



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

7 April 2022*

(Reference for a preliminary ruling – Agriculture – Common agricultural policy – Direct support schemes – Common rules – Single area payment scheme – Regulation (EU) No 1307/2013 – Article 4(1)(a) and (c) and Article 4(2)(b) – National legislation making direct support conditional on the farmer keeping his own animals – Article 9(1) – Concept of ‘active farmer’ – Regulation (EU) No 1306/2013 – Article 60 – Circumvention clause – Concept of ‘artificially created conditions’)

In Case C-176/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania), made by decision of 11 February 2020, received at the Court on 7 April 2020, in the proceedings

SC Avio Lucos SRL

v

Agenția de Plăți și Intervenție pentru Agricultură – Centrul județean Dolj,

Agenția de Plăți și Intervenție pentru Agricultură (APIA) – Aparat Central,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the First Chamber, acting as President of the Second Chamber, I. Ziemele (Rapporteur), T. von Danwitz, P.G. Xuereb and A. Kumin, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- SC Avio Lucos SRL, by M. Gornoviceanu, avocate,
- the Agenția de Plăți și Intervenție pentru Agricultură – Centrul județean Dolj, by N.S. Răducan, acting as Agent,

* Language of the case: Romanian.

- the Agenția de Plăți și Intervenție pentru Agricultură (APIA) – Aparat Central, by A. Pinteș, acting as Agent,
- the Romanian Government, by E. Gane and A. Rotăreanu, acting as Agents,
- the Czech Government, by M. Smolek, J. Pavliš and J. Vlácil, acting as Agents,
- the European Commission, by A. Sauka and A. Biolan, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 September 2021,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation, first, of Article 4(1)(a) and (c), Article 4(2)(b) and Article 9(1) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608) and, second, of Article 60 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).
- 2 The request has been made in proceedings between, on the one hand, SC Avio Lucos SRL and, on the other hand, the Agenția de Plăți și Intervenție pentru Agricultură – Centrul județean Dolj (Agency for payments and measures for agriculture – Dolj District Centre, Romania) and the Agenția de Plăți și Intervenție pentru Agricultură (APIA) – Aparat Central (Agency for payments and measures for agriculture – Headquarters, Romania) (together, ‘the APIA’) concerning a decision of the APIA rejecting Avio Lucos’ application for payment under the single area payment scheme in respect of the year 2015.

Legal context

European Union law

Regulation (EC) No 1782/2003

- 3 Under Article 29 of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1), entitled ‘Restriction of payment’:

‘Without prejudice to any specific provisions in individual support schemes, no payment shall be made in favour of beneficiaries for whom it is established that they artificially created the conditions

required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of that support scheme.’

Regulation No 1306/2013

4 Article 60 of Regulation No 1306/2013, entitled ‘Circumvention clause’, provides:

‘Without prejudice to specific provisions, no advantage provided for under sectoral agricultural legislation shall be granted in favour of a natural or legal person in respect of whom it is established that the conditions required for obtaining such advantages were created artificially, contrary to the objectives of that legislation.’

Regulation No 1307/2013

5 Recital 3 of Regulation No 1307/2013 states:

‘All the basic elements pertaining to the payment of Union support to farmers should be included in this Regulation, which should also fix the conditions of access to payments which are inextricably linked to those basic elements.’

6 Article 4 of that regulation, entitled ‘Definitions and related provisions’, provides:

‘1. For the purposes of this Regulation, the following definitions shall apply:

- (a) “farmer” means a natural or legal person, or a group of natural or legal persons, regardless of the legal status granted to such group and its members by national law, whose holding is situated within the territorial scope of the Treaties, as defined in Article 52 TEU in conjunction with Articles 349 and 355 TFEU, and who exercises an agricultural activity;
- (b) “holding” means all the units used for agricultural activities and managed by a farmer situated within the territory of the same Member State;
- (c) “agricultural activity” means:
 - (i) production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes,
 - (ii) maintaining an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries, based on criteria established by Member States on the basis of a framework established by the Commission, or
 - (iii) carrying out a minimum activity, defined by Member States, on agricultural areas naturally kept in a state suitable for grazing or cultivation;

...

2. Member States shall:

...

(b) where applicable in a Member State, define the minimum activity to be carried out on agricultural areas naturally kept in a state suitable for grazing or cultivation, as referred to in point (c)(iii) of paragraph 1;

...

3. In order to ensure legal certainty, the Commission shall be empowered to adopt delegated acts in accordance with Article 70 establishing:

...

(b) the framework within which Member States shall define the minimum activity to be carried out on agricultural areas naturally kept in a state suitable for grazing or cultivation, as referred to in point (c)(iii) of paragraph 1;

...'

7 Article 9 of that regulation, entitled 'Active farmer', provides, in paragraph 1 thereof:

'No direct payments shall be granted to natural or legal persons, or to groups of natural or legal persons, whose agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and who do not carry out on those areas the minimum activity defined by Member States in accordance with point (b) of Article 4(2).'

