



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

8 September 2022 *

(Reference for a preliminary ruling – Protection of species of wild fauna and flora by regulating trade therein – Regulation (EC) No 338/97 – Article 8(3)(d) – Concept of ‘specimens of animal species that are born and bred in captivity’ – Regulation (EC) No 865/2006 – Article 1(3) – Concept of ‘breeding stock’ – Article 54(2) – Establishment of the breeding stock – Controlled ancestry)

In Case C-659/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), made by decision of 25 November 2020, received at the Court on 4 December 2020, in the proceedings

ET

v

Ministerstvo životního prostředí,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, S. Rodin (Rapporteur), J.-C. Bonichot, L.S. Rossi and O. Spineanu-Matei, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- ET, by P. Pařil, advokát,
- the Czech Government, by L. Dvořáková, M. Smolek and J. Vláčil, acting as Agents,
- the Slovak Government, by S. Ondrášiková, acting as Agent,
- the European Commission, by P. Ondrůšek and C. Valero, acting as Agents,

* Language of the case: Czech.

after hearing the Opinion of the Advocate General at the sitting on 3 March 2022,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(3) and Article 54(2) of Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (OJ 2006 L 166, p. 1).
- 2 The request has been made in the course of an appeal on a point of law between ET and the Ministerstvo životního prostředí (Ministry of the Environment, Czech Republic) concerning the grant of an exemption from the prohibition of trade for five specimens of the hyacinth macaw (*Anodorhynchus hyacinthinus*).

Legal context

International law

- 3 The Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed in Washington on 3 March 1973 (*United Nations Treaty Series*, vol. 993, No I-14537, ‘CITES’) seeks to ensure that international trade in species listed in its appendices, and in parts and derivatives thereof, does not damage the conservation of biodiversity and is based on a sustainable use of wild species.
- 4 CITES, to which the European Union became a party on 8 July 2015, was implemented in the European Union as from 1 January 1984 under Council Regulation (EEC) No 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora (OJ 1982 L 384, p. 1). That regulation was repealed by Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1), the second paragraph of Article 1 of which provides that that regulation is to apply in compliance with the objectives, principles and provisions of CITES.
- 5 Article II(1) of CITES, entitled ‘Fundamental principles’, provides:

‘Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorised in exceptional circumstances.’
- 6 Since 22 October 1987, the hyacinth macaw species has been included in Appendix I to CITES.

- 7 Paragraph 1(c) of Resolution 10.16 of the Conference of the Parties to CITES ('Resolution Conf. 10.16') entitled 'Regarding terminology' provides:

'[The Conference of the Parties to CITES] ADOPTS the following definitions of terms used in this Resolution:

...

(c) the "breeding stock" of an operation means the ensemble of the animals in the operation that are used for reproduction;

- 8 Paragraph 2(b)(ii)(A) of that resolution, entitled 'Regarding the term "bred in captivity"', provides:

'[The Conference of the Parties to CITES] DECIDES that:

...

(b) the term "bred in captivity" shall be interpreted to refer only to specimens, as defined in Article I, paragraph (b), of [CITES], born or otherwise produced in a controlled environment, and shall apply only if:

...

(ii) the breeding stock, to the satisfaction of the competent government authorities of the exporting country:

A. was established in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild;'

- 9 Paragraph 5(a) of Resolution 12.10 of the Conference of the Parties to CITES ('Resolution Conf. 12.10'):

'[The Conference of the Parties to CITES] RESOLVES that:

(a) an operation may only be registered according to the procedure in this Resolution if specimens produced by that operation qualify as "bred in captivity" according to the provisions of Resolution Conf. 10.16 (Rev.).'

- 10 Annex 1 to Resolution Conf. 12.10, entitled 'Information to be provided to the Secretariat by the Management Authority on operations to be registered', lists 16 categories of data which must be communicated to the Secretariat of CITES, which include, inter alia, the name and address of the owner and manager of the captive-breeding operation, the date of that operation and the description of facilities to house the captive stock and to prevent the escape of specimens.

