



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

16 February 2023*

(Reference for a preliminary ruling – Common agricultural policy – Support measures for rural development by the European Agricultural Fund for Rural Development – Agri-environmental payments – Regulation (EC) No 1974/2006 – Inability of the beneficiaries to continue to comply with the commitments given – Concepts of ‘reparcelling’ and ‘land-consolidation measures’ – Absence of measures necessary to adapt the obligations of the beneficiary to the new situation of the holding – Regulation (EC) No 1122/2009 – Concept of ‘*force majeure* and exceptional circumstances’)

In Case C-343/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decision of 19 May 2021, received at the Court on 2 June 2021, in the proceedings

PV

v

Zamestnik izpalnitelen direktor na Darzhaven fond ‘Zemedelie’,

THE COURT (Eighth Chamber),

composed of N. Piçarra, acting as President of the Chamber, N. Jääskinen and M. Gavalec (Rapporteur), Judges,

Advocate General: L. Medina,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 9 June 2022,

after considering the observations submitted on behalf of:

- PV, by S. Angelova, advokat,
- the zamestnik izpalnitelen direktor na Darzhaven fond ‘Zemedelie’, by I. Boyanov, P. Slavcheva and I.B. Zareva,

* Language of the case: Bulgarian.

- the Bulgarian Government, by T. Mitova, E. Petranova and L. Zaharieva, acting as Agents,
 - the European Commission, by J. Aquilina, G. Koleva and A. Sauka, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 15 September 2022,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 45(4) of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2006 L 368, p. 15) and Article 31 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L30, p. 16).
- 2 The request has been made in proceedings between PV, a farmer, and the zamestnik izpalnitelen direktor na Darzhaven fond 'Zemedelie' (Deputy Executive Director of the State Agricultural Fund, Bulgaria) concerning a decision requiring PV to reimburse 20% of the financing received by him under Measure 214 'Agri-environment payments' of the Rural Development Programme 2007-2013 ('Measure 214') for the marketing years 2013 to 2016.

Legal context

European Union law

Regulation (EC) No 1698/2005

- 3 Recital 35 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1) stated:

'(35) Agri-environmental payments should continue to play a prominent role in supporting the sustainable development of rural areas and in responding to society's increasing demand for environmental services. They should further encourage farmers and other land managers to serve society as a whole by introducing or continuing to apply agricultural production methods compatible with the protection and improvement of the environment, the landscape and its features, natural resources, the soil and genetic diversity. In this context the conservation of genetic resources in agriculture should be given specific attention. In accordance with the polluter-pays principle these payments should cover only those commitments going beyond the relevant mandatory standards.'

4 Article 36 of that regulation, entitled 'Measures', provided:

'Support under this section shall concern:

(a) measures targeting the sustainable use of agricultural land through:

...

(iv) agri-environment payments;

...

...'

5 Article 39 of that regulation, entitled 'Agri-environment payments', provided:

'1. Member States shall make available support provided for in Article 36(a)(iv) throughout their territories, in accordance with their specific needs.

2. Agri-environment payments shall be granted to farmers who make on a voluntary basis agri-environmental commitments. ...

3. ...

These commitments shall be undertaken as a general rule for a period between five and seven years. ...

4. The payments shall be granted annually and shall cover additional costs and income foregone resulting from the commitment made. Where necessary, they may cover also transaction cost.

...'

Regulation No 1974/2006

6 Recital 23 of Regulation No 1974/2006 stated:

'As regards support for agri-environment and animal welfare, the minimum requirements to be met by beneficiaries in connection with the various agri-environment and animal welfare commitments should ensure a balanced application of support that takes account of the objectives and should thus contribute to sustainable rural development. In this respect, establishing a methodology for the calculation of the additional costs, income foregone and likely transaction costs stemming from the commitment given should be of high importance. Where commitments are based on input limitations, support should be granted only if such limitations can be assessed in a way providing reasonable assurance about the respect of the commitment.'