8 Under Article 74 of Regulation No 1307/2013, that regulation became applicable on 1 January 2015.

Delegated Regulation (EU) No 639/2014

9 Recitals 4 and 16 of Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation No 1307/2013 and amending Annex X to that Regulation (OJ 2014 L 181, p. 1), state:

'(4) In line with the case-law of the Court of Justice of the European Union ..., it is appropriate to clarify that Member States, when adopting measures to implement Union law, should exercise their discretion in compliance with certain principles, including in particular the principle of non-discrimination.

...

(16) In line with the case-law of the Court of Justice of the European Union ..., payment entitlements should be allocated to the person enjoying decision-making power, benefits and financial risks in relation to the agricultural activity on the land for which such allocation is requested. It is appropriate to clarify that this principle applies in particular where an eligible hectare is subject to an application for allocation of payment entitlements by more than one farmer.'

- 10 Article 5 of that delegated regulation, entitled ‘Framework for minimum activities on agricultural areas naturally kept in a state suitable for grazing or cultivation’, provides:

‘For the purposes of the point (iii) of Article 4(1)(c) of Regulation [No 1307/2013], the minimum activity to be established by the Member States that is to be carried out on agricultural areas naturally kept in a state suitable for grazing or cultivation shall be at least one annual activity to be carried out by a farmer. Where justified for environmental reasons, Member States may decide to recognise also activities that are carried out only every second year.’

Romanian law

Government Emergency Order No 34/2013

- 11 Article 2 of Ordonanța de urgență a Guvernului nr. 34/2013 privind organizarea, administrarea și exploatarea pajiștilor permanente și pentru modificarea și completarea Legii fondului funciar nr. 18/1991 (Government Emergency Order No 34/2013 on the organisation, management and exploitation of permanent grassland, amending and supplementing Law No 18/1991 on land ownership), of 23 April 2013 (*Monitorul Oficial al României*, Part I, No 267 of 13 May 2013), provides:

‘For the purposes of this Emergency Order:

...

- (c) “livestock unit (LSU)” means a standard unit of measurement established according to the feed requirements of each animal species, which allows for conversion between the various categories of animals;

...’

OUG No 3/2015

- 12 Article 2 of Ordonanța de urgență a Guvernului nr. 3/2015 pentru aprobarea schemelor de plăți care se aplică în agricultură în perioada 2015-2020 și pentru modificarea articolului 2 din Legea nr. 36/1991 privind societățile agricole și alte forme de asociere în agricultură (Government Emergency Order No 3/2015 approving the payment schemes applicable in the field of agriculture for the period 2015-2020 and amending Article 2 of Law No 36/1991 on agricultural companies and other forms of association in the field of agriculture), of 18 March 2015, in the version thereof in force on 1 July 2015 (*Monitorul Oficial al României*, Part I, No 191 of 23 March 2015) (‘OUG No 3/2015’), provides:

‘(1) For the purposes of this Emergency Order:

...

- (f) “farmer” means a natural or legal person or a form of association of natural or legal persons, regardless of their legal status, whose holding is situated in the territory of Romania and who exercises an agricultural activity;

...

(2) Within the meaning of paragraph 1(f), the expression “agricultural activity” shall mean, as the case may be:

...

(d) carrying out a minimum activity on agricultural areas normally kept in a state suitable for grazing or cultivation, with a guarantee of a minimum grazing density of 0.3 LSU/ha by the animals reared by the farmer or annual mowing on the permanent grassland, in accordance with the provisions of the specific legislation in the pasture sector. ...’

13 Article 7(1) of that order provides:

‘The beneficiaries of payments shall be active farmers, natural or legal persons who carry out an agricultural activity as users of areas of agricultural land and/or lawful keepers of animals, in accordance with the legislation in force. ...’

14 Article 8 of that order reads as follows:

‘(1) In order to benefit from the direct payments ..., farmers must:

...

(c) exploit agricultural land of an area of at least 1 ha; the area of the agricultural parcels must be at least 0.3 ha and, in the case of greenhouses, solar greenhouses, vineyards, orchards, crops of hops, nurseries and fruit bushes, the area of the agricultural parcel must be at least 0.1 ha and/or, as the case may be, hold a minimum number of animals. ...

...

(n) present, when submitting a single payment application or amendments thereto, the necessary documents proving the lawful use of the agricultural land, including land containing areas of ecological interest, and of animals. ...

...

(6) The documents showing the lawful use of the agricultural land and the keeping of livestock shall be determined by order of the [Minister for Agriculture and Rural Development] and shall be presented, as appropriate, by all applicants when submitting single payment applications. The areas or livestock for which such documents are not presented shall not be eligible for the payment.’