European Union law

Regulation No 338/97

- 11 Recital 10 of Regulation No 338/97 provides:

‘Whereas there is a need, in order to ensure the broadest possible protection for species covered by this Regulation, to lay down provisions for controlling trade and movement of specimens within the Community, and the conditions for housing specimens; whereas the certificates issued under this Regulation, which contribute to controlling these activities, must be governed by common rules on their issue, validity and use’.

- 12 Under the first paragraph of Article 1 of Regulation No 338/97, entitled ‘Object’:

‘The object of this Regulation is to protect species of wild fauna and flora and to guarantee their conservation by regulating trade therein in accordance with the following Articles.’

- 13 Article 8(1), (2) and (3)(d) of that regulation, entitled ‘Provisions relating to the control of commercial activities’, provides:

‘1. The purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in Annex A shall be prohibited.

2. Member States may prohibit the holding of specimens, in particular live animals of the species listed in Annex A.

3. In accordance with the requirements of other Community legislation on the conservation of wild fauna and flora, exemption from the prohibitions referred to in paragraph 1 may be granted by issuance of a certificate to that effect by a management authority of the Member State in which the specimens are located, on a case-by-case basis where the specimens:

...

(d) are captive-born and bred specimens of an animal species or artificially propagated specimens of a plant species or are parts or derivatives of such specimens’.

- 14 The species *Anodorhynchus*, which includes animals with the common names ‘hyacinth macaw, Lear’s macaw, glaucous macaw’, appears in Annex A to that regulation.

Regulation No 865/2006

- 15 Recital 1 of Regulation No 865/2006 is worded as follows:

‘Provisions are required to implement Regulation (EC) No 338/97 and to ensure full compliance with the provisions of [CITES].’

16 Article 1(3) of that regulation, entitled ‘Definitions’, provides:

‘For the purposes of this Regulation, in addition to the definitions laid down in Article 2 of Regulation (EC) No 338/97, the following definitions shall apply:

...

(3) “breeding stock” means all the animals in a breeding operation that are used for reproduction’.

17 Article 54(2) of that regulation, entitled ‘Specimens born and bred in captivity of animal species’, states:

‘Without prejudice to Article 55, a specimen of an animal species shall be considered to be born and bred in captivity only if a competent management authority, in consultation with a competent scientific authority of the Member State concerned, is satisfied that the following criteria are met:

...

(2) the breeding stock was established in accordance with the legal provisions applicable to it at the time of acquisition and in a manner not detrimental to the survival of the species concerned in the wild’.

18 Under Article 55 of Regulation No 865/2006, entitled ‘Establishment of ancestry’:

‘Where, for the purposes of Articles 54, 62(1) or 63(1), a competent authority considers it necessary to establish the ancestry of an animal through the analysis of blood or other tissue, such analysis or the necessary samples shall be made available in a manner established by that authority.’

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

19 ET breeds parrots in the Czech Republic. On 21 January 2015, he applied to the krajský úřad (Regional Authority, Czech Republic) responsible for granting an exemption from the prohibition of trade for five specimens of hyacinth macaw (*Anodorhynchus hyacinthinus*) born during the year 2014 in his breeding.

20 The grandparents of those parrots (‘the grandparent pair’) were initially imported into Bratislava (Slovakia) by a Uruguayan citizen and then by car into the Czech Republic in June 1993, by FU, under circumstances incompatible with CITES.

21 While being transported to the Czech Republic, the car was stopped at the border by customs authorities and the grandparent pair was subsequently confiscated by means of an administrative decision. However, that decision was annulled by the Vrchní soud v Praze (High Court, Prague, Czech Republic) in 1996.

22 The competent administrative authority therefore returned the grandparent pair to FU, who then lent them to a third person called GV. GV obtained a pair in the year 2000, whom she raised (‘the parent pair’). ET acquired that pair from GV in the course of that year, without the validity of the transfer of ownership having been contested.

