OPINION OF ADVOCATE GENERAL MISCHO

delivered on 30 March 2000 [1]

Legal Background

1. Article 2(5) of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures [2] ('the Regulation') provides:

'[M]ember States shall, for the purposes of this regulation, define what is meant by the expression "farmer practising farming as his main occupation".

This definition shall, in the case of a natural person, include at least the condition that the proportion of income derived from the agricultural holding must be 50% or more of the farmer's total income and that the working time devoted to work unconnected with the holding must be less than half of the farmer's total working time.

On the basis of the criteria referred to in the foregoing subparagraph, the Member States shall define what is meant by this same expression in the case of persons other than natural persons.'

2. The wording of that provision, itself reiterating the wording of Article 3 of Council Directive 72/159/EEC of 17 April 1972 on the modernisation of farms, [3] was reproduced in full in Article 5(5) of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures. [4]

3. Article 13 of Italian law No 153 of 9 May 1975 provides that:

'In addition to natural persons, agricultural cooperatives established in accordance with the legislation on cooperation, and farmers' associations which submit a joint development plan for restructuring and modernising the farm or for mutual assistance between farms or for the joint management of farms, shall qualify for the subsidies provided for under this title, provided that

1 — Original language: French.
2 — OJ 1985 L 93, p.1
3 — OJ, English Special Edition 1972 (II), p. 324.
4 — OJ 1991 L 218, p. 1.

all the members derive at least 50% of their own income from farming and associated activity and devote at least 50% of their working time to farming and associated activity. In all cases, the investments must be envisaged in connection with a development plan for the farm or for mutual assistance between farms, and an undertaking to keep farm accounts must be made. In respect of land let to share-croppers or tenant-farmers, the subsidies are paid to the share-cropper or tenant-farmer, or jointly to the share-cropper or tenant-farmer and the lessor provided that both parties satisfy the subjective criteria and also the objective criteria laid down in Articles 11 and 12 of the present law. Share-croppers and tenant-farmers may submit the development plan for the farm, even if they cannot reach an agreement with the lessor. Provided that the development plan has been approved by the Region, it may be implemented without the consent of the lessor by giving the share-cropper or tenant-farmer the control over the implementation thereof and the rights to make improvements which Law No 11 of 11 February 1971 affords the tenant.'

4. Article 2 of the Italian Ministerial Decree of 12 September 1985 provides:

'Beneficiaries

1. The following farmers shall qualify for the intervention measures referred to in Title I of the abovementioned regulation in so far as they satisfy the subjective criteria set out in Article 2(1) of that regulation:

(a) farmers who cultivate their own land, whether they are owners or tenants, share-croppers and tenant-farmers, whether without the agreement of the lessor or together with the lessor, perpetual leaseholders, family members helping the farmer on a regular and permanent basis;

(b) owners, usufructuaries and tenants;

(c) agricultural cooperatives established in accordance with the legislation in force on cooperation;

(d) associations of farmers who cultivate their own land, perpetual lease-holders, tenant-farmers, family members helping the farmer on a regular and permanent basis, owners, usufructuaries and tenants;

(e) partnerships which directly manage agricultural holdings which they own or of which they have

the use in whatever form. The regions and autonomous provinces shall define, within the limits set in Article 6 of the Regulation, the conditions as to eligibility.

2. The criteria of being a farmer practising farming as his main occupation and that relating to occupational skill and competence, which are laid down in Article 2(1)(a) and (b) of the abovementioned regulation, shall be defined on the basis of the regional legislative provisions adopted pursuant to Directive 72/159/EEC. Failing that, Articles 12 and 13 of Law No 153 of 9 May 1975 shall apply.

3. The cooperatives referred to under (c) above, whose sole object is the management of agricultural holdings, may seek to obtain the investment aid provided for under Title I of the Regulation even if only 20% of their members satisfy the subjective criteria prescribed.'

5. Law No 17 of the Region of Sardinia of 27 September 1992 provided for the creation of a new Register of Farmers Practising Farming as their Main Occupation, specifying that the criteria for the management of the Register were to be determined by the Giunta Regionale (Regional Council).

6. On the date on which the Tribunale Civile e Penale, Cagliari, made its order for reference, namely 26 March 1998, the criteria for the management of the Register had not yet been laid down and there was no regional legislation defining the conditions under which a capital company could be granted the status of 'farmer practising farming as his main occupation'.

