



## Reports of Cases

ORDER OF THE COURT (Sixth Chamber)

7 October 2013\*

(Request for a preliminary ruling — Common agricultural policy — Joint actions — Non-payment of financial aid by the Commission — Withdrawal by a Member State of its contribution — Question of fact — Internal situation — Manifest lack of jurisdiction of the Court — Description of the factual context — Insufficiency — Hypothetical question — Manifest inadmissibility)

In Case C-82/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Italy), made by decision of 30 October 2012, received at the Court on 19 February 2013, in the proceedings

**Società cooperativa Madonna dei miracoli**

v

**Regione Abruzzo,**

**Ministero delle Politiche Agricole e Forestali,**

THE COURT (Sixth Chamber),

composed of M. Berger (Rapporteur), President of the Chamber, E. Levits and J.-J. Kasel, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give its decision by reasoned order in accordance with Article 53(2) of the Rules of Procedure of the Court,

makes the following

### Order

- 1 This request for a preliminary ruling concerns the interpretation of the European Commission's conduct in the context of the alleged cancellation, by the Commission, of the grant of Community financial aid from the European Agricultural Guidance and Guarantee Fund (EAGGF) – Guidance Section for the funds for the year 1992.

\* Language of the case: Italian.

- 2 The request has been made in proceedings between, on the one hand, the Società cooperativa Madonna dei miracoli ('the Società cooperativa') and, on the other, the Regione Abruzzo (Abruzzo Region) and the Ministero delle Politiche Agricole e Forestali (Ministry of Agriculture and Forestry Policy) concerning the cancellation of the regional contribution which the Italian State had granted to the Società cooperativa for an investment project forming part of the Abruzzo Region's operational programme.

### **Legal context**

- 3 Article 42(a) of Regional Law No 31 of 3 June 1982, relating to the Framework Law for the development of agriculture in the Abruzzo Region from 1982 to 1985, provides:

'The Region shall promote the purchase, creation, expansion and modernisation of facilities for the processing of agricultural or livestock products and of integrated production plant, including equipment and appliances, by means of the following measures:

- (a) initiatives eligible for EAGGF financing (Regulation No 355/77): capital grants amounting to 25% of the eligible expenditure.

...'

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

- 4 The order for reference relates that the Società cooperativa, an undertaking active in the wine sector, was granted a regional contribution of ITL 438 750 000 (EUR 226 595.46, or 25% of the total eligible expenditure) for an investment project to modernise the technological process of vinification, which formed part of the Abruzzo Region's operational programme, for the funds for the year 1992, approved by the Commission.
- 5 The investment falls within the ambit of the EAGGF Guidance Section relating to the financing of the common agricultural policy with a view to improving the processing and marketing conditions for agricultural products. In the present case, the total eligible expenditure should have been funded in the proportion of 50% by the Commission and of 25% by the Member State concerned, in the latter case through the grant of the regional contribution at issue in the main proceedings, on the basis of Article 42(a) of Regional Law No 31/1982, which, according to the Consiglio di Stato (Council of State), is ancillary and supplementary to the Community contribution.
- 6 During the procedure for payment of the contributions granted, the Commission carried out inspections which led it to conclude that the use of the technology financed was not consistent with the selection criteria for the projects eligible for aid under the relevant Community rules. Accordingly, the Commission did not pay the contribution.
- 7 By order of 19 July 2000 ('the contested decision'), the Abruzzo Region adopted a decision cancelling the regional contribution for that project, on the ground that its contribution was ancillary to the Community contribution.
- 8 The Società cooperativa brought an action before the Tribunale amministrativo regionale dell'Abruzzo (Regional Administrative Court, Abruzzo) for annulment of the contested decision. As that action was dismissed, the Società cooperativa brought an appeal before the Consiglio di Stato, the referring court. In essence, the Società cooperativa claims that the contested decision is based on the incorrect assumption that the Community contribution had been cancelled and that, as a consequence, the regional contribution had also to be cancelled.