Order No 619/2015

15 Article 2 of Ordinul ministrului agriculturii și dezvoltării rurale nr. 619/2015 pentru aprobarea criteriilor de eligibilitate, condițiilor specifice și a modului de implementare a schemelor de plăți prevăzute la articolul 1 alineatele (2) și (3) din [OUG nr. 3/2015], precum și a condițiilor specifice de implementare pentru măsurile compensatorii de dezvoltare rurală aplicabile pe terenurile agricole, prevăzute în Programul Național de Dezvoltare Rurală 2014-2020 (Order of the

Minister for Agriculture and Rural Development No 619/2015 approving the eligibility criteria, the specific conditions and the detailed rules governing implementation of the payments schemes provided for in Article 1(2) and (3) of [OUG No 3/2015] as well as the specific conditions governing the implementation of rural development countervailing measures applicable to agricultural land, as laid down in the National Rural Development Programme 2014-2020), of 6 April 2015, in the version thereof in force on 1 July 2015 (*Monitorul Oficial al României*, Part I, No 234 of 6 April 2015) ('Order No 619/2015'), provides:

'For the purposes of this Order:

...

(m) "animal keeper" means a person who permanently possesses animals, as the owner of animals and/or owner of a holding, or temporarily possesses animals, as a person into whose custody they have been entrusted for the entire period of the year of application, which are kept pursuant to an act concluded under the conditions laid down by the legislation in force;

...'

16 Article 7(3) of that order provides:

'Users of permanent grassland, natural or legal persons governed by private law, other than those mentioned in paragraph 1 and in Article 6(1), who carry out at least a minimum agricultural activity on the permanent grassland at their disposal under the conditions laid down by law, as defined in Article 2(2)(d) of [OUG No 3/2015], as active farmers, shall present, when submitting a single payment application to the APIA, the documents provided for in Article 5(1) and (2)(a), (b)(i), (c) and (d), as well as, where applicable:

(a) a copy of the identification document of the farm holding to which the animals are registered or a certificate issued by an authorised veterinarian stating the code of the holding registered in the National Register of Holdings valid on the date on which the single payment application is submitted, where the owner of the permanent grassland keeps animals such that a minimum grazing density of 0.3 LSU/ha is guaranteed;

...'

Civil Code

17 Article 2.146 of the Codul Civil (Civil Code), adopted by Law No 287 of 17 July 2009 (*Monitorul Oficial al României*, Part I, No 505 of 15 July 2011), on loans for use, provides:

'A loan for use is an agreement concluded free of charge by which one party, referred to as the "lender", hands over movable or immovable property to the other party, referred to as the "borrower", in order that the latter may use it, subject to the obligation to return it after a certain period of time.'

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

- 18 Avio Lucos submitted to the APIA an application for financial support under the single area payment scheme in respect of the year 2015, concerning an area of 170.36 ha of pastureland. To that end, it submitted a number of documents, which included a concession contract, concluded on 28 January 2013 with the Consiliul Local al Comunei Podari (Municipal Council of the Municipality of Podari, Romania), concerning a pasture situated within that municipality, together with loan-for-use contracts, concluded in April 2015 between Avio Lucos and various owners of animals, under which those animals are to be used for grazing and thus contribute to the declared agricultural activity.
- 19 By decision of 20 October 2017, the APIA rejected that application on the ground that Avio Lucos had not guaranteed the minimum grazing density of 0.3 LSU/ha for the entire area of pastureland of 170.36 ha. According to the APIA, the livestock grazing was in fact carried out not by Avio Lucos' animals, but by those of the owners with whom it had concluded a loan-for-use contract. Avio Lucos lodged a complaint against that decision, which was rejected by the APIA on 4 January 2018.
- 20 Avio Lucos brought an action against that decision before the Tribunalul Dolj (Regional Court, Dolj, Romania), which the latter dismissed on 28 January 2018. In essence, that court took the view, first of all, that the concession contract had been concluded in breach of national law, since Avio Lucos did not, *inter alia*, have the status of animal breeder on the date on which that contract was concluded and that the minimum density of 0.3 LSU/ha had to be satisfied on that date. Consequently, Avio Lucos was not legally entitled to take on concession the pastureland at issue, with the result that its application for payment was inadmissible. Next, despite formal compliance with the criteria laid down in the applicable national legislation, Avio Lucos artificially created the conditions for obtaining financial support. Lastly, a broad interpretation of the concept of 'animal breeder', such as that proposed by Avio Lucos, would be contrary to EU law, since the national authorities can rely solely on the data held in the database of the national system for the individual identification and registration of animals in order to refuse the aid sought, without necessarily having to carry out other checks.
- 21 Avio Lucos brought an appeal against that judgment before the referring court, the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania). In support of its appeal, Avio Lucos claims, *inter alia*, that it was incorrectly held in that judgment that it did not satisfy the condition relating to the status of animal breeder.
- 22 The referring court observes that, under Article 4(1)(a) and (c) of Regulation No 1307/2013, a natural or legal person who exercises an 'agricultural activity', which – according to Article 4(1)(c)(iii) of that regulation – may consist in carrying out a minimum activity, defined by Member States, on agricultural areas naturally kept in a state suitable for grazing or cultivation, comes *inter alia* under the concept of a 'farmer'. Article 4(2) of the regulation affords the Member States the possibility of defining what constitutes such minimum activity. In that regard, the Romanian legislature provided that the agricultural activity must be carried out with the animals reared by the farmer himself, thus excluding from the grant of financial support any legal person carrying out such an activity through an intermediary, which, according to the APIA, is the case with Avio Lucos.