7. It was only on 27 May 1998 that the Giunta Regionale of the Region of Sardinia adopted Decision No 2515 laying down the 'detailed rules for implementing in the Autonomous Region of Sardinia the scheme of investment aid to agricultural holdings provided for by Council Regulation (EC) No 950/97 of 27 May 1997 of the Council of the European Communities'.

8. The last indent of Paragraph 5(5) of that decision provides that, in respect of legal persons, the status of farmer practising farming as his main occupation is conferred on those entities which fulfil the following conditions:

'— in the case of capital companies, at least 50% of the income must be derived from farming and the managing director must devote at least 50% of his time to managing the agricultural holding.'

Factual background

9. Azienda Agricola Monte Arcosu ('Monte Arcosu') is a private limited company which was formed for the purpose of carrying on farming activities.

10. Monte Arcosu has acquired several holdings of agricultural land in Sardinia. In the public deed of sale it stipulated that it intended to obtain the status of a farmer practising farming as its main occupation and therefore, for the purposes of registration, it claimed the benefit of a lower taxation rate.

11. The order for reference shows that Monte Arcosu subsequently applied to the Organismo Comprensoriale No 24 della Sardegna for entry in the Register of Farmers Practising Farming as their Main Occupation.

12. That application was rejected by decision of 11 September 1991 on the ground that the regional rules did not provide for commercial companies to be entered in the Register.

13. Monte Arcosu therefore brought proceedings against Regione Autonoma della Sardegna, Organismo Comprensoriale No 24 della Sardegna and Ente Regionale per l'Assistenza Tecnica in Agricoltura (ERSAT) in order to obtain its entry in the Register of Farmers Practising Farming as their Main Occupation on the basis of Article 2(5) of Regulation No 797/85 or Article 5(5) of Regulation No 2328/91.

14. Since it took the view that the resolution of the dispute before it depended on the interpretation of the abovementioned provisions, the Tribunale Civile e Penale, Cagliari, decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Despite the silence of the Italian legislature, is it in any event possible to apply the Community provisions in question to persons other than natural persons, and in particular to companies having legal personality?

(2) If an affirmative answer is given to the first question, what are the necessary and sufficient conditions for conferring the status of farmers practising farming as their main occupation on persons other than natural persons and, in particular, on companies with legal personality?'

Analysis

The admissibility of the questions

15. First, the Commission considers the admissibility of the questions raised by the national court.

16. In this respect, it notes that the referring court is called upon to apply a national fiscal provision, which limits particular benefits to operators having the status of farmers practising farming as their main occupation for the purpose of Italian Law No 153 of 9 May 1975, which the Court has already held is not coterminous in that respect with Community rules.

17. The Commission adds that, in paragraph 26 of the judgment in *Tenuta il Bosco* v *Ministero delle Finanze*,[5] the Court pointed out that the 'reduced rate of registration duty on acquisitions of agricultural land by farmers... does not fall within the scope of the aforementioned Regulation No 797/95'. However, Monte Arcosu applied for entry in the Register of Farmers Practising Farming as their Main Occupation ('the Register') at the time when it purchased land and with a view to obtaining a reduced rate of registration duties.

5 — Case C-162/91 [1992] ECR I-5279.

18. The Commission concludes, however, that the questions referred are admissible and I share that point of view.

19. First of all, it should be remembered that in *Tenuta il Bosco*, the fact that the question raised concerned only the application of registration duty in situations where title relating to agricultural land is transferred did not preclude the Court from replying.

20. Second, it should be noted that, in the case in point, the questions are worded in general terms and do not refer exclusively to fiscal legislation, which would tend to confirm that the proceedings pending before the national court do not relate to the issue of registration duties but to the actual entry in the Register.

21. Finally, the refusal to enter Monte Arcosu in the Register does not have the effect of merely preventing it from benefitting from a reduced rate of registration duty, but is also likely to make access to the aid provided for in connection with Community legislation more difficult for it.

22. Accordingly, it is necessary to reply to the questions raised by the Tribunale Civile e Penale, Cagliari.

The substance

23. The Commission is right, first of all, to draw attention to the fact that the definitions of 'farmer' and 'farming' are not uniform in Community law, and that their meaning varies according to the purpose the legislature has in mind. The Court's reply will therefore apply only for the purpose of implementing the regulations concerning the improvement of agricultural structures, which, moreover, is confirmed by the wording of the aforementioned relevant provision of those regulations which clearly states that the definition of a farmer practising farming as his main occupation is provided solely for the purpose of those regulations.