7 Article 45 of that regulation provided:

'1. When a beneficiary increases the area of the holding during the period for which a commitment given as a condition for the grant of assistance runs, Member States may provide for the commitment to be extended to cover the additional area for the remainder of the period

of the commitment in accordance with paragraph 2, or for the original commitment to be replaced by a new one in accordance with paragraph 3.

Provision may also be made for such replacement in cases where the area covered by a commitment within a holding is extended.

2. The extension referred to in paragraph 1 may be granted only under the following conditions:

- (a) it is of benefit to the measure concerned;
- (b) it is justified in terms of the nature of the commitment, the length of the remaining period and the size of the additional area;
- (c) it does not impede the effectiveness of checks to ensure compliance with the conditions for the grant of assistance.

3. The new commitment referred to in paragraph 1 shall cover the whole area concerned under terms at least as strict as those of the original commitment.

4. Where a beneficiary is unable to continue to comply with commitments given because the holding is re parcelled or is the subject of public land-consolidation measures or of land-consolidation measures approved by the competent public authorities, Member States shall take the measures necessary to allow the commitments to be adapted to the new situation of the holding. If such adaptation proves impossible, the commitment shall expire and reimbursement shall not be required in respect of the period in which the commitment was effective.'

Regulation No 73/2009

8 Article 31 of Regulation No 73/2009, entitled '*Force majeure* and exceptional circumstances', provided:

'For the purposes of this Regulation, *force majeure* or exceptional circumstances shall be recognised by the competent authority in cases such as:

- (a) the death of the farmer;
- (b) long-term professional incapacity of the farmer;
- (c) a severe natural disaster gravely affecting the holding's agricultural land;
- (d) the accidental destruction of livestock buildings on the holding;
- (e) an epizootic affecting part or all of the farmer's livestock.'

Regulation (EC) No 1122/2009

9 Article 75 of Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the

direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ 2009 L 316, p. 65), entitled ‘*Force majeure* and exceptional circumstances’, provided:

‘1. If a farmer has been unable to comply with his obligations as a result of *force majeure* or exceptional circumstances as referred to in Article 31 of Regulation [No 73/2009] he shall retain his right to aid in respect of the area or animals eligible at the time when the case of *force majeure* or the exceptional circumstance occurred. In addition, when the non-compliance resulting from such *force majeure* or exceptional circumstances concerns cross-compliance, the corresponding reduction shall not be applied.

2. Cases of *force majeure* and exceptional circumstances within the meaning of Article 31 of Regulation [No 73/2009] shall be notified in writing to the competent authority, with relevant evidence to the satisfaction of the competent authority, within ten working days from the date on which the farmer is in a position to do so.’

Regulation (EU) No 65/2011

- 10 Article 18 of Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ 2011 L 25, p. 8), entitled ‘Reductions and exclusions in the case of non-compliance with other eligibility criteria, commitments and linked obligations’, provided in paragraph 1 thereof:

‘...

In case of multiannual commitments, aid reductions, exclusions and recoveries shall also apply to the amounts already paid in the previous years for that commitment.’

Bulgarian law

The ZSPZZ

- 11 Article 37c of the zakon za sobstvenostta i polzvaneto na zemedelskite zemi (Law on ownership and use of agricultural land) (DV No 17 of 1 March 2001; ‘the ZSPZZ’) provides:

‘(1) Groupings for the use of agricultural land shall be created by an agreement between the owners and/or the users. The conclusion of the agreement shall be overseen by a commission for each locality in the territory of the municipality, set up by an order of the Director of the District Directorate “Agriculture” by 5 August of the relevant year. ...

(2) The agreement shall be concluded in accordance with a model established by the Minister for Agriculture, Food and Forestry ... The agreement shall be concluded and updated each year before 30 August for the following financial year within the meaning of Paragraph 2(3) of the Supplementary Provisions of the zakon za arendata v zemedeliето [(Law on agricultural leasing)]. It may not encompass properties declared for farming within their real boundaries and properties that are permanently used as grasslands and meadows. The agreement shall take effect provided

that it covers at least two thirds of the total surface area of the land use groupings in the relevant locality.