- 23 That court considers that the question whether Article 4(1)(a) and (c) of Regulation No 1307/2013 precludes such national legislation and, if not, whether Article 4(1)(a) and (c) and Article 9(1) of that regulation allow a legal person who has concluded a concession contract and loan-for-use contracts in circumstances such as those at issue in the main proceedings to be regarded as falling within the scope of the concept of ‘active farmer’ is not free of uncertainty. In addition, since, from a formal perspective, Avio Lucos satisfied the eligibility criteria laid down in national law, that court seeks to ascertain whether the conclusion of a concession contract and loan-for-use contracts such as those at issue in the main proceedings can fall within the scope of the concept of ‘artificially created conditions’, as referred to in Article 60 of Regulation No 1306/2013.
- 24 In those circumstances, the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does Regulation [No 1307/2013] preclude national legislation which establishes that the minimum activity to be carried out on agricultural areas normally kept in a state suitable for grazing is to consist in grazing with animals reared by [the] farmer?
- (2) In so far as the abovementioned law [of the European Union] does not preclude the national legislation referred to in Question 1, may the respective provisions of Article 4(1)(a) and (c), and of Article 9(1), of Regulation [No 1307/2013] be interpreted as meaning that a legal person who has concluded a concession contract in circumstances such as those in the main proceedings and who keeps animals under loan-for-use contracts concluded with natural persons, by which the lenders entrust to the borrowers, free of charge, the animals which they keep as owners, for the purpose of use for grazing, on the pastureland made available to the borrowers and over the agreed periods of time, may be regarded as an “active farmer”?
- (3) Must Article 60 of Regulation [No 1306/2013] be interpreted as meaning that artificial conditions also cover the case of a concession contract and loan-for-use contracts such as those at issue in the main proceedings?’

Consideration of the questions referred

The first question

- 25 As a preliminary point, it should be recalled that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 18 November 2021, *A. S.A.*, C-212/20, EU:C:2021:934, paragraph 36 and the case-law cited).
- 26 In the present case, it should be noted, first of all, that, notwithstanding the fact that the referring court does not specify the provisions of Regulation No 1307/2013 which it seeks to have interpreted, it is apparent from the grounds of the order for reference that the referring court’s doubts relate specifically to the interpretation of Article 4 of that regulation, in particular paragraph 1(c)(iii) and paragraph 2(b) of that article.

- 27 Next, as the Romanian Government pointed out in its written observations, the expression ‘agricultural areas normally kept’, which appears in the wording of the first question, is used in Article 2(2)(d) of OUG No 3/2015, which, according to that government, corresponds, in essence, to the expression ‘agricultural areas naturally kept’, referred to in Article 4(1)(c)(iii) and Article 4(2)(b) of Regulation No 1307/2013.
- 28 Lastly, in response to a request for clarification from the Court of Justice, the referring court stated that the expression ‘animals reared by the farmer’, also used in the wording of its first question and appearing in Article 2(2)(d) of OUG No 3/2015, is not defined in national law. However, that expression overlaps both with the concept of ‘keeping’ animals, as laid down in Article 8(6) of OUG No 3/2015, and that of ‘animal keeper’, referred to in Article 2(m) of Order No 619/2015.
- 29 In those circumstances, it must be considered that, by its first question, the referring court asks, in essence, whether Article 4(1)(c)(iii) and Article 4(2)(b) of Regulation No 1307/2013 must be interpreted as precluding national legislation which provides that the minimum activity on agricultural areas naturally kept in a state suitable for grazing or cultivation, referred to in those provisions, must be carried out by the farmer with animals kept by the farmer himself.
- 30 It should be noted at the outset that Article 4(1)(c)(iii) of Regulation No 1307/2013 defines ‘agricultural activity’, *inter alia*, as carrying out a minimum activity, defined by Member States, on agricultural areas naturally kept in a state suitable for grazing or cultivation. In addition, paragraph 2(b) of that article states that the Member States are to ‘define the minimum activity to be carried out on agricultural areas naturally kept in a state suitable for grazing or cultivation, as referred to in point (c)(iii) of paragraph 1’.
- 31 As is clear from their wording, those provisions give Member States discretion to define the type of minimum activity to be carried out, *inter alia*, on agricultural areas naturally suitable for grazing.
- 32 As regards the question whether that discretion includes the possibility for Member States of laying down, in their respective national legislation, a condition according to which that minimum activity must be carried out by the farmer with animals kept by him, it should be noted that Article 4(3)(b) of Regulation No 1307/2013 provides that, in order to ensure legal certainty, the Commission is to be empowered to adopt delegated acts establishing the framework within which Member States are to define that minimum activity.
- 33 While Delegated Regulation No 639/2014, which was adopted for that purpose, states, in recital 4 thereof, that Member States, when adopting measures to implement EU law, should exercise their discretion in compliance with certain principles, including in particular the principle of non-discrimination, it is limited in that regard to providing, in the provisions thereof concerning the definitions set out in Regulation No 1307/2013, and in particular in Article 5 thereof, which delimits the framework referred to in the preceding paragraph, that ‘for the purposes of the point (iii) of Article 4(1)(c) of Regulation [No 1307/2013], the minimum activity to be established by the Member States that is to be carried out on agricultural areas naturally kept in a state suitable for grazing or cultivation shall be at least one annual activity to be carried out by a farmer’, although Member States are free, where justified for environmental reasons, to recognise also activities that are carried out only every second year.
- 34 It follows, first, that the minimum activity must, in principle, be carried out on those agricultural areas at least once a year. Second, that minimum activity must be carried out ‘by a farmer’.

