



## Reports of Cases

### JUDGMENT OF THE COURT (Ninth Chamber)

28 April 2022 \*

(Reference for a preliminary ruling – Common agricultural policy – Direct support schemes – Regulation (EU) No 1306/2013 – Payments to beneficiaries – Article 75 – Time limit for payments – Compliance – None – Tacit refusal of the application for aid)

In Joined Cases C-160/21 and C-217/21,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Administrativen sad Veliko Tarnovo (Administrative Court, Veliko Tarnovo, Bulgaria) by decisions of 10 February 2021 and 19 February 2021, received by the Court of Justice on 10 March 2021 and 6 April 2021 respectively, in the proceedings

**‘Nikopolis AD Istrum 2010’ EOOD** (C-160/21),

**‘Agro – eko 2013’ EOOD** (C-217/21)

v

**Izpalnitelen direktor na Darzhaven fond ‘Zemedelie’,**

THE COURT (Ninth Chamber),

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

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Czech Government, by M. Smolek, J. Pavliš and J. Vlácil, acting as Agents,
- the Austrian Government, by J. Schmoll and V.-S. Strasser, acting as Agents,
- the European Commission, by M. Kaduczak and G. Koleva, acting as Agents,

\* Language of the case: Bulgarian.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,  
gives the following

### **Judgment**

- 1 These requests for a preliminary ruling concern the interpretation of Article 75(1) 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, and corrigendum, OJ 2016 L 130, p. 6), as amended by Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 (OJ 2017 L 350, p. 15) ('Regulation No 1306/2013').
- 2 The requests have been made in proceedings between 'Nikopolis AD Istrum' EOOD ('Nikopolis') and 'Agro – eko 2013' EOOD ('Agro – eko'), commercial agricultural production companies registered as farmers, and the Izpalnitelen direktor na Darzhaven fond 'Zemedelie' (executive director of the national agricultural fund/paying agency; 'the Direktor') concerning aid applications for financing under the EU common agricultural policy (CAP), submitted for the 2018 and 2019 marketing years.

### **Legal context**

#### ***Regulation No 1306/2013***

- 3 Recital 27 of Regulation No 1306/2013 is worded as follows:  
  
'(27) Union aid should be paid to beneficiaries in good time so that they may use it efficiently. A failure by the Member States to comply with the payment deadlines laid down in Union law might create serious difficulties for the beneficiaries and could jeopardise the Union's yearly budgeting. Therefore, expenditure made without respecting deadlines for payments should be excluded from Union financing. The principle of proportionality laid down in [Council] Regulation (EC) No 1290/2005 [of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1)] should be maintained and should apply to both the Funds. In order to respect the principle of proportionality, the Commission should be able to provide for exceptions to this general rule.'
- 4 Article 40 of Regulation No 1306/2013, entitled 'Compliance with payment deadlines', states:  
  
'Where payment deadlines are laid down by Union law, any payment made by the paying agencies to the beneficiaries before the earliest possible date of payment and after the latest possible date of payment shall make the payments ineligible for Union financing, except in the cases, conditions and limits to be determined taking into account the principle of proportionality.  
  
In order to make expenditure effected before the earliest possible date of payment or after the latest possible date of payment eligible for Union financing, while limiting the financial impact of doing so, the Commission shall be empowered to adopt delegated acts in accordance with Article 115, derogating from the rule contained in the first paragraph.'

5 Article 58 of that regulation, entitled ‘Protection of the financial interests of the Union’, provides:

‘1. Member States shall, within the framework of the CAP, adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Union, in particular to:

- (a) check the legality and regularity of operations financed by the Funds;
- (b) ensure effective prevention against fraud, especially in areas with a higher level of risk, and which will act as a deterrent, having regard to the costs and benefits as well as the proportionality of the measures;
- (c) prevent, detect and correct irregularities and fraud;
- (d) impose penalties which are effective, dissuasive and proportionate in accordance with Union law, or failing this, national law, and bring legal proceedings to that effect, as necessary;
- (e) recover undue payments plus interest, and bring legal proceedings to that effect as necessary.

2. Member States shall set up efficient management and control systems in order to ensure compliance with the legislation governing Union support schemes aimed at minimising the risk of financial damage to the Union.

...’

6 Article 74 of that regulation, entitled ‘Verification of eligibility conditions and reductions’, states in paragraph 1 thereof:

‘In accordance with Article 59, Member States, through the paying agencies or the bodies delegated by them, shall carry out administrative checks on the aid application to verify the eligibility conditions for the aid. Those checks shall be supplemented by on-the-spot checks.’