(3) Where the users cannot reach an agreement in the circumstances set out in paragraph 1, and also as regards the land not covered by the agreement, the commission shall draw up a draft allocation of land use by groupings by 15 September of the relevant year in the following manner:

1. the right to use the individual grouping shall be granted to the user with the largest share of owned and/or leased/rented agricultural land in the grouping;
2. the surface area of the agricultural land in respect of which no contracts have been concluded and no declarations have been submitted by its owners in accordance with Article 37b shall be allocated between the users in proportion to the surface area and in accordance with the manner in which the owned and/or leased/rented agricultural land in the relevant locality is permanently used.

(4) The commission shall prepare a report for the Director of the District Directorate "Agriculture", which contains the agreement concluded, the allocation of the land use groupings, information on the land referred to in Paragraph 3(2), their owners and the payment of rents due, and on the basis of that report the Director of the District Directorate "Agriculture" shall issue an order for the allocation of the groupings in the locality before 1 October of the relevant year.

...

(14) The agreement for the creation of land use groupings or the allocation of the land use groupings shall constitute a legal basis for the purposes of the zakon za podpomagane na zemedelskite proizvoditeli [(Law on support for farmers)], and, in the part concerning the land referred to in paragraph 3, it shall constitute a legal basis provided that payment for that land has been made.

(15) Agricultural land included in land use groupings and approved for support under measure 'Agri-environment payments' of the Rural Development Programme 2007-2013 and/or under measure 'Agri-environment-climate' and 'Organic farming' of the Rural Development Programme 2014-2020 shall be allocated without changing the locations of the persons approved under the measure where:

1. the properties made available by them pursuant to Article 37b for participation in the procedure have a surface area greater than or equal to the surface area approved for support under the measure, and
2. the owners and the users whose properties have been made available to the persons approved under the measure in question have declared their wish to participate in the procedure for the creation of land use groupings pursuant to that article in respect of the same properties.

...'

Decree No 11/2009

- 12 The naredba n° 11 za usloviyata i reda za prilagane na myarka 214 'Agroekologichni plashtania' ot Programata za razvitie na selskite rayoni za perioda 2007-2013 (Decree No 11 on the conditions and detailed rules for the application of Measure 214 'Agri-environmental payments' of the Rural Development Programme 2007-2013) of 6 April 2009 (DV No 29 of 17 April 2009, 'Decree No 11/2009'), adopted by the Minister for Agriculture and Food, provides in Article 18 thereof:

'(3) The darzhaven fond "Zemedelie" [(State Agricultural Fund, Bulgaria)] shall terminate the agri-environmental commitment and the beneficiaries shall reimburse the financial aid received, in respect of that part of the programme concerned, in accordance with the provisions of paragraph 4, where:

...

3. the requirements of Article 24(2) have not been complied with;

...

(4) The beneficiaries shall reimburse the financial aid received up to that date, together with statutory interest on the basis of the year in which the initial admission to the measure was made, until the year in which the agri-environmental commitment is terminated, as follows:

...

(c) until the end of the fifth year – 20%;

...

(5) In the event of a finding of non-compliance with the management requirements applicable to the parts of the programme concerned, in accordance with Article 26, the financial aid shall be reimbursed up to the amount calculated in accordance with the detailed rules referred to in Article 16.

(6) In cases of *force majeure* or exceptional circumstances, the agri-environmental commitment shall be terminated and the partial or total reimbursement of the financial aid received by the farmer shall not be required.

(7) Cases of *force majeure* or exceptional circumstances shall be notified together with the corresponding evidence (documents emanating from the competent administrative authority) in written form to the [State Agricultural Fund] – RA (paying agency) by the farmer or by another person authorised by him or her, or by his or her successors, within 10 working days of the date on which the farmer or another person authorised by him or her, or his or her successors, were able to do so.'

