



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

22 January 2020 *

(Reference for a preliminary ruling — Common fisheries policy — Regulation (EC) No 1198/2006 — Article 55(1) — Financial contribution by the European Fisheries Fund (EFF) — Eligibility of expenditure — Condition — Expenditure actually paid by the beneficiaries — Meaning)

In Case C-814/18,

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 18 December 2018, received at the Court on 21 December 2018, in the proceedings

Ursa Major Services BV

v

Minister van Landbouw, Natuur en Voedselkwaliteit,

THE COURT (Seventh Chamber),

composed of P.G. Xuereb, President of the Chamber, T. von Danwitz and A. Kumin (Rapporteur), Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Netherlands Government, by M. Bulterman and M. Noort, acting as Agents,
- the European Commission, by F. Moro, K. Walkerová and S. Noë, acting as Agents,

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

gives the following

* Language of the case: Dutch.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 55(1) of Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (OJ 2006 L 223, p. 1).
- 2 The request has been made in proceedings between Ursa Major Services BV ('UMS') and the Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality, Netherlands) ('the Minister') concerning an application for amendment of a decision to grant a subsidy for a project in the fisheries sector.

Legal context

EU law

Regulation No 1198/2006

- 3 Recital 16 of Regulation No 1198/2006 states:

'In order to strengthen the leverage effect of Community resources by favouring, as far as possible, recourse to private sources of financing and to take better account of the profitability of the operations, the forms of assistance available from the [European Fisheries Fund] should be diversified and the rates of assistance differentiated with a view to promoting the Community interest, encouraging the use of a wide range of financial resources and limiting the contribution of the [European Fisheries Fund] by encouraging the use of appropriate forms of assistance.'

- 4 Article 1 of the regulation, entitled 'Scope', lays down:

'This regulation establishes the European Fisheries Fund (hereinafter EFF) and defines the framework for Community support for the sustainable development of the fisheries sector, fisheries areas and inland fishing.'

- 5 Article 3 of that regulation, headed 'Definitions', provides:

'For the purposes of this regulation, the following definitions shall apply:

...

(l) "beneficiary": a natural or legal person who is the ultimate recipient of public aid;

...'

- 6 Article 52 of Regulation No 1198/2006, entitled 'Public aid intensity', lays down:

'The maximum intensity of public aid is set out in the Table in Annex II.'

- 7 Article 54 of that regulation, headed 'Non-Accumulation', provides:

'Expenditure co-financed by the EFF shall not receive assistance from another Community financial instrument.'

8 Article 55 of that regulation, entitled ‘Eligibility of expenditure’, states:

‘1. Expenditure shall be eligible for a contribution from the EFF if it has actually been paid by the beneficiaries between the date of submission of the operational programme to the [European] Commission or from 1 January 2007, whichever is earlier, and 31 December 2015. Operations co-financed must not have been completed before the starting date for eligibility.

2. By way of derogation from paragraph 1, in-kind contributions, depreciation costs and overheads may be treated as expenditure paid by beneficiaries in implementing operations under the following conditions:

- (a) the eligibility rules drawn up on the basis of paragraph 4 provide for the eligibility of such expenditure;
- (b) the amount of the expenditure is justified by accounting documents having a probative value equivalent to invoices;
- (c) in the case of in-kind contributions, the co-financing from the EFF does not exceed the total eligible expenditure, excluding the value of such contributions.

...

4. The rules on the eligibility of expenditure shall be laid down at national level subject to the exceptions provided for in this Regulation. They shall cover the entirety of expenditure declared under the operational programme.

...’

9 Article 59 of Regulation No 1198/2006, entitled ‘Functions of the managing authority’, states:

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

...

- (b) verifying that the co-financed products and services are delivered and that the expenditure declared by the beneficiaries has actually been incurred and complies with Community and national rules; ...

...’

10 Article 70 of that regulation, entitled ‘Management and control’, provides:

‘1. Member States shall be responsible for the management and control of operational programmes, in particular through the following measures:

- (a) ensuring that the management and control systems for the operational programme are set up in accordance with Articles 57 to 61 and function effectively;

...’