7 Under Article 75 of the regulation, entitled ‘Payment to beneficiaries’:

‘1. The payments under the support schemes and the measures referred to in Article 67(2) shall be made within the period from 1 December to 30 June of the following calendar year.

Payments shall be made in a maximum of two instalments within that period.

‘Notwithstanding the first and second subparagraphs of this paragraph, Member States may:

- (a) prior to 1 December but not before 16 October, pay advances of up to 50% for direct payments;
- (b) prior to 1 December, pay advances of up to 75% for the support granted under rural development as referred to in Article 67(2).

With regard to support granted under rural development, as referred to in Article 67(2), the first and second subparagraphs of this paragraph shall apply in respect of the aid applications or payment claims submitted from claim year 2019.

2. Payments referred to in the paragraph 1 shall not be made before the verification of eligibility conditions, to be carried out by the Member States pursuant to Article 74, has been finalised.

By way of derogation from the first subparagraph, advances for support granted under rural development as referred to in Article 67(2) may be paid after the administrative checks pursuant to Article 59(1) have been finalised.

3. In the event of an emergency, the Commission shall adopt implementing acts which are both necessary and justifiable, in order to resolve specific problems in relation to the application of this Article. Such implementing acts may derogate from paragraphs 1 and 2, but only to the extent that, and for such a period, as is strictly necessary.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 116(3).'

### ***Delegated Regulation (EU) No 907/2014***

- 8 Recital 4 of Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ 2014 L 255, p. 18), as amended by Commission Delegated Regulation (EU) 2018/967 of 26 April 2018 (OJ 2018 L 174, p. 2) ('Delegated Regulation No 907/2014'), reads as follows:

'Union agricultural legislation includes, for the European Agricultural Guarantee Fund (EAGF), periods for payment of aids to beneficiaries which must be complied with by Member States. Payments effected outside those periods are to be regarded as ineligible for Union payments, and therefore cannot be the subject of reimbursement by the Commission, as provided for in Article 40 of [Regulation No 1306/2013]. The analysis of late payments of aid by Member States has shown that a number of these are due to additional checks by Member States related to contentious claims, appeals and other national legal disputes. In accordance with the principle of proportionality, a fixed margin related to expenditure should be laid down within which no reductions of the monthly payments are to be made for these cases. In addition, once this margin is exceeded, in order to modulate the financial impact in proportion to the delay incurred in payment, provision should be made for the Commission to proportionally reduce the Union payments according to the length of delay in payment recorded. Payments of aid before the earliest possible date of payment as provided for in the Union agricultural legislation cannot be justified by the same reasons as payments after the latest possible date of payment. Therefore, no proportional reduction should be foreseen for these early payments. However, an exception should be provided for cases where Union agricultural legislation foresees the payment of an advance up to a certain maximum amount.'

- 9 Article 5 of Delegated Regulation No 907/2014, entitled 'Non-Compliance with the latest payment deadline as regards the European Agricultural Guarantee Fund', provides in paragraph 1 thereof:

'As regards the European Agricultural Guarantee Fund (EAGF), pursuant to the exceptions referred to in the first paragraph of Article 40 of [Regulation No 1306/2013] and in accordance with the principle of proportionality, expenditure effected after the payment deadlines shall be eligible for Union payments under the conditions laid down in paragraphs 2 to 6 of this Article.'

- 10 Article 5a of Delegated Regulation No 907/2014, entitled ‘Non-Compliance with the latest payment deadline as regards the European Agricultural Fund for Rural Development’, provides in paragraph 1 thereof:

‘As regards the European Agricultural Fund for Rural Development, pursuant to the exceptions referred to in the first paragraph of Article 40 of [Regulation No 1306/2013] and in accordance with the principle of proportionality, expenditure made after the payment deadline shall be eligible for Union payments under the conditions laid down in paragraphs 2 to 6 of this Article.’

***Implementing Regulation (EU) No 809/2014***

- 11 Article 24 of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ 2014 L 227, p. 69), as amended by Commission Implementing Regulation (EU) 2018/746 of 18 May 2018 (OJ 2018 L 125, p. 1) (‘Implementing Regulation No 809/2014’), entitled ‘General principles’, provides:

‘1. Administrative checks and on-the-spot checks provided for in this Regulation shall be made in such a way as to ensure effective verification of:

- (a) the correctness and completeness of the information provided in the aid application, application for support, payment claim or other declaration;
- (b) compliance with all eligibility criteria, commitments and other obligations for the aid scheme and/or support measure concerned, the terms under which aid and/or support or exemption from obligations are granted;
- (c) the requirements and standards relevant for cross-compliance.

