OPINION OF ADVOCATE GENERAL MISCHO
delivered on 24 March 1998 *

1. Article 1 of Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas [1] authorises Member States 'in order to ensure the continuation of farming, thereby maintaining a minimum population level or conserving the countryside in certain less-favoured areas' to introduce a special system of aids 'to encourage farming and to raise farm incomes in these areas'.

2. Article 4 states that this system includes *inter alia* 'the granting ... of an allowance to compensate for permanent natural handicaps'.

3. The conditions under which Member States may take such special measures for the benefit of agriculture in certain less-favoured areas are set out in Article 17 et seq. of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures. [2]

4. Article 17(1) of Regulation No 2328/91 states that:

'In regions which appear on the Community list of less-favoured farming areas within the meaning of Directive 75/268/EEC, Member States may grant an annual compensatory allowance to assist farming activities, such allowance to be fixed according to the permanent natural handicaps described in Article 3 of that Directive within the limits and subject to the conditions laid down in Articles 18 and 19 of this Regulation.'

5. In addition, Article 18 states that:

'1. Where Member States grant a compensatory allowance, farmers with at least three hectares of usable agricultural area who undertake to pursue a farming activity in accordance with the aims of Article 1 of Directive 75/268/EEC for at least five years from the first payment of a compensatory allowance shall be eligible for such an allowance ...

...

* Original language: French.
1 — OJ 1975 L 128, p. 1.
2 — OJ 1991 L 218, p. 1.

3. Member States may lay down additional or limiting conditions for the grant of the compensatory allowance, including conditions which encourage the use of practices compatible with the need to safeguard the environment and preserve the countryside.'

6. In the case of Finland, the conditions for granting the above allowance (hereinafter called 'the compensatory allowance') were laid down by the Finnish Government's Decision No 861/1995 of 15 June 1995. By a decision of 29 August 1995, the Commission established in accordance with Articles 29 and 30 of Regulation No 2328/91, cited above, that the provisions adopted by the Finnish Government satisfied the conditions for a financial contribution by the Community, apart from Article 5(3) of Decision No 861/1995, which stated that in order to be eligible for the allowance the person concerned should be permanently resident in Finland. The Finnish Government repealed that provision by decision No 1097/1995 of 31 August 1995.

7. Paragraph 2 of Decision No 861/1995 states that the compensatory allowance is intended to ensure the continuation of farming and thereby maintain a minimum population level and conserve the viability of the countryside in certain regions which are less-favoured from the point of view of agriculture.

8. Paragraph 6 of the Decision sets out in detail the conditions for the grant of the allowance concerning the recipient's residence. That Paragraph states that the compensatory allowance may be paid to a farmer if he lives on the farm or within a distance of 12 kilometres, at most, measured along a practicable road, from the operational centre of the farm. However, the municipal authority may decide, by way of derogation and for 'special reasons', that the compensatory allowance may also be paid to a farmer who does not satisfy the residence requirement.

9. In that case, Paragraph 6(3) requires that the farmer should carry on the activity himself and should obtain at least 50% of his income from agriculture, horticulture and forestry or from some of the other rural industries referred to in that subparagraph, which should take place on the farm in respect of which the allowance is sought.

10. The two cases which form the subject of these references for a preliminary ruling concern the application of that provision.

11. In Case C-9/97 the appellant in the main proceedings, Raija-Liisa Jokela, is the owner of a farm situated in a less-favoured area within the meaning of the rules, part of which she owns jointly with her husband. Since 1994 she has lived in Germany, in Bonn, with her husband, who is an official at the Finnish Foreign Ministry. The competent municipal authority refused to grant her a compensatory allowance for 1995 on the ground that

she did not live on the farm or within 12 kilometres of it and there were no 'special reasons' for granting the application. Mrs Jokela appealed against that decision unsuccessfully to the Etelä-Pohjanmaa Maaseutuelinkeinopiiri (District Rural Businesses Committee for Southern Pohjanmaa), and then to the Maaseutuelinkeinojen Valituslautakunta (Rural Businesses Appeals Board), which stayed proceedings and referred two questions to the Court of Justice for a preliminary ruling.

