or a public or private body designated by the Member State to manage the operational programme;

...

3. The Member State shall lay down rules governing its relations with the authorities referred to in paragraph 1 and their relations with the Commission.

Without prejudice to this Regulation, the Member State shall lay down the mutual relations between the authorities referred to in paragraph 1, which shall carry out their tasks in full accordance with the institutional, legal and financial systems of the Member State concerned.

...

5. Specific rules on management and control are laid down in the Regulation (EC) No 1080/2006 for operational programmes under the European territorial cooperation objective.

...’

- 7 Article 60 of Regulation No 1083/2006, entitled ‘Functions of the Managing Authority’, provides;

‘The Managing Authority shall be responsible for managing and implementing the operational programme in accordance with the principle of sound financial management and in particular for:

- (a) ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with applicable Community and national rules, for the whole of their implementation period;

...

- (h) guiding the work of the Monitoring Committee and providing it with the documents required to permit the quality of the implementation of the operational programme to be monitored in the light of its specific goals.’

8 Under Article 63 of the regulation, entitled ‘Monitoring Committee’:

‘1. The Member State shall set up a Monitoring Committee for each operational programme, in agreement with the Managing Authority, within three months from the date of the notification to the Member State of the decision approving the operational programme. A single Monitoring Committee may be set up for several operational programmes.

2. Each Monitoring Committee shall draw up its rules of procedure within the institutional, legal and financial framework of the Member State concerned and adopt them in agreement with the Managing Authority in order to exercise its missions in accordance with this Regulation.’

9 Article 65 of the regulation states:

‘The Monitoring Committee shall satisfy itself as to the effectiveness and quality of the implementation of the operational programme, in accordance with the following provisions:

(a) it shall consider and approve the criteria for selecting the operations financed within six months of the approval of the operational programme and approve any revision of those criteria in accordance with programming needs;

...’

Regulation No 1080/2006

10 Article 1 of Regulation No 1080/2006 states:

‘1. This Regulation establishes the tasks of the [ERDF], the scope of its assistance with regard to the Convergence, Regional competitiveness and employment and European territorial cooperation objectives as defined in Article 3(2) of Regulation ... No 1083/2006, and the rules on eligibility for assistance.

2. The ERDF is governed by Regulation ... No 1083/2006 and by this Regulation.’

11 Article 14(1) and (3) of Regulation No 1080/2006 provides as follows:

‘1. Member States participating in an operational programme shall appoint a single Managing Authority, a single certifying authority and a single audit authority, the latter being situated in the Member State of the Managing Authority. The certifying authority shall receive the payments made by the Commission and, as a general rule, shall make the payments to the lead beneficiary.

The Managing Authority, after consultation with the Member States represented in the programme area, shall set up a joint technical secretariat. The latter shall assist the Managing Authority and the Monitoring Committee, and, where appropriate, the audit authority, in carrying out their respective duties.

...

3. Each Member State participating in the operational programme shall appoint representatives to sit on the Monitoring Committee referred to in Article 63 of Regulation ... No 1083/2006.’

- 12 Article 19 of Regulation No 1080/2006, entitled ‘Selection of operations’, provides in paragraphs 1 and 3 thereof:

‘1. Operations selected for operational programmes aimed at developing cross-border activities as referred to in Article 6(1) and at establishing and developing transnational cooperation as referred to in Article 6(2) shall include beneficiaries from at least two countries, of which at least one shall be a Member State, which shall cooperate in at least two of the following ways for each operation: joint development, joint implementation, joint staffing and joint financing.

...

3. In addition to the tasks referred to in Article 65 of Regulation ... No 1083/2006, the Monitoring Committee or a steering committee reporting to it shall be responsible for selecting operations.’