2. Member States shall ensure that compliance with all conditions applicable established by Union law or laid down in relevant national law and documents containing implementing arrangements or by the rural development programme can be checked according to a set of verifiable indicators to be established by the Member States.

3. The results of the administrative and on-the-spot checks shall be assessed to establish whether any problems encountered could in general entail a risk for other similar operations, beneficiaries or other bodies. The assessment shall also identify the causes of such situations, any further examination which may be required and necessary corrective and preventive actions.

4. The competent authority shall carry out physical inspections in the field in the event that photo-interpretation of satellite or aerial ortho-images or other relevant evidence including evidence provided by the beneficiary at the request of the competent authority do not provide results that would permit definitive conclusions to be drawn to the satisfaction of the competent authority concerning the eligibility or, where applicable, the correct size of the area that is the subject of administrative or on-the-spot checks.

5. This Chapter shall apply to all checks carried out under this Regulation and without prejudice to specific rules provided for in Title IV and V. Paragraph 3 shall however not apply to Title V.’

- 12 Article 25 of Implementing Regulation No 809/2014, entitled ‘Announcement of on-the-spot checks’, provides:

‘On-the-spot checks may be announced provided that it does not interfere with their purpose or effectiveness. Any announcement shall be strictly limited to the minimum time period necessary and shall not exceed 14 days.

However, for on-the-spot checks concerning livestock aid applications or payment claims under animal-related support measures or commitments notified in accordance with Article 14a(5), the announcement shall not exceed 48 hours, except in duly justified cases. Furthermore, where the legislation applicable to the acts and standards relevant to cross-compliance requires the on-the-spot check to be unannounced, those rules shall also apply in the case of on-the-spot checks related to cross-compliance.’

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

#### ***Case C-160/21***

- 13 Nikopolis is a Bulgarian commercial company that produces agricultural products and is registered as a farmer.
- 14 It submitted an aid application for the 2019 marketing year under the 2014-2020 Rural Development Programme, for eight different support schemes. The application was accompanied by the necessary documents and automatic checks of the company’s data were carried out.
- 15 During an on-the-spot check carried out between 18 and 21 November 2019 of parcels of land farmed by Nikopolis, it was found that the legal requirements had been met. On 23 October 2019, the Direktsiya ‘Technicheski inspektorat’ na Darzhaven fond ‘Zemedelie’ (technical inspection office of the national agricultural fund) carried out an on-the-spot cross-compliance check, during which, likewise, no irregularities were found. According to a report from a field inspection carried out by an expert from the Veliko Tarnovo regional technical office, the on-the-spot checks of all land for which aid was applied for, carried out between 16 September 2019 and 31 October 2019, revealed that only one parcel of 0.51 hectares was ineligible for the aid.
- 16 By letter dated 25 November 2019, the Izpalnitelna agentsiya ‘Sertifikatsionen odit na sredstvata ot evropeyskite zemedelski fondove’ (executive agency for certification audits of funding granted by EU agricultural funds) informed the Direktor that checks had been carried out at livestock farms, including a Nikopolis livestock farm, and that the findings from those checks had revealed evidence of fraud which required further analysis. On the basis of that letter, on 3 December 2019 the Direktor issued a memo suspending the processing of the applications referred to in the letter.
- 17 On 6 August 2020, Nikopolis submitted a payment claim to the Direktor in relation to its aid application referred to in paragraph 14 of the present judgment. By letter of 14 August 2020, the deputy executive director of the national agricultural fund replied that the processing of aid applications for the 2019 marketing year under the 2014-2020 Rural Development Programme had not yet been finalised and that that aid application was undergoing further checks, specifically stating that that letter did not constitute an individual administrative act.

- 18 Taking the view that the Direktor's failure to take a decision on the aid application by the legal time limit constituted a tacit decision to reject the application, Nikopolis lodged an appeal against the decision before the Administrativen sad Veliko Tarnovo (Administrative Court, Veliko Tarnovo, Bulgaria), the referring court.

