

JUDGMENT OF THE COURT (Third Chamber)

27 January 2022 (\*)

(Reference for a preliminary ruling – European Agricultural Fund for Rural Development (EAFRD) – Regulation (EU) No 1305/2013 – Support for rural development – Article 30(6)(a) – Natura 2000 payments – Compensation for income foregone in agricultural and forest areas – Peat bogs – Prohibition of establishing plantations of cranberries – No compensation for damage – Charter of Fundamental Rights of the European Union – Article 17 – Right to property)

In Case C-234/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa (Senāts) (Supreme Court, Latvia), made by decision of 3 June 2020, received at the Court on 4 June 2020, in the proceedings

‘Sātiņi-S’ SIA,

intervening party:

**Lauku atbalsta dienests,**

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third Chamber, J. Passer (Rapporteur), F. Biltgen, L.S. Rossi and N. Wahl, Judges,

Advocate General: A. Rantos,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 3 June 2021,

after considering the observations submitted on behalf of:

- ‘Sātiņi-S’ SIA, by A. Grigorjevs,
- the Latvian Government, initially by K. Pommere, V. Soņeca, V. Kalniņa and by E. Bārdiņš, and subsequently by K. Pommere and E. Bārdiņš, acting as Agents,
- Ireland, by M. Browne, J. Quaney, M. Lane and by A. Joyce, acting as Agents, and by S. Kingston, Senior Counsel, and G. Gilmore, Barrister-at-Law,
- the European Commission, initially by C. Hermes, M. Kaduczak and I. Naglis, and subsequently by C. Hermes and M. Kaduczak, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 September 2021,

gives the following

**Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 30(1) and (6)(a) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ 2013 L 347, p. 487, and corrigendum OJ 2016 L 130, p. 1), and of Article 17 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between 'Sātiņi-S' SIA and the Lauku atbalsta dienests (Rural Support Service, Latvia) concerning the latter's refusal to grant Sātiņi-S compensatory payments under Natura 2000 on account of the prohibition of establishing plantations of cranberries in peat bogs falling within the Natura 2000 network.

## **Legal context**

### ***European Union law***

#### *The 'Habitats' Directive*

- 3 The first subparagraph of Article 3(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) ('the "Habitats" Directive') provides:

'A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.'

- 4 Article 6(2) of that directive provides:

'Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.'

#### *Regulation No 1305/2013*

- 5 Recitals 9 and 24 of Regulation No 1305/2013 state:

'(9) Rural development programmes should identify the needs of the area covered and describe a coherent strategy to meet them in the light of the [European] Union priorities for rural development. That strategy should be based on the setting of targets. The links between the needs identified, the targets set and the choice of measures selected to meet them should be established. Rural development programmes should also contain all the information required to assess their conformity with the requirements of this Regulation.

...

(24) Support should continue to be granted to farmers and forest holders to help address specific disadvantages in the areas concerned resulting from the implementation of Directive 2009/147/EC of the European Parliament and of the Council [of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7)] and [the "Habitats" Directive] and in order to contribute to the effective management of Natura 2000 sites. Support should also be made available to farmers to help address disadvantages in river basin areas resulting from the implementation of [Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1)]. Support should be linked to

specific requirements described in the rural development programme that go beyond relevant mandatory standards and requirements. Member States should also ensure that payments to farmers do not lead to double funding under this Regulation and 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)]. Furthermore, the specific needs of Natura 2000 areas should be taken into account by Member States in the overall design of their rural development programmes.’

6 Article 2 of that regulation, under the heading ‘Definitions’, provides in paragraphs 1 and 2 thereof:

‘1. ...

In addition, the following definitions shall apply:

...

(c) “measure” means a set of operations contributing to one or more of the Union priorities for rural development;

...

(f) “agricultural area” means any area taken up by arable land, permanent grassland and permanent pasture or permanent crops as defined in Article 4 of [Regulation No 1307/2013];

...

(r) “forest” means an area of land spanning more than 0,5 hectares with trees higher than 5 meters and a canopy cover of more than 10 percent, or trees able to reach these thresholds in situ; and does not include land that is predominantly under agricultural or urban land use, subject to paragraph 2.

2. A Member State or region may choose to apply a forest definition, other than the one in point (r) of paragraph 1, based on existing national law or inventory system. The Member States or regions shall provide such definition in the rural development programme.’

