



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

27 January 2021 *

(Reference for a preliminary ruling – Common agricultural policy – Support scheme for farmers – Regulation (EU) No 1306/2013 – Article 97(1) and Article 99(1) – Direct payments – Reductions and exclusions in the event of non-compliance with the cross-compliance rules – Determination of the year to be taken into account in order to calculate the percentage reduction – Proportionate, effective and dissuasive penalties – Implementing Regulation (EU) No 809/2014 – Article 73(4), first subparagraph, point (a))

In Case C-361/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands), made by decision of 23 April 2019, received at the Court on 3 May 2019, in the proceedings

De Ruiter vof

v

Minister van Landbouw, Natuur en Voedselkwaliteit,

THE COURT (Fourth Chamber),

composed of M. Vilaras (Rapporteur), President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Fourth Chamber, N. Piçarra, D. Šváby and S. Rodin, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: M. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Netherlands Government, by M.K. Bulterman, C. Schillemans and J. Langer, acting as Agents,
- the Danish Government, by J. Nymann-Lindegren, acting as Agent, and by P. Biering, advokat,
- the German Government, by D. Klebs and J. Möller, acting as Agents,

* Language of the case: Dutch.

- the Swedish Government, by A. Falk, H. Eklinder, C. Meyer-Seitz and H. Shev, acting as Agents,
 - the European Parliament, by G. Mendola and R. van de Westelaken, acting as Agents,
 - the Council of the European Union, by D. Kornilaki, S. Boelaert and F. Naert, acting as Agents,
 - the European Commission, by L. Haasbeek and A. Sauka, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 25 November 2020,
- gives the following

Judgment

- 1 This request for a preliminary ruling concerns the validity (i) of Article 99(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 (OJ 2013 L 347, p. 549, and corrigendum, OJ 2016 L 130, p. 13) and (ii) of Article 73(4), first subparagraph, point (a) of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation No 1306/2013 with regard to the integrated administration and control system, rural development measures and cross compliance (OJ 2014 L 227, p. 69).
- 2 The request has been made in proceedings between De Ruiter vof and the minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality, Netherlands) ('the Minister'), concerning the reduction of direct payments for 2016, on account of non-compliance found in the same year with the cross-compliance rules in respect of aid received under the common agricultural policy (CAP), but relating in particular to instances of non-compliance which occurred in 2015.

Legal context

Regulation No 1306/2013

- 3 Recital 53 of Regulation No 1306/2013 states:

'Council Regulation (EC) No 1782/2003 [of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1)] which was replaced by [Council] Regulation (EC) No 73/2009 [of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation No 1782/2003 (OJ 2009 L 30, p. 16)] established the principle that the full payment to beneficiaries of some supports under the CAP should be linked to compliance with rules relating to land management, agricultural production

and agricultural activity. That principle was subsequently reflected in 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 [Council] Regulation (EC) No 1234/2007 [of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1)].

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

4 According to recital 57 of that regulation:

‘The cross-compliance system implies certain administrative constraints for both beneficiaries and national administrations since record keeping has to be ensured, checks have to be carried out and where necessary penalties have to be applied. Those penalties should be proportionate, effective and dissuasive. Such penalties should be without prejudice to other penalties laid down under Union or national law. For the sake of consistency, it is appropriate to merge the relevant Union provisions into one single legal instrument. ...’

5 Article 91 of that regulation, entitled ‘General principle’, provides, in paragraph 1 thereof:

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

6 Article 92 of that regulation, entitled ‘Beneficiaries concerned’, provides, in the first paragraph thereof:

‘Article 91 shall apply to beneficiaries receiving direct payments ...’

7 Article 97 of Regulation No 1306/2013, entitled ‘Application of the administrative penalty’, is worded as follows:

‘1. The administrative penalty provided for in Article 91 shall be imposed where the rules on cross-compliance are not complied with at any time in a given calendar year (“the calendar year concerned”), and where the non-compliance in question is directly attributable to the beneficiary who submitted the aid application or the payment claim in the calendar year concerned.