### *Case C-217/21*

- 19 Agro – eko is a Bulgarian commercial company that produces agricultural products and is registered as a farmer.
- 20 It submitted an aid application for the 2018 marketing year under the 2014-2020 Rural Development Programme, for 12 different support schemes, including Measure 10 'Agri-environment-climate'. The application was accompanied by the necessary documents and automatic checks of the company's data were carried out.
- 21 During on-the-spot checks of parcels of land farmed by Agro – eko, it was found that the eligibility conditions for the aid applied for had been met.
- 22 Agro – eko received payment for the schemes and measures concerned, with the exception of Measure 10 'Agri-environment-climate', about which it received no information letter.
- 23 On 21 February 2020, Agro – eko submitted a payment claim to the Direktor in relation to its aid application under Measure 10 'Agri-environment-climate', referred to in paragraph 20 of the present judgment. That payment claim also remained unanswered.
- 24 Taking the view that the Direktor's failure to take a decision on the aid application by the legal time limit constituted a tacit decision to reject the application, Agro – eko lodged an appeal against the decision before the referring court.

### *Questions referred for a preliminary ruling*

- 25 In the two cases before it, the referring court is faced with the question whether the failure to pay the aid at issue by the time limit set out in Article 75(1) of Regulation No 1306/2013 must be regarded as constituting an implicit decision to reject the aid applications referred to in paragraphs 14 and 20 of the present judgment.
- 26 The referring court finds the case-law of the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria) to be contradictory on the matter and notes that the Court of Justice has never ruled on the interpretation of Article 75 of Regulation No 1306/2013.
- 27 In those circumstances, the Administrativen sad Veliko Tarnovo (Administrative Court, Veliko Tarnovo) decided, in both of the disputes in the main proceedings, to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Does the term "payment" used in Article 75(1) of [Regulation No 1306/2013] signify the conclusion of the procedure initiated on the basis of a payment claim?

- (2) Does the actual receipt of the amount claimed by a farmer equate to a positive decision by the paying agency on the application for activation of payment entitlements or does the non-receipt of funds in the case of publicly notified payments for the measure concerned constitute a refusal of the claimed payment entitlements where the person has not been notified of the continuation of the procedure by way of new checks?
- (3) Does the time limit under Article 75(1) of [Regulation No 1306/2013] require the Member States to verify the eligibility conditions before its expiry, and can that verification continue only exceptionally?
- (4) Does failure to comply with the time limit under Article 75(1) of Regulation No 1306/2013 constitute an implicit refusal to pay aid where a farmer has not been notified of the carrying out of supplementary checks and there is no written document in relation thereto?

### Consideration of the questions referred

- 28 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 75(1) of Regulation No 1306/2013 must be interpreted as meaning that failure by the paying agency of a Member State to pay, before the end of the time limit set out in that provision, aid applied for by a farmer under the common agricultural policy programmes should be regarded as constituting an implicit decision to reject the aid application in question.
- 29 The referring court, as an ancillary question, also asks the Court whether, in the event that additional checks or verifications are carried out after the time limit has expired, the fact that the competent national authorities have or have not informed the applicant of the aid could influence the answer to that question.
- 30 According to the settled case-law of the Court, it is necessary, in order to interpret a provision of EU law, to consider not only its wording but also its context and the objectives of the legislation of which it forms part (judgment of 26 February 2019, *Rimšēvičs and ECB v Latvia*, C-202/18 and C-238/18, EU:C:2019:139, paragraph 45 and the case-law cited).
- 31 Article 75(1) of Regulation No 1306/2013 forms part of Chapter II of Title V of that regulation, entitled ‘Integrated Administration and Control System’. Under the terms of that provision, the payments under the support schemes and the measures referred to in Article 67(2) of Regulation No 1306/2013 must be made within the period from 1 December to 30 June of the following calendar year. Article 40 of that regulation provides that any payment made outside that period is ineligible for Union financing.
- 32 In principle, mere silence on the part of an institution, organ of the Union or national authority implementing EU law cannot be placed on the same footing as an implied refusal, except where that result is expressly provided for by a provision of EU law (see, to that effect, judgment of 9 December 2004, *Commission v Greencore*, C-123/03 P, EU:C:2004:783, paragraph 45).
- 33 In the present case, it is necessary, first of all, to determine whether the relevant EU regulations include a provision expressly providing that, after the time limit has expired and in the absence of payment, an implicit decision to reject the application is deemed to have been taken. It must be observed that that is not the case: neither Regulation No 1306/2013 nor any other relevant legal act expressly provides for such a consequence.