7 Article 6 of that regulation, under the heading ‘Rural development programmes’, provides in paragraph 1 thereof:

‘The EAFRD shall act in the Member States through rural development programmes. Those programmes shall implement a strategy to meet the Union priorities for rural development through a set of measures as defined in Title III. Support from the EAFRD shall be sought for the achievement of the objectives of rural development pursued through Union priorities.’

8 Article 10 of that regulation, under the heading ‘Approval of rural development programmes’ provides:

‘1. Member States shall submit to the [European] Commission a proposal for each rural development programme, containing the information referred to in Article 8.

2. Each rural development programme shall be approved by the Commission by means of an implementing act.’

9 Article 30 of that regulation, under the heading ‘Natura 2000 and [Directive 2000/60] payments’, provides:

‘1. Support under this measure shall be granted annually per hectare of agricultural area or per hectare of forest in order to compensate beneficiaries for additional costs and income foregone resulting from

disadvantages in the areas concerned, related to the implementation of [the “Habitats” Directive ] and [Directive 2009/147] and [Directive 2000/60].

When calculating support under this measure, Member States shall deduct the amount necessary in order to exclude double funding of the practices referred to in Article 43 of [Regulation No 1307/2013].

...

6. The following areas shall be eligible for payments:

(a) Natura 2000 agricultural and forest areas designated pursuant to [the “Habitats” Directive ] and [Directive 2009/147];

...’

*Regulation No 1307/2013*

10 Article 4 of Regulation No 1307/2013, under the heading ‘Definitions and related provisions’, provides in paragraph 1 thereof:

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

...

(h) “permanent grassland and permanent pasture” (together referred to as “permanent grassland”) means land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or more; it may include other species such as shrubs and/or trees which can be grazed provided that the grasses and other herbaceous forage remain predominant as well as, where Member States so decide, land which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas;

...’

11 Article 45 of that regulation, under the heading ‘Permanent grassland’, provides in the first subparagraph of paragraph 1 thereof:

‘Member States shall designate permanent grasslands which are environmentally sensitive in areas covered by [the “Habitats” Directive and Directive 2009/147], including in peat and wetlands situated in these areas, and which need strict protection in order to meet the objectives of those Directives.’

*Implementing Regulation (EU) No 808/2014*

12 Article 10 of Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation No 1305/2013 (OJ 2014 L 227, p. 18), under the heading ‘Standard assumption of additional costs and income foregone’, is worded as follows:

‘1. Member States may fix the amount of the payments for the measures or types of operations referred to in Articles 28 to 31 and Articles 33 and 34 of [Regulation No 1305/2013] on the basis of standard assumptions of additional costs and income foregone.

2. Member States shall ensure that the calculations and the corresponding payments referred to in paragraph 1:

(a) contain only elements that are verifiable;

- (b) are based on figures established by appropriate expertise;
- (c) indicate clearly the source of the figures used;
- (d) are differentiated to take account of regional or local site conditions and actual land use, where applicable;
- (e) do not contain elements linked to investment costs.’

13 Part 1 of Annex I to that implementing regulation is entitled ‘Presentation of the content of rural development programmes’. Point 8 of Part 1 is entitled ‘Description of the measures selected’ and reads as follows:

‘...

(2) Description by measure including:

...

(e) description specific to each measure and/or type of operation as follows:

...

11. Natura 2000 and Directive [2000/60] payments [Article 30 of Regulation No 1305/2013]

...

- identification of the restrictions/disadvantages based on which payments can be granted and indication of compulsory practices;
- description of the methodology and the agronomic assumptions including the description of the baseline requirements referred to in Article 30(3) of Regulation [No 1305/2013] for [the “Habitats” Directive and Directive 2009/147] and in Article 30(4) of that Regulation for [Directive 2000/60] used as reference for the calculations justifying additional costs and income foregone resulting from the disadvantages in the areas concerned related to the implementation of [the “Habitats” Directive, Directive 2009/147] and [Directive 2000/60]; where relevant, that methodology shall take into account payment for agricultural practices beneficial for the climate and the environment granted in accordance with [Regulation No 1307/2013], in order to exclude double funding.

...’

14 Part 5 of Annex I to that implementing regulation relates to the codes of measures and sub-measures. That part provides, under Article 30 of Regulation No 1305/2013, under code 12, for the measure under the heading ‘Natura 2000 and [Directive 2000/60] payments’. That measure comprises three sub-measures under the heading, respectively, under codes 12.1, 12.2 and 12.3, ‘Compensation payment for Natura 2000 agricultural areas’, ‘Compensation payment for Natura 2000 forest areas’ and ‘Compensation payment for agricultural areas included in river basin management plans’.