24. The Commission also provides some information concerning the subject matter of the questions raised by the referring court.

25. The national court asks whether, despite the silence of the Italian legislature, the status of farmers practising farming as their main occupation may be conferred on 'persons other than natural persons' and, in particular, on 'companies having legal personality'.

26. It is apparent from the documents in the case that there are national provisions governing the conditions for granting the status of farmers practising farming as their main occupation to certain legal persons other than natural persons. That is true of partnerships, which do not have legal personality under Italian law, and of some co-operatives and associations which, in some cases, do have legal personality.

27. It follows that the 'companies having legal personality' to which the national court refers are capital companies in respect of which the national rules applicable to the main proceedings do not provide for the status of farmer practising farming as his main occupation to be conferred.

28. That interpretation is confirmed, moreover, by the fact that the applicant in the main proceedings, who has been refused the benefit of the status of farmer practising farming as his main occupation because of the lack of provisions applicable to his circumstances, is a private limited company, that is to say a capital company.

29. By its first question, the referring court ask whether it is possible to 'apply the Community provisions in question' to capital companies. That is tantamount to asking whether it is possible for a national court to grant the status of farmer practising farming as his main occupation to those companies, where no applicable provisions exist under domestic law.

30. It is therefore necessary to examine whether it is possible to determine the conditions which such companies should satisfy in order to benefit from the status of farmers practising farming as their main occupation.

31. Those very conditions are the subject of the second question which is, therefore, inextricably linked to the first. Accordingly, I propose to analyse them together.

32. Both the Commission and Monte Arcosu point out that Community legislation prohibits Member States from excluding capital companies solely on the ground of their legal form. In support of this they cite *Villa Banfi* v *Regione Toscana*, [6] from which it follows that to exclude certain types of persons other than natural persons, on the basis of a purely formal requirement, would not be consistent with the Community legislation which does not define any relevant formal requirement.

33. I share that point of view. It is apparent from the very wording of the third subparagraph of Article 2(5) of the Regulation that Member States have not only the right, but also the obligation to define the criteria for granting the status of farmers practising farming as their main occupation to persons other than natural persons.

34. In *Villa Banfi*, the Court had in fact already held that the Italian provisions in question did not properly implement the Community legislation. That legislation 'not only does not exclude legal persons but expressly includes them within its scope', [7] provided that they satisfy the conditions laid down. However, those conditions are unconnected to the legal form in which a legal person is constituted.

35. The Court thus inferred that the Community legislation prevents a Member State from withholding from a capital company the status of a farmer practising farming as his main occupation solely on the ground of its legal form.

36. However, the right of such a company to be granted that status cannot be unconditional since, as was stated above, the Community legislation obliges Member States to define the criteria for granting it. It is bound to follow that its full implementation depends on the adoption of national legislation.

37. In the present case, the absence of relevant national legislation laying down the requisite criteria at the time when Monte Arcosu lodged its application is not disputed.

38. It is therefore necessary to establish whether that deficiency is likely to be remedied by the national court.

6 — Case 312/85 [1986] ECR 4039.

7 — See paragraph 10 of the judgment.

39. According to Monte Arcosu, that is unquestionably the case. National authorities must give effect to the Regulation which, it points out, is binding in all respects, under Article 189 of the EC Treaty (now Article 249 EC). Furthermore, the national authorities are obliged not to treat legal persons more unfavourably than natural persons.

40. However, they need only be guided by the criteria laid down in the second subparagraph of Article 2(5) of the Regulation, as the third subparagraph of Article 2(5) indeed obliges them to be.

41. Consequently, they must apply the conditions relating to the time devoted to farming and the income derived from farming to the company itself, in its capacity as a legal person practising farming and entirely distinct from the members of which it is composed.

42. Logic dictates such a solution because a capital company has legal personality. Therefore it has its own legal existence which is distinct from that of its members. Furthermore, as a general rule, a member of a capital company does not manage the company's affairs. Finally, the status of member is linked to his holding shares which are distinguishable by their transferable nature. To impose special conditions on the members would therefore be unreasonable and contrary to the very nature of a capital company.