- 13 Article 24(1) and (2) of that decree states:

'(1) Agri-environmental activities or parts of the agri-environmental programme referred to in Article 2(1)(1)(a) as well as subparagraphs 2, 3 and 4 of Article 2(1) shall be performed on one and the same agricultural area for one and the same block of agricultural holdings for a period of five years from the date on which the agri-environmental commitment was entered into.

(2) The agricultural area eligible for the performance of agri-environmental activities or parts of the agri-environmental programme referred to in Article 2(1)(1)(a) as well as subparagraphs 2, 3 and 4 of Article 2(1) may be reduced by up to 10% and each year at least 90% of the area covered by the relevant part of the programme must overlap geographically with the area covered by the agri-environmental commitment.'

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

- 14 In 2013, PV submitted an application for aid under Measure 214.
- 15 In the context of that application, PV undertook to comply with an agri-environmental commitment in accordance with the detailed rules and conditions laid down by Decree No 11/2009. One of the requirements which PV thus undertook to comply with was that he would perform the activities for the part of the programme concerned on one and the same agricultural area for five consecutive years.
- 16 That application was granted. PV was allowed to take part in Measure 214 with 857 hectares of agricultural land which he leased and used on the basis of agreements concluded in 2012 for the 2012/2013 financial year. Those agreements were concluded for a period of one year with owners and/or users of agricultural land, in accordance with Article 37c(1) of the ZSPZZ.
- 17 Similar agreements were concluded for the following three financial years 2013/2014, 2014/2015 and 2015/2016. During those years, PV was subject to all the mandatory administrative controls and on-the-spot checks and received a total of 1 063 317.54 Bulgarian leva (BGN) (approximately EUR 544 000) under Measure 214.
- 18 However, in 2016, the owners and users of the agricultural land in question were unable to conclude such agreements under Article 37c(1) of the ZSPZZ for the 2016/2017 financial year. Although PV had wished to conclude those agreements, the other participants in the previous agreements informed him that, for that year, they wished to cultivate that land within the actual boundaries of the land, which precluded the possibility of reaching an agreement under that provision. PV was thus prevented, for that year, from using that land, with which he had entered into the agri-environmental commitment referred to in paragraph 15 of the present judgment, and therefore from complying with the conditions laid down in Article 37c in order to be eligible for agri-environmental payments.
- 19 Since, in accordance with Article 37c(2), agreements between owners and/or users must be concluded each year before 30 August, PV was already aware, at the beginning of August 2016, of his inability to continue to use the same land in the 2016/2017 financial year.
- 20 On 29 May 2017, PV notified the State Agricultural Fund of his intention to terminate his agri-environmental commitment on the ground that the legal basis for the use of the land with which he participated in Measure 214 had disappeared.
- 21 On 23 January 2018, PV was informed of the initiation of proceedings for termination of the multiannual commitment on the ground of non-compliance with the requirement laid down in Article 24(2) of Decree No 11/2009 according to which, each year, the agricultural area

participating in Measure 214 overlaps with at least 90% of the area covered by the agri-environmental commitment. The absence of agreements for the 2016/2017 marketing year meant that that overlap percentage is only 76.18%.