#### *Latvian law*

15 The Ministru kabineta noteikumi No 562 ‘Noteikumi par zemes lietošanas veidu klasifikācijas kārtību un noteikšanas kritērijiem’ (Decree No 562 of the Council of Ministers on the rules for the classification of

types of land use and the criteria for determining them) of 21 August 2007 (*Latvijas Vēstnesis*, 2007, No 137) provides, in its annex, a classification of types of land use.

16 The Ministru kabineta noteikumi No 264 ‘Īpaši aizsargājamo dabas teritoriju vispārējie aizsardzības un izmantošanas noteikumi’ (Decree No 264 of the Council of Ministers on general provisions on the protection and use of special areas of conservation) of 16 March 2010 (*Latvijas Vēstnesis*, 2010, No 58) lays down the general rules for the protection and use of special areas of conservation.

17 Point 16 of that decree, included in Chapter 5 thereof, under the heading ‘Protected natural areas’, provides:

‘In nature protection areas it is forbidden:

...

16.12. to establish cranberry plantations in peat bogs;

...’

18 Points 56 to 58 of the Ministru kabineta noteikumi No 171 ‘Noteikumi par valsts un Eiropas Savienības atbalsta piešķiršanu administrēšanu un uzraudzību vides, klimata un lauku ainavas uzlabošanai 2014.–2020. gada plānošanas periodā’ (Decree No 171 of the Council of Ministers relating to the grant, administration and supervision of State and European Union aid for improvements to the environment, climate and rural areas during the programming period for the years 2014 to 2020) of 7 April 2015 (*Latvijas Vēstnesis*, 2015, No 76) are worded as follows:

‘Point 56. The area eligible for support under this measure is forest land (excluding peat bogs):

56.1. which is included in the list of [Natura 2000 areas] pursuant to Article 30(6)(a) of Regulation No 1305/2013;

...

Point 58: Support may be granted if the eligible area declared for the support is at least 1 ha and comprises fields of at least 0.1 ha, and the minimum area subject to some form of restriction within a field measures at least 0.1 ha, and if the said fields can be identified on a map, are included in the Rural Support Service’s electronic application system and are subject to any of the following restrictions on economic activity from 1 March of the current year under the legislation governing the protection and use of special areas of conservation or the protection of species and biotopes:

58.1. prohibition on forestry activities;

58.2. prohibition on main harvesting and thinning;

58.3. prohibition on main harvesting;

58.4. prohibition on clear cutting.’

19 The Latvijas lauku attīstības programma 2014.-2020.gadam (Rural development programme for Latvia 2014-2020), approved by the Commission under Article 10(2) of Regulation No 1305/2013 (‘the Rural Development programme 2014-2020’), states that support may be paid where restrictions are placed on forestry activities in Natura 2000 areas or in microreserves located on forest land, excluding peat bogs.

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

- 20 In 2002, Sātiņi-S purchased 7.7 ha of peat bog, situated in a nature protection area and in a Natura 2000 conservation area of Community importance in Latvia.
- 21 On 2 February 2013, Sātiņi-S applied to the Rural Support Service for compensation for 2015 and 2016 in view of the prohibition on establishing cranberry plantations on that peatland. By decision of 28 February 2017, that service rejected that application on the ground that the applicable national legislation did not provide for such compensation.
- 22 Sātiņi-S brought an appeal against that decision before the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia), which dismissed that action by judgment of 26 March 2018.
- 23 Sātiņi-S brought an appeal on a point of law against that judgment before the referring court, the Augstākā tiesa (Senāts) (Supreme Court, Latvia), which considers that an interpretation of Article 30 of Regulation No 1305/2013 is necessary in order to enable it to rule on that appeal.
- 24 In those circumstances, the Augstākā tiesa (Senāts) (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must Article 30(6)(a) of [Regulation No 1305/2013] be interpreted as meaning that peat bogs are completely excluded from Natura 2000 payments?
  - (2) If the reply to the first question is in the negative, are peat bogs included in agricultural or forest areas?
  - (3) If the reply to the first question is in the negative, must Article 30 of Regulation No 1305/2013 be interpreted as meaning that a Member State may completely exclude peat bogs from Natura 2000 payments and that such national provisions are compatible with the compensatory aim of those payments established in Regulation No 1305/2013?
  - (4) Must Article 30 of Regulation No 1305/2013 be interpreted as meaning that a Member State may restrict support payments for Natura 2000 areas by making support available only in connection with restrictions on a particular type of economic activity, for example, by limiting support in forest areas to forestry activities?
  - (5) Must Article 30(1) of Regulation No 1305/2013, read together with Article 17 of the [Charter], be interpreted as meaning that someone is entitled to a Natura 2000 payment by virtue of his or her plans for a new economic activity if, when he or she acquired the property, he or she was already aware of the restrictions that applied to it?’