The operational programme between the Republic of Estonia and the Republic of Latvia for 2007–2013

- 13 The operational programme between the Republic of Estonia and the Republic of Latvia for 2007-2013 (‘the Estonia-Latvia operational programme’) has the objective of promoting European territorial cooperation.
- 14 Under Article 32(5) of Regulation No 1083/2006, that programme was adopted by Article 1 of European Commission Decision C(2007) 6603 final of 21 December 2007.
- 15 The Estonia-Latvia operational programme was the subject-matter of the document ‘Eesti-Läti programm 2007–2013’ (programme between Estonia and Latvia for 2007-2013; ‘the programme document’), bearing reference CCI No 2007 CB 163 PO 050, which was prepared jointly by the authorities of the Republic of Estonia and the Republic of Latvia.
- 16 Pursuant to Regulations Nos 1083/2006 and 1080/2006, the programme document specified, inter alia, the rules for designation and functioning of the Managing Authority, the certifying authority and the audit authority.
- 17 Chapter 7.1 of the programme document, entitled ‘Programme management’, states in its second, fifth, seventh and ninth subparagraphs:

‘In accordance with Article 63 of the General Regulation, Estonia and Latvia shall set up a joint Monitoring Committee, which shall satisfy itself as to the effectiveness and quality of the implementation of the Programme.

...

Estonia and Latvia have decided to set up the joint implementation structure of the [Estonia-Latvia operational] Programme in Estonia. The Ministry of the Interior has been designated to act as the Managing Authority, the Certifying Authority, and the Audit Authority of the Programme. ...

...

In accordance with Article 59(3) of [Regulation No 1083/2006], the above authorities shall carry out their tasks in full accordance with the institutional, legal, and financial systems of the Republic of Estonia.

...

More detailed provisions on implementation of the Programme, supplementing the rules laid down in the following chapters of the operational programme, shall be included in the Programme Manual. The Programme Manual shall be adopted by the Monitoring Committee at its first meeting. The provisions of the Programme Manual shall be binding both to the authorities implementing the Programme, and to the lead beneficiaries and other beneficiaries of the Programme.'

- 18 Chapter 7.2.2 of the programme document, entitled 'Functions of the Managing Authority', provides:

'In accordance with Article 60 of [Regulation No 1083/2006] and Articles 14(1) and 15 of [Regulation No 1080/2006], a single Managing Authority shall be responsible for managing and implementing the [Estonia-Latvia] operational programme in accordance with the principle of sound financial management in particular for:

- (a) ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with applicable Community and national rules for the whole of their implementation period. ...

...

Furthermore, the Managing Authority shall:

...

lay down the implementing arrangements for each operation in agreement (subsidy contract) with the lead beneficiary (Article 15(2) of [Regulation No 1080/2006]) after respective financing decision by the Monitoring Committee (Article 19(3) of [Regulation No 1080/2006]);

...'

- 19 Chapter 7.6.1 of the programme document, concerning the tasks of the Monitoring Committee, is worded as follows:

'In accordance with Article 65 of [Regulation No 1083/2006], the Monitoring Committee shall satisfy itself as to the effectiveness and quality of the implementation of the [Estonia-Latvia] operational programme, in accordance with the following provisions:

- (a) it shall consider and approve the criteria for selecting the operations financed within six months of the approval of the operational programme and approve any revision of those criteria in accordance with programming needs;

...

Furthermore, the Monitoring Committee shall:

...

select operations for funding (Article 19(3) of [Regulation No 1080/2006]);

...'

- 20 The fourth sub-subparagraph of Chapter 7.6.2 of the programme document states in that regard that the Monitoring Committee must be composed of a maximum of seven representatives from both Estonia and Latvia.

21 Under Chapter 7.7.1 of the programme document, the Joint Technical Secretariat (JTS) set up by the Managing Authority, which administers the [Estonia-Latvia operational] programme, is based in Tartu (Estonia) and has an information office in Riga (Latvia).

22 The first subparagraph of Chapter 9.4 of the programme document provides:

‘The Monitoring Committee comprising of members from both Estonia and Latvia, with the representatives of the Commission, the Managing Authority, and the JTS in an advisory capacity, will select operations for funding.’

23 Chapter 9.5 of the programme document is drafted as follows:

‘Following the decision of the Monitoring Committee to approve an application for funding, the Managing Authority will prepare a subsidy contract to be made with the lead beneficiary of the approved operation.’

24 The Seirekomitee adopted a programme manual in respect of the Estonia-Latvia [operational] programme, dated 1 December 2009 (‘the programme manual’), which, inter alia, gives instructions for the preparation of applications for subsidies and the implementation, monitoring, reporting and completion of the projects. The last sentence of Chapter 1 of the programme manual states that ‘[t]he text of this manual is the main guide to the applicants’.