- 23 The competent regional authority refused to grant the exemption sought, on 21 January 2015, by ET, on the basis of the opinion of the Agentura ochrany přírody a krajiny ČR (Nature Conservation Agency of the Czech Republic), which concerned the compatibility of the breeding stock by ET with Article 54(2) of Regulation No 856/2006. According to that opinion, it could not be stated with certainty that that stock had been established in accordance with the legal provisions, since the 1998 registers, mentioning the grandparent pair, contained numerous irregularities and did not reproduce other information concerning the origin of the specimens in question.
- 24 ET brought an administrative appeal against that refusal, in which he claimed that the competent regional authority had misinterpreted the concept of ‘breeding stock’, such a stock being established, in his view, only by the parent pair and the offspring of those parents, therefore that authority was not authorised to examine the origin of the grandparent pair.
- 25 The Ministry of the Environment rejected the appeal, considering that the method by which the grandparent pair was acquired was decisive and that an exemption could not be granted to ET, as he was unable to demonstrate the origin of that pair.
- 26 ET appealed against the decision rejecting his administrative appeal before the Krajský soud v Hradci Králové (Regional Court, Hradec Králové, Czech Republic).
- 27 That court dismissed the appeal on the ground that the trade in parrots of the *Anodorhynchus* species can only be authorised if the conditions laid down in Article 54 of Regulation No 865/2006 are satisfied. According to that court, neither of the conditions laid down in Article 54(2) of that regulation were satisfied in the present case.
- 28 More specifically, the Krajský soud v Hradci Králové (Regional Court, Hradec Králové) found in ET’s appeal that, on the date on which the grandparent pair were imported into the Czech Republic, CITES was in force in that Member State and incorporated into the domestic order by national legislation. That court held that, first, according to the provisions for the transposition of CITES into Czech law, it is permissible to examine the origin of the breeding stock to the grandparent pair and, second, that the concept of ‘breeding stock’ within the meaning of Regulation No 865/2006 covers, in the present case, the three generations of parrots and that, therefore, the competent regional authority could require proof of the origin of the grandparent pair.
- 29 ET brought an appeal on a point of law against that judgment before the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), claiming that the Krajský soud v Hradci Králové (Regional Court, Hradec Králové) had misinterpreted the concept of ‘breeding stock’ within the meaning of Regulation No 865/2006.
- 30 The Nejvyšší správní soud (Supreme Administrative Court) notes that it is not disputed by the parties to the main proceedings, first, that the parent pair was born in captivity in 2000 in the Czech Republic and that its acquisition by ET was, as such, lawful, and second, that the origin of the grandparent pair is suspicious. Accordingly, that court asks, in the first place, whether the concept of ‘breeding stock’, within the meaning of Article 54(2) of Regulation No 865/2006, also includes relatives in the ancestry of such animals situated in the territory of a Member State.