## **Consideration of the questions referred**

### ***The first and second questions***

- 25 By its first two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 30(6)(a) of Regulation No 1305/2013 must be interpreted as meaning that peat bogs are completely excluded from entitlement to Natura 2000 payments and, if that is not the case, whether peat bogs fall within the ‘agricultural areas’ or ‘forest areas’ within the meaning of that provision.
- 26 In order to answer those questions, it should be noted that Article 30 of Regulation No 1305/2013 governs, inter alia, Natura 2000 payments. Under paragraph 1 of that provision, support is to be granted annually per hectare of agricultural area or per hectare of forest in order to compensate beneficiaries for additional costs and income foregone resulting from disadvantages in the areas concerned, related to the implementation of the ‘Habitats’ Directive, and Directive 2009/147 (the ‘Birds’ Directive) and Directive 2000/60 (the ‘Water Framework Directive’). That provision states, in paragraph 6(a), that Natura 2000

agricultural and forest areas designated pursuant to the ‘Habitats’ Directive and the ‘Birds’ Directive are eligible for payments relating to the support in question.

27 Thus, agricultural and forest areas which, although situated in Natura 2000 areas designated pursuant to the ‘Habitats’ Directive and the ‘Birds’ Directive, fall within the concept of ‘agricultural area’ or ‘forest area’ within the meaning of Regulation No 1305/2013, may be eligible for Natura 2000 payments referred to in Article 30(1) of Regulation No 1305/2013.

28 That said, it should be noted that Regulation No 1305/2013 does not mention and, a fortiori, does not define the concept of ‘peat bogs’ or ‘peat land’. Nor does the referring court specify what is meant by ‘peat bogs’ or ‘peat land’ within the meaning of the national legislation at issue in the main proceedings. In those circumstances, it must therefore be held, as the Advocate General did in point 33 of his Opinion, that a peat bog designates, in essence and according to the ordinary meaning of that word, a wetland characterised by the presence of ‘peat’, soil characterised by a high content of organic matter of plant origin and by organic carbon storage.

29 For its part, the concept of ‘forest’ is defined in Article 2(1)(r) of Regulation No 1305/2013 as an area of land spanning more than 0.5 hectare with trees higher than 5 meters and a canopy cover of more than 10 percent, or trees able to reach these thresholds in situ, and does not include land that is predominantly under agricultural or urban land use. However, paragraph 2 of that article provides that a Member State may choose to apply a different definition than that definition, based on national law or the inventory system in force, provided that, in that case, that definition is given in its rural development programme. It will be for the referring court, if necessary, to ascertain whether, in the present case, the Republic of Latvia adopted such a definition.

30 As the Advocate General observed in point 35 of his Opinion, it cannot be ruled out that, depending on the vegetation present in the place concerned, a peat bog may be made up of ‘forests’ within the meaning of Article 2(1)(r) of Regulation No 1305/2013, or within the definition of ‘forest’ which may, as the case may be, be established by the Member State concerned under Article 2(2) of that regulation.

31 As regards agricultural areas, Regulation No 1305/2013 defines ‘agricultural area’ in Article 2(1)(f) of that regulation as ‘any area taken up by arable land, permanent grassland and permanent pasture or permanent crops as defined in Article 4 of [Regulation No 1307/2013]’.

32 As the Advocate General observed in point 34 of his Opinion, it follows from the definition of ‘permanent grassland and permanent pasture’ set out in Article 4(1)(h) of Regulation No 1307/2013, and from the specifications set out in the first subparagraph of Article 45(1) of that regulation, that peat bogs and peat land may fall within that definition and, therefore, within that of agricultural area.

33 It must therefore be held that, in so far as peat bogs or peat land situated in Natura 2000 areas designated pursuant to the ‘Habitats’ Directive and the ‘Birds’ Directive fall within the concept of ‘forest’ or ‘agricultural area’ within the meaning of Regulation No 1305/2013 or, as the case may be, the national legislation adopted in accordance with that regulation, those peat bogs and peat land may be regarded as ‘Natura 2000 agricultural and forest areas’ within the meaning of Article 30(6)(a) of that regulation and therefore, in principle, are eligible for the Natura 2000 payments referred to in Article 30(1) of that regulation.