- 11 Article 78 of the regulation, entitled ‘Statement of expenditure’, provides in paragraph 1:

‘All statements of expenditure shall include, for each priority axis and for each objective, the total amount of eligible expenditure paid by beneficiaries in implementing the operations and the corresponding public contribution paid or due to be paid to the beneficiaries, according to the conditions governing the public contribution. Expenditure paid by beneficiaries shall be supported by receipted invoices or accounting documents of equivalent probative value. ...’

Regulation (EU) No 508/2014

- 12 Article 128(1) of Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ 2014 L 149, p. 1) provides:

‘Without prejudice to the provisions of Article 129(2), Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006, (EC) No 791/2007, (EU) No 1255/2011 and Article 103 of Regulation (EC) No 1224/2009 are repealed with effect from 1 January 2014.’

- 13 Article 129(2) of Regulation No 508/2014 states:

‘This regulation shall not affect the continuation or modification, including the total or partial cancellation, of the projects concerned, until their closure, or of assistance approved by the Commission on the basis of Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006, (EC) No 791/2007 and (EU) No 1255/2011 and Article 103 of Regulation (EC) No 1224/2009 or any other legislation applying to that assistance on 31 December 2013, which shall continue to apply to such projects or assistance.’

Netherlands law

- 14 Headed ‘Submission of the application for the grant of a subsidy’, Article 1(9) of the Regeling houdende regels inzake de verstrekking van subsidies door de Minister van Landbouw, Natuur en Voedselkwaliteit (Regeling LNV-subsidies) (Regulation on the grant of subsidies by the Minister for Agriculture, Nature and Food Quality) of 14 February 2007, in the version in force at the time of the facts at issue in the main proceedings, provided:

‘ ...

2. An application for the grant of a subsidy for a project shall be accompanied by a project plan, which includes, at least:

...

(c) a balanced budget for the project, which is a multiannual budget with a liquidity plan for each year in so far as the duration of the project exceeds one year, with explanations in that regard;

...’

15 Article 1(13) of that regulation, entitled ‘Obligations of the beneficiary of the subsidy in the context of projects’, stated:

‘1. Where a subsidy has been granted for the execution of a project, the beneficiary of the subsidy shall carry out that project in accordance with the project plan, which is an integral part of the decision to grant the subsidy.

...

3. The Minister may approve an amendment to a project plan which arose in the interim, unless the amendment:

- (a) relates to the objectives set out in the project plan;
- (b) gives rise to an increase in the amount of the subsidy or in the maximum amount at which the subsidy may be fixed, in accordance with the decision to grant the subsidy.

4. Where approval has been given, as referred to in paragraph 3, the Minister may amend the decision to grant the subsidy and the obligations imposed on the beneficiary of the subsidy.

...’

16 Article 1(15) of the regulation, entitled ‘Eligible and ineligible costs’, provided:

‘1. The following costs shall not be eligible for a subsidy:

- (a) costs which have been, or are, otherwise subsidised or financed by the authorities;
- (b) costs which cannot be shown to be directly attributable to the activity to which the grant relates;
- (c) interest charges;
- (d) costs relating to activities that are carried out in infringement of EC measures or national rules applicable to them.

...

4. In addition to the rules laid down in this regulation, the Minister may, when launching [the opportunity to submit subsidy applications], as referred to in the first paragraph of Article 1(3), lay down more detailed rules on the costs eligible for a subsidy.

...’

17 In Chapter 4 of the regulation, entitled ‘Fisheries’, Article 4(33i), headed ‘Amount of the subsidy’, provided:

‘1. The subsidy shall correspond to a maximum of 60% of the eligible costs.

2. By way of derogation from paragraph (1), the subsidy shall correspond to a maximum of 40% of the eligible costs for the projects, as referred to in Group 2 and Group 4 of Annex II to Regulation No 1198/2006.

...’