25 The first and second subparagraphs of Chapter 6.6 of the programme manual, in the version applicable to the dispute in the main proceedings, state:

‘The decisions on the projects to be financed shall be taken by the Monitoring Committee ... on the basis of the results of the assessment. The decisions of the Monitoring Committee are not appealable.

After the funding decisions have been taken by the [Monitoring Committee], the lead partners of the projects which were not approved receive a letter from the Joint Technical Secretariat explaining the grounds on which the application failed. The [Joint Technical Secretariat] will send the letter within 10 working days after the Monitoring Committee meeting.’

26 Furthermore, on 29 May 2009, the Seirekomitee adopted rules of procedure for the implementation of the Estonia-Latvia [operational] programme. Under rule 1.2 thereof, the official seat of the Monitoring Committee is the same as that of the Joint Technical Secretariat and, according, it is therefore located in Tartu.

Estonian law

27 Paragraph 2(1) of the Law on administrative procedure (haldusmenetluse seadus (RT I 2001, 58, 354), which was adopted on 6 June 2001, in the version applicable at the date of the facts of the dispute in the main proceedings (‘the HMS’), states:

‘An administrative procedure is the action of an administrative body (Paragraph 8) when promulgating a regulation (Paragraph 88) or an administrative act (Paragraphs 51 and 52), enforcing an act (Paragraph 106) or concluding an administrative agreement (Paragraph 95).’

28 Paragraph 8(1) of that Law provides:

“Administrative body” means an institution, body or person which is empowered to perform tasks connected with the public administration by a law, an ordinance adopted pursuant to a law or a management agreement.’

29 Paragraph 51(1) of the HMS provides:

‘An administrative act is an order, a decision, an edict, a circular or another act, promulgated by an administrative body in the performance of its administrative tasks in a public law relationship to govern a particular case, intended to engender or amend the rights or obligations of a person or to put an end to those rights or obligations.’

30 Paragraph 1(1) to (3) and (5) of the Law on structural aid for the period 2007-2013 (Perioodi 2007-2013 struktuuritoetuse seadus, RT I 2006, 59, 440) which was adopted on 7 December 2006, in the version applicable at the date of the facts of the main proceedings (‘StS 2007–2013’), states:

‘1. This Law establishes the bases of and procedure for the grant, use, recovery and repayment of structural aid, as well as the bases for monitoring the grant and use of structural aid and the rules governing opposition proceedings.

2. This Law shall apply to the grant and use of funds allocated for structural aid within the framework of an operational programme adopted by the European Commission in accordance with Article 32(5) of [Regulation No 1083/2006].

3. For the purposes of the grant and use of structural aid within the framework of operational programmes which pursue the “European territorial cooperation” objective referred to in Article 3(2)(c) of [Regulation No 1083/2006], the provisions of Paragraph 2, Paragraph 3(4), Paragraph 5, Paragraph 14, Paragraph 21(1), Paragraph 22, Paragraph 25(1), (2), (4) (5), (t) and (8), Paragraphs 26-28, Paragraph 30(2) and (3), Paragraphs 31-33 and Chapter 8 of this Law shall apply.

...

5. The provisions of the [HMS] shall apply to the procedure provided for in this Law, taking into account the special characteristics set out in this Law.’

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

31 It is apparent from the order for reference and the observations made to the Court that, on 19 February 2010, Liivimaa Lihaveis submitted an application under the Estonia-Latvia operational programme for financing of a project ‘(t)o create a new product and brand which is produced from quality beef animals raised on the most diversified grasslands of Estonia and Latvia’.

32 By letter of 19 April 2010 the JTS informed Liivimaa Lihaveis that its application had passed the first stage of the selection process and that its project had been declared technically eligible for aid. In the same letter, the JTS stated that it would proceed to the qualitative assessment of the application, but that the final decision would be taken by the Seirekomitee on 29 June 2010.

33 By letter of 7 July 2010, the JTS informed Liivimaa Lihaveis that the Seirekomitee had rejected its application for aid. The grounds for the rejection were stated in that letter.