34 Whether, depending on their specific configuration, peat bogs situated in a Natura 2000 area, such as those at issue in the main proceedings come, as the case may be, within the concept of ‘forest’ or ‘agricultural area’ and thus within that of ‘Natura 2000 agricultural and forest areas’, within the meaning of Article 30(6)(a) of Regulation No 1305/2013, constitutes a factual assessment which falls within the jurisdiction of the national courts.

35 In the light of all the foregoing, the answer to the first two questions is that Article 30(6)(a) of Regulation No 1305/2013 must be interpreted as meaning that it does not exclude, in principle, peat bogs from Natura

2000 payments, in so far as those peat bogs are situated in Natura 2000 areas designated pursuant to the ‘Habitats’ Directive and to the ‘Birds’ Directive and fall within the concept of ‘agricultural area’ or ‘forest’, within the meaning of, respectively, points (f) and (r) of Article 2(1) or of Article 2(2) of that regulation, which may thus be eligible for the payments referred to in Article 30(1) of that regulation as ‘Natura 2000 agricultural and forest areas’ within the meaning of Article 30(6)(a) thereof.

### *The third and fourth questions*

- 36 By its third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 30 of Regulation No 1305/2013 permits a Member State to exclude peat bogs from entitlement to Natura 2000 payments or to limit the grant of support for such areas to situations where their designation as ‘Natura 2000 areas’ has the effect of adversely affecting the exercise of a specific type of economic activity in those areas, in particular, forestry.
- 37 In the first place, it should be noted that it follows from the answer given to the first two questions that ‘peat bogs’ or ‘peat land’ situated in Natura 2000 areas which are not covered by the definition of ‘agricultural area’ or that of ‘forest’ within the meaning of, respectively, subparagraphs (f) and (r) of Article 2(1) or of Article 2(2) of Regulation No 1305/2013 are ineligible for payments under Article 30 of that regulation.
- 38 In that regard, it is important, however, to point out that, under Article 2(2) thereof, a Member State is entitled to establish a definition of the concept of ‘forest’, the effect of which is to exclude peat bogs or peat land from entitlement to payments, even though they are areas corresponding to the definition set out in Article 2(1)(r) of Regulation No 1305/2013.
- 39 It is apparent from the written observations of the Latvian Government that the specific categories of plots of land and their decisive characteristics are defined in Decree No 562 of the Council of Ministers of 21 August 2007 on the rules for the classification of types of land use and the criteria for determining them. Under the annex to that decree, ‘agricultural land’, ‘forest[s]’ and ‘peat bogs’ constitute three distinct categories of land depending on their type of use. That being so, it is for the referring court to ascertain whether, in the present case, the Republic of Latvia adopted a definition of the concept of ‘forest’ under Article 2(2) of Regulation No 1305/2013.
- 40 In the second place, it should be borne in mind that Article 30 of Regulation No 1305/2013 gives Member States the possibility of granting compensation under Natura 2000, but does not create any obligation to that effect imposed on them. Payments under Natura 2000 and the ‘Water Framework Directive’ are one of the rural development measures within the meaning of Article 2(1)(c) of that regulation. Accordingly, Article 30 thereof and the conditions laid down therein apply only to payments made under the rural development programme of the Member State concerned, as approved by the Commission under Article 10 of that regulation. Member States are not obliged to implement all measures, but only those corresponding to their strategy and that of the European Union, also taking into account the level of EAFRD financing. That interpretation is consistent with recital 9 of Regulation No 1305/2013, which refers, inter alia, to the choice of measures adopted in order to achieve the objectives in the field of rural development. Consequently, a payment under Article 30 of Regulation No 1305/2013 is only one of the options for which a Member State may opt for the purposes of receiving funding.
- 41 Furthermore, first of all, Annex I, Part 5, measure 12 of Implementing Regulation No 808/2014 leaves it to the Member States to choose between three sub-measures under Article 30 of Regulation No 1305/2013, namely compensation payment for Natura 2000 agricultural areas, compensation payment for Natura 2000 forest areas and compensation payment for agricultural areas included in river basin management plans. Next, Annex I, Part 1, Section 8, 2)(e), point 11 of that implementing regulation requires, inter alia, the Member States to determine the restrictions or disadvantages on account of which payments provided for in rural development plans may be granted. Lastly, Article 10(1) of that implementing regulation provides that Member States may determine the amount of payments on the basis of standard assumptions of additional costs and income foregone.