- 31 In the second place, if the concept of ‘breeding stock’ were to be interpreted strictly, the question would arise as to whether the concept of ‘establishment’ of such stock, which appears in Article 54(2) of Regulation No 865/2006, refers only, in the present case, to the acquisition of the parent pair used for the reproduction or, on the contrary, to the beginning of the breeding line, namely, in the present case, the acquisition of the grandparent pair.
- 32 In the third place, the referring court asks whether certain specific circumstances should still be taken into account in the examination of the application for exemption sought by ET.
- 33 In that regard, the referring court points out that ET acquired the parent pair lawfully and that, at the time of that acquisition, first, the Czech Republic was not part of the European Union and, secondly, if CITES was in force there, the national legislation implementing that law did not require a certificate, within the meaning of CITES, to be issued in the case of a transfer within the same State. Accordingly, that court is of the opinion that ET could have had a legitimate expectation that the trade in the offspring of that parent pair would be permitted, at least in the Czech Republic.
- 34 Furthermore, the referring court states that the fact that the grandparent pair was returned to FU pursuant to a judicial decision may have to be taken into consideration in the examination of an application for exemption, as well as ET’s argument that trade in specimens born in captivity would reduce market demand for illegal purchases of specimens captured in the wild. Finally, that court points out that, in the event that the exemption sought by ET is not granted, his right to property would be reduced to the right to have the parent pair and, possibly, their offspring, without being able to dispose of them legally.
- 35 In those circumstances, the Nejvyšší správní soud (Supreme Administrative Court) decided to stay the proceedings before it and refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does “breeding stock”, as defined by Regulation [No 865/2006], include specimens that are the parents of specimens bred by a given breeder, even though that breeder never owned or kept them?
- (2) If the answer to the first question is that such parent specimens do not constitute a part of the breeding stock, are competent bodies authorised to verify, in examining compliance with the condition set in Article 54(2) of [Regulation No 865/2006], consisting of the establishment of stock legally and, at the same time, in a manner not detrimental to the survival of wild specimens, the origin of those parent specimens and to infer on that basis whether the breeding stock has been established in accordance with the rules set out in Article 54(2) of the regulation?
- (3) In examining compliance with the condition set out in Article 54(2) of [Regulation No 865/2006], consisting of the establishment of stock legally and, at the same time, in a manner not detrimental to the survival of wild specimens, can further circumstances of the case be taken into consideration (in particular, good faith in the transfer of the specimens and the legitimate expectation that trading in their potential offspring will be permitted, and potentially also the less stringent legislation applicable in the Czech Republic prior to the country’s accession to the European Union)?’

Consideration of the questions referred

The first question

- 36 By its first question, the referring court asks, in essence, whether Article 1(3) of Regulation No 865/2006 must be interpreted as meaning that the term ‘breeding stock’, within the meaning of that provision, covers the ancestors of specimens bred in a breeding operation which have never been owned or kept by that operation.
- 37 According to settled case-law, when 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 8 December 2020, *Staatsanwaltschaft Wien (Falsified transfer orders)*, C-584/19, EU:C:2020:1002, paragraph 49 and the case-law cited).
- 38 In that regard, in the first place, as regards the literal interpretation of Article 1(3) of Regulation No 865/2006, it follows from that provision that the concept of ‘breeding stock’ includes all the animals of a breeding operation which are used for reproduction.
- 39 As the Advocate General observed, in points 36 and 37 of her Opinion, the wording of Article 1(3) of Regulation No 865/2006 is not sufficient, in itself, to remove the ambiguity as to the interpretation to be given to that provision, since the various language versions of that provision suggest various meanings. Whereas it follows from several language versions, such as the Spanish, German, French or Latvian versions, that only animals present in a breeding operation, that is to say, a specific site with structures suitable for breeding animals, come within the concept of ‘breeding stock’, within the meaning of that provision, other language versions, such as the Greek, English, Croatian or Slovenian, refer more broadly to all animals in a breeding process and which may potentially cover the ancestors of specimens which have never been owned or kept in a breeding operation.
- 40 It is common ground that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be made to override the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union (see, to that effect, judgment of 24 March 2021, *A*, C-950/19, EU:C:2021:230, paragraph 37 and the case-law cited).
- 41 In those circumstances, it is necessary to examine, in the second place, the context of Article 1(3) of Regulation No 865/2006 as well as the objectives pursued by that provision and the rules of which it forms part.
- 42 In that regard, it should be noted, as stated in recital 1 of Regulation No 865/2006, that the purpose of that regulation is, first, to ensure the implementation of Regulation No 338/97 and, second, to ensure full compliance with the provisions of CITES, thereby guaranteeing, as stated in recital 10 of the latter regulation, the broadest possible protection for species of wild fauna and flora by regulating trade therein.
- 43 As the Advocate General pointed out in footnote 19 of her Opinion, it is apparent from Annex 1 to Resolution Conf. 12.10 that, under CITES, the registration of a captive-breeding operation requires the precise identification of such an operation, its owner and manager, and the facilities

intended to house the stock. Therefore, the concept of ‘operation’ cannot be understood, in the context of Regulation No 865/2006, as referring to a simple breeding process, which is detached from any concrete physical installation.