- 34 Next, although Article 40 and Article 75(1) of Regulation No 1306/2013, read in the light of recital 27 of that regulation, are intended to ensure that farmers receive their financial assistance in good time so that they may use it efficiently, and to avoid jeopardising the Union's yearly budgeting, it is clear from the general scheme of that regulation that the payment of aid may, in some circumstances, validly be made after the expiry of the time limit set out in Article 75(1).
- 35 First, to protect the financial interests of the Union, in accordance with Article 58 of Regulation No 1306/2013, Article 75(2) of that regulation specifies that the payments referred to in Article 75(1) must not be made before the verification of eligibility conditions, to be carried out by the Member States pursuant to Article 74 of the regulation and the general principles set out in Article 24 of Implementing Regulation No 809/2014, has been finalised. However, Article 75(2) does not set a time limit by which that verification must be carried out, thereby suggesting that it may be carried out after the latest possible date of payment provided for in Article 75(1), and therefore be finalised by the competent national authorities after 30 June of the calendar year following the submission of the aid application in question. Whether or not the farmer concerned has been informed of the completion of the additional checks or verification after the expiry of the time limit set out in that provision is irrelevant in that respect. In effect, the arrangements for informing farmers about the processing of their applications are left to the discretion of the Member States. In addition, Article 25 of Implementing Regulation No 809/2014 provides for the possibility of unannounced on-the-spot checks.
- 36 Second, the first paragraph of Article 40 of Regulation No 1306/2013 expressly provides for the possibility that, in the cases, conditions and limits to be determined taking into account the principle of proportionality, an exception may be made to the rule that payments made by the paying agencies to the beneficiaries before the earliest possible date of payment and after the latest possible date of payment are ineligible for EU financing. On the basis of that provision, Delegated Regulation No 907/2014 provides in Articles 5 and 5a that late payments by a paying agency are, under certain conditions and in certain proportions, eligible for EU payments, and justifies this derogation, as set out in recital 4 thereof, by the fact that such late payments may in particular be due to additional checks by Member States related to disputed claims.
- 37 Accordingly, it is clear from a literal and contextual interpretation of Article 75 of Regulation No 1306/2013 that, although that article establishes the principle that the payment of aid to beneficiaries and the verification of eligibility conditions preceding that payment must, as a general rule, take place within the time limit set out in Article 75(1), it cannot be excluded that, occasionally and in compliance with the principles of good administration and due diligence, that verification may be carried out after the expiry of that time limit and that, therefore, the payment – which can only be made once the verification has been finalised – may take place after 30 June of the calendar year following the submission of the aid application in question.
- 38 Thus, the time limit set out in Article 75(1) is not absolute, but is intended solely as a guide. In those circumstances, failure to pay aid within that time limit cannot be regarded as an implicit decision to reject the aid application in question.
- 39 Lastly, that literal and contextual interpretation of Article 75 of Regulation No 1306/2013 is corroborated by a teleological interpretation of that provision. Treating failure to pay aid before the end of the time limit set out in Article 75(1) as an implicit decision to reject the aid application in question is difficult to reconcile with the interests of the European Union and those of the farmers receiving aid under the common agricultural policy. On the one hand, as regards the European Union, this could have the effect of encouraging the paying agencies of the

Member States to expedite the checks they are required to carry out under Article 74 of the regulation, or even not to perform them at all, which could be contrary to the objective of protecting the financial interests of the European Union, despite being guaranteed by Article 58 of that regulation. On the other hand, as regards the beneficiary farmers, it would mean depriving them of any possibility of obtaining payment after that time limit has expired, unless they lodge an appeal to that effect, even in circumstances where the paying agency intended to make the payment.

- 40 In the light of all the foregoing considerations, the answer to the questions referred is that Article 75(1) of Regulation No 1306/2013 must be interpreted as meaning that failure by the paying agency of a Member State to pay, before the end of the time limit laid down in that provision, aid applied for by a farmer, is not to be regarded as constituting an implicit decision to reject the aid application in question, irrespective of whether the farmer concerned has or has not been informed of any additional checks which would justify such an overrun of that time limit.

### **Costs**

- 41 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 (Ninth Chamber) hereby rules:

**Article 75(1) 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, as amended by Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017, must be interpreted as meaning that failure by the paying agency of a Member State to pay, before the end of the time limit laid down in that provision, aid applied for by a farmer, is not to be regarded as constituting an implicit decision to reject the aid application in question, irrespective of whether the farmer concerned has or has not been informed of any additional checks which would justify such an overrun of that time limit.**

[Signatures]