Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

27 January 2022 *

(Reference for a preliminary ruling – Charter of Fundamental Rights of the European Union – Article 17 – Right to property – Directive 2009/147/EC – Compensation for the damage caused to aquaculture by protected wild birds in a Natura 2000 area – Compensation less than the damage actually suffered – Article 107(1) TFEU – State aid – Concept of 'advantage' – Conditions – Regulation (EU) No 717/2014 – *De minimis* rule)

In Case C-238/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa (Senāts) (Supreme Court, Latvia), made by decision of 4 June 2020, received at the Court on 5 June 2020, in the proceedings

'Sātiņi-S' SIA,

intervening party:

Dabas aizsardzības pārvalde,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third Chamber, J. Passer (Rapporteur), F. Biltgen, L.S. Rossi and N. Wahl, Judges,

Advocate General: A. Rantos,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 3 June 2021,

after considering the observations submitted on behalf of:

– 'Sātiņi-S' SIA, by A. Grigorjevs,

– the Latvian Government, initially by K. Pommere, V. Soņeca and V. Kalniņa, and subsequently by K. Pommere, acting as Agents,

– Ireland, by M. Browne, J. Quaney, M. Lane and by A. Joyce, acting as Agents, and by S. Kingston, Senior Counsel, and G. Gilmore, Barrister-at-Law,

* Language of the case: Latvian.

– the Netherlands Government, by M. de Ree, acting as Agent,

– the European Commission, by initially by V. Bottka, C. Hermes and I. Naglis, and subsequently by V. Bottka and C. Hermes, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 September 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 17(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), Articles 107 and 108 TFEU and Article 3(2) of Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid in the fishery and aquaculture sector (OJ 2014 L 190, p. 45).

2 The request has been made in proceedings between 'Sātiņi-S' SIA and the Dabas aizsardzības pārvalde (Environmental Protection Authority, Latvia) concerning the latter's refusal to grant it compensation for damage caused to its aquaculture farm by wild birds on a Natura 2000 site on the ground that it had already obtained the maximum amount of money that could be granted to it in the light of the *de minimis* rule on State aid.

Legal context

European Union law

Directive 92/43/EEC

3 Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) ('the "Habitats" Directive') provides:

'Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.'

Directive 2009/147/EC

4 Article 4(4) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7) ('the "Birds" Directive') is worded as follows:

'In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.'

5 Article 5 of that directive provides:

‘Without prejudice to Articles 7 and 9, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular:

(a) deliberate killing or capture by any method;

(b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;

(c) taking their eggs in the wild and keeping these eggs even if empty;

(d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;

(e) keeping birds of species the hunting and capture of which is prohibited.’

Regulation No 717/2014

6 Recital 15 of Regulation No 717/2014 provides:

‘For the purposes of transparency, equal treatment and effective monitoring, this Regulation should apply only to *de minimis* aid for which it is possible to calculate precisely the gross grant equivalent *ex ante* without any need to undertake a risk assessment (“transparent aid”). Such a precise calculation can, for instance, be made for grants, interest rate subsidies, capped tax exemptions or other instruments that provide for a cap ensuring that the relevant ceiling is not exceeded. Providing for a cap means that as long as the precise amount of aid is not or not yet known, the Member State has to assume that the amount equals the cap in order to ensure that several aid measures together do not exceed the ceiling set out in this Regulation and to apply the rules on cumulation.’

7 Article 1 of that regulation, under the heading ‘Scope’, provides:

‘1. This Regulation applies to aid granted to undertakings in the fishery and aquaculture sector, with the exception of:

(a) aid the amount of which is fixed on the basis of price or quantity of products purchased or put on the market;

(b) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;

(c) aid contingent upon the use of domestic over imported goods;

(d) aid for the purchase of fishing vessels;

(e) aid for the modernisation or replacement of main or ancillary engines of fishing vessels;

(f) aid to operations increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish;

(g) aid for the construction of new fishing vessels or importation of fishing vessels;

(h) aid to the temporary or permanent cessation of fishing activities unless specifically provided for in the 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)];

(i) aid to exploratory fishing;

(j) aid to the transfer of ownership of a business;

(k) aid to direct restocking, unless explicitly provided for as a conservation measure by a Union legal act or in the case of experimental restocking.