34 By letter of 23 July 2010, Liivimaa Lihaveis sent a letter to the JTS and the Ministry of the Interior of the Republic of Estonia, by which it drew their attention to the fact that it had been informed of the rejection of its application by a simple letter and not by an administrative act. Liivimaa Lihaveis requested that the administrative act formalising the decision of the Seirekomitee rejecting its application be sent to it.

- 35 In an exchange of emails which followed the sending of that letter, the Managing Authority indicated to the Ministry of the Interior of the Republic of Estonia that, in the context of the Estonia-Latvia operational programme, no formal administrative decision is adopted to accept or reject the applications for project financing since the minutes of the meeting of the Seirekomitee and the letter from the JTS regarding the financing or lack thereof of a project in respect of which aid has been requested constitute official documents. In that regard, the Managing Authority referred to Chapter 6.6 of the programme manual, according to which project financing decisions are to be taken by the Seirekomitee, the decisions of which are not open to appeal, and the lead partners of projects not approved will receive only a letter explaining to them the reasons for the rejection.
- 36 On 16 September 2010, the director of the Managing Authority sent a letter to Liivimaa Lihaveis with, in annex, an extract of the minutes of the meeting of the Seirekomitee of 28 and 29 June 2010, which referred to the decision to reject its application for aid.
- 37 Liivimaa Lihaveis brought legal proceedings before the Tartu Halduskohus (Administrative Court, Tartu) seeking the annulment of the Seirekomitee's decision rejecting its application for aid and an order requiring the Seirekomitee to re-examine the application and to adopt an administrative decision consistent with the law. By order of 21 September 2011, that court dismissed the action.
- 38 On 3 October 2011, Liivimaa Lihaveis appealed against that order before the Tartu ringkonnakohus (Court of Appeal, Tartu).
- 39 The referring court notes, firstly, that the Seirekomitee is a body established by agreement between the Republic of Estonia and the Republic of Latvia on the basis of Article 63(1) of Regulation No 1083/2006 and the programme document. Accordingly, the Charter applies to a case such as that in the main proceedings, in accordance with Article 51(1) thereof. In the event of the rejection of an application for aid, the fact that the decision of the Seirekomitee cannot be the subject of an appeal before any court, under Chapter 6.6 of the programme manual, runs counter to Article 63(2) of Regulation No 1083/2006, read in conjunction with Article 47 of the Charter.
- 40 Next, the Seirekomitee is not an administrative body within the meaning of the Law on administrative procedure, or a private law entity, and nor is it an international organisation created by a treaty. Since that committee, provided for in the programme document, was instituted on the basis of a Commission decision, it constitutes an EU body. Thus, the programme manual, adopted by the Seirekomitee, is an act intended to implement the secondary legislation of the European Union and is binding on persons wishing to obtain aid under the Estonia-Latvia operational programme.
- 41 Finally, the referring court is of the view that Chapter 6.6 of the programme manual is intended to produce legal effects vis-à-vis third parties. The General Court of the European Union therefore has jurisdiction to rule on an action brought against a rejection decision of the Seirekomitee. Even if the programme manual did not produce legal effects, the dispute would have to be settled by the competent national court in accordance with Article 274 TFEU. However, since the operational programme involves the Republic of Estonia and the Republic of Latvia, actions could be brought in parallel before courts in each of those States, with the risk of contradictory judgments being delivered.
- 42 In those circumstances, the Tartu ringkonnakohus decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:
- '1. Are the rules of procedure of a monitoring committee jointly set up by two Member States, such as the programme manual adopted by the [Seirekomitee], which provide that "The decisions of the Monitoring Committee are not appealable at any place of jurisdiction" (Chapter 6.6.4 of the programme manual) compatible with Article 63(2) of Council Regulation No 1083/2006 in conjunction with Article 47 of the [Charter]?

2. If Question 1 is to be answered in the negative, must point (b) of the first paragraph of Article 267 [TFEU] be interpreted as meaning that Chapter 6.6.4 of [that programme manual] is an act of an institution, body, office or agency of the European Union which must be declared invalid?
3. If Question 1 is to be answered in the negative, must the second sentence of the first paragraph of Article 263 [TFEU] in conjunction with Article 256(1) [TFEU] and Article 274 [TFEU] be interpreted as meaning that the General Court of the European Union or the competent court under national law has jurisdiction to hear and determine actions against decisions of the [Seirekomitee]?’