...

2. In cases in which the land is transferred during the calendar year concerned or the years concerned, paragraph 1 shall also apply where the non-compliance in question is the result of an act or omission directly attributable to the person to whom or from whom the agricultural land was transferred. By way of derogation from the first sentence, where the person to whom the act or omission is directly attributable has submitted an aid application or a payment claim in the calendar year concerned or the years concerned, the administrative penalty shall be imposed on the basis of the total amounts of the payments referred to in Article 92 granted or to be granted to that person.

For the purpose of this paragraph “transfer” means any type of transaction whereby the agricultural land ceases to be at the disposal of the transferor.

3. Notwithstanding paragraph 1, and subject to the rules to be adopted pursuant to Article 101, Member States may decide not to apply an administrative penalty per beneficiary and per calendar year when the amount of the penalty is EUR 100 or less.

Where a Member State decides to make use of the option provided for in the first subparagraph, the competent authority shall, for a sample of beneficiaries, take in the following year the actions necessary to verify that the beneficiary has remedied the findings of non-compliance concerned. The finding and the obligation to take remedial action shall be notified to the beneficiary.

...'

8 Under Article 99 of that regulation, entitled 'Calculation of the administrative penalty':

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

...'

Implementing Regulation No 809/2014

9 Article 73 of Implementing Regulation No 809/2014, entitled 'General principles', provides in the first subparagraph of paragraph 4, point (a):

The administrative penalty shall be applied to the total amount of the payments referred to in Article 92 of Regulation (EU) No 1306/2013 granted or to be granted to that beneficiary:

(a) following aid applications or payments claims he has submitted or will submit in the course of the year of the finding ...'

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

10 Following a check carried out on 3 March 2016 by the Nederlandse Voedsel- en Warenautoriteit (Netherlands Food and Consumer Product Safety Authority), the Minister informed the applicant in the main proceedings on 12 January 2017 of his intention to impose on it a 5% reduction of direct payments in respect of 2016, for non-compliance with the cross-compliance rules, on account of two instances of non-compliance in the health sector which had taken place in 2015 and one instance of non-compliance in the animal welfare sector which had taken place in 2016.

11 The College van Beroep voor het Bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands), before which the applicant in the main proceedings has brought an action, states that the year in which the first two instances of non-compliance with the cross-compliance rules occurred, namely 2015, was not the same as that in which the third instance of non-compliance occurred and in which the first two instances were found, namely 2016.

- 12 The referring court notes that, in accordance with Article 99(1) of Regulation No 1306/2013 and Article 73(4), first subparagraph, point (a) of Implementing Regulation No 809/2014 – the wording of which it considers to be clear in Dutch, English and French – the Minister applied the reduction for non-compliance with the cross-compliance rules in respect of the year in which the instances of non-compliance were found.
- 13 That court expresses doubts as to the validity of those two provisions in the light of the judgment of 25 July 2018, *Teglgård and Fløjstrupgård* (C-239/17, EU:C:2018:597, paragraphs 34 to 59), concerning the legislation which preceded the regulations applicable in the present case, while noting that the language versions of those regulations are different from those of that legislation.
- 14 On reading that judgment, the referring court raises the question whether, by using, in Regulation No 1306/2013 and Implementing Regulation No 809/2014, the year of the finding of the non-compliance in order to calculate the reduction in direct payments, the EU legislature made a choice contrary to the principles of equal treatment, proportionality and legal certainty.
- 15 The referring court notes that the Court held, in that judgment, first, that the taking into account of the year of a finding of non-compliance with the cross-compliance rules to calculate the reduction in direct payments gives rise to the risk that the amount of payments to which the reduction is applied is significantly higher than that of the payments of the year in which that non-compliance occurred or that, on the contrary, the reduction applied is significantly lower in the event of a reduction in the amount of direct payments between the year in which the non-compliance occurred and the year of its finding, second, that that taking into account cannot ensure a link between the farmer's behaviour leading to that reduction or cancellation and the reduction or cancellation itself, and, third, that such taking into account is likely to make it difficult for the farmer to predict the financial consequences he will have to bear.
- 16 The referring court therefore considers it necessary to make a reference to the Court of Justice for a preliminary ruling in order to determine whether Article 99(1) of Regulation No 1306/2013 and Article 73(4), first subparagraph, point (a) of Implementing Regulation No 809/2014 are valid.
- 17 That court therefore wonders whether there is a basis in EU law for imposing a reduction in direct payments in respect of 2016 as a result of non-compliance with the cross-compliance rules which occurred in 2015. It observes that the absence of such a basis would undermine the objective of Regulation No 1306/2013 concerning compliance with the cross-compliance rules which is set out in recitals 53 and 54 thereof.
- 18 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 question to the Court of Justice for a preliminary ruling:

'Are Article 99(1) of Regulation [No 1306/2013] and [point (a) of the first subparagraph of] Article 73(4) of [Implementing] Regulation [No 809/2014] valid, in so far as, in those provisions, the year of the finding of non-compliance is decisive for the determination of the year for which the cross-compliance reduction is calculated, in a situation where the year of the non-compliance with the cross-compliance rules is not the same as the year of the finding of non-compliance?'

Procedure before the Court

- 19 Due to the risks associated with the coronavirus pandemic, the hearing scheduled for 11 March 2020 was cancelled.
- 20 Consequently, by decision of 24 April 2020, the questions sent to the interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union for oral response at the hearing were converted into questions for written response.
- 21 The Danish, German, Netherlands and Swedish Governments, and the European Parliament, the Council of the European Union and the European Commission answered the written questions put by the Court.

Consideration of the question referred

- 22 As a preliminary point, it should be borne in mind that, in the procedure laid down in Article 267 TFEU for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it, and, with this in mind, the Court may have to reformulate the questions referred to it or to examine whether a question relating to the validity of a provision of EU law is based on a correct reading of the provision in question (judgment of 17 July 1997, *Krüger*, C-334/95, EU:C:1997:378, paragraphs 22 and 23).
- 23 Furthermore, in order to provide such a useful answer, the Court may decide to take into consideration rules of EU law to which the national court has made no reference in the wording of its question (judgment of 14 May 2020, *T-Systems Magyarország*, C-263/19, EU:C:2020:373, paragraph 45 and the case-law cited).
- 24 In that regard, the first subparagraph of Article 99(1) of Regulation No 1306/2013, the validity of which the Court is asked to interpret, cannot be taken into consideration outside of its context and, in particular, of the first subparagraph of Article 97(1) of that regulation, which states that the administrative penalty provided for in Article 91 of that regulation is to be imposed where the rules on cross-compliance are not complied with at any time in a given calendar year ('the calendar year concerned'), and where the non-compliance in question is directly attributable to the beneficiary who submitted the aid application or the payment claim in the calendar year concerned.
- 25 The first subparagraph of Article 99(1) of Regulation No 1306/2013 provides that the administrative penalty provided for in Article 91 of that regulation is to be applied by means of reduction or exclusion of the total amount of the payments listed in Article 92 of that regulation granted or to be granted to the beneficiary concerned in respect of aid applications he has submitted or will submit in the course of the calendar year of the finding.
- 26 It is therefore not apparent from an overall reading of the first subparagraph of Article 97(1) and the first subparagraph of Article 99(1) of Regulation No 1306/2013 that, contrary to the premiss on which the referring court relies in order to make a reference to the Court on the validity of the second of those provisions and on that of Article 73(4), first subparagraph, point (a) of

Implementing Regulation No 809/2014, the reduction of direct payments due to non-compliance with the cross-compliance rules must be calculated on the payments granted or to be granted in the year of the finding of that non-compliance.