- 35 In that regard, Article 4(1)(a) of Regulation No 1307/2013, which defines the concept of ‘farmer’, does not specify the nature of the right the farmer must have over the animals which, as the case may be, he grazes on such agricultural areas.
- 36 However, that provision states, in essence, that a farmer is a person whose holding is situated within the territorial scope of the Treaties and who exercises an agricultural activity. The concept of ‘holding’, defined in Article 4(1)(b) of that regulation, includes all the production units ‘managed’ by a farmer situated within the territory of the same Member State. It must therefore be concluded that the production units managed by the farmer in question include animals used for grazing, provided that he has sufficient power over those animals for the carrying-out of his agricultural activity, that being a matter for the competent national court to assess, taking into account all the circumstances of the case (see, by analogy, judgments of 14 October 2010, *Landkreis Bad Dürkheim*, C-61/09, EU:C:2010:606, paragraphs 61 and 62, and of 2 July 2015, *Demmer*, C-684/13, EU:C:2015:439, paragraph 58).
- 37 Such an interpretation is supported by recital 16 of Delegated Regulation No 639/2014, which states, in essence, that payment entitlements must be allocated to the person enjoying decision-making power, receiving the benefits and bearing the financial risks in relation to the agricultural activity on the land for which such allocation is requested.
- 38 In the present case, as is apparent from paragraph 28 of this judgment, the referring court stated, in essence, that the ‘animal keeper’, within the meaning of Article 2(m) of Order No 619/2015, is either a person who permanently possesses animals, as the owner of animals and/or owner of a holding, or a person who temporarily possesses animals, pursuant to a contract concluded under the conditions laid down by the national legislation in force, as a person into whose custody they have been entrusted for the entire period of the year of application.
- 39 In its written observations, the APIA stated, on that point, first, that in Romania the identification and registration of pigs, sheep, goats and cows are ensured by the national computer database and by the national system for the identification and registration of animals and, second, that the status of owner of animals and/or temporary keeper of animals must be proved by means of the ‘holding card’, that is to say, the document identifying the holding used for rearing animals, since every agricultural holding in Romania must be registered in the National Register of Holdings and is given a unique and permanent alphanumeric code. According to the APIA, Avio Lucos’ single payment application did not establish, by that means, its status as owner of animals or temporary keeper of animals.
- 40 In that regard, as is apparent from the case-law of the Court, in the light of the discretion enjoyed by Member States in the framework of support schemes under the common agricultural policy (CAP), it is permissible for the Member States to lay down more detailed rules as to the evidence to be submitted in support of an aid application by referring, in particular, to the usual practices in their territory in the field of agriculture as regards the keeping by the farmer of animals used for grazing (see, by analogy, judgment of 24 June 2010, *Pontini and Others*, C-375/08, EU:C:2010:365, paragraph 82).
- 41 In that context, the Court has already ruled that the database of a system for the identification and registration of animals is designed to ensure efficient tracing in real time of those animals, which is essential for public health reasons, and that such a database is able to confirm the fact that the conditions governing eligibility for aid are met, such as those relating to the density of livestock (see, to that effect, judgment of 21 July 2011, *Nagy*, C-21/10, EU:C:2011:505, paragraph 42).