- 44 It follows from the foregoing considerations that Article 1(3) of Regulation No 865/2006 must be interpreted as meaning that the term ‘breeding stock’, within the meaning of that provision, does not include the ancestors of specimens bred in a breeding operation, which have never been owned or kept by that operation.

The second and third questions

- 45 As a preliminary point, it should be noted, first, that, under Article 8(1) of Regulation No 338/97, it is prohibited to sell specimens of the species listed in Annex A to that regulation. However, Article 8(3) of that regulation allows Member States to derogate from such a prohibition, inter alia, where the specimens of an animal species listed in Annex A and which are for sale are specimens born and bred in captivity. According to Article 54 of Regulation No 865/2006, a specimen of an animal species is considered to be born and bred in captivity only if a management authority is satisfied that, inter alia, the breeding stock was established in accordance with the legal provisions applicable to it at the time of acquisition and in a manner not detrimental to the survival of the species concerned in the wild.
- 46 Secondly, it is apparent from the file before the Court that ET was refused authorisation to sell the parrots at issue in the main proceedings, on the ground that they could not be considered to have been born and bred in captivity, within the meaning of Article 8(3) of Regulation No 338/97, because the grandparent pair had been unlawfully imported into the Czech Republic by a third party. In accordance with what has been stated in paragraph 44 of the present judgment, that pair cannot be regarded as belonging to the breeding stock kept by ET, since ET has never owned or kept them.
- 47 Thirdly, it is also clear from the order for reference that it is possible to determine, among the ancestry of the parrots at issue in the main proceedings, the specimens removed from the wild, since it is common ground between the parties to the main proceedings that they are, in the present case, the grandparent pair.
- 48 It is in the light of those factors that the Court answers the second and third questions.
- 49 Accordingly, it must be held that, by its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 54(2) of Regulation No 865/2006, read in conjunction with Article 17 of the Charter of Fundamental Rights of the European Union (‘the Charter’) and the principle of protection of legitimate expectations, must be interpreted as meaning that it precludes a specimen, kept by a breeder, of an animal species referred to in Annex A to Regulation No 338/97, from being regarded as born and bred in captivity, within the meaning of Article 8(3) of that regulation, where the ancestors of that specimen, which do not constitute a part of the breeding stock of that breeder, were acquired by a third party before the entry into force of those regulations, in disregard of the applicable legal provisions or in a manner which is detrimental to the survival of the species concerned in the wild.