- 27 It follows that, in order to provide the referring court with a useful answer based on a correct interpretation of the provisions referred to by it, the question referred for a preliminary ruling must be reformulated.
- 28 Thus, by its question, the referring court asks, in essence, whether the first subparagraph of Article 97(1) and the first subparagraph of Article 99(1) of Regulation No 1306/2013, and Article 73(4), first subparagraph, point (a) of Implementing Regulation No 809/2014 must be interpreted as meaning that reductions in direct payments on account of non-compliance with the cross-compliance rules must be calculated on the basis of the payments granted or to be granted in the year in which such non-compliance is found or on the basis of the payments granted or to be granted in the year in which such non-compliance occurred, and whether, if the Court adopts the first of those interpretations, those latter two provisions are valid.
- 29 In the first place, it should be noted that, in the judgment of 25 July 2018, *Teglgaard and Fløjstrupgård* (C-239/17, EU:C:2018:597), the Court interpreted, inter alia, the provisions of Regulation No 73/2009 and those of Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Regulation No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for [by] that Regulation, as well as for the implementation of Regulation No 1234/2007 (OJ 2009 L 316, p. 65). Those provisions preceded the first subparagraph of Article 97(1) and the first subparagraph of Article 99(1) of Regulation No 1306/2013, and Article 73(4), first subparagraph, point (a) of Implementing Regulation No 809/2014.
- 30 Such an interpretation was necessary in order to determine whether the reduction of direct payments due to non-compliance with the cross-compliance rules had to be applied on the payments granted or to be granted in the year in which that non-compliance occurred or on the payments granted or to be granted in the year in which that non-compliance was found.
- 31 In that regard, the Court held, first, that Regulation No 73/2009 required farmers to comply, during each year of operation, with the statutory management requirements and good agricultural and environmental conditions, which form the cross-compliance rules (judgment of 25 July 2018, *Teglgaard and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraph 42).
- 32 According to the Court, the full significance of compliance with those rules was clear only if the penalty for their infringement, whether due to negligence or an intentional act, led to a reduction in or cancellation of direct payments granted or to be granted in that calendar year of that infringement, only such a correspondence being likely to maintain the link between the farmer's behaviour which gave rise to the penalty and that penalty (judgment of 25 July 2018, *Teglgaard and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraph 43).
- 33 Secondly, in order to interpret Article 23(1) of Regulation No 73/2009, which stated that, where the cross-compliance rules were not complied with at any time in a given calendar year, referred to as the 'calendar year concerned', and that non-compliance was the result of an act or omission directly attributable to the farmer who had submitted the aid application in the calendar year concerned, the total amount of direct payments granted or to be granted to that farmer was to be

reduced, the Court refused to rely on the wording of Article 70(8)(a) of Regulation No 1122/2009, since an implementing regulation, such as that latter regulation, adopted on the basis of an enabling provision in the basic regulation, may not derogate from the provisions of that regulation, to which it is subordinate (see, to that effect, judgment of 25 July 2018, *Teglgaard and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraphs 45, 56 and 57).

- 34 The Court specified that the latter provision related in reality to the methods of reducing direct payments for non-compliance with cross-compliance rules and not to the rules for calculation of such a reduction (judgment of 25 July 2018, *Teglgaard and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraphs 46 and 58).
- 35 Thirdly, the Court held that such an interpretation of the legal framework before it was borne out by the principles of equal treatment, proportionality and legal certainty (judgment of 25 July 2018, *Teglgaard and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraph 47).
- 36 As regards the first of those principles, the Court held that using as the basis for the calculation of the reduction of direct payments those granted or to be granted in the year in which non-compliance with the cross-compliance rules occurred enabled removal of the risk that the amount of payments to which the reduction was applied was significantly higher than that of that year or, on the contrary, that the reduction applied was significantly lower in the event of a reduction in the amount of direct payments between the year in which the non-compliance occurred and the year of its finding, which was thus such as to guarantee equal treatment among farmers (see, to that effect, judgment of 25 July 2018, *Teglgaard and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraph 48).
- 37 As regards the principle of proportionality, the Court held that observance of that principle was still ensured where the reduction or cancellation of the direct payments was calculated on the amount of direct payments granted or to be granted in the calendar year in which the non-compliance with the cross-compliance rules occurred, since the link between the farmer's behaviour which led to such a reduction or cancellation and that reduction or cancellation itself was maintained, a reduction or cancellation calculated in that manner being appropriate for ensuring the achievement of the objective of the relevant EU legislation, which is to penalise instances of non-compliance with the cross-compliance rules, and not going beyond what is necessary to achieve that objective (see judgment of 25 July 2018, *Teglgaard and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraph 51).
- 38 Lastly, as regards the principle of legal certainty, the Court found that, when the reduction or cancellation of the direct payments was calculated on the basis of the amount of those ? payments granted or to be granted in the calendar year in which the non-compliance with the cross-compliance rules occurred, there was no risk that it would be difficult to predict the financial consequences for the farmer concerned, since any change in the factual circumstances, on the basis of which those payments are granted, subsequent to the occurrence of that non-compliance had no impact on the financial consequences which he would have to bear (see judgment of 25 July 2018, *Teglgaard and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraph 53).
- 39 In the second place, according to the Court's settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 25 July 2018, *Teglgaard and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraph 35 and the case-law cited).