43. Logic also dictates that the condition of occupational skill and competence cannot apply only to the natural person responsible for carrying out the work on behalf of the company, and in particular to the person responsible for managing the company.

44. Monte Arcosu further maintains that the argument it advances is borne out by the case-law of the Consiglio di Stato (Italian Council of State) and the Corte Suprema di Cassazione (Supreme Court of Cassation), and also by the measures adopted by various legislative or administrative authorities.

45. The Commission points out that we are not dealing with a situation where, in accordance with the Court's case-law, it is for the national court to set aside a national rule which is contrary to Community law. In the present case, it is a question of compensating for the absence of national rules implementing Community legislation.

46. However, in the Commission's submission, the implementation of Community law presupposes a technical choice by the Member State, which therefore has some

discretionary power. Accordingly, it would be difficult to imagine how the national court could assume the role of the authorities which are responsible for making such choices.

47. The Commission nevertheless takes the view that, even in the present case, the principle of interpreting national law in accordance with Community law allows the court to apply the national rules in such a way as to compensate for the deficiencies in the domestic law which amount to breaches of Community law.

48. In that respect, it argues, first, that since the national legislation includes criteria for conferring the status of farmers practising farming as their main occupation on persons other than natural persons, that is to say on partnerships, the national court should examine to what extent those criteria could be extended to capital companies, notwithstanding the difference in nature between partnerships and capital companies.

49. Second, the Commission emphasises other means of achieving, in this case, an interpretation of national law which is consistent with Community law. It points out that the laws of the Region of Sardinia have since laid down the criteria required for granting the status of farmers practising farming as their main occupation to capital companies. If the referring court were able to interpret that provision by giving it retroactive effect, it could fill the gap in question. Thus, it would prevent the Member State which has delayed transposing certain provisions for several decades from withholding something from individuals as a result of its own failure to fulfil its obligations.

50. Third, the Commission adds that if it proved impossible to extend the principles of the interpretation of national law in accordance with Community law, and of *nemo allegans turpitudinem suam est audiendus* invoked by the Court with regard to directives which have not been transposed, individuals would have no alternative but to plead the liability of the State for breach of Community law.

51. In the present case, it acknowledges that since there are no national rules which laid down in due time the criteria for awarding the status of farmer practising farming as his main occupation, such an action for damages comes up against the impossibility of ascertaining which operators would have been entitled to the status of farmers practising farming as their main occupation and have therefore been prejudiced by the belated implementation of Community law.

52. The Commission considers, however, that by referring to national provisions which have subsequently defined the entities which may obtain the status of farmers practising farming as their main occupation, it is possible to establish the circle of 'victims' of the belated implementation of Community law and therefore to compensate the loss.

53. The Commission concludes by stating that it does not underestimate the difficulties inherent in the solutions it proposes. However, it takes the view that if they were not adopted, 'it would be necessary to accept that the direct effect of the prohibition on discriminating against capital companies solely on the ground of their legal form — an effect recognised by the Court since *Villa Banfi* — remains, in the end, conditional on an act of the Italian legislature which, in the case of the Region of Sardinia, did not materialise for more than twenty-six years after Directive 72/159/EEC was adopted.'

54. How should these various solutions be viewed?

55. In *Villa Banfi*, the Court held that Community legislation prohibited a Member State from withholding the status of farmer practising farming as his main occupation from an operator solely on the ground of its legal form.

56. The approach proposed by Monte Arcosu has the merit of preventing a Member State from withholding that status and therefore of being consistent with that case-law.

57. However, the fact remains that such an approach effectively deprives the Member State of any discretion as regards laying down the criteria applicable to capital companies.

58. The proposed solution is tantamount to applying to capital companies *mutatis mutandis* the criteria laid down by the national legislature for *natural persons* on the basis of Community law.

59. However, the third subparagraph of Article 2(5) of the Regulation expressly provides that, in the case of persons other than natural persons, the Member States are to define the criteria 'on the basis of' those applicable to natural persons.

60. As the Commission rightly points out, that expression does not require a Member State merely to transpose the criteria laid down in the second subparagraph of Article 2(5). On the contrary, it allows it a latitude which is effectively completely denied by the approach proposed by Monte Arcosu.