- 42 Accordingly, in principle, EU law confers on the Member States a margin of discretion as regards, first, the choice of measures which they intend to implement, among those provided for by EU law and, second, the determination of the restrictions or disadvantages on account of which payments are granted.
- 43 While it is admitted that the restrictions adopted by Member States, while establishing their rural development programme, must not deprive the Natura 2000 payments system of its the compensatory aim (see, to that effect, judgment of 30 March 2017, *Lingurár*, C-315/16, EU:C:2017:244, paragraph 28), the fact remains that those Member States may decide how the measures to achieve the objectives set out in Regulation No 1305/2013 are to be implemented in practice. Furthermore, when making these choices, those States must observe the general principles of EU law, such as non-discrimination and proportionality (see, to that effect, concerning the principle of proportionality, judgment of 30 March 2017, *Lingurár*, C-315/16, EU:C:2017:244, paragraph 29 and the case-law cited).
- 44 In the present case, it is apparent from the request for a preliminary ruling that, in the Rural Development programme 2014-2020, which was approved by the Commission on 13 February 2015, the Republic of Latvia limited the grant of Natura 2000 payments to forest areas, excluding the peat bogs located therein. The provisions of that programme are reproduced in Decree No 171 of the Council of Ministers of 7 April 2015 relating to the grant, administration and supervision of State and European Union aid for improvements to the environment, climate and rural areas during the programming period for the years 2014 to 2020, point 56 of which states that support may be granted ‘to forest land, excluding peat bogs’.
- 45 It follows, first, that, as regards the three sub-measures referred to in paragraph 41 of the present judgment, the Republic of Latvia opted only for the second of those sub-measures, under the heading ‘Compensation payment for Natura 2000 forest areas’, thus excluding in that way from the support scheme put in place, ‘Natura 2000 agricultural areas’, within the meaning of Article 30(6)(a) of that regulation, and, consequently, the peat bogs which fall, as the case may be, within the definition of those areas. In so doing, the Republic of Latvia therefore made a choice between the three types of sub-measures, which were thus available to it under Regulation No 1305/2013 and Implementing Regulation No 808/2014.
- 46 As regards, second, the restrictions or disadvantages on account of which such payments may be granted for ‘Natura 2000 forest areas’, within the meaning of Article 30(6)(a) of Regulation No 1305/2013, that Member State described them and defined the amount of that compensation per hectare of land concerned, excluding peat bogs.
- 47 Consequently, the fact that a Member State limits payments for such areas to situations where their designation as ‘Natura 2000 areas’ has the effect of restricting the exercise of a specific type of economic activity in those areas, in particular forestry, appears to comply with the conditions of Regulation No 1305/2013.
- 48 It follows from the foregoing considerations that the answer to the third and fourth questions is that Article 30(6)(a) of Regulation No 1305/2013 must be interpreted as allowing a Member State to exclude from Natura 2000 payments, first, ‘Natura 2000 agricultural areas’ within the meaning of that provision, including, in that case, peat bogs which come within such areas and, second, and in accordance with Article 2(2) of Regulation No 1305/2013, peat bogs situated in Natura 2000 areas, which, in principle, come within the concept of ‘forest’ within the meaning of Article 2(1)(r) of that regulation, and thus the concept of ‘Natura 2000 forest areas’ within the meaning of Article 30(6)(a) of that regulation. The latter provision must also be interpreted as permitting a Member State to limit such payments for Natura 2000 forest areas, including, where appropriate, peat bogs, to situations where the designation of those areas as ‘Natura 2000 areas’ has the effect of adversely affecting the exercise of a specific type of economic activity, in particular forestry.

### ***The fifth question***

- 49 By its fifth question, the referring court asks, in essence, whether Article 30(1) of Regulation No 1305/2013, read in conjunction with Article 17 of the Charter, must be interpreted as meaning that a

Natura 2000 payment must be granted to the owner of a peat bog falling within that network on the basis that a restriction was imposed on an economic activity that could be carried out on such a peat bog, such as planting cranberries, where, at the time when he or she acquired the immovable property concerned, the owner was aware of such restriction.