- 50 In the first place, it should be borne in mind that, in accordance with the case-law referred to in paragraph 37 of the present judgment, it is necessary to consider not only the wording of Article 54(2) of Regulation No 865/2006 but also the context in which it occurs and the objectives pursued by the rules of which it is part.
- 51 In addition, it is important to point out that Article 8(3) of Regulation No 338/97, in so far as it constitutes an exception to the general rule prohibiting all commercial use of specimens of the species listed in Annex A to that regulation, must be interpreted strictly. Therefore, the conditions under which Article 54(2) of Regulation No 865/2006 permits the inference that a specimen of an animal species born and bred in captivity must also be interpreted strictly, in so far as that provision seeks to clarify the scope of Article 8(3).
- 52 As the Advocate General pointed out in point 52 of her Opinion, that finding is borne out by Article II(1) of CITES, according to which trade in specimens of species threatened with extinction must be subject to particularly strict regulation in order not to further endanger their survival and must only be authorised in exceptional circumstances.
- 53 In the second place, as the Advocate General noted, in essence, in point 51 of her Opinion, Article 54(2) of Regulation No 865/2006 refers to the concept of ‘establishment’ of the breeding stock. That concept has a broad scope and allows account to be taken, when examining whether such a breeding stock complies with the requirements imposed by that provision, of events prior to the actual acquisition of the breeding stock by the breeder.
- 54 That finding is supported by Article 55 of Regulation No 865/2006, under which the competent authorities may examine the ancestry of an animal for the purposes of the application of Article 54 of that regulation. It follows, as the Advocate General stated in point 55 of her Opinion, that that provision allows the competent authorities to examine the ancestry of breeding stock in order to verify that the conditions laid down in Article 54(2) of Regulation No 865/2006 have been fulfilled.
- 55 Furthermore, the objective pursued by Regulation No 865/2006, as set out in paragraph 42 of the present judgment, supports the interpretation that the competent authorities have the power to examine the ancestry of a breeding stock in the context of an application for an exemption certificate for the sale of specimens born and bred in captivity.
- 56 In that respect, as the Advocate General pointed out in paragraph 57 of her Opinion, the conditions set out in Article 54(2) of Regulation No 865/2006 correspond to the ones set out in paragraph 2(b)(ii) of Resolution Conf. 10.16. That resolution was adopted in view of the concern that much trade in specimens declared as born and bred in captivity remains contrary to CITES and to the resolutions of the Conference of the Parties to CITES, and may be detrimental to the survival of wild populations of the species concerned.
- 57 Thus, the interpretation according to which the competent national authorities have the power to examine the ancestry of a breeding stock is consistent with the objective pursued by CITES of strengthening control of the ancestry of specimens born and bred in captivity.
- 58 That being so, while Article 54(2) of Regulation No 865/2006 requires those authorities to check the manner in which the ancestry of the breeding stock were removed from their natural environment in order to ensure that that removal did not take place in a manner detrimental to the survival of the species in the wild, it is apparent, by contrast, from the very wording of that

provision that it does not require those authorities to check whether the ancestry of the breeding stock has been acquired in accordance with the legal provisions applicable at the date of their acquisition, but only to ensure that the legal provisions applicable to the acquisition of the breeding stock have been complied with.

- 59 In addition, in order to determine whether the breeding stock was not established in a manner detrimental to the survival of the species concerned in the wild because of the removal of an ancestor of that stock from its natural environment, account must be taken of the status of the species concerned at the time of that removal. Where, on that date, as in the present case, that species fell within Appendix I to CITES, its removal must, in any event, be regarded as detrimental to the survival of the species concerned in the wild and no Member State must be able to grant an exemption from the prohibition on the sale of specimens originating from that ancestor pursuant to Article 8(3) of Regulation No 338/97.
- 60 As regards, in the third place, the practical aspects of the examination under Article 54(2) of Regulation No 865/2006, in so far as that provision, first, requires the competent authority to establish with certainty that the criteria set out therein are met and, second, does not lay down the detailed rules for such an examination or the means of proving that those criteria are met, it must be held that the task of laying down such detailed rules and means of proof is left to the competent authorities of the Member States. That evidence includes the licences or certificates provided for in that regulation or any other appropriate document which may be deemed useful by the competent national authorities (see, by analogy, judgment of 16 July 2009, *Rubach*, C-344/08, EU:C:2009:482, paragraph 27).
- 61 Consequently, such rules of examination may, in particular, as the Advocate General stated, in essence, in points 66 and 67 of her Opinion, depend on the risk assessment pertaining to the circumstances of each case and also include an examination of the documentation regarding the acquisition of the breeding stock.
- 62 In the fourth place, it should be noted that the prohibition on selling specimens of which one of the ancestors has been acquired in a manner that is detrimental to the survival of the species in the wild, resulting from a combined reading of Article 8(1) and (3) of Regulation No 338/97 and Article 54(2) of Regulation No 865/2006, is not incompatible with the right to property, as enshrined in Article 17 of the Charter.
- 63 It must be remembered that the right to property is not absolute and that its exercise may be subject to, under the conditions laid down in Article 52(1) of the Charter, 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).
- 64 It should be noted that the protection of wild species constitutes such a legitimate objective in the public interest (see, to that effect, judgment of 19 June 2008, *Nationale Raad van Dierenkwekers en Liefhebbers and Andibel*, C-219/07, EU:C:2008:353, paragraph 27 and the case-law cited).
- 65 Furthermore, as the Advocate General observed in point 77 of her Opinion, Regulations No 338/97 and No 865/2006 operate a balance between that right and the requirements linked to the protection of wildlife. It should also be pointed out that such requirements make it possible to justify the fact that the placing on the market of specimens of endangered species is, in principle, prohibited. As regards, more specifically, ET's argument that that placing on the market may