Consideration of the questions referred

The third question

- 43 By its third question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 263 TFEU must be interpreted as meaning that, in the context of an operational programme under Regulations Nos 1083/2006 and 1080/2006 to promote European territorial cooperation, an action against a decision of a monitoring committee rejecting an application for aid falls within the jurisdiction of the General Court of the European Union or of a national court.
- 44 Pursuant to the first sentence of the first paragraph of Article 263 TFEU, the Court of Justice is to review the legality of legislative acts, of acts of the Council of the European Union, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties.
- 45 Furthermore, under the second sentence of the first paragraph of Article 263 TFEU, the Court of Justice is also to review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.
- 46 In accordance with the case-law of the Court, the judicial review mechanisms laid down in Article 263 TFEU apply to the bodies, offices and agencies established by the EU legislature which were given powers to adopt measures that are legally binding on natural or legal persons in specific areas, such as the European Aviation Safety Agency (EASA), the European Medicines Agency (EMA), the European Chemicals Agency (ECHA), the Community Plant Variety Office (CPVO) and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (see, to that effect, judgment in *United Kingdom v Council and Parliament*, C-270/12, EU:C:2014:18, paragraph 81).
- 47 A monitoring committee instituted as part of an operational programme to promote European territorial cooperation is not an institution or a body, office or agency of the European Union.
- 48 In an action brought under Article 263 TFEU, the European Union Court has no jurisdiction to rule on the lawfulness of a measure adopted by a national authority (see, to that effect, judgments in *Oleificio Borelli v Commission*, C-97/91, EU:C:1992:491, paragraph 9, and *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 91).
- 49 In the present case, under Article 63(1) and (2) of Regulation No 1083/2006, a monitoring committee is to be set up for each operational programme by the ‘Member State’ and each monitoring committee is to draw up its rules of procedure within the institutional, legal and financial framework of the Member State concerned.

- 50 Since Regulations Nos 1083/2006 and 1080/2006 provide for the possibility of establishing operational programmes to promote European territorial cooperation, the Seirekomitee was instituted jointly by the Republic of Estonia and the Republic of Latvia, as expressly stated in the second subparagraph of Chapter 7.1 of the programme document.
- 51 Accordingly, the General Court of the European Union does not have jurisdiction, under Article 256 TFEU, to hear an action against a decision of a monitoring committee, such as the Seirekomitee, rejecting an application for aid.
- 52 Having regard to the foregoing, the answer to the third question is that Article 263 TFEU must be interpreted as meaning that, in the context of an operational programme under Regulations Nos 1083/2006 and 1080/2006 and intended to promote European territorial cooperation, an action against a decision of a monitoring committee rejecting an application for aid does not fall within the jurisdiction of the General Court of the European Union.

The second question

- 53 By its second question, the referring court asks, in essence, whether point (b) of the first paragraph of Article 267 TFEU must be interpreted as meaning that a programme manual adopted by a monitoring committee in the context of an operational programme under Regulations Nos 1083/2006 and 1080/2006 to promote European territorial cooperation between two Member States, such as that at issue in the main proceedings, constitutes an act of an institution, body, office or agency of the European Union.
- 54 As is apparent from the answer given to the third question, the Seirekomitee is not an institution or a body, office or agency of the European Union.
- 55 In consequence, the Court of Justice does not have jurisdiction to review the validity of the provisions of a programme manual such as that at issue in the main proceedings.
- 56 Having regard to the foregoing, the answer to the second question is that point (b) of the first paragraph of Article 267 TFEU must be interpreted as meaning that a programme manual adopted by a monitoring committee in the context of an operational programme under Regulations Nos 1083/2006 and 1080/2006 and intended to promote European territorial cooperation between two Member States, such as that at issue in the main proceedings, does not constitute an act of an institution, body, office or agency of the European Union and, in consequence, the Court of Justice does not have jurisdiction to review the validity of the provisions of such a programme manual.