*The jurisdiction of the Court*

- 50 The Commission submits that the Court has no jurisdiction to rule on the fifth question. It claims that Article 30 of Regulation No 1305/2013 does not create any obligation or promise to pay compensation to natural persons on account of all the restrictions allegedly affecting the use of property coming within the Natura 2000 network and, generally, that EU law does not recognise the existence of a general principle requiring compensation to be granted in all circumstances, that is to say for all those restrictions imposed by way of Natura 2000. The Commission takes the view that a solution similar to that adopted by the Court in the judgment of 22 May 2014, *Érsekcsanádi Mezőgazdasági* (C-56/13, EU:C:2014:352) should apply in the present case, since, in that judgment the Court held, in essence, that, since the obligation to pay compensation at issue in the case which gave rise to that judgment was based not on EU law, but on national legislation, the Court did not have jurisdiction to assess such national legislation in the light of the right to an effective remedy, the right to property and the freedom to conduct a business guaranteed by the Charter.
- 51 In that regard, it should be borne in mind that the Charter's scope is defined in Article 51(1) thereof, according to which, so far as action of the Member States is concerned, the provisions of the Charter are addressed to those Member States only when they are implementing EU law (judgment of 13 June 2017, *Florescu and Others*, C-258/14, EU:C:2017:448, paragraph 44 and the case-law cited).
- 52 The Member States are implementing EU law, within the meaning of Article 51(1) of the Charter, where, in accordance with the requirements of the 'Habitats' Directive, they take appropriate steps to ensure that the natural habitats and the habitats of wild flora and fauna's species are maintained or restored at a favourable conservation status and, in particular, to avoid, in the special areas of conservation, the deterioration of natural habitats.
- 53 Article 6(2) of the 'Habitats' Directive provides that Member States are to take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of that directive.
- 54 Furthermore, the transposition and implementation by the Member States of the measures referred to in the 'Birds' Directive and the 'Habitats' Directive inevitably have repercussions on the right to property of persons to whom immovable property situated in the areas in question belongs, since, at the very least, they are subject to restrictions on the use of that property.
- 55 Accordingly, it must be held that the Member States implement EU law, within the meaning of Article 51(1) of the Charter, when they establish schemes that grant Natura 2000 payments and payments under the 'Water Framework Directive', pursuant to Article 30(1) of Regulation No 1305/2013. Moreover, it is also because EU law is being implemented in the present case that the general principles of EU law apply, as has already been stated in paragraph 43 of the present judgment.
- 56 Furthermore, it follows from Article 6(1) and Article 10 of Regulation No 1305/2013 that the EAFRD is to act in the Member States through the rural development programmes of the Member States, which are to be approved by the Commission.
- 57 It is true that Article 30(1) of Regulation No 1305/2013 leaves the Member States a margin of discretion in deciding what measures are to be taken, as is apparent from paragraph 40 of the present judgment. However, where a Member State adopts measures in the exercise of the discretion conferred upon it by an act of EU law, it must be regarded as implementing that law, within the meaning of Article 51(1) of the

Charter (see, to that effect, judgment of 13 June 2017, *Florescu and Others*, C-258/14, EU:C:2017:448, paragraph 48 and the case-law cited).

58 The mere fact that Article 30 of Regulation No 1305/2013 does not impose an obligation on Member States to provide for a compensation scheme cannot be interpreted as meaning that Article 17 of the Charter is not applicable (see, by analogy, judgment of 9 June 2016, *Pesce and Others*, C-78/16 and C-79/16, EU:C:2016:428, paragraph 86).

59 It follows that Article 17 of the Charter is applicable to the dispute in the main proceedings and that, accordingly, the Court has jurisdiction to rule on the fifth question.

#### *Substance*

60 It should be noted at the outset that it is apparent from the wording of Article 17 of the Charter that that article expressly confers a right to compensation only in the event of deprivation of the right to property, such as expropriation, which is clearly not the situation in the present case.

61 In this respect, it is necessary, in particular, to distinguish the main proceedings from those which gave rise to the judgment of 9 June 2016, *Pesce and Others* (C-78/16 and C-79/16, EU:C:2016:428), in so far as those proceedings concerned the systemic felling of trees, namely olive trees, and therefore the deprivation of property of those trees as such. In the present case, the prohibition on establishing plantations of cranberries on property coming within the Natura 2000 network does not constitute a deprivation of the right to property of that immovable property, but a restriction on its use, which may be regulated by law to the extent necessary in the public interest, in accordance with the provisions in the third sentence of Article 17(1) of the Charter.

62 As regards the restrictions that may thus be placed on the use of the right to property, it should be borne in mind, moreover, that, the right to property guaranteed by Article 17 of the Charter is not absolute and that its exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union (judgment of 20 September 2016, *Ledra Advertising and Others v Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 69 and the case-law cited).