2. Where an undertaking is active in the fishery and aquaculture sector and is also active in one or more of the sectors or has other activities falling within the scope of [Commission] Regulation (EU) No 1407/2013 [of 18 December 2013 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid (OJ 2013 L 352, p. 1)], that Regulation shall apply to aid granted in respect of the latter sectors or activities, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the activities in the fishery and aquaculture sector do not benefit from the *de minimis* aid granted in accordance with that Regulation.

3. Where an undertaking is active in the fishery and aquaculture sector as well as in the primary production of agricultural products falling within the scope of Commission Regulation (EU) No 1408/2013 [of 18 December 2013 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid in the agriculture sector (OJ 2013 L 352, p. 9)], this Regulation shall apply to aid granted in respect of the former sector provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the primary production of agricultural products does not benefit from *de minimis* aid granted in accordance with this Regulation.'

8 Article 3 of that regulation, under the heading '*De minimis* aid', provides in paragraphs 1 to 3:

'1. Aid measures shall be deemed not to meet all the criteria in Article 107(1) [TFEU], and shall therefore be exempt from the notification requirement in Article 108(3) [TFEU], if they fulfil the conditions laid down in this Regulation.

2. The total amount of *de minimis* aid granted per Member State to a single undertaking in the fishery and aquaculture sector shall not exceed EUR 30 000 over any period of three fiscal years.

3. The cumulative amount of *de minimis* aid granted per Member State to undertakings active in the fishery and aquaculture sector over any period of three fiscal years shall not exceed the national cap set out in the Annex.'

9 Article 4 of that regulation, under the heading 'Calculation of gross grant equivalent', provides:

'1. This Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without any need to undertake a risk assessment ("transparent aid").

2. Aid comprised in grants or interest rate subsidies shall be considered as transparent *de minimis* aid.

…

7. Aid comprised in other instruments shall be considered as transparent *de minimis* aid if the instrument provides for a cap ensuring that the relevant ceiling is not exceeded.'

Latvian law

10 Article 4 of the Sugu un biotopu aizsardzības likums (Law on the conservation of species and biotopes) of 16 March 2000 (*Latvijas Vēstnesis*, 2000, No 121/122), under the heading 'Powers of the Council of Ministers', provides in paragraph 6:

'The Council of Ministers shall lay down:

…

(6) the procedures for determining the amount of losses suffered by land users as a result of serious damage caused by animals of migratory species and specially protected non-cynegetic species, and the minimum requirements to be met by the protective measures necessary to avoid damage;

…'

11 Article 10 of that law, under the heading 'Right of land owners or users to obtain compensation', provides:

'1. Land owners or users shall be entitled to receive compensation from the State budget funds earmarked for that purpose for serious damage caused by animals of migratory species and specially protected non-cynegetic species, provided that they have adopted the necessary protective measures and have employed their knowledge, skills and practical abilities to introduce environmentally respectful measures to prevent or reduce damage. Landowners or users shall not be entitled to receive compensation if they have maliciously contributed towards causing the damage or increasing the value thereof in order to obtain compensation.

…

3. Compensation for serious damage caused by animals of migratory species and specially protected non-cynegetic species shall not be awarded if the land owner or user has received other State, municipal or EU payments directly or indirectly intended to offset the same limitations on economic activity or the same damage caused by animals of migratory species and specially protected non-cynegetic species for which compensation is made available in legislative provisions, or if the applicant receives aid under [Regulation No 508/2014].'

12 Article 5 of the Lauksaimniecības un lauku attīstības likums (Law on agriculture and rural development) of 7 April 2004 (*Latvijas Vēstnesis*, 2004, No 64), under the heading 'State and European Union support', states in paragraph 7:

'The Council of Ministers shall lay down the detailed rules for managing and monitoring aid awarded by the State and by the European Union for agriculture and aid awarded by the State and by the European Union for rural development and fisheries.'

13 The Ministru kabineta noteikumi No 558 '*De minimis* atbalsta uzskaites un piešķiršanas kārtība zvejniecības un akvakultūras nozarē' (Decree No 558 of the Council of Ministers laying down detailed rules on accounting for and awarding *de minimis* aid in the fishery and aquaculture sector) of 29 September 2015 (*Latvijas Vēstnesis*, 2015, No 199), in its version applicable to the dispute in the main proceedings, was worded as follows:

'Point 1: this Decree lays down the detailed rules on accounting for and awarding *de minimis* aid in the fishery and aquaculture sector, in accordance with [Regulation No 717/2014].