61. Admittedly, it would be theoretically possible for the national court to be faced with a situation where each shareholder in

the company satisfied the criteria laid down by national law, on the basis of Community law, in respect of natural persons or 'farmers' associations'. In those circumstances, would it be obliged to confer the status of farmer practising farming as its main occupation on such a company?

62. It might be tempting to reply in the affirmative. However, that solution would effectively render the third subparagraph of Article 2(5) of the Regulation redundant and, as the referring court points out, it would be confronted with the difference in nature between a natural person and a capital company which, in the words of the referring court, is 'a legal person quite distinct from the persons of the individual members', the latter being, 'as it were, concealed'.

63. Let me now examine the solutions envisaged by the Commission. Its first proposal implies suggesting to the referring court that it might transpose the criteria laid down under national law in respect of certain persons other than natural persons to the situation of capital companies.

64. That would therefore amount to applying to capital companies the rule provided for by Article 13 of Italian Law No 153 of 9 May 1975, concerning 'farmers' associations', namely that 'all the members derive at least 50% of their own income from farming and associated activity and devote at least 50% of their working time to farming and associated activity.'

65. It is immediately apparent that that solution is, in substance, identical to the solution I have just examined in the previous paragraph, since those criteria correspond, in essence, to the criteria applying to natural persons.

66. The drawbacks and difficulties in resorting to that solution are therefore identical.

67. Second, the Commission considers that the national court might retroactively apply the criterion which the Region of Sardinia has since laid down for capital companies.

68. In that regard, it takes the view that the referring court is obliged to investigate whether Italian law permits such an application. There is no doubt that such an obligation exists.

69. However, the real problem lies in establishing what the position would be if

the result of that investigation turned out to be negative. In such a case, does the principle of the primacy of Community law, from which the duty invoked by the Commission to interpret national law in accordance with Community law follows, require the retroactive application of the measures adopted by the regional legislature in order to ensure that the Community rule is applied?

70. In this respect, it should be remembered that on several occasions the Court has held that:

'the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 5 of the EC Treaty to take all appropriate measures, whether general or particular, to ensure fulfilment of that obligation is binding on all the authorities of Member States, including, for matters within their jurisdiction, the courts. It follows that, when applying national law, whether adopted before or after the directive, the national court having to interpret that law must do so, as far as possible, in the light of the wording and the purpose of the directive so as to achieve the result it has in view and thereby comply with the third paragraph of Article 189 of the EC Treaty'. [8]

8 — See, by way of example, Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8; and Case C-54/96 *Dorsch Consult* v *Bundesbaugesellschaft Berlin* [1997] ECR I-4961, paragraph 43.

71. It is true that in those situations it was a question of directives rather than a regulation, as in the present case. However, since the Regulation in question expressly entrusts Member States with responsibility for adopting the measures necessary to implement it, there is no need to distinguish it from a directive for the purpose of applying that case-law.

72. Of more significance is the contention that if the national court were required to give retroactive effect to the provisions adopted by the relevant authorities of a Member State in order to ensure that Community law is applied, it would be likely to come into conflict with the fundamental principle prohibiting the retroactive application of legislation.

73. However, the constraints which might arise for the national court as a result of the application of a national principle of non-retroactivity cannot go beyond what is required for that principle to be observed under Community law.

74. A principle of national law, even if it is of a constitutional nature, must not impede the primacy of Community law, as the Court held in *Amministrazione delle Finanze dello Stato* v *Simmenthal*. [9]

9 — Case 106/77 [1978] ECR 629.

75. Admittedly, that assertion must be moderated by the effect of the principle of the institutional autonomy of the Member States, from which it follows that it is for the Member States to define the procedural rules necessary to implement Community law, provided that it does not render the application of Community law impossible or excessively difficult. [10]

76. In the present case, it is not the procedural framework laid down by national law which is in issue, but the scope of a principle common to national law and Community law, namely the principle of non-retroactivity.

77. Let me therefore analyse the effect, in the present case, of the principle of non-retroactivity as it emerges from the Court's case-law.

78. It is apparent from that case-law that the principle stems from the requirements of legal certainty and of the protection of legitimate expectations and is therefore not absolute in scope.

79. Thus, according to settled case-law,

'[a]lthough in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected'. [11]

80. In the present case, the retroactive application of the national provisions in question would not jeopardise the protection of the legitimate expectations of the operators concerned.