- 42 The fact remains that, as is apparent from the case-law of the Court, the exercise by Member States of their discretion in respect of the evidence to be provided in support of an aid application must be consistent with the objectives pursued by the EU legislation concerned, as well as with the general principles of EU law, in particular the principle of proportionality, in accordance with which measures implemented through provisions must be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it (see, to that effect, judgments of 24 June 2010, *Pontini and Others*, C-375/08, EU:C:2010:365, paragraphs 86 and 87, and of 17 December 2020, *Land Berlin (Payment entitlements in connection with the CAP)*, C-216/19, EU:C:2020:1046, paragraph 35).
- 43 It is primarily for the national court to verify whether that principle has been complied with in the context of the national legislation applicable to the case in the main proceedings (see, to that effect, judgment of 24 June 2010, *Pontini and Others*, C-375/08, EU:C:2010:365, paragraph 89).
- 44 In its written observations, the Romanian Government stated that, inter alia, when it established the minimum activities for agricultural areas naturally kept in a state suitable for grazing, the Romanian legislature intended to make it easier for the greatest possible number of owners or keepers of animals to enjoy direct access to the pastureland in question, not persons who carry out agricultural activities by way of an intermediary.
- 45 In that regard, as the Advocate General observed, in essence, in point 50 of his Opinion, such an objective is consistent with those pursued by the EU legislation at issue. Article 39(1)(b) TFEU states that support schemes under the CAP provide for direct income support, which is intended to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture.
- 46 As regards the appropriateness of the national legislation at issue in the main proceedings for attaining the objective which it pursues, it is sufficient to note, subject to the checks which it is for the referring court to carry out, that it appears appropriate for attaining that objective, which consists, as is apparent from paragraph 44 of this judgment, in making it easier for the greatest possible number of owners or keepers of animals to enjoy direct access to the pastureland in question.
- 47 Furthermore, in those circumstances, that national legislation also does not appear to go beyond what is necessary to achieve that objective, which it is for the referring court to ascertain. Nevertheless, the issue of proportionality must be examined by taking into consideration, in particular, the objectives of the CAP, which necessitates that those objectives be weighed against the objective pursued by that legislation (see, to that effect, judgment of 23 December 2015, *Scotch Whisky Association and Others*, C-333/14, EU:C:2015:845, paragraphs 28 and 40).
- 48 In the light of all the foregoing considerations, the answer to the first question is that Article 4(1)(c)(iii) and Article 4(2)(b) of Regulation No 1307/2013 must be interpreted as not precluding national legislation which provides that the minimum activity on agricultural areas naturally kept in a state suitable for grazing or cultivation, referred to in those provisions, must be carried out by the farmer with animals kept by the farmer himself.

The second question

- 49 By its second question, the referring court asks, in essence, whether Article 4(1)(a) and (c) and Article 9(1) of Regulation No 1307/2013 must be interpreted as meaning that the concept of ‘active farmer’, within the meaning of that second provision, covers a legal person who has concluded a concession contract relating to an area of pastureland belonging to a municipality and who grazes on that land animals which have been loaned to it, free of charge, by natural persons who own those animals.
- 50 It is settled case-law that, in 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 (see, to that effect, judgments of 24 June 2010, *Pontini and Others*, C-375/08, EU:C:2010:365, paragraph 58, and of 29 July 2019, *Pelham and Others*, C-476/17, EU:C:2019:624, paragraph 28 and the case-law cited).
- 51 In the first place, as regards the wording of Article 9 of Regulation No 1307/2013, which, according to its title, relates to the concept of ‘active farmer’, it should be noted, first, that paragraph 1 of that provision expressly provides that no direct payments are to be granted to persons whose agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and who do not carry out on those areas the minimum activity defined by Member States in accordance with Article 4(2)(b) of that regulation, those conditions being cumulative, as is apparent from the use of the conjunction ‘and’ in that Article 9(1).
- 52 In the present case, it is common ground that the agricultural areas at issue in the main proceedings are mainly areas naturally kept in a state suitable for grazing or cultivation, in accordance with the first condition laid down by that provision.
- 53 As regards the second condition laid down by that provision, it is clear from the wording of Article 9(1) of Regulation No 1307/2013 that a farmer who does not carry out on the agricultural areas in question the minimum activity defined by Member States, pursuant to Article 4(1)(c)(iii) of that regulation, cannot be regarded as an ‘active farmer’ and, therefore, must be refused any direct payments.
- 54 Second, in order to fall within the concept of ‘active farmer’ within the meaning of Article 9(1) of Regulation No 1307/2013, a person must first satisfy the requirements referred to in Article 4(1)(a) of that regulation, according to which the concept of ‘farmer’ refers to a person ‘whose holding is situated within the territorial scope of the Treaties ... and who exercises an agricultural activity’.
- 55 In that regard, as is apparent from paragraph 36 above, the concept of ‘holding’, defined in Article 4(1)(b) of that regulation, includes all the production units managed by a farmer.
- 56 As regards the requirement that a production unit must be ‘managed’ by a farmer, the Court has already ruled that the concept of management does not imply that the farmer has unlimited power over the area in question when using it for agricultural purposes. However, the farmer in question must enjoy a degree of autonomy with regard to that area sufficient for the carrying-out of his agricultural activity, that being a matter for the national court to assess, taking into account all the circumstances of the case before it (see, to that effect, judgments of 14 October 2010, *Landkreis Bad Dürkheim*, C-61/09, EU:C:2010:606, paragraphs 61 and 62, and of 2 July 2015, *Demmer*, C-684/13, EU:C:2015:439, paragraph 58).