Point 2: in order to obtain *de minimis* aid in accordance with the provisions of Articles 3, 4 and 5 of Regulation No 717/2014, an aid applicant must make an application for *de minimis* aid to the aid awarding body (Annex 1) ("the application"). The application shall indicate the *de minimis* aid received by the applicant in the current year and in the two preceding fiscal years, as well as any planned *de minimis* aid, irrespective of the mode of award or the awarding body. In cases where *de minimis* aid is cumulated, the aid applicant shall also provide information on the other aid received for the project in question in connection with the same eligible costs. In providing information on *de minimis* aid and other planned State aid, the aid applicant shall also indicate any aid for which it has applied but in respect of which the aid awarding body has not yet made a decision. If the applicant for *de minimis* aid has not previously received aid of this type, it shall provide the relevant information in its application.'

14 The Ministru kabineta noteikumi No 353 'Kārtība, kādā zemes īpašniekiem vai lietotājiem nosakāmi to zaudējumu apmēri, kas saistīti ar īpaši aizsargājamo nemedījamo sugu un migrējošo sugu dzīvnieku nodarītajiem būtiskiem postījumiem, un minimālās aizsardzības pasākumu prasības postījumu novēršanai' (Decree No 353 of the Council of Ministers on the procedure for determining the amount of losses suffered by land owners or users as a result of serious damage caused by animals of migratory species and specially protected non-cynegetic species, and on the minimum requirements to be met by the protective measures necessary to avoid damage) of 7 June 2016 (*Latvijas Vēstnesis*, 2016, No 111), in the version applicable to the dispute in the main proceedings, provides:

'Point 1: This Decree lays down:

1.1. the procedure for determining the amount of losses suffered by land owners or users as a result of serious damage caused by animals of migratory species and specially protected non-cynegetic species ("losses");

…

Point 39: when adopting a decision on the award of compensation, the Administration shall meet the following requirements:

39.1. award the compensation with due regard for the limitations in terms of sector and activity referred to in Article 1(1) of [Regulation No 1408/2013] or Article 1(1) of [Regulation No 717/2014];

39.2. verify that the amount of compensation does not increase the total amount of *de minimis* aid received during the fiscal year in question and during the two preceding fiscal years to a level in excess of the *de minimis* aid threshold laid down in Article 3(2) of Regulation No 1408/2013 (economic operators active in the primary production of agricultural products) or in Article 3(2) of Regulation No 717/2014 (economic operators active in the fishery and aquaculture sector […]). In considering the amount of compensation, the Administration shall assess the *de minimis* aid received in relation to a single undertaking. A "single undertaking" is one which meets the criteria laid down in Article 2(2) of Regulation No 1408/2013 and Article 2(2) of Regulation No 717/2014.

Point 40: within a period of two months from the determination of the amount of the losses, the [competent] official shall adopt either a decision awarding compensation, which shall fix the amount thereof, or a decision refusing compensation.'

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

15 In 2002, Sātiņi-S purchased two properties, with a total surface area of 687 ha, including ponds with a surface area of 600.70 ha, in a protected nature reserve, which was subsequently included, in 2005, in the Natura 2000 network in Latvia.

16 In 2017, Sātiņi-S applied to the Environmental Protection Authority for an award of compensation for the damage caused to aquaculture by birds and other protected animals. That authority refused that request, on the ground that Sātiņi-S had already been awarded a total amount corresponding to the *de minimis* rule of EUR 30 000, over a period of three fiscal years, provided for in Article 3(2) of Regulation No 717/2014.

17 Sātiņi-S brought an action against that decision, claiming that, because it is compensatory in nature, compensation for the damage caused to aquaculture by protected animals was not State aid. Since its claim was dismissed at first and second instance, Sātiņi-S brought an appeal on a point of law before the referring court, the Augstākā tiesa (Senāts) (Supreme Court, Latvia).