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

- 18 UMS, a subsidiary of Nederlandse Visserijbond (Dutch Fishermen's Association), manages subsidy projects in the fisheries sector. One of those projects aims to promote sustainable investments by participating shrimp fishing undertakings in a newly developed fishing gear, known as *seewing* ('the project at issue').
- 19 Following an application by UMS, submitted on behalf of a foundation and nine fishing undertakings, the Minister granted, by decision of 17 August 2012 ('the decision to grant the subsidy'), a subsidy of a maximum amount of EUR 118 056 for that project, amounting to 60% of the eligible costs. Half of that amount came from the province of Friesland (Netherlands) and the other half from the EFF.
- 20 The remaining costs — namely the costs incurred by the beneficiaries of that subsidy which could not be regarded as eligible costs and the remaining 40% of the eligible costs — had to be financed in another way by the beneficiaries of the subsidy. Initially, the foundation and the nine aforementioned fishing undertakings were to finance those remaining costs. However, that foundation and three of the nine fishing undertakings withdrew from the project at issue. In order to pursue it, UMS therefore turned to Visserijbedrijf J. Seepma ('Seepma') and VCU TCD BV ('VCU'), fishing undertakings which were already involved in the project, as field expert and supplier of *seewing*, respectively, and which were willing to provide a financial contribution. Under the decision to grant the subsidy, only the other six fishing undertakings benefit from the subsidy; Seepma and VCU are considered to be third parties participating in the project.
- 21 In practice, Seepma's financial contribution was made by deduction on invoices issued for the services which it provided as field expert. Thus, UMS' claim against Seepma, stemming from Seepma's commitment to provide a financial contribution, was set off against the debt owed to Seepma by UMS on the basis of the services provided. In so doing, UMS paid Seepma amounts smaller than the costs incurred by Seepma for the project at issue. As regards VCU, no set-off was made and separate invoices were issued in relation to the delivery of the *seewing*, which UMS paid to VCU, and in respect of VCU's financial contribution, which VCU paid to UMS.
- 22 After granting the subsidy in question, the Minister, at the request of UMS, made an advance payment on the basis of the invoices submitted by UMS. Those invoices also included those issued by Seepma for payment by UMS, which gave rise to the set-off mentioned above.
- 23 By letter of 28 September 2015, UMS asked the Minister to amend, following the modification of the financing, the budget summary and the financing of the project at issue, which is an integral part of the decision to grant the subsidy.
- 24 By decision of 20 January 2016, the Minister rejected that request, on the ground that Seepma and VCU were not co-applicants or co-beneficiaries of the subsidy in question, but merely partners of the project. In that regard, he considered that a contribution to the financing by such partners or by third parties could not be subsidised, since those costs were not payable by the applicants for that subsidy. Thus, according to the Minister, a contribution to the financing of that project by partners to it or by third parties must be deducted from the eligible costs, which gives rise to a reduction in the amount of the subsidy granted.
- 25 By decision of 21 July 2016, the Minister supplemented the reasoning of his decision of 20 January 2016 by referring back to Article 55(1) of Regulation No 1198/2006, on the basis of which he maintains that costs are eligible only if the beneficiary of the subsidy has incurred and paid them himself.

- 26 UMS brought an action against that latter decision before the referring court, the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands). That court states that, previously, the Minister included the financial contribution of third parties in the eligible costs. However, he changed his position on the basis of information from the Commission.
- 27 The referring court asks, in the first place, whether Article 55(1) of Regulation No 1198/2006 is applicable to the relationship between the provider of a subsidy, namely, in the present case, the Minister, and the beneficiary of a subsidy, or whether that provision concerns only the relationship between the European Union and the Member State involved, in which case national legislation would be decisive as regards the eligibility of the costs of the project in question. That legislation does not provide, according to that court, that costs are not eligible because they were borne by a third party.
- 28 In the second place, should the Court rule that that provision is applicable to the relationship between the provider and the beneficiary [of a subsidy], the question arises whether expenditure borne by a third party, where appropriate by a set-off, may be regarded as expenditure actually paid by the beneficiary of the subsidy, as referred to in Article 55(1) of the regulation.
- 29 In the third place, the referring court states that, if it is apparent from the Court's responses that the Minister's interpretation of Article 55 of Regulation No 1198/2006 is correct, the Court will also have to rule on whether the principle of protection of legitimate expectations and the national principle of legal certainty can legitimately be invoked, in circumstances in which the Minister considered, when granting the advance, that financial contributions from third parties constituted eligible costs, but changed his position because of a different interpretation of EU law by the Commission.
- 30 In those circumstances, the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Is Article 55(1) of Regulation [No 1198/2006] applicable to the relationship between the provider of a subsidy, in the present case the Minister, and the beneficiary (the recipient of the subsidy)?
- (2) If the first question is answered to the effect that Article 55(1) of Regulation [No 1198/2006] does apply to the relationship between the provider of the subsidy and the beneficiary: can expenditure that has been paid by a third party (whether or not by set-off) be regarded as expenditure actually paid by the beneficiary as referred to in Article 55(1) of Regulation [No 1198/2006]?
- (3) If the second question is answered to the effect that expenditure paid by a third party (whether or not by set-off) cannot be regarded as expenditure actually paid by the beneficiary as referred to in Article 55(1) of Regulation [No 1198/2006]:
- (a) does an executive practice whereby the provider of the subsidy has consistently considered contributions from third parties to be expenditure actually paid by the beneficiary as referred to in Article 55(1) of Regulation [No 1198/2006] mean that the beneficiary could not have been expected to detect such an incorrect interpretation of Article 55(1) of Regulation [No 1198/2006] by the provider of the subsidy, with the result that the beneficiary is entitled to the subsidy as granted to him, and
- (b) should the contributions from third parties then be included in the expenditure actually paid by the beneficiary as referred to in Article 55(1) of Regulation [No 1198/2006] (in which case the subsidy is set higher) or
- (c) should recovery of the wrongly granted subsidy then be waived on the basis of the principle of the protection of legitimate expectations and/or the principle of legal certainty?
- (d) does it make any difference in that regard if the provider of the subsidy, as in the present case, has granted an advance on the subsidy?'