- 40 First, as regards their respective wording, both the first subparagraph of Article 97(1) and the first subparagraph of Article 99(1) of Regulation No 1306/2013 use the term ‘applied’ or, in certain language versions, the term ‘imposed’, as regards the administrative penalty provided for in Article 91 of that regulation. As the Advocate General observed in point 61 of his Opinion, those are terms with a broad meaning, which may just as much mean ‘calculate’ the penalty as ‘impute’ it, according to the distinction made by the Court in the judgment of 25 July 2018, *Teglgård and Fløjstrupgård* (C-239/17, EU:C:2018:597, paragraph 46).
- 41 It should be noted that the first subparagraph of Article 97(1) of Regulation No 1306/2013 refers to the fact that the cross-compliance rules are not complied with at any time in a given calendar year, referred to as ‘the calendar year concerned’, as the event giving rise to the reduction or exclusion of direct payments and that it is thus drafted in terms very similar to those of Article 23(1) of Regulation No 73/2009, which was interpreted as providing that the reductions in direct payments due to non-compliance with the cross-compliance rules must be calculated on the basis of the payments granted or to be granted in the calendar year in which the non-compliance occurred (judgment of 25 July 2018, *Teglgård and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraphs 54 to 56).
- 42 In addition, as the Advocate General observed in points 62 and 63 of his Opinion, it is clear from the correlation table in Annex XI to Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Regulation No 73/2009 (OJ 2013 L 347, p. 608) that Article 97 of Regulation No 1306/2013 replaced Article 23 of Regulation No 73/2009.
- 43 Furthermore, it should be noted that it is also clear from that correlation table that Article 99 of Regulation No 1306/2013 replaced Article 24 of Regulation No 73/2009, entitled ‘Detailed rules on reductions and exclusions in the event of non-compliance with cross-compliance rules’ and which provided, inter alia, for the circumstances which could affect the percentage level of reductions to be applied.
- 44 Nonetheless, none of the provisions in Article 24 of Regulation No 73/2009 corresponds to the wording of the first subparagraph of Article 99(1) of Regulation No 1306/2013, which is drafted in terms similar to those of Article 70(8)(a) of Regulation No 1122/2009, adopted for the application of Regulation No 73/2009 and which stated that ‘the percentage of the reduction shall be applied to ... the overall amount of direct payments that has been, or has to be, granted to the farmer concerned following aid applications he has submitted or will submit in the course of the calendar year of the finding’.
- 45 As regards the latter provision, the Court specified that it related in reality to the methods of reducing direct payments for non-compliance with cross-compliance rules and not to the rules for calculation of such a reduction (see, to that effect, judgment of 25 July 2018, *Teglgård and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraphs 46 and 58).
- 46 The fact that Article 99 of Regulation No 1306/2013 is entitled ‘Calculation of the administrative penalty’ cannot have any effect since (i) the first subparagraph of paragraph 1 of that article refers in reality to the methods of reducing direct payments for non-compliance with cross-compliance rules, and (ii) other provisions in Article 99 concern certain methods for calculating such a

penalty, such as, inter alia, the setting of maximum reduction rates where the non-compliance is due to negligence or in the case of reoccurrence, which are referred to in the first subparagraph of Article 99(2) of that regulation.