18 That court asks, first of all, whether the right to property guaranteed by Article 17 of the Charter does not preclude compensation for the losses caused to aquaculture in a Natura 2000 area by birds protected under the 'Birds' Directive from being significantly less than the losses actually suffered by the applicant. Next, the question arises as to whether the compensation claimed by Sātiņi-S constitutes 'State aid' for the purposes of Article 107(1) TFEU. If that were the case, that court asks whether the *de minimis* ceiling of EUR 30 000, provided for in Article 3(2) of Regulation No 717/2014, applies.

19 In those circumstances, the Augstākā tiesa (Senāts) (Supreme Court), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the right to fair compensation for limits on the right to property that is guaranteed by Article 17 of the [Charter] allow the compensation awarded by a State for the losses caused to aquaculture in a Natura 2000 rea by protected birds, in accordance with the [“Birds”] Directive, to be significantly less than the losses actually suffered?

(2) Does the compensation awarded by a State for the losses caused to aquaculture in a Natura 2000 area by protected birds, in accordance with the [“Birds”] Directive, constitute State aid within the meaning of Articles 107 and 108 TFEU?

(3) If the answer to the second question is in the affirmative, is the *de minimis* aid limit of EUR 30 000 laid down in Article 3(2) of [Regulation No 717/2014] applicable to compensation such as that at issue in the dispute in the main proceedings?’

Consideration of the questions referred

The first question

20 By its first question, the referring court asks, in essence, whether Article 17 of the Charter must be interpreted as precluding the compensation granted by a Member State for the losses suffered by an economic operator as a result of the protective measures applicable in a Natura 2000 network area under the ‘Birds’ Directive from being significantly less than the damage actually incurred by that operator.

The jurisdiction of the Court

21 The European Commission submits that the Court has no jurisdiction to rule on the first question. It claims that payment of the compensation at issue in the main proceedings does not constitute implementation of EU law within the meaning of Article 51(1) of the Charter, since neither the ‘Birds’ Directive nor the ‘Habitats’ Directive provides for compensation on the basis of damage caused to private property, in particular aquaculture ponds, when they are implemented. The Commission takes the view that a solution similar to that adopted by the Court in the judgment of 22 May 2014, *Érsekcsanádi Mezőgazdasági* (C-56/13, EU:C:2014:352) should apply in the present case, since, in that judgment the Court held, in essence, that, since the obligation to pay compensation at issue in the case which gave rise to that judgment was based not on EU law, but on national legislation, the Court did not have jurisdiction to assess such national legislation in the light of the right to an effective remedy, the right to property and the freedom to conduct a business guaranteed by the Charter.

22 In that regard, it should be borne in mind that the Charter’s scope is defined in Article 51(1) thereof, according to which, so far as action of the Member States is concerned, the provisions of the Charter are addressed to those Member States only when they are implementing EU law (judgment of 13 June 2017, *Florescu and Others*, C-258/14, EU:C:2017:448, paragraph 44 and the case-law cited).

23 The Member States are implementing EU law, within the meaning of Article 51(1) of the Charter, where, in accordance with the requirements of the 'Birds' Directive and the 'Habitats' Directive, they take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the requisite measures to establish a general system of protection for the species of birds covered by the former directive.

24 First, Article 5 of the 'Birds' Directive requires the Member States to take the requisite measures to establish a general system of protection for all the bird species referred to in Article 1 of that directive.

25 Second, Article 6(2) of the 'Habitats' Directive provides that Member States are to take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of that directive.

26 Furthermore, the transposition and implementation by the Member States of those measures, the objective of which is to protect birds and their habitats, inevitably have repercussions on the right to property of persons to whom immovable property situated in the areas in question belongs, since, at the very least, they are subject to restrictions on the use of that property.

27 The Member States also implement EU law, within the meaning of Article 51(1) of the Charter, when they establish schemes granting payments under the 'Birds' Directive and the 'Habitats' Directive.

28 In that regard, the mere fact that those directives do not provide for a compensation scheme themselves or that they do not impose an obligation on Member States to provide for such a scheme cannot be interpreted as meaning that Article 17 of the Charter is not applicable (see, by analogy, judgment of 9 June 2016, *Pesce and Others*, C-78/16 and C-79/16, EU:C:2016:428, paragraph 86).

29 In those circumstances, the Court has jurisdiction to rule on the first question.

Substance

30 It should be noted at the outset that it is apparent from the wording of Article 17 of the Charter that that article expressly confers a right to compensation only in the event of deprivation of the right to property, such as expropriation, which is clearly not the situation in the present case.