Consideration of the questions referred

- 31 As a preliminary point, it must be noted that Regulation No 1198/2006 was repealed and replaced by Regulation No 508/2014 as from 1 January 2014. It is however apparent from Article 128(1) of Regulation No 508/2014, read in conjunction with Article 129(2) thereof, that Regulation No 1198/2006 continues to be applicable to projects approved while it applied *ratione temporis* until their closure. Therefore, the project which is the subject of the action in the main proceedings continues to be governed by Regulation No 1198/2006.

The first question

- 32 By its first question, the referring court asks, in essence, whether Article 55(1) of Regulation No 1198/2006 is applicable to the relationship between the managing authority of an operational programme, such as the Minister, and the beneficiary of a subsidy granted under the EFF, so that that provision can be invoked against that beneficiary.
- 33 In order to answer that question, it should be recalled that, under the second paragraph of Article 288 TFEU, a regulation is of general application and directly applicable in all Member States. Accordingly, by virtue of the very nature of regulations and of their function in the system of sources of EU law, the provisions of regulations generally have immediate effect in the national legal systems without its being necessary for the national authorities to adopt implementing measures (see, to that effect, judgment of 12 April 2018, *Commission v Denmark*, C-541/16, EU:C:2018:251, paragraph 27 and the case-law cited).
- 34 In so far as the implementation of certain provisions of a regulation so require, Member States may adopt implementing measures for a regulation provided that (i) they do not thereby obstruct its direct applicability or conceal its nature as an act of EU law, (ii) they specify that they are acting in exercise of a discretion conferred on them under that regulation, and (iii) they adhere to the parameters laid down thereunder (see, to that effect, judgment of 12 April 2018, *Commission v Denmark*, C-541/16, EU:C:2018:251, paragraphs 27 and 28 and the case-law cited).
- 35 In that regard, it is by referring to the relevant provisions of the regulation concerned, interpreted in the light of its objectives, that it may be determined whether they prohibit, require or allow Member States to adopt certain implementing measures and, particularly in the latter case, whether the measure concerned comes within the scope of the discretion that each Member State is recognised as having (judgment of 12 April 2018, *Commission v Denmark*, C-541/16, EU:C:2018:251, paragraph 29 and the case-law cited).
- 36 It must also be recalled that any provision of EU law that satisfies the conditions required to have direct effect is binding on all the authorities of the Member States, that is to say, not merely the national courts but also all administrative bodies, including decentralised authorities, and those authorities are required to apply it (judgment of 5 March 2019, *Eesti Pagar*, C-349/11, EU:C:2019:172, paragraph 90 and the case-law cited).
- 37 In accordance with the Court's settled case-law, both the administrative authorities and the national courts that are called upon, within the exercise of their respective powers, to apply provisions of EU law are under a duty to give full effect to those provisions (judgment of 5 March 2019, *Eesti Pagar*, C-349/11, EU:C:2019:172, paragraph 91 and the case-law cited).
- 38 As regards Regulation No 1198/2006, it should be noted that, pursuant to Article 70(1)(a) thereof, Member States are responsible for the management and control of operational programmes, in particular in that they ensure that the management and control systems for the operational programme are established in accordance with Articles 57 to 61 of that regulation.