- 47 Accordingly, it is apparent from the respective wording of the first subparagraph of Article 97(1) of Regulation No 1306/2013 and the first subparagraph of Article 99(1) of that regulation that the first of those provisions concerns the calculation of the administrative penalty provided for in Article 91 of that regulation and that the second relates to the imputation of that penalty.
- 48 Secondly, the context of the first subparagraph of Article 97(1) of Regulation No 1306/2013 confirms that that provision concerns the calculation of the reductions to be applied to direct payments.
- 49 Thus, several provisions of Article 97 of Regulation No 1306/2013 refer to the year in which the non-compliance with the cross-compliance rules occurs. The second sentence of the first subparagraph of Article 97(2) of that regulation states that, where the person to whom the act or omission is directly attributable has submitted an aid application or a payment claim in the calendar year concerned, the administrative penalty is to be imposed on the basis of the total amounts of the payments referred to in Article 92 of that regulation, thereby underscoring the link between the year in which the non-compliance occurs and the payments on the basis of which the administrative penalty is calculated, namely those corresponding to aid applications submitted in respect of the same year. Secondly, the first subparagraph of Article 97(3) of that regulation provides that Member States may decide not to apply an administrative penalty per beneficiary and per calendar year when the amount of the penalty is EUR 100 or less, thus underlining the rule that the administrative penalty is to be calculated on direct payments in the year in which the non-compliance occurs.
- 50 Thirdly, the purpose of Regulation No 1306/2013 is to ensure a link between direct payments and compliance with the cross-compliance rules, by requiring, as stated in recital 53 of that regulation, a reduction or exclusion of that support in whole or in part in the event of non-compliance. The existence of such a link in the earlier legislation led the Court to hold that the full significance of compliance with those rules was clear only if the penalty for their infringement led to a reduction in or cancellation of direct payments granted or to be granted in that calendar year of that infringement (judgment of 25 July 2018, *Teglgaard and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraph 43).
- 51 Such a consideration must also prevail in the interpretation of the first subparagraph of Article 97(1) and of the first subparagraph of Article 99(1) of Regulation No 1306/2013 and of Article 73(4), first subparagraph, point (a) of Implementing Regulation No 809/2014, in order to best ensure the link between direct payments and cross-compliance rules, and also compliance with the principles of equal treatment, proportionality and legal certainty (see, to that effect, judgment of 25 July 2018, *Teglgaard and Fløjstrupgård*, C-239/17, EU:C:2018:597, paragraphs 47 to 52).
- 52 It is true that recital 57 of Regulation No 1306/2013 states that penalties imposed for non-compliance with the cross-compliance rules should be effective and dissuasive. However, such a requirement has a central role in a system of penalties such as that provided for by that regulation. The calculation of the penalty is effected, in accordance with the first subparagraph of Article 97(1) of that regulation, on the basis of direct payments granted or to be granted in the year in which the non-compliance occurred, which makes it possible to ensure the link between the

farmer's behaviour and the penalty and, therefore, the proportionality of that penalty, a principle which is also mentioned in recital 57. Moreover, the penalty is imputed, in accordance with the first subparagraph of Article 99(1) of that regulation, on the basis of direct payments granted or to be granted in the year in which the non-compliance is found, which ensures the effectiveness and dissuasiveness of the penalty, since the penalty is applied on the payments due to the farmer in that year, without there being any need for a procedure separate from the procedure for clearing those payments.