31 In this respect, it is necessary, in particular, to distinguish the main proceedings from those which gave rise to the judgment of 9 June 2016, *Pesce and Others*, (C-78/16 and C-79/16, EU:C:2016:428), in so far as those proceedings concerned the systemic felling of trees, namely olive trees, and therefore the deprivation of property of those trees as such. In the present case, the regulatory obligations restricting the freedom of owners of property coming within the Natura 2000 network as to the choice and implementation of protective measures for aquaculture in respect of protected wild birds do not constitute a deprivation of the right to property of that immovable property, but a restriction on its use, which may be regulated by law to the extent necessary in the public interest, in accordance with the provisions in the third sentence of Article 17(1) of the Charter.

32 As regards the restrictions that may thus be placed on the use of the right to property, it should be borne in mind, moreover, that, the right to property guaranteed by Article 17 of the Charter is not absolute and that its exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union (judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 69 and the case-law cited).

33 It is therefore apparent from Article 52(1) of the Charter that restrictions may be imposed on the use of the right to property, provided that the restrictions genuinely meet the objectives of general interest pursued and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right guaranteed (judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 70 and the case-law cited).

34 First, it follows from settled case-law of the Court that protection of the environment is one of those objectives of general interest (see, to that effect, judgment of 9 March 2010, *ERG and Others*, C-379/08 and C-380/08, EU:C:2010:127, paragraph 81 and the case-law cited). Protection of the environment is therefore capable of justifying a restriction on the use of the right to property (judgment of 15 January 2013, *Križan and Others*, C-416/10, EU:C:2013:8, paragraph 114 and the case-law cited).

35 Second, it does not appear, subject to any review by the referring court in this respect, that measures such as those at issue in the main proceedings, thus taken for the purposes of protecting nature and the environment, under the 'Birds' Directive and the 'Habitats' Directive, and which do not prevent the practice of aquaculture on the plots concerned, but only regulate the conditions of exercise of that activity in order to prevent harm to the environmental interests thus protected, constitute, in the absence of compensation for affected owners, a disproportionate and intolerable interference impairing the very substance of the right to property (see, by analogy, judgment of 10 July 2003, *Booker Aquaculture and Hydro Seafood*, C-20/00 and C-64/00, EU:C:2003:397, paragraph 70).

36 Although, admittedly, the Member States may consider, where appropriate, provided that they do so in compliance with EU law, that full or partial compensation is appropriate for owners of plots affected by conservation measures taken under the 'Birds' Directive and the 'Habitats' Directive, the existence of an obligation under EU law to grant such compensation cannot however be inferred from that finding (see, to that effect, judgment of 10 July 2003, *Booker Aquaculture and Hydro Seafood*, C-20/00 and C-64/00, EU:C:2003:397, paragraph 85).

37 In the light of all the foregoing considerations, the answer to the first question is that Article 17 of the Charter must be interpreted as not precluding the compensation granted by a Member State for the losses suffered by an economic operator as a result of the protective measures applicable in a Natura 2000 network area under the 'Birds' Directive being significantly less than the damage actually incurred by that operator.

The second question

38 By its second question, the referring court asks, in essence, whether Article 107 TFEU must be interpreted as meaning that compensation granted by a State for the losses suffered by an economic operator as a result of the protective measures applicable in a Natura 2000 network area under the 'Birds' Directive constitutes 'State aid' within the meaning of that provision.

39 In accordance with the Court's settled case-law, classification of a measure as 'State aid' for the purposes of Article 107(1) TFEU requires all of the following conditions to be fulfilled. First, there must be an intervention by the State or through State resources. Second, the intervention must be liable to affect trade between Member States. Third, it must confer a selective advantage on the recipient. Fourth, it must distort or threaten to distort competition. (see, inter alia, judgment of 6 March 2018, *Commission* v *FIH Holding and FIH Erhvervsbank*, C-579/16 P, EU:C:2018:159, paragraph 43 and the case-law cited). In addition, Article 107(1) TFEU does not distinguish between measures of State intervention by reference to their causes or their aims but defines them in relation to their effects (see, to that effect, judgment of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraph 77 and the case-law cited).