The first question

- 57 By its first question, the referring court asks, in essence, whether Regulation No 1083/2006, read in conjunction with Article 47 of the Charter, must be interpreted as precluding a provision of a programme manual adopted by a monitoring committee in the context of an operational programme established by two Member States to promote European territorial cooperation where that provision provides that a decision of that monitoring committee rejecting an application for aid cannot be subject to appeal.
- 58 In the present case, the Estonia-Latvia operational programme was prepared jointly by the Estonian and Latvian authorities on the basis, in particular, of Regulations Nos 1083/2006 and 1080/2006, and it was subsequently adopted by the Commission.

- 59 The ninth subparagraph of Chapter 7.1 of the programme document states that more detailed provisions on implementation of the operational programme are to be included in the programme manual. On the basis of that provision, the Seirekomitee adopted the programme manual, in which the contested provision appears, namely the second sentence of the first subparagraph of Chapter 6.6 thereof.
- 60 The fact that the Seirekomitee is not an institution, body, office or agency of the European Union, as follows from the answer to the third question asked by the referring court, does not prevent Article 47 of the Charter from applying if the adoption by that committee of the programme manual is an act falling within the scope of EU law.
- 61 In consequence, it is necessary to ascertain whether the programme manual implements EU law, within the meaning of Article 51(1) of the Charter.
- 62 In accordance with the settled case-law of the Court, the concept of ‘implementing Union law’, as referred to in that provision of the Charter, requires a certain degree of connection above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other (see, *inter alia*, judgment in *Kremzow*, C-299/95, EU:C:1997:254, paragraph 16).
- 63 In the present case, it is sufficient to note that EU law required the two Member States involved in the Estonia-Latvia operational programme to implement that programme.
- 64 In particular, firstly, those Member States were required to institute a monitoring committee, pursuant to Article 63(1) and (2) of Regulation No 1083/2006. Secondly, all the measures intended to apply that operational programme, which include the programme manual, had to comply with the provisions of Regulations Nos 1083/2006 and 1080/2006.
- 65 Accordingly, it must be held that the adoption of the programme manual by the monitoring committee implements EU law within the meaning of Article 51(1) of the Charter.
- 66 Consequently, when it adopted that manual, the Monitoring Commission was required to comply with the provisions of the Charter.
- 67 The first paragraph of Article 47 of the Charter provides that everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article.
- 68 To ensure that the right to an effective remedy within the EU is upheld, the second subparagraph of Article 19(1) TEU requires the Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law.
- 69 In a case such as that in the main proceedings, the rejection of an application for aid by the Seirekomitee means that the applicant is definitively excluded from the procedure allocating the aid cofinanced by the EU, without any decision being communicated to it subsequently.
- 70 Furthermore, it is apparent from the second sentence of the first subparagraph of Chapter 6.6 of the programme manual that the decisions of the Seirekomitee are not appealable. It is therefore not possible for an applicant whose application for aid has been rejected to contest that rejection decision.
- 71 In those circumstances, the lack of any remedy against such a rejection decision deprives the applicant of its right to an effective remedy, in breach of Article 47 of the Charter.

- 72 It must be added that Article 52(1) of the Charter accepts that limitations may be made on the exercise of the rights and freedoms recognised by the Charter, as long as the limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others.
- 73 In any event, the lack of remedy against a decision rejecting an application for aid, such as that at issue in the main proceedings, was provided for by the Seirekomitee and not by law.
- 74 Consequently, it must be found that, in so far as it provides that a decision of the Seirekomitee rejecting an application to aid cannot be subject to an appeal, the programme manual does not comply with the principle of effective judicial protection laid down in the first paragraph of Article 47 of the Charter.
- 75 Furthermore, it must be borne in mind that the requirement for judicial review of any decision of a national authority constitutes a general principle of EU law. Pursuant to that principle, it is for the national courts to rule on the lawfulness of a disputed national measure and to regard an action brought for that purpose as admissible even if the domestic rules of procedure do not provide for this in such a case (see, to that effect, judgment in *Oleificio Borelli v Commission*, EU:C:1992:491, paragraphs 13 and 14).
- 76 Having regard to the foregoing considerations, the answer to the first question is that Regulation No 1083/2006, read in conjunction with Article 47 of the Charter, must be interpreted as precluding a provision of a programme manual adopted by a monitoring committee in the context of an operational programme established by two Member States and intended to promote European territorial cooperation where that provision does not provide that a decision of that monitoring committee rejecting an application for aid can be subject to appeal before a court of a Member State.