63 It is therefore apparent from Article 52(1) of the Charter, that restrictions may be imposed on the use of the right to property, provided that the restrictions genuinely meet the objectives of general interest pursued and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right guaranteed (judgment of 20 September 2016, *Ledra Advertising and Others v Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 70 and the case-law cited).

64 First, it follows from settled case-law of the Court that protection of the environment is one of those objectives of general interest (see, to that effect, judgment of 9 March 2010, *ERG and Others*, C-379/08 and C-380/08, EU:C:2010:127, paragraph 81 and the case-law cited). Protection of the environment is therefore capable of justifying a restriction on the use of the right to property (judgment of 15 January 2013, *Križan and Others*, C-416/10, EU:C:2013:8, paragraph 114 and the case-law cited).

65 Second, it does not appear that measures such as those at issue in the main proceedings, thus taken for the purposes of protecting nature and the environment, under the ‘Birds’ Directive and the ‘Habitats’ Directive, which merely prohibit planting cranberries in peat bogs in order to prevent harm to the environmental interests thus protected, constitute, in the absence of compensation for affected owners, a disproportionate and intolerable interference impairing the very substance of the right to property (see, by analogy, judgment of 10 July 2003, *Booker Aquaculture and Hydro Seafood*, C-20/00 and C-64/00, EU:C:2003:397, paragraph 70). In the present case, such a conclusion is all the more compelling since, as is apparent from the statements made in the order for reference, that prohibition, and hence the restriction on the exercise of the right to property, were already in force at the time when the peat bogs at issue in the

main proceedings were acquired by Sātiņi-S, with the result that Sātiņi-S could not have been unaware of the existence of that restriction.

66 Although, admittedly, the Member States may consider, where appropriate, provided that they do so in compliance with EU law, that full or partial compensation is appropriate for owners of plots affected by conservation measures taken under the ‘Birds’ Directive and the ‘Habitats’ Directive, the existence of an obligation under EU law to grant such compensation cannot however be inferred from that finding (see, to that effect, judgment of 10 July 2003, *Booker Aquaculture and Hydro Seafood*, C-20/00 and C-64/00, EU:C:2003:397, paragraph 85).

67 In the light of the foregoing, the answer to the fifth question is that Article 30 of Regulation No 1305/2013, read in conjunction with Article 17 of the Charter, must be interpreted as meaning that a Natura 2000 payment must not be granted to the owner of a peat bog that comes within the Natura 2000 network on the basis that a restriction has been made to an economic activity which may be carried out on such a peat bog, such as the prohibition on planting cranberries, where, at the time when he or she acquired the immovable property concerned, the owner was aware of such restriction.

### Costs

68 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 (Third Chamber) hereby rules:

- 1. Article 30(6)(a) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 must be interpreted as meaning that it does not exclude, in principle, peat bogs from Natura 2000 payments, in so far as those peat bogs are situated in Natura 2000 areas designated pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, and fall within the concept of ‘agricultural area’ or ‘forest’, within the meaning of, respectively, points (f) and (r) of Article 2(1) or of Article 2(2) of Regulation No 1305/2013, which may thus be eligible for the payments referred to in Article 30(1) of that regulation as ‘Natura 2000 agricultural and forest areas’ within the meaning of Article 30(6)(a) thereof.**
- 2. Article 30(6)(a) of Regulation No 1305/2013 must be interpreted as allowing a Member State to exclude from Natura 2000 payments, first, ‘Natura 2000 agricultural areas’ within the meaning of that provision, including, in that case, peat bogs which come within such areas and, second, and in accordance with Article 2(2) of Regulation No 1305/2013, peat bogs situated in Natura 2000 areas, which, in principle, come within the concept of ‘forest’, within the meaning of Article 2(1)(r) of that regulation, and thus of ‘Natura 2000 forest areas’ within the meaning of Article 30(6)(a) of that regulation. The latter provision must also be interpreted as permitting a Member State to limit such payments for Natura 2000 forest areas, including, where appropriate, peat bogs, to situations where the designation of those areas as ‘Natura 2000 areas’ has the effect of adversely affecting the exercise of a specific type of economic activity, in particular forestry.**
- 3. Article 30 of Regulation No 1305/2013, read in conjunction with Article 17 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a Natura 2000 payment must not be granted to the owner of a peat bog that comes within the Natura 2000 network on the basis that a restriction has been made to an economic activity which may**

**be carried out on such a peat bog, in particular the prohibition on planting cranberries, where, at the time when he or she acquired the immovable property concerned, the owner was aware of such restriction.**

[Signatures]

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\* Language of the case: Latvian.