- 39 In this respect, it is apparent from Article 59(b) of the regulation that it is the responsibility of the managing authority of an operational programme to verify that the expenditure declared by the beneficiaries has actually been incurred and that it complies with the rules of EU law and national rules.
- 40 As for the rules on the eligibility of expenditure, Article 55(4) of Regulation No 1198/2006 provides that they are to be established at national level, subject to the exceptions laid down in that regulation. Article 55(1) of the regulation, which provides that expenditure may be eligible for a contribution from the EFF only if it has actually been paid by the beneficiaries between the date of submission of the operational programme to the Commission or from 1 January 2007, whichever is earlier, and 31 December 2015, amounts to such an exception. Subject to the application of derogating rules of EU law, such as the rule in Article 55(2) of the regulation, that provision precludes expenditure which does not satisfy those requirements from being considered eligible for a contribution from the EFF.
- 41 Therefore, while it is the responsibility of the Member States, under Article 55(4) of Regulation No 1198/2006, to establish the rules on the eligibility of expenditure, the discretion afforded to them is governed by Article 55(1) of that regulation which, in terms of its content, is unconditional and sufficiently precise, and thus fulfils the conditions required to have direct effect.
- 42 In so far as Article 55(1) of Regulation No 1198/2006 provides that expenditure is eligible for a contribution from the EFF if it has actually been paid by the beneficiaries during the period referred to in that provision, it sets out, in unequivocal terms, a requirement which is not subject to any discretionary implementing measure and does not give Member States discretion other than, in particular, in the cases referred to in Article 55(2) of that regulation, which are, however, not relevant in the present case.
- 43 Therefore, where the declared expenditure is governed by Article 55(1) of Regulation No 1198/2006, the competent national authority must require that such expenditure has actually been paid by the beneficiaries, as referred to in that provision, by relying directly on it.
- 44 In the light of all the above considerations, the answer to the first question is that Article 55(1) of Regulation No 1198/2006 must be interpreted as being applicable to the relationship between the managing authority of an operational programme and the beneficiary of a subsidy granted under the EFF, so that that provision can be invoked against that beneficiary.

The second question

- 45 By its second question, the referring court asks, in essence, whether an amount invoiced to the beneficiary of a subsidy granted under the EFF and paid by that beneficiary can be regarded as expenditure actually paid, as referred to in Article 55(1) of Regulation No 1198/2006, even if the third party who invoiced that amount has also made a financial contribution to the subsidised project, either by a set-off of the debt owed to him by the beneficiary against that beneficiary's claim against him, stemming from his commitment to make a contribution, or by issuing a separate invoice.
- 46 From the outset, it must be observed that the wording of Article 55(1) of Regulation No 1198/2006 does not, alone, enable an answer to be given to that question.
- 47 As set out in that provision, and having regard, *inter alia*, to the use of the words 'actually paid', that provision lends itself to an interpretation according to which, in order to determine the eligibility of an expenditure, all financial flows between the beneficiary and his supplier or service provider must be

taken into account, so that only the amount invoiced by that supplier or service provider — after deduction of a financial contribution made by him — is eligible. That contribution would accordingly be treated as a reduction in the price of the goods or service provided.