- 22 On 17 August 2018, PV received notification of the termination of his agri-environmental commitment under Measure 214. That act has not been challenged and has become final.
- 23 By letter from the Deputy Executive Director of the State Agricultural Fund received on 7 December 2018, PV was informed of the initiation of proceedings for the issuance of a declaration establishing a public debt in the context of which he was requested to reimburse, in accordance with Article 18(4)(c) of Decree No 11/2009, 20% of the total amount received, namely BGN 212 663.51 (approximately EUR 109 000).
- 24 PV objected to the initiation of those proceedings, arguing that, following an amendment to the regulatory framework in October 2015, numerous owners and/or users refused to conclude an agreement under Article 37c of the ZSPZZ, which made it impossible for him to comply with the commitment referred to in paragraph 15 of the present judgment. He argued that since those were circumstances which he could not have foreseen at the time he made the commitment and which therefore constituted *force majeure* within the meaning of Article 18(6) of Decree No 11/2009, he was not required to reimburse that sum.
- 25 By decision of 14 November 2019, the Deputy Executive Director of the State Agricultural Fund established a public debt in the amount of BGN 212 663.51 (approximately EUR 109 000), representing 20% of the aid paid under Measure 214, for the marketing years from 2013 to 2016.
- 26 PV brought an action against that decision before the Administrativen sad – Targovishte (Administrative Court, Targovishte, Bulgaria), which dismissed that action. That court held, in essence, that that decision was valid and rejected PV's argument based on the occurrence of *force majeure*. That court held that PV could not legitimately expect that the owners and/or users of agricultural land with which he had concluded agreements under Article 37c of the ZSPZZ would renew those agreements for the 2016/2017 financial year. Moreover, even if the circumstances could be described as constituting 'a case of *force majeure*', that court observed that PV had not complied with the notification period laid down for informing the competent administrative authority, which is a time limit.
- 27 PV brought an appeal against that decision before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), which is the referring court, claiming, first, that, by introducing new, stricter requirements, the amendment to Decree No 11/2009, which entered into force on 20 October 2015, had dissuaded some of the owners and/or users from concluding agreements under Article 37c of the ZSPZZ and that that amendment constituted a case of *force majeure* or an exceptional circumstance within the meaning of Article 18(6) of that decree. Second, PV submits that the court of first instance infringed Article 45(4) of Regulation No 1974/2006.
- 28 The referring court considers that Article 45(4) must be interpreted as meaning that, where a holding is re-parcelled or is the subject of public land-consolidation measures or of land-consolidation measures approved by the competent public authorities, which result in the aid beneficiary being unable to continue to comply with the commitments given, the Member State concerned must take the measures necessary to allow the commitments to be adapted to

the new situation of that beneficiary's holding. Otherwise, the commitment would have to expire without the latter being required to reimburse the sums received in respect of the period in which the commitment was effective.

- 29 If that interpretation is not upheld, the referring court asks whether a situation such as that at issue in the main proceedings could constitute a case of *force majeure* or exceptional circumstances, within the meaning of Article 31 of Regulation No 73/2009, which would be likely to release the beneficiary from the obligation to reimburse those sums. In that respect, the referring court is reluctant to adopt such a classification. It notes that the beneficiary knew, at the time of his application for aid under Measure 214, that the agreements for the use of land belonging to third parties, provided for in Article 37c of the ZSPZZ, were for a period of one year and that the owners and/or users of that land could decide not to conclude agreements for the following years.
- 30 In those circumstances, the Varhoven administrativen sad (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Does the interpretation of Article 45(4) of [Regulation No 1974/2006] permit the assumption that, in a case such as the present one, a holding has been "reparcelled" or has been the subject of "land-consolidation measures" as a result of which the beneficiary is unable to comply with the commitments given by him or her?
- (2) If the first question is answered in the affirmative, does the fact that a Member State has not taken the measures necessary to allow the beneficiary's commitments to be adapted to the new situation of the holding provide justification for not requiring reimbursement of the funds in respect of the period in which the commitment was effective?
- (3) If the first question is answered in the negative, how is Article 31 of [Regulation No 73/2009] to be interpreted in the light of the facts established in the main proceedings and what is the nature of the time limit under Article 75(2) of [Regulation No 1122/2009]?'