81. In fact, it would have the effect of allowing the scope of a right to which they are entitled under Community legislation to be sufficiently defined, a right which is to be asserted against the public authorities and not against other individuals.

10 — Joined Cases C-430/93 and C-431/93 *Van Schijndel and Van Veen* [1995] ECR I-4705; and Case C-312/93 *Peterbroeck* [1995] ECR I-4599.

11 — See, in particular, Case 98/78 *Racke* v *Hauptzollamt Mainz* [1979] ECR 69; and Case 99/78 *Decker* v *Hauptzollamt Landau* [1979] ECR 101.

82. On the other hand, failure to apply the national provisions would have the effect of depriving the operators of the opportunity to benefit from that right. Thus, it would not be their legitimate expectations which would be protected but, paradoxically, the failure of the competent authorities of the Member State to introduce at the appropriate time the measures required for Community law to be implemented.

83. We are therefore definitely not dealing with a situation where Community law, in accordance with the principles of the protection of legitimate expectations and legal certainty, would preclude any retroactive application of the national rules in issue.

84. That would be the case if it were a question, *quod non,* of retroactively imposing any obligation or responsibility on individuals. It is not a question of putting in issue a course of action which was not punishable at the time when it was taken either. We are therefore not dealing with a situation such as those where the principle of non-retroactivity of criminal law, common to all the legal systems of the Member States and enshrined in Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, applies.

85. It follows from the foregoing that, in the present case, the retroactive application by the national court of national rules implementing the Regulation cannot come into conflict with the principle of non-retroactivity arising from Community law.

86. For the reason set out in paragraph 73 above, a principle of non-retroactivity deriving from national law could not therefore be invoked against the national court either.

87. In view of the arguments I have set out above, I see no need to invoke the liability of the State for breach of Community law by relying on the principles laid down by the Court in *Francovich and Others*,[12] where a situation similar to the present case was at issue, in that the failure to transpose Community provisions into national rules had the effect of depriving certain persons of rights which the Community rule sought to grant them.

88. I therefore make the following comments only as a secondary consideration.

12 — Joined Cases C-6/90 and C-9/90 [1991] ECR I-5357.

89. The Court has held that in such a situation, where the full effect of Community rules is conditional on the State taking action and where, consequently, failure to take such action prevents individuals from asserting before national courts the rights granted to them under Community law, the possibility of obtaining compensation payable by the Member State is especially necessary.

90. In the Court's view, that solution was dictated by the full effectiveness of Community rules and by the protection of the rights afforded by them.

91. The same considerations are at issue here.

92. It could, admittedly, be contended that, in the present case, the problem of specifying the beneficiaries of the Community rule arises, since they must be defined by the national rule from whose absence the proceedings arise.

93. In that respect, I agree with the Commission's analysis according to which reference must be made to the national rules which now implement the Community rule.

94. By adopting those national rules, the Member State has exercised the discretionary power conferred on it by Community legislation. Therefore, by referring to those rules in order to determine the potential beneficiaries of the Community legislation and accordingly the persons entitled to claim a loss, the national court would in no way assume the role of the authorities responsible for making the choices required to implement the legislation in question.

95. It is indeed true that, if it had adopted the necessary provisions within the time-limit, the Member State might have relied on criteria other than those it has now chosen. The fact remains that the Member State failed, in breach of Community law, to exercise that right in due time.

96. It cannot therefore be conceded that the State may now rely on that failure which is contrary to the Treaty and leave the operators affected to bear the consequences of it.

97. In this way, the national court would be able to reconcile the protection of the rights afforded to individuals by Community law with respect for the discretion which that law has granted to the Member State in the present case.

Conclusion

98. In view of the foregoing, I propose that the Court reply as follows to the questions referred by the Tribunale Civile e Penale, Cagliari:

It does not follow either from Article 2(5) of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures or from Article 5(5) of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures that the national court is bound to apply to capital companies the definition of farmer practising farming as his main occupation laid down in respect of natural persons and persons other than natural persons where a Member State has failed to define that concept by reference to those companies.

On the other hand, the need to interpret national law in accordance with Community law obliges the national court to apply the national rules required to define the concept of farmer practising farming as his main occupation in the case of capital companies, even though those rules were belatedly introduced, in order to enable capital companies to be awarded the status of farmers practising farming as their main occupation if they meet the conditions laid down by those rules and by the relevant acts of the institutions.