reduce the number of specimens of those species caught in the wild, it is sufficient to note that such placing on the market contributes to the creation, maintenance or extension of a market for the acquisition of such specimens. The EU legislature was entitled to take the view that the very existence of such a market constitutes, to a certain extent, a threat to the survival of endangered species.

- 66 Lastly, the factors mentioned by the referring court relating to the protection of ET's legitimate expectations in the fact that they could market the offspring of his breeding stock cannot lead to any other conclusion.
- 67 First, as the Advocate General observed in point 74 of her Opinion, even if the competent authority were to conclude that the establishment of the breeding stock was lawful at the date of its acquisition, that finding alone does not suffice to allow derogation from the prohibition on selling specimens of that stock in so far as, as has been pointed out in paragraph 59 of the present judgment, it would still be necessary to ensure that the establishment of that breeding stock was not detrimental to the survival of the species concerned in the wild.
- 68 Secondly, the fact that the regulatory framework in force was less stringent when ET purchased his breeding stock in 2000, since the Czech Republic was not yet a member of the European Union at that time, is also irrelevant.
- 69 In that regard, it is sufficient to note that the scope of the principle of protection of legitimate expectations cannot be extended to the point of generally preventing new rules from applying to the future effects of situations which arose under the earlier rules (judgment of 21 December 2021, *Skarb Państwa (Motor insurance cover)*, C-428/20, EU:C:2021:1043, paragraph 45 and the case-law cited).
- 70 Thirdly, as regards the fact that the grandparent pair was, in the present case, handed over to its importer, pursuant to a judicial decision, it is sufficient to note that, because of the date on which that decision was delivered, namely prior to the accession of the Czech Republic to the European Union, such a decision cannot, in any event, constitute a factor to be taken into consideration in order to determine whether the breeding stock at ET's disposal was established in accordance with Article 54(2) of Regulation No 865/2006.
- 71 It follows from all the foregoing considerations that Article 54(2) of Regulation No 865/2006, read in conjunction with Article 17 of the Charter and the principle of protection of legitimate expectations, must be interpreted as precluding a specimen, kept by a breeder, of a species of animal referred to in Annex A to Regulation No 338/97 from being regarded as having been born and bred in captivity, within the meaning of Article 8(3) of that regulation, where the ancestors of that specimen, which do not form part of the breeding stock of that breeder, were acquired by a third party before the entry into force of those regulations in a manner which is detrimental to the survival of the species concerned in the wild.

Costs

- 72 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **Article 1(3) of Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein,**

must be interpreted as meaning that the concept of ‘breeding stock’, within the meaning of that provision, does not include the ancestors of specimens bred in a breeding operation which have never been owned or kept by that operation.

2. **Article 54(2) of Regulation No 865/2006, read in conjunction with Article 17 of the Charter of Fundamental Rights of the European Union and the principle of protection of legitimate expectations,**

must be interpreted as precluding a specimen, kept by a breeder, of a species of animal referred to in Annex A to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, from being regarded as having been born and bred in captivity, within the meaning of Article 8(3) of that regulation, where the ancestors of that specimen, which do not form part of the breeding stock of that breeder, were acquired by a third party before the entry into force of those regulations in a manner which is detrimental to the survival of the species concerned in the wild.

[Signatures]