Consideration of the questions referred

The first question

- 31 By its first question, the referring court asks, in essence, whether Article 45(4) of Regulation No 1974/2006 must be interpreted as meaning that it is applicable where a farmer is unable to continue to comply with the agri-environmental commitments he or she has made for the final year of performance of those commitments and where that inability results from the absence of agreements between that farmer and other owners or users of the agricultural land for the use of that land.
- 32 In order to answer that question, it must be borne in mind that Article 45(4) of Regulation No 1974/2006 covers the case of a beneficiary who is unable to continue to comply with commitments given because his or her holding is reparcelled or is the subject of public land-consolidation measures or of land-consolidation measures approved by the competent public authorities.

- 33 In that regard, it should be noted that neither that provision nor any other provision of that regulation, nor Regulation No 73/2009 and Regulation No 1122/2009 defines the concepts of reparable and public land-consolidation measures or land-consolidation measures approved by the competent public authorities.
- 34 In addition, since Article 45(4) of Regulation No 1974/2006 does not, for those concepts, make any reference to national law, they must be interpreted independently, so as to apply uniformly throughout the European Union (see, by analogy, judgment of 22 April 2021, *Austrian Airlines*, C-826/19, EU:C:2021:318, paragraph 21 and the case-law cited).
- 35 In that context, it should be recalled that the meaning and scope of terms for which EU law provides no definition must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part (judgment of 18 March 2021, *Kuoni Travel*, C-578/19, EU:C:2021:213, paragraph 37 and the case-law cited).
- 36 In the first place, as regards the usual meaning in everyday language of the term 'reparable', that term refers to measures consisting of the reconfiguration of agricultural parcels in order to ensure a more rational use of the land. The expression 'land-consolidation measures' refers more generally, as the Advocate General observed in points 36 and 37 of her Opinion, to measures which relate to a rearrangement of agricultural parcels linked to the provision of necessary infrastructure for the land development concerned. Taken together, the concepts of 'reparable' and 'land-consolidation measures', within the meaning of Article 45(4) of Regulation No 1974/2006, refer to operations aimed at the reconfiguration and rearrangement of agricultural parcels in order to create more rational agricultural holdings in terms of land use.
- 37 In the second place, as the Advocate General noted in points 38 to 40 of her Opinion, that provision requires, according to most language versions, both the reparable and the land-consolidation measures mentioned therein to be decided upon or approved by the competent public authorities.
- 38 In that regard, it should be noted that that provision merely states, in general terms, that the public authority is associated with those measures either by way of decision or by way of approval, without further specifying the procedural rules governing the participation of that authority in the reparable operations or land-consolidation measures.
- 39 It follows that any operation which has as its purpose the reconfiguration and rearrangement of agricultural parcels in order to form more rational agricultural holdings in terms of land use and which is decided upon or approved by the competent public authorities is likely to fall within the concepts of reparable and public land-consolidation measures or of land-consolidation measures approved by the competent public authorities.
- 40 That interpretation is supported by the context of Article 45(4) of Regulation No 1974/2006 and, more generally, by the objectives pursued by the rules on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).
- 41 First, in accordance with Article 36(a)(iv) and Article 39 of Regulation No 1698/2005, agri-environmental payments constitute aid granted annually to a farmer who has voluntarily made an agri-environmental commitment and is intended to cover the additional costs and the income foregone resulting from such commitments. In that regard, as stated in recital 35 of that

regulation, those agri-environmental payments play a prominent role in supporting the sustainable development of rural areas and protecting the environment, since they encourage beneficiaries to enter into multiannual commitments going beyond compliance with the mandatory standards of EU agricultural legislation and with the particular requirements laid down by national legislation.