- 57 It follows that the fact that the areas used for the purposes of carrying out an agricultural activity were the subject of a concession contract relating to an area of pastureland belonging to a municipality is irrelevant for the purposes of establishing whether a farmer falls within the concept of ‘active farmer’, provided that the farmer in question enjoys a degree of autonomy with regard to that area sufficient for the carrying-out of his agricultural activity.
- 58 Furthermore, as is apparent from paragraph 36 of this judgment, the ‘production units’ referred to in Article 4(1)(b) of that regulation include animals used for grazing, provided that the farmer concerned has sufficient power over those animals for the carrying-out of his agricultural activity, that being a matter for the national court to assess, taking into account all the circumstances of the case before it.
- 59 It follows that, in the case in the main proceedings, the fact that Avio Lucos grazes animals which have been loaned to it free of charge by natural persons who own them is also irrelevant for the purposes of establishing whether that legal person falls within the concept of ‘active farmer’, within the meaning of Article 9(1) of Regulation No 1307/2013, provided, as is clear from the preceding paragraph, that Avio Lucos has sufficient power over those animals for the carrying-out of its agricultural activity.
- 60 In the second place, the interpretation of Article 4(1)(a) and (c) and of Article 9(1) of Regulation No 1307/2013, as follows from paragraphs 50 to 59 above, is supported by the context of those provisions. As noted in paragraph 37 above, recital 16 of Delegated Regulation No 639/2014 states, in essence, that payment entitlements must be allocated to the person enjoying decision-making power, receiving the benefits and bearing the financial risks in relation to the agricultural activity on the land for which such allocation is requested.
- 61 In those circumstances, it must be held that, provided that the farmer has sufficient power over the animals on his holding for the purposes of carrying out his agricultural activity and that he receives the benefits and bears the financial risks in relation to the agricultural activity on the land for which the aid application is made, the fact that a farmer carries out an agricultural activity with animals made available to him under a loan-for-use contract does not preclude that farmer from being regarded as an ‘active farmer’ within the meaning of Article 9(1) of Regulation No 1307/2013.
- 62 Such an interpretation is, in the third place, consistent with the objective pursued by that regulation. In particular, support schemes under the CAP provide for direct income support, which is intended to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture.
- 63 As the Advocate General observed, in essence, in point 66 of his Opinion, since direct aid is granted to farmers who have sufficient power over the animals used for grazing in connection with their use for agricultural purposes and who receive the benefits and bear the financial risks in relation to the agricultural activity on the land for which such allocation is requested, the fact that those animals are used under a loan-for-use contract is not decisive.
- 64 In the present case, it follows from the answer to the first question that, subject to the checks to be carried out by the referring court, EU law does not preclude national legislation which provides that the minimum activity on agricultural areas naturally kept in a state suitable for grazing or cultivation, referred to in Article 4(1)(c)(iii) and Article 4(2)(b) of Regulation No 1307/2013, must be carried out by the farmer with animals kept by the farmer. In that regard, as is apparent

from paragraph 38 of this judgment, in the present case, ‘animal keeper’, as defined in Article 2(m) of Order No 619/2015, means not only a person who permanently possesses animals, as the owner of animals and/or owner of a holding, but also a person who temporarily possesses those animals, as a person into whose custody they have been entrusted for the entire period of the year of application, which are kept pursuant to an act concluded under the conditions laid down by the legislation in force. Such a definition does not appear, as a matter of principle, to exclude from the concept of ‘animal keeper’ a person who possesses animals which are loaned to him free of charge by natural persons who own them, and who has sufficient power over those animals for the purposes of carrying out his agricultural activity. Since such a finding involves an interpretation of national law, it is for the referring court, where appropriate, to make it.

65 In the light of all the foregoing considerations, the answer to the second question is that Article 4(1)(a) and (c) and Article 9(1) of Regulation No 1307/2013 must be interpreted as meaning that the concept of ‘active farmer’, within the meaning of that second provision, covers a legal person who has concluded a concession contract relating to an area of pastureland belonging to a municipality and who grazes on that land animals which have been loaned to it, free of charge, by natural persons who own those animals, provided that that person carries out on that area of pastureland a ‘minimum activity’ within the meaning of Article 4(1)(c)(iii) of that regulation.

The third question

66 By its third question, the referring court asks, in essence, whether Article 60 of Regulation No 1306/2013 must be interpreted as meaning that a situation in which an applicant for financial support under the single area payment scheme submits, in support of his application, a concession contract relating to areas of pastureland and loan-for-use contracts, concluded free of charge, in respect of animals intended for grazing on those areas, may fall within the concept of ‘artificially created conditions’ for the purposes of that provision.