- 53 Fourthly, as the Advocate General stated in points 79 to 84 of his Opinion, nothing in the preparatory documents which led to the adoption of Regulation No 1306/2013 permits the inference that the EU legislature intended to adopt the rule that reductions to be applied to direct payments in the event of non-compliance with the cross-compliance rules had to be calculated on the payments granted or to be granted in the year in which those instances of non-compliance were found.
- 54 First of all, none of the recitals of Regulation No 1306/2013 refers to such an intention. On the contrary, recital 57 thereof mentions that that regulation is intended, 'for the sake of consistency, ... to merge the relevant Union provisions into one single legal instrument', merely reproducing, in that way and in the absence of any indication to the contrary, the system of penalties for non-compliance with the cross-compliance rules which emerged from the previous legislation, without amending it.
- 55 Next, it is not apparent from the preparatory documents for Regulation No 1306/2013 that, contrary to what is claimed by the Commission, the EU legislature intended to adopt a rule according to which reductions to be applied to direct payments in the event of non-compliance with the cross-compliance rules had to be calculated on the payments granted or to be granted in the year in which those instances of non-compliance were found. There is nothing to suggest that the change, made on a proposal from the Commission, to the wording of the first subparagraph of Article 99(1) of the draft regulation, which became Regulation No 1306/2013, was intended to amend the rule as set out in Regulation No 73/2009 and Regulation No 1122/2009 for calculating those reductions.
- 56 Lastly, although the Commission's internal documents, produced before the Court, refer, as grounds for that amendment, to the choice of the year of the finding of non-compliance in order to calculate those reductions on account of the difficulty in establishing the year in which those cases arose, it must be observed, as the Parliament and the Council point out, that no passage from the published preparatory documents refers to such grounds.
- 57 In the third place, the arguments put forward in particular by the Netherlands and German Governments that practical difficulties make it necessary to adopt a simple rule for the calculation of reductions in direct payments, namely that based on the year in which instances of non-compliance with the cross-compliance rules are found, cannot succeed.
- 58 A Member State cannot rely on practical difficulties to justify an interpretation of provisions providing for a system of penalties for non-compliance with the cross-compliance rules which would run counter to the very wording of those provisions (see, by analogy, judgments of 21 February 1991, *Germany v Commission*, C-28/89, EU:C:1991:67, paragraph 18, and of 14 April 2005, *Spain v Commission*, C-468/02, not published, EU:C:2005:221, paragraph 44).

- 59 Moreover, it is apparent from an examination of both the recitals of Regulation No 1306/2013 and the preparatory documents for that regulation that, as was already observed in paragraph 56 of this judgment, the EU legislature did not take account of such difficulties before adopting that system of penalties and, in particular, the first subparagraph of Article 97(1) and the first subparagraph of Article 99(1) of Regulation No 1306/2013.
- 60 As regards the interpretation of Article 73(4), first subparagraph, point (a) of Implementing Regulation No 809/2014, it should be noted that the wording of that provision is, in essence, identical to that of Article 99(1) of Regulation No 1306/2013, Implementing Regulation No 809/2014 laying down rules for the application of that regulation. In those circumstances, the considerations set out in paragraphs 24 to 59 of this judgment concerning Article 99(1) of Regulation No 1306/2013 are also relevant to the interpretation of Article 73(4), first subparagraph, point (a) of Implementing Regulation No 809/2014.
- 61 In the light of the foregoing considerations, the answer to the question referred is that the first subparagraph of Article 97(1) and the first subparagraph of Article 99(1) of Regulation No 1306/2013 and Article 73(4), first subparagraph, point (a) of Implementing Regulation No 809/2014 must be interpreted as meaning that reductions of direct payments due to non-compliance with the cross-compliance rules must be calculated on the basis of the payments granted or to be granted in the year in which such non-compliance occurred.

Costs

- 62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

The first subparagraph of Article 97(1) and the first subparagraph of Article 99(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, and Article 73(4), first subparagraph, point (a) of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation No 1306/2013 with regard to the integrated administration and control system, rural development measures and cross compliance must be interpreted as meaning that reductions of direct payments due to non-compliance with the cross-compliance rules must be calculated on the basis of the payments granted or to be granted in the year in which such non-compliance occurred.

[Signatures]