- 42 Second, it is apparent from recital 23 of Regulation No 1974/2006 that, in order to contribute to the objective of sustainable rural development, the EU legislature intended to favour a balanced application of EU support by means of agri-environmental payments.
- 43 Therefore, as the Advocate General noted in point 43 of her Opinion, the pursuit of those objectives requires farmers not to be deterred from entering into multiannual agri-environmental commitments by reason of the possible occurrence, during the period of performance of those commitments, of a reparable operation or land-consolidation measures which would prevent them from fulfilling those commitments. In that context, Article 45(4) of Regulation No 1974/2006 seeks to mitigate the occurrence of such events during that period.
- 44 However, that provision does not apply if such inability results from the absence of agreements concluded between a farmer and other owners or users of agricultural land. In such a case, the fact that a farmer is unable to comply with those commitments does not result directly from measures decided upon or approved by the competent public authorities affecting the structure of that holding.
- 45 In the light of the foregoing considerations, the answer to the first question is that Article 45(4) of Regulation No 1974/2006 must be interpreted as meaning that it is applicable where a farmer is unable to continue to comply with the agri-environmental commitments which he or she has made for the final year of performance of those commitments and where that inability results directly from a reparable operation or a land-consolidation measure affecting the structure of the agricultural holding which is the subject of those commitments, decided upon or approved by a competent public authority. By contrast, that provision is not applicable where that inability results from the disappearance of the right to use part of the area of that holding during the performance of those commitments.

The second question

- 46 By its second question, the referring court asks, in essence, whether Article 45(4) of Regulation No 1974/2006 must be interpreted as meaning that a Member State's failure to adopt the measures necessary to allow the agri-environmental commitments of a beneficiary to be adapted to the new situation of his or her agricultural holding resulting from a reparable operation or land-consolidation measure, within the meaning of that provision, precludes a requirement for that beneficiary to reimburse the funds received in respect of the period in which those commitments were complied with.
- 47 As a preliminary point, it should be noted that Article 18(1) of Regulation No 65/2011 provides that, in the case of multiannual commitments, aid reductions, exclusions and recoveries shall also apply to the amounts already paid in the previous years for that commitment.
- 48 However, Article 45(4) of Regulation No 1974/2006 provides that, if the beneficiary of an agri-environmental payment is unable to continue to comply with the commitment given because the holding is reparable or is the subject of a land-consolidation measure decided upon

or approved by the competent public authorities, the Member States are to take the measures necessary to allow that commitment to be adapted to the new situation of that holding. If such adaptation proves impossible, the commitment must expire without reimbursement being required in respect of the period in which the commitment was effective.

- 49 It is clear from the wording of that provision that, first, the adoption or approval, by the competent public authorities, of a reparable measure or land-consolidation measure affecting a beneficiary's ability to continue to comply with an agri-environmental commitment given has as its corollary an obligation on the Member State concerned to adapt that commitment to the new situation of the agricultural holding in question.
- 50 Second, it is only where such adaptation proves impossible that that commitment expires, without reimbursement being required in respect of the period in which that commitment was effective.
- 51 As noted in paragraph 42 of the present judgment, it is apparent from recital 23 of Regulation No 1974/2006 that, as regards aid for agri-environmental action, the EU legislature intended to adopt a balanced application of EU support in order to contribute to sustainable rural development.
- 52 In the present case, assuming that the reduction in the area of the beneficiary's agricultural holding, making him unable to comply with the agri-environmental commitment given, results from a reparable or land-consolidation measure, within the meaning of Article 45(4) of Regulation No 1974/2006, it is for the referring court to ascertain whether the competent national authorities have taken the measures necessary to allow that commitment to be adapted to the new situation of that holding. If that court reaches the conclusion that that is not the case, it must then consider that that commitment has expired, without that beneficiary being required to reimburse the aid in respect of the period in which that commitment was effective.
- 53 In the light of the foregoing considerations, Article 45(4) of Regulation No 1974/2006 must be interpreted as meaning that a Member State's failure to adopt the measures necessary to allow the agri-environmental commitments of a beneficiary to be adapted to the new situation of his or her agricultural holding resulting from a reparable or land-consolidation measure, within the meaning of that provision, precludes a requirement for that beneficiary to reimburse the funds received in respect of the period in which those commitments were complied with.