- 9 The referring court notes that the outcome of the case before it depends chiefly on the interpretation of the conduct of the European Union bodies whose failure to act, as regards payment of the contribution previously granted to the Società cooperativa, was interpreted by the Abruzzo Region and by the national court of first instance as an ‘implicit withdrawal of the contribution’, a view contested by the Società cooperativa.
- 10 In those circumstances, the Consiglio di Stato decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) First of all, is it the case that the ... Commission has cancelled the grant of the Community contribution and what was the measure adopted?
- (2) In the alternative:
- (a) What legal effect is to be attached to the Commission’s failure to act, following which the Community contribution was not paid?
- (b) Does the ... Commission’s failure to act, through non-disbursement of the Community contribution, preclude the application of Article 42(a) of ... Regional Law No 31/1982, under which the [Società cooperativa] was granted the regional contribution ancillary to the Community contribution and, consequently, does that failure preclude payment of the regional contribution?
- (3) In any event, what are the obligations incumbent on the Italian State in the case of persistent failure to act on the part of the ... Commission?’

#### **The jurisdiction of the Court and the admissibility of the request for a preliminary ruling**

- 11 First, it should be noted that, under Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, the latter is empowered only to give rulings on the interpretation or the validity of a European Union provision on the basis of the facts which the national court puts before it (see, to that effect, inter alia, Case C-226/08 *Stadt Papenburg* [2010] ECR I-131, paragraph 23 and the case-law cited). On the other hand, it falls exclusively to the referring court to interpret national legislation (see, inter alia, Case C-416/10 *Križan and Others* [2013] ECR, paragraph 58 and the case-law cited). Furthermore, in preliminary ruling proceedings, a question of fact is not for the Court of Justice but for the national court to decide (Case 80/71 *Merluzzi* [1972] ECR 175, paragraph 10).
- 12 Second, it should be noted that, according to settled case-law, a question referred for a preliminary ruling by a national court is inadmissible where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted (see Case C-101/08 *Audiolux and Others* [2009] ECR I-9823, paragraph 31 and the case-law cited). The Court would be exceeding the limits of the function entrusted to it if it decided to rule on a hypothetical problem without having before it the necessary factual or legal material (Case C-83/91 *Meilicke* [1992] ECR I-4871, paragraphs 32 and 33).
- 13 In the present case, as regards Question 1, it is clear that, by that question, the Court is being asked to decide whether the Commission cancelled the grant of a European Union contribution and, if so, to specify the measures adopted to that effect. However, those questions are obviously questions of fact and, as such, they are not for the Court to decide in proceedings under Article 267 TFEU.

- 14 By Question 2(a), the referring court asks the Court to decide what legal force is to be attached to the Commission's failure to act. However, any attempt at such legal characterisation pre-supposes a factual interpretation of the Commission's conduct over a period of nearly two decades. As was noted in the preceding paragraph, such an interpretation is not a matter for the Court. In addition, given that the Commission's alleged failure to act cannot be declared by the Court in the course of the present proceedings, the legal force that falls to be attached to that failure to act is a purely hypothetical issue. Furthermore, the referring court has not provided the Court with the information necessary for it to be able to give a useful answer to the question.
- 15 As for Question 2(b), by which the referring court asks whether failure to act by the Commission, such as that alleged in the main proceedings, precludes the application of Article 42(a) of Regional Law No 31/1982, clearly that question relates to the interpretation of a provision of national law – in the present case, a provision of Abruzzo regional law. However, as was noted in paragraph 11 above, such an interpretation is a matter exclusively for the national courts and, in consequence, the Court manifestly lacks jurisdiction to rule in that regard.
- 16 As regards, finally, Question 3, by which the Court is asked to specify the obligations incumbent on the Italian State in the event of persistent failure to act on the part of the Commission, it should be noted, first, that that question is purely hypothetical, for the same reasons as those given in paragraph 14 above. Secondly, and in any event, the order for reference does not contain the factual or legal material which would be necessary for the Court to be able to give a useful answer to that question.
- 17 In those circumstances, it must be held, on the basis of Article 53(2) of the Rules of Procedure, that the Court manifestly lacks jurisdiction to answer the questions referred by the Consiglio di Stato and that, furthermore, the request for a preliminary ruling is manifestly inadmissible.

### **Costs**

- 18 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 (Sixth Chamber) hereby rules:

- 1. The Court of Justice of the European Union manifestly lacks jurisdiction to answer the questions referred by the Consiglio di Stato (Italy).**
- 2. As to the remainder, the request for a preliminary ruling is manifestly inadmissible.**

[Signatures]