



## Reports of Cases

### JUDGMENT OF THE COURT (Third Chamber)

14 July 2022\*

(Reference for a preliminary ruling – Common agricultural policy – Regulation (EU) No 1307/2013 – Direct support schemes – Common rules – Article 30(6) and Article 50(2) – Application for payment entitlements from the national reserve for young farmers – National administrative authority which has given incorrect information about the classification of a person as a ‘young farmer’ – Principle of the protection of legitimate expectations – Action seeking reparation for loss or harm based on the failure to comply with the national law principle of legitimate expectations)

In Case C-36/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands), made by decision of 22 December 2020, received at the Court on 22 January 2021, in the proceedings

**Sense Visuele Communicatie en Handel vof**, also trading under the name De Scharrelderij,

v

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

THE COURT (Third Chamber),

composed of K. Jürimäe (Rapporteur), President of the Chamber, N. Jääskinen, M. Safjan, N. Piçarra and M. Gavalec, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Sense Visuele Communicatie en Handel vof, also trading under the name De Scharrelderij, by P. Heida and L. Rensema,
- the Netherlands Government, by M.K. Bulterman and C.S. Schillemans, acting as Agents,

\* Language of the case: Dutch.

– the Spanish Government, by J. Rodríguez de la Rúa Puig, acting as Agent,  
– the European Commission, by A. Sauka and C. Zois, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 24 February 2022,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of general principles of EU law, in particular the principle of the protection of legitimate expectations.
- 2 The request has been made in proceedings between Sense Visuele Communicatie en Handel vof (also trading under the name De Scharrelderij) ('Sense') and the Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality, Netherlands; 'the Minister') concerning compensation for the loss or harm allegedly suffered as a result of erroneous information communicated to Sense by the Rijksdienst voor Ondernemend Nederland (Netherlands Enterprise Agency; 'the RVO') concerning the application of provisions of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608).

### **Legal context**

#### ***European Union law***

- 3 Article 30(1), (4), (6) and (11) of Regulation No 1307/2013 provides:  
  
‘1. Each Member State shall establish a national reserve. In order to do so, Member States shall proceed, in the first year of implementation of the basic payment scheme, to a linear percentage reduction of the basic payment scheme ceiling at national level.  
  
...  
  
4. Member States shall allocate payment entitlements from their national or regional reserves in accordance with objective criteria and in such a way as to ensure the equal treatment of farmers and to avoid distortions of the market and of competition.  
  
...  
  
6. Member States shall use their national or regional reserves to allocate payment entitlements, as a matter of priority, to young farmers and to farmers commencing their agricultural activity.  
  
...’

11. For the purposes of this Article, the following definitions shall apply:

(a) “young farmers” means farmers fulfilling the conditions laid down in Article 50(2) and, where relevant, the conditions referred to in Article 50(3) and (11);

...’

4 Under Article 50(2) of that regulation:

‘For the purposes of this Chapter, “young farmers”, means natural persons:

(a) who are setting up for the first time an agricultural holding as head of the holding, or who have already set up such a holding during the five years preceding the first submission of an application under the basic payment scheme or the single area payment scheme referred to in Article 72(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

(b) who are no more than 40 years of age in the year of submission of the application referred to in point (a).’

### *Netherlands law*

5 Article 2.1 of the Uitvoeringsregeling rechtstreekse betalingen GLB (Ministerial regulation implementing the common agricultural policy direct payments schemes), in the version applicable to the dispute in the main proceedings, stated:

‘1. The Minister shall allocate payment entitlements to the farmer on application, in accordance with ... Article 30(4) of [Regulation No 1307/2013].

2. The Minister shall grant direct payments in respect of:

(a) the basic payment scheme under Article 32 of [Regulation No 1307/2013];

(b) payment for agricultural practices beneficial for the climate and the environment;

(c) payment for young farmers;

...’

6 Article 4.2 of that ministerial regulation, in the version applicable to the dispute in the main proceedings, read as follows:

‘1. A farmer who asserts a claim to direct payments as referred to in Article 2(1)(2) shall use the single application when applying for or activating payment entitlements or applying for payments.

...

3. Except where the first paragraph of Article 12 of [Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ 2014 L 181, p. 48)] applies, the single application shall be submitted to the Minister in the period from 1 March to 15 May.'