40 In the present case, it is apparent from the order for reference that the referring court is uncertain whether the compensation claimed by the applicant in the main proceedings must be classified as State aid in view of its compensatory nature, in so far as it concerns compensation for damage caused to aquaculture by protected animals. The second question therefore seeks, in essence, to determine whether compensation granted through State resources, such as that at issue in the main proceedings, confers on its recipient an advantage for the purposes of Article 107(1) TFEU, in view of its allegedly compensatory nature.

41 In that regard, it follows from the settled case-law of the Court that measures which, whatever their form, are likely directly or indirectly to benefit undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions are regarded as State aid (judgment of 4 March 2021, *Commission* v *Fútbol Club Barcelona*, C-362/19 P, EU:C:2021:169, paragraph 58 and the case-law cited).

42 Furthermore, the agreed benefits may include not only positive benefits such as subsidies, loans or direct investment in the capital of undertakings, but also interventions which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which therefore, without being subsidies in the strict sense of the word, are of the same character and have the same effect (judgment of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 123 and the case-law cited). In that regard, the concept of 'charges which are normally borne by the budget of an undertaking' include, in particular, the additional costs which undertakings must bear by virtue of obligations imposed by law, regulation or agreement which apply to an economic activity (see, to that effect, judgment of 30 June 2016, *Belgium* v *Commission*, C-270/15 P, EU:C:2016:489, paragraphs 35 and 36).

43 As the Advocate General observed in point 40 of his Opinion, it follows that the existence of an agreed advantage by means of a State measure is not called into question by the compensatory nature of such a measure, on the ground that it seeks to remedy the losses incurred by an economic operator following the application of an obligation deriving from EU legislation or, as is the case in the main proceedings, to compensate such an operator for the damage caused to its undertaking by the occurrence of natural events linked with the normal conditions of the exercise of the economic activity.

44 The costs of complying with regulatory obligations for the protection of the environment, in particular that of wild fauna, and responsibility for the damage, which the latter may cause to an undertaking in the aquaculture sector, such as that at issue in the main proceedings, are part of the

normal operating costs of such an undertaking. Therefore, the grant of compensation for damage caused to its undertaking by protected animals constitutes an economic advantage to which the undertaking concerned cannot in principle be entitled under normal market conditions.

45 Nevertheless, the referring court also asks whether classification as State aid should be excluded as regards the compensation at issue in the main proceedings on the ground that the objective of that compensation is to compensate for damage incurred by the operators concerned because those operators must fulfil public interest obligations laid down by their Member State in the context of the implementation of EU environmental protection rules, in this case, the 'Birds' Directive.

46 In that regard, it should be borne in mind that, in order to rule out the possibility that an advantage of an undertaking in charge of public service obligations may constitute 'State aid' for the purposes of Article 107(1) TFEU, it is necessary to ascertain whether, in fact, four conditions, identified by the Court in the judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg* (C-280/00, EU:C:2003:415), are all satisfied.

47 First, the recipient undertaking must actually have public service obligations to discharge, and those obligations must be clearly defined. Secondly, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. Thirdly, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant revenue and a reasonable profit for discharging those obligations. Fourthly and lastly, where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately equipped so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenue and a reasonable profit for discharging its obligations.

48 The mere fact that an economic operator, such as Sātiņi-S, is required to comply with national regulatory obligations arising from the implementation of EU law and, more specifically, obligations established under the Natura 2000 network, is not such as to establish that such an operator has been tasked with public service obligations to discharge, which are clearly defined, within the meaning of the first of the four cumulative conditions listed in paragraph 47.

49 Furthermore, relying on the judgment of 27 September 1988, *Asteris and Others* (106/87 to 120/87, EU:C:1988:457), Ireland argues that compensation such as that claimed by Sātiņi-S cannot be regarded as conferring an advantage on it.

50 In that regard, it should, however, be noted that the case in the main proceedings must be distinguished from that which gave rise to that judgment, in so far as it relates not to sums due or paid on the basis of the non-contractual liability of the Member State concerned, but to the compensation of costs – arising from regulatory obligations or natural events – normally borne by the undertakings concerned in the context of their economic activity. In the present case, there is thus no question of compensation for damage caused by the national authorities.