The limitation of the temporal effects of this judgment

- 77 On the basis that this judgment would mean that a provision such as that at issue in the main proceedings would not meet the requirements of EU law, the Latvian Government, in its written observations, has asked the Court to limit *ex nunc* the effects of its judgment, except as regards actions against decisions of the Seirekomitee which were brought before the courts of the Member States before delivery of the judgment.
- 78 In support of its application, the Latvian Government pointed out, firstly, that the Republic of Estonia and the Republic of Latvia had acted in good faith, since Regulation No 1083/2006 did not expressly state that it was necessary to provide for a system for appeals against the decisions of the Seirekomitee.
- 79 Secondly, that Government submitted that, if the decisions of the Seirekomitee could be appealed, a large number of appeals against decisions which had been carried out could result. The Estonia-Latvia Operational Programme was applicable until 2013, so that all the financing provided for its implementation has already been allocated. Accordingly, that situation would lead to an additional burden on the national budgets.
- 80 It should be recalled in this regard that, according to settled case-law, the interpretation which, in the exercise of the jurisdiction conferred upon it by Article 267 TFEU, the Court gives to a rule of EU law clarifies and defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may, and must, be applied by the courts to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the

conditions for bringing before the courts having jurisdiction an action relating to the application of that rule are satisfied (see, *inter alia*, judgments in *Blaizot and Others*, 24/86, EU:C:1988:43, paragraph 27, and *Vent De Colère and Others*, C-262/12, EU:C:2013:851, paragraph 39).

- 81 It is only quite exceptionally that the Court may, in application of the general principle of legal certainty inherent in the EU legal order, be moved to restrict for any person concerned the opportunity of relying on a provision which it has interpreted with a view to calling into question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed: those concerned must have acted in good faith and there must be a risk of serious difficulties (see, *inter alia*, judgments in *Skov and Bilka*, C-402/03, EU:C:2006:6, paragraph 51, and *Vent De Colère and Others*, EU:C:2013:851, paragraph 40).
- 82 As regards the risk of serious difficulties, it must be noted that, in this situation, the interpretation of EU law given by the Court in the present case relates to the right of applicants to be able to contest before the courts the decisions of the Seirekomitee rejecting their applications for aid. It is for the competent national court to rule on each of the appeals brought, on the basis of the circumstances of each particular case.
- 83 In those circumstances, the financial consequences which could follow for the Republic of Latvia cannot be determined on the sole basis of the interpretation of EU law given by the Court in the present case (see, by analogy, judgment in *RWE Vertrieb*, C-92/11, EU:C:2013:180, paragraph 61 and the case-law cited).
- 84 Consequently, the Court finds that the risk of serious economic repercussions, as contemplated in the case-law cited in paragraph 81 of this judgment, such as to justify placing a temporal limitation on the effects of this judgment, has not been established.
- 85 As the second criterion mentioned in paragraph 81 above is not satisfied, it is not necessary to ascertain whether the criterion of the good faith of those concerned is satisfied.
- 86 It follows from those considerations that there is no need to limit the temporal effects of the present judgment.

Costs

- 87 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 (Fourth Chamber) hereby rules:

1. **Article 263 TFEU must be interpreted as meaning that, in the context of an operational programme under Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 and Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) 1783/1999 and intended to promote European territorial cooperation, an action against a decision of a monitoring committee rejecting an application for aid does not fall within the jurisdiction of the General Court of the European Union.**

2. **Point (b) of the first paragraph of Article 267 TFEU must be interpreted as meaning that a programme manual adopted by a monitoring committee in the context of an operational programme under Regulations Nos 1083/2006 and 1080/2006 and intended to promote European territorial cooperation between two Member States, such as that at issue in the main proceedings, does not constitute an act of an institution, body, office or agency of the European Union and, in consequence, the Court of Justice of the European Union does not have jurisdiction to review the validity of the provisions of such a manual.**
3. **Regulation No 1083/2006, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a provision of a programme manual adopted by a monitoring committee in the context of an operational programme established by two Member States and intended to promote European territorial cooperation, where that provision does not provide that a decision of the monitoring committee rejecting an application for aid can be subject to appeal before a court of a Member State.**

[Signatures]