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

- 7 Sense, a general partnership with two partners, A and B, has operated a pig-fattening farm since 2017. On 21 January 2018, A attained the age of 41.
- 8 Sense asked the RVO, which is the body entrusted with the implementation of the EU common agricultural policy in the Netherlands, whether it could obtain payment entitlements from the Nationale reserve voor Jonge landbouwers (National reserve for young farmers, Netherlands; 'the national reserve'). During telephone interviews which took place on 15 March 2018, 5 April 2018 and 9 January 2019, RVO employees indicated to Sense that it could be allocated payment entitlements from that national reserve, since A had been under 41 years of age at some point in 2018. That information was confirmed by an email sent by an RVO employee to Sense on 15 January 2019.
- 9 On 5 April 2018, Sense submitted a joint declaration, in which it applied, first, to be allocated payment entitlements from the national reserve, on the ground that A was a young farmer, and, second, to be transferred the payment entitlements, greening payment and additional payment for young farmers.
- 10 By decisions of 2 and 4 January 2019, the minister rejected those applications.
- 11 Sense lodged complaints against those decisions, which were rejected by decision of the Minister of 22 March 2019. According to the Minister, Sense did not qualify for payment entitlements from the national reserve. Since A was over 40 years of age in 2018, she did not fulfil the age requirement laid down in Article 50(2)(b) of Regulation No 1307/2013. Given that Sense was not eligible for payment entitlements on 15 May 2018, it could not obtain the payment entitlements, greening payment and additional payment for young farmers.
- 12 Sense brought an action before the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands), which is the referring court, seeking annulment of the decision of 22 March 2019 and compensation for the financial loss which it claims to have suffered.
- 13 The referring court states that the subject matter of the dispute in the main proceedings concerns, not the allocation of payment entitlements from the national reserve, but the question whether, in not offering to compensate Sense, the Minister acted in breach of the principle of the protection of legitimate expectations.
- 14 In that regard, it has been established that, in 2018, Sense could not be allocated payment entitlements from the national reserve since A, who was declared to be a young farmer, did not fulfil the age requirement laid down in Article 50(2)(b) of Regulation No 1307/2013.

- 15 That said, the referring court takes the view that the information provided by the RVO to Sense during the telephone conversations on 15 March and 5 April 2018 could reasonably have led Sense to believe that it could obtain such entitlements even though A had reached the age of 41 in 2018. On the basis of that information, Sense applied for the allocation of payment entitlements from the national reserve for 2018 and did not purchase any payment entitlements. As a result, it was deprived of the basic payment and the greening payment for 2018 when those payments could have been granted to it if it had purchased payment entitlements. Sense therefore suffered harm corresponding to the loss of those payments, after deduction of the purchase costs of the payment entitlements.
- 16 That court states that, since EU law is directly applicable to the allocation of payment entitlements and the transfer of direct payments, it is appropriate to apply the principle of the protection of legitimate expectations recognised by EU law. According to the case-law of the Court, that principle cannot be relied upon against an unambiguous provision of EU law. Since Article 50(2)(b) of Regulation No 1307/2013 is an unambiguous provision, the conduct of RVO employees was not capable of giving rise to a legitimate expectation on the part of Sense of beneficial treatment contrary to EU law.
- 17 The referring court infers from the case-law of the Court that where, in the application of EU law, Member States are obliged to respect the principle of the protection of legitimate expectations recognised by EU law, it is not possible to apply the principle of the protection of legitimate expectations recognised by national law. Accordingly, Sense cannot rely on that principle in order to obtain payment entitlements from the national reserve.
- 18 However, the question arises whether that case-law also implies that Sense cannot obtain, on the basis of the principle of the protection of legitimate expectations recognised by national law, compensation for the loss or harm suffered as a result of the fact that, on the basis of incorrect information communicated to it, it applied for the allocation of payment entitlements from the national reserve instead of purchasing payment entitlements. According to the referring court, the Court has not yet ruled on such a question.
- 19 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:

‘Does EU law preclude an assessment, on the basis of the principle of the protection of legitimate expectations under national law, of whether a national administrative body has created expectations contrary to a provision of EU law and has thus acted unlawfully under national law in failing to compensate the injured party for the damage suffered as a result, where the injured party cannot successfully invoke the principle of the protection of legitimate expectations under EU law because it involves an unambiguous provision of EU law?’