- 48 However, the wording of Article 55(1) of Regulation No 1198/2006 can also be understood as meaning that the fact that the supplier or service provider has a claim against the beneficiary, and that that claim has been paid by the beneficiary, is sufficient to find the existence of an expenditure which has been ‘actually paid’, and the circumstance that a financial contribution has been made in parallel is irrelevant in this respect.
- 49 However, the Court has consistently held that, 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 (judgments of 7 June 2005, *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 41 and the case-law cited; of 24 June 2014, *Parliament v Council*, C-658/11, EU:C:2014:2025, paragraph 51; and of 19 September 2019, *Gesamtverband Autoteile-Handel*, C-527/18, EU:C:2019:762, point 30).
- 50 As regards the context of Article 55(1) of Regulation No 1198/2006, it should be noted that, apart from the situation referred to in Article 54 of that regulation, in which expenditure co-financed by the EFF cannot benefit from the intervention of another Union financial instrument, that regulation does not prevent the beneficiary of a subsidy granted under the EFF from receiving contributions from third parties, which he uses to pay the expenditure linked to the project concerned.
- 51 Contrary to what the referring court takes into consideration, it cannot in particular be inferred from Article 52 of Regulation No 1198/2006 that a project can be financed only by public aid, on the one hand, and the own funds of the beneficiaries of subsidies granted under the EFF, on the other. That article aims solely to limit the total amount of the public contribution, without prejudice to the arrangements for the financing of the project concerned.
- 52 Moreover, Regulation No 1198/2006 in no way makes the eligibility of expenditure dependent on the method of financing of a given project, so that the arrangements chosen by the beneficiary of such subsidies to finance his expenditure do not affect the eligibility of that expenditure for a contribution from the EFF. Thus, the fact that a third party makes a financial contribution is not relevant, as such, for the purposes of determining the level of expenditure actually paid by that beneficiary, as referred to in Article 55(1) of that regulation.
- 53 Any other interpretation would be contrary to the objectives of Regulation No 1198/2006, since it is apparent from recital 16 thereof that recourse to private sources of financing should be favoured as far as possible and the use of a wide range of financial resources should be encouraged.
- 54 In those circumstances, the fact that the supplier or service provider has a claim against the beneficiary of a subsidy granted under the EFF and that that claim has been paid by that beneficiary is sufficient to find the existence of expenditure which has ‘actually been paid’ within the meaning of Article 55(1) of Regulation No 1198/2006, and the circumstance that that third party has also made a financial contribution to the subsidised project is irrelevant.
- 55 In that context, it does not matter how the financial contribution concerned was made. That contribution may, inter alia, have been made by deduction from the amount invoiced to the beneficiary, its claim against the third party, stemming from the commitment made by that third party, having been set off against the debt owed to him by the third party on the basis of the supply of goods or a service. However, every expenditure and every contribution must, as required by Article 78(1) of Regulation No 1198/2006, be duly supported by receipted invoices or accounting documents of equivalent probative value, which it is for the referring court to ascertain.

- 56 In this respect, it is, in particular, for that court to examine, by means of the supporting documents submitted to it, whether there actually is a contribution to the financing of the project concerned, which does not affect the level of expenditure actually paid, as referred to in Article 55(1) of Regulation No 1198/2006, or whether it is in actual fact a discount on the price of goods or service provided, resulting in a reduction in the expenditure actually paid by the beneficiary of the subsidy granted under the EFF.
- 57 In the light of the foregoing considerations, the answer to the second question is that Article 55(1) of Regulation No 1198/2006 must be interpreted as meaning that an amount invoiced to the beneficiary of a subsidy granted under the EFF and paid by him may be regarded as expenditure actually paid, as referred to in that provision, even if the third party who invoiced that amount has also made a financial contribution to the subsidised project, either by a set-off of the debt owed to him by the beneficiary against that beneficiary's claim against him, stemming from his commitment to make a contribution, or by issuing a separate invoice, provided that the expenditure and the contribution concerned are duly supported by receipted invoices or accounting documents of equivalent probative value, which it is for the referring court to ascertain.

The third question

- 58 In view of the answer to the second question, there is no need to reply to the third question.

Costs

- 59 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 (Seventh Chamber) hereby rules:

1. **Article 55(1) of Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund must be interpreted as being applicable to the relationship between the managing authority of an operational programme and the beneficiary of a subsidy granted under the European Fisheries Fund, so that that provision can be invoked against that beneficiary.**
2. **Article 55(1) of Regulation No 1198/2006 must be interpreted as meaning that an amount invoiced to the beneficiary of a subsidy granted under the European Fisheries Fund and paid by him may be regarded as expenditure actually paid, as referred to in that provision, even if the third party who invoiced that amount has also made a financial contribution to the subsidised project, either by a set-off of the debt owed to him by the beneficiary against that beneficiary's claim against him, stemming from his commitment to make a contribution, or by issuing a separate invoice, provided that the expenditure and the contribution concerned are duly supported by receipted invoices or accounting documents of equivalent probative value, which it is for the referring court to ascertain.**

[Signatures]