67 Under Article 60 of Regulation No 1306/2013, without prejudice to specific provisions, no advantage provided for under sectoral agricultural legislation is to be granted in favour of a natural or legal person in respect of whom it is established that the conditions required for obtaining such advantages were created artificially, contrary to the objectives of that legislation.

68 On its wording, Article 60 of the regulation essentially repeats Article 29 of Regulation No 1782/2003, which codifies existing case-law according to which it is not possible to rely on EU law fraudulently or abusively.

69 It is settled case-law that the scope of EU regulations must not be extended to cover abusive practices on the part of a trader (judgment of 12 September 2013, *Slancheva sila*, C-434/12, EU:C:2013:546, paragraph 27 and the case-law cited).

70 The Court has already ruled that evidence of an abusive practice on the part of the potential beneficiary of support requires, first, a combination of objective circumstances in which, despite formal observance of the conditions laid down by the relevant rules, the purpose of those rules has not been achieved, and, second, a subjective element consisting in the intention to obtain an advantage from the EU rules by creating artificially the conditions laid down for obtaining it (judgment of 12 September 2013, *Slancheva sila*, C-434/12, EU:C:2013:546, paragraph 29 and the case-law cited).

- 71 Furthermore, it is for the national court to establish the existence of those two elements, evidence of which must be adduced in accordance with the rules of national law, provided that the effectiveness of EU law is not thereby undermined (judgment of 12 September 2013, *Slancheva sila*, C-434/12, EU:C:2013:546, paragraph 30 and the case-law cited).
- 72 It is in that context that the concept of ‘artificially created conditions’ for the purposes of Article 60 of Regulation No 1307/2013 must be interpreted.
- 73 First, as regards the objective element referred to in paragraph 70 of this judgment, it should be recalled that it is apparent from Article 39(1)(b) TFEU that the support schemes under the CAP provide for direct income support, which is intended to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture. As the Advocate General observed, in essence, in point 73 of his Opinion, the grant of such support to a person who has concluded a concession contract relating to areas of pastureland and who, not keeping the number of animals necessary to exploit those areas of pastureland, concludes loan-for-use contracts in respect of animals intended for grazing on those areas, is liable to constitute a diversion of that support, to the detriment of a section of the agricultural community, in this case persons who graze their own animals on those areas.
- 74 Second, as the Advocate General also stated in point 74 of his Opinion, in respect of the subjective element referred to in paragraph 70 above, it is for the referring court in the present case to take account of all the relevant facts of the dispute in the main proceedings in order to determine whether it was Avio Lucos’ intention to obtain an advantage from the EU rules by artificially creating the conditions laid down for obtaining it. The facts which may thus be taken into account include the conclusion, in breach of the applicable national law, of the concession contract or the content of the loan-for-use contracts at issue in the main proceedings, in particular if it were apparent from them that the grazing of the animals loaned is carried out not by Avio Lucos, but by the owners of those animals.
- 75 In the light of the foregoing considerations, the answer to the third question is that Article 60 of Regulation No 1306/2013 must be interpreted as meaning that a situation in which an applicant for financial support under the single area payment scheme submits, in support of his application, a concession contract relating to areas of pastureland and loan-for-use contracts, concluded free of charge, in respect of animals intended for grazing on those areas, may fall within the concept of ‘artificially created conditions’ for the purposes of that provision, provided that, first, it is apparent from a combination of objective circumstances that, despite formal observance of the conditions laid down by the relevant rules, the purpose of those rules has not been achieved and, second, the intention to obtain an advantage from the EU rules by creating artificially the conditions laid down to obtain it is established.

Costs

- 76 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 (Second Chamber) hereby rules:

1. **Article 4(1)(c)(iii) and Article 4(2)(b) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 must be interpreted as not precluding national legislation which provides that the minimum activity on agricultural areas naturally kept in a state suitable for grazing or cultivation, referred to in those provisions, must be carried out by the farmer with animals kept by the farmer himself.**
2. **Article 4(1)(a) and (c) and Article 9(1) of Regulation No 1307/2013 must be interpreted as meaning that the concept of ‘active farmer’, within the meaning of that second provision, covers a legal person who has concluded a concession contract relating to an area of pastureland belonging to a municipality and who grazes on that land animals which have been loaned to it, free of charge, by natural persons who own those animals, provided that that person carries out on that area of pastureland a ‘minimum activity’ within the meaning of Article 4(1)(c)(iii) of that regulation.**
3. **Article 60 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 must be interpreted as meaning that a situation in which an applicant for financial support under the single area payment scheme submits, in support of his application, a concession contract relating to areas of pastureland and loan-for-use contracts, concluded free of charge, in respect of animals intended for grazing on those areas, may fall within the concept of ‘artificially created conditions’ for the purposes of that provision, provided that, first, it is apparent from a combination of objective circumstances that, despite formal observance of the conditions laid down by the relevant rules, the purpose of those rules has not been achieved and, second, the intention to obtain an advantage from the EU rules by creating artificially the conditions laid down to obtain it is established.**

[Signatures]