### **Admissibility of the request for a preliminary ruling**

- 20 Sense contends that the request for a preliminary ruling is inadmissible. First, it asks, in essence, whether the references made by the referring court to the principle of the protection of legitimate expectations are relevant since, in accordance with the case-law of the Court, it is common ground that it cannot derive any right from the expectation created by the national

administrative authority in breach of EU law. Second, it observes that the referring court makes no reference to the principle of proportionality which should, however, be the basis for compensation for the alleged damage.

- 21 It follows from the Court's settled case-law that, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (see, to that effect, judgments of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 34 and the case-law cited, and of 16 October 2019, *Agrárminiszter*, C-490/18, EU:C:2019:863, paragraph 20 and the case-law cited).
- 22 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for this Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, judgments of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 35 and the case-law cited, and of 16 October 2019, *Agrárminiszter*, C-490/18, EU:C:2019:863, paragraph 21 and the case-law cited).
- 23 In the present case, it is apparent from the request for a preliminary ruling that the referring court is uncertain as to the interpretation of the general principles of EU law, and more specifically of the principle of the protection of legitimate expectations, in order to determine whether that principle precludes an injured party from invoking only the principle of the protection of legitimate expectations recognised by national law.
- 24 Consequently, the request for a preliminary ruling is admissible.

### **Consideration of the question referred**

- 25 By its question, the referring court asks, in essence, whether EU law and, in particular, the principle of the protection of legitimate expectations must be interpreted as precluding an injured party from obtaining, by virtue of the principle of the protection of legitimate expectations recognised by national law and solely on the basis of that law, compensation for loss or harm resulting from a misinterpretation by a national authority of an unambiguous provision of EU law.
- 26 It should be borne in mind that, according to the settled case-law of the Court, the principle of the protection of legitimate expectations forms part of the EU legal order and is binding on every national authority responsible for applying EU law (see, to that effect, judgments of 26 April 1988, *Krücken*, 316/86, EU:C:1988:201, paragraph 22, and of 7 August 2018, *Administratīvā rajona tiesa*, C-120/17, EU:C:2018:638, paragraph 48).

- 27 It follows that, when implementing the provisions in Regulation No 1307/2013, national authorities are required to observe the principle of the protection of legitimate expectations.
- 28 According to the settled case-law of the Court, the principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of EU law; nor can the conduct of a national authority responsible for applying EU law, which acts in breach of that law, give rise to a legitimate expectation on the part of a trader of beneficial treatment contrary to EU law (judgments of 26 April 1988, *Krücken*, 316/86, EU:C:1988:201, paragraph 24; of 20 June 2013, *Agroferm*, C-568/11, EU:C:2013:407, paragraph 52 and the case-law cited; and of 20 December 2017, *Erzeugerorganisation Tiefkühlgemüse*, C-516/16, EU:C:2017:1011, paragraph 69).
- 29 Accordingly, an injured party cannot rely upon the principle of the protection of legitimate expectations under EU or national law for the purposes of being allocated an advantage which is contrary to an unambiguous provision of EU law.
- 30 Reliance upon the principle of the protection of legitimate expectations recognised by national law for the purposes of obtaining an advantage contrary to EU law would, as the Advocate General observed in points 27 to 30 of her Opinion, be liable to call into question the primacy, effectiveness and uniform application of EU law in all the Member States, to give rise to distortions of competition between them within the internal market and, where the advantage at issue is financed by the EU budget, to prejudice the financial interests of the European Union.
- 31 In the present case, it is apparent from the explanations provided by the referring court that Sense, for the year 2018, applied for an allocation of payment entitlements from the national reserve for ‘young farmers’, within the meaning of Article 50(2) of Regulation No 1307/2013.
- 32 That provision makes the classification of a farmer as a ‘young farmer’ subject to, inter alia, an age requirement which restricts that classification to natural persons ‘who are no more than 40 years of age in the year’ of the first submission of an application under the basic payment scheme or under the single area payment scheme.
- 33 Accordingly, it follows unequivocally from the wording of that provision that that age condition requires the person concerned not to have reached the age of 41 at any time during the year of the first application.
- 34 Therefore, and as the referring court, the parties to the main proceedings and the interested parties which have submitted observations to the Court also agree, Article 50(2)(b) of Regulation No 1307/2013, in so far as it lays down an age condition, constitutes an unambiguous provision of EU law, within the meaning of the case-law referred to in paragraph 28 above.
- 35 It follows that the principle of the protection of legitimate expectations cannot be relied upon by a farmer who does not satisfy the age condition laid down in Article 50(2)(b) of Regulation No 1307/2013, against that provision, for the purposes of allocating payment entitlements from the national reserve and for the grant of payments on the basis of such entitlements.
- 36 On the other hand, EU law does not preclude such a farmer, by an action for damages based exclusively on national law, from seeking not an advantage contrary to EU law, but compensation for the damage allegedly caused by the national authority entrusted with implementing the provisions of Regulation No 1307/2013 in breach of the principle of the protection of legitimate