The third question

- 54 By its third question, the referring court asks, in essence, whether Article 31 of Regulation No 73/2009 must be interpreted as meaning that the fact that a beneficiary is unable to continue to comply with a multiannual agri-environmental commitment for the final year of that commitment because there are no agreements concluded with other owners or users of agricultural land for the use of that land constitutes a 'case of *force majeure*' within the meaning of Article 31 and must, therefore, be notified to the competent authority within the period of 10 working days provided for in Article 75(2) of Regulation No 1122/2009.
- 55 In that regard, it should be noted that Article 31(a) to (e) of Regulation No 73/2009 lists various events which may constitute a case of *force majeure*.

- 56 However, those events do not include the situation of a beneficiary of EU funding under a multiannual agri-environmental commitment who is unable to comply with that commitment because there were no agreements concluded with other owners or users of agricultural land for the use of that land.
- 57 That said, it follows from the adverb 'such as' in Article 31 of Regulation No 73/2009 that that article does not contain an exhaustive list of events which may constitute a case of *force majeure*.
- 58 Furthermore, according to the case-law of the Court, *force majeure* is any event resulting from abnormal and unforeseeable circumstances, outside the control of the operator concerned, the consequences of which, in spite of the exercise of all due care, could not have been avoided (see, to that effect, judgments of 17 December 1970, *Internationale Handelsgesellschaft*, 11/70, EU:C:1970:114, paragraph 23, and of 17 December 2015, *Szemerey*, C-330/14, EU:C:2015:826, paragraph 58).
- 59 Therefore, although the fact that a beneficiary is unable to continue to comply with an agri-environmental commitment because of the absence of agreements concluded with other owners or users of agricultural land for the use of that land may, in principle, constitute a case of *force majeure*, that is the case only if that inability results from abnormal and unforeseeable circumstances outside the control of that beneficiary, the consequences of which, in spite of the exercise of all due care, could not have been avoided, which it is for the referring court to ascertain.
- 60 In the light of the foregoing considerations, the answer to the third question is that Article 31 of Regulation No 73/2009 must be interpreted as meaning that, although the fact that a beneficiary is unable to continue to comply with an agri-environmental commitment because of the absence of agreements concluded with other owners or users of agricultural land for the use of that land may, in principle, constitute a case of *force majeure*, that is the case only if that inability results from abnormal and unforeseeable circumstances outside the control of that beneficiary, the consequences of which, in spite of the exercise of all due care, could not have been avoided, which it is for the referring court to ascertain.

Costs

- 61 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 (Eighth Chamber) hereby rules:

- 1. Article 45(4) of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)**

must be interpreted as meaning that it is applicable where a farmer is unable to continue to comply with the agri-environmental commitments which he or she has made for the final year of performance of those commitments and where that inability results directly from a reparable operation or a land-consolidation measure affecting the structure of

the agricultural holding which is the subject of those commitments, decided upon or approved by a competent public authority. By contrast, that provision is not applicable where that inability results from the disappearance of the right to use part of the area of that holding during the performance of those commitments.

2. Article 45(4) of Regulation No 1974/2006

must be interpreted as meaning that a Member State's failure to adopt the measures necessary to allow the agri-environmental commitments of a beneficiary to be adapted to the new situation of his or her agricultural holding resulting from a reparcelling or land-consolidation measure, within the meaning of that provision, precludes a requirement for that beneficiary to reimburse the funds received in respect of the period in which those commitments were complied with.

3. Article 31 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003,

must be interpreted as meaning that, although the fact that a beneficiary is unable to continue to comply with an agri-environmental commitment because of the absence of agreements concluded with other owners or users of agricultural land for the use of that land may, in principle, constitute a case of *force majeure*, that is the case only if that inability results from abnormal and unforeseeable circumstances outside the control of that beneficiary, the consequences of which, in spite of the exercise of all due care, could not have been avoided, which it is for the referring court to ascertain.

[Signatures]