51 Lastly, as the Commission has rightly observed, compensation such as that sought by Sātiņi-S in the context of the case in the main proceedings cannot be equated with the repayment of charges levied unlawfully, as was the case in the cases which gave rise to the judgments of 27 March 1980, *Denkavit italiana* (61/79, EU:C:1980:100), and of 10 July 1980, *Ariete* (811/79, EU:C:1980:195),

nor to the payment of compensation for expropriation, as in the case which gave rise to the judgment of 1 July 2010, *Nuova Terni Industrie Chimiche* v *Commission* (T-64/08, not published, EU:T:2010:270). In those two situations, where it has been concluded that the Member State concerned had not granted 'State aid' within the meaning of Article 107(1) TFEU, that State had been required to repay sums unduly received by it or to pay the counter-value for an asset of which the owner had been divested.

52 Consequently, the compensation granted by a Member State for the losses suffered by an economic operator as a result of the protective measures applicable in a Natura 2000 network area under the 'Birds' Directive confers on the person concerned an 'advantage' capable of constituting 'State aid' for the purposes of Article 107(1) TFEU, provided that the other conditions relating to such a classification recalled in paragraph 39 above are satisfied, which is a matter for the referring court to determine.

53 Accordingly, the answer to the second question is that Article 107(1) TFEU must be interpreted as meaning that compensation granted by a Member State for the losses suffered by an economic operator as a result of the protective measures applicable in a Natura 2000 network area under the 'Birds' Directive confers an advantage capable of constituting 'State aid' for the purposes of that provision, where the other conditions relating to such a classification are satisfied.

The third question

54 By its third question, the referring court asks, in essence, whether Article 3(2) of Regulation No 717/2014 must be interpreted as meaning that, in a case where the compensation such as that described in the second question fulfils the conditions of Article 107(1) TFEU, the *de minimis* ceiling of EUR 30 000, provided for in that provision, is applicable to that compensation.

55 Article 1(1) of Regulation No 717/2014 lists the cases in which aid granted to undertakings in the fishery and aquaculture sector is excluded from its scope.

56 As the Advocate General observed in point 56 of his Opinion, none of those exceptions applies to compensation such as that at issue in the case in the main proceedings.

57 Furthermore, it is apparent from Article 4 of Regulation No 717/2014, read in the light of recital 15 thereof, on which the referring court relies, that that regulation applies only to so-called 'transparent' aid, that is to say, that for which it is possible to calculate precisely the gross grant equivalent *ex ante* without any need to undertake a risk assessment. Given that compensation such as that sought by Sātiņi-S in the context of the main proceedings would consist in *ex post* capped compensation, it should be regarded as being transparent, since it allows the gross grant equivalent to be calculated precisely *ex ante*.

58 To the extent that Regulation No 717/2014 is applicable, the Member State concerned may, if it decides, as in the present case, to limit the aid at issue to EUR 30 000, classify that aid as '*de minimis* aid' and, consequently, refrain from notifying that aid to the Commission.

59 Accordingly, the answer to the third question is that Article 3(2) of Regulation No 717/2014 must be interpreted as meaning that, in a case where the compensation such as that described in the second question fulfils the conditions of Article 107(1) TFEU, the *de minimis* ceiling of EUR 30 000, provided for in that Article 3(2) of Regulation No 717/2014, is applicable to that compensation.

Costs

60 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 (Third Chamber) hereby rules:

1. **Article 17 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding the compensation granted by a Member State for the losses suffered by an economic operator as a result of the protective measures applicable in a Natura 2000 area under Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds being significantly less than the damage actually incurred by that operator.**

2. **Article 107(1) TFEU must be interpreted as meaning that compensation granted by a Member State for the losses suffered by an economic operator as a result of the protective measures applicable in a Natura 2000 network area under Directive 2009/147 confers an advantage capable of constituting 'State aid' for the purposes of that provision, where the other conditions relating to such a classification are satisfied.**

3. **Article 3(2) of Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid in the fishery and aquaculture sector must be interpreted as meaning that, in a case where the compensation such as that described in point 2 of this operative part fulfils the conditions of Article 107(1) TFEU, the *de minimis* ceiling of EUR 30 000, provided for in that Article 3(2) of Regulation No 717/2014, is applicable to that compensation.**

[Signatures]