expectations recognised by national law, in so far as that authority provided him or her with incorrect information as to the interpretation of those provisions (see, by analogy, judgments of 27 September 1988, *Asteris and Others*, 106/87 to 120/87, EU:C:1988:457, paragraphs 19 and 20, and of 16 July 1992, *Belovo*, C-187/91, EU:C:1992:333, paragraph 20).

- 37 Whereas the conditions governing the allocation to young farmers of payment entitlements from the national reserve and the grant of payments on the basis of such payment entitlements are governed by the provisions of Regulation No 1307/2013, such an action for compensation is based exclusively on the national law of the Member State concerned.
- 38 It cannot be regarded as contrary to EU law for national law, as far as compensation for loss or harm caused by conduct attributable to the national authority entrusted with implementing EU law is concerned, to take into consideration the principle of the protection of legitimate expectations recognised by national law.
- 39 That said, the principle that the application of national law must not undermine the application and effectiveness of EU law requires that the interests of the European Union also be taken fully into consideration when applying the principle of the protection of legitimate expectations recognised by national law (see, by analogy, judgment of 13 March 2008, *Vereniging Nationaal Overlegorgaan Sociale Werkvoorziening and Others*, C-383/06 to C-385/06, EU:C:2008:165, paragraph 55 and the case-law cited).
- 40 That means, as the Advocate General stated, in essence, in points 36 to 44 of her Opinion, that the compensation which may be obtained following such an action based on national law must not be equated with the grant of an advantage contrary to EU law, that it cannot be borne by the EU budget and that it must not be such as to give rise to distortions of competition between Member States.
- 41 Without prejudice to an assessment, by the referring court, of those conditions for the purposes of the dispute in the main proceedings, it must be stated that those conditions appear to be satisfied in the case of an action for damages which, in the circumstances set out in paragraph 36 above, seeks exclusively compensation for loss or harm corresponding, in essence, to the amount of direct payments which could have been granted to a farmer if he or she had purchased payment entitlements, after deduction of the purchase costs of those payment entitlements, whereas the farmer did not seek to purchase those payment entitlements due to incorrect information provided by the competent national authority.
- 42 Furthermore, as the Netherlands Government and the Commission emphasise, and as the Advocate General stated in point 39 of her Opinion, any action for damages brought under national law and based on the unlawful conduct of a national authority would be compensated exclusively from the national budget. Consequently, such an action could not have a detrimental effect on the funds arising from the European Union's budget or affect its financial interests.
- 43 Such an action may therefore satisfy the three conditions set out in paragraph 40 above since it cannot lead either to the allocation of payment entitlements from the national reserve under Regulation No 1307/2013 or to the grant of a payment under that regulation and does not in any other way affect the financial interests of the European Union.



- 44 In the light of all the foregoing considerations, the answer to the question referred is that EU law and, in particular, the principle of the protection of legitimate expectations must be interpreted as not precluding an injured party from obtaining, by virtue of the principle of the protection of legitimate expectations recognised by national law and solely on the basis of that law, compensation for loss or harm resulting from a misinterpretation by a national authority of an unambiguous provision of EU law, provided that that compensation is not equivalent to the grant of an advantage contrary to EU law, that it is not borne by the EU budget and that it is not such as to give rise to distortions of competition between Member States.

### **Costs**

- 45 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 (Third Chamber) hereby rules:

**EU law and, in particular, the principle of the protection of legitimate expectations must be interpreted as not precluding an injured party from obtaining, by virtue of the principle of the protection of legitimate expectations recognised by national law and solely on the basis of that law, compensation for loss or harm resulting from a misinterpretation by a national authority of an unambiguous provision of EU law, provided that that compensation is not equivalent to the grant of an advantage contrary to EU law, that it is not borne by the EU budget and that it is not such as to give rise to distortions of competition between Member States.**

[Signatures]