12. The appellant in the main proceedings in Case C-118/97, Laura Pitkäranta, born in 1989, inherited a farm situated in a less-favoured area within the meaning of the rules, 70 kilometres from her present place of residence. In 1995 she applied for the compensatory allowance, which the competent municipal authority refused to grant her on the ground that she did not live on the farm or within 12 kilometres of most of it, and that she herself was not a farmer. She appealed against that decision at first instance, and then on appeal to the Maaseutuelinkeinojen Valituslautakunta, which stayed proceedings and referred two questions to the Court for a preliminary ruling, the first of which is the same as the first question referred in Case C-9/97.

13. That question is worded as follows:

'1. Is it compatible with the aims of Articles 17 and 18 of Council Regulation (EEC) No 2328/91 on improving the efficiency of agricultural structures, and of Article 1 of Council Directive 75/268/EEC on mountain and hill farming and farming in certain less-favoured areas, for a compensatory allowance for natural handicaps to be granted to a farmer, if he does not live on a farm owned or controlled by him in Finland in a less-favoured area within the meaning of the said directive, but lives for most of the year outside the said area?

If the answer to the above question is affirmative, even partly or conditionally:

(a) is it permissible, having regard to the said provisions and the principles embodied in Article 5, the second subparagraph of Article 40(3), and indent (a) of the second paragraph of Article 42 of the EC Treaty, and in particular to the principle of equal treatment of farmers and the associated prohibition of discrimination set out there, to require a farmer who wishes to obtain the compensation for natural handicaps referred to in Paragraph 6 of the decision of the national Council of State (861/1995) and who lives outside the farm and more than 12 kilometres by road from its operational centre, to receive at least half his

total income from agriculture, horticulture and forestry and other activities carried out on the farm and also to work the farm himself; and

(b) is it consistent in particular with the principle of legal certainty to be observed in the Community legal order always also to require that special grounds should exist?'

14. The second question has two variants, one for Case C-9/97 (Jokela), the other for Case C-118/97 (Pitkäranta):

'2. Is it contrary in particular to the principles of non-discrimination and proportionality, or to other applicable principles of Community law, to exclude from the compensation in question

— a farmer, who lives for the greater part of the year in another Member State with her husband, who is a diplomat representing the Finnish State, and who is also the owner of part of the farm concerned? (Case C-9/97)

— a minor, permanently residing with her guardian some 70 kilometres from the operational centre of the farm, which is not worked either by her or by her guardian? (Case C-118/97).'

Admissibility

15. The Finnish Government and the Commission have provided the Court with a number of details which will enable it to assess whether the Maaseutuelinkeinojen Valituslautakunta is a court or a tribunal for the purposes of Article 177 of the EC Treaty.

16. These show that the institution concerned was established under national law, namely Finnish Law No 1203/1992 of 4 December 1992, as amended by Law No 36/1995. It is made up of three members: the president and the deputy president, who are appointed for a period of five years by the President of the Republic and who hold the diploma which qualifies them to practise as judges occupying their posts full-time; the third member is an expert appointed for the same period by the Government; he may vary depending on the type of case and is not a permanent member. All the members have the same right to remain in office as do holders of the office of judge.

17. The legal basis for the role of the Maaseutuelinkeinojen Valituslautakunta as regards aid for rural activities is contained in Finnish Law No 1336/1992. That law provides that it is for the municipal rural industries authority to decide in the first instance on an application for aid to be granted. In the event of refusal the party concerned is entitled to appeal against the decision to the Maaseutuelinkeinopiiri, whose decisions may in turn be the subject of an appeal to the Maaseutuelinkeinojen Valituslautakunta, as has happened in the cases now referred to the Court.

18. The Maaseutuelinkeinojen Valituslautakunta gives legal rulings according to the rules applying in the case and according to the general rules of procedure.

19. The Finnish Government states that the Maaseutuelinkeinojen Valituslautakunta is an independent appeal body whose decisions may be contested before the Korkein hallinto-oikeus (Supreme Administrative Court). In this particular case, the decision taken can only be the subject of an appeal provided the Korkein hallinto-oikeus gives leave.

20. It is clear therefore that the Maaseutuelinkeinojen Valituslautakunta is an independent body which gives legal rulings and has a composition and procedure determined by law and not by the parties. I consider therefore that, as the Court has ruled on other occasions, [3] there is no doubt that it is a court or tribunal for the purposes of Article 177 of the Treaty. The admissibility of the questions referred for a preliminary ruling is therefore incontestable in this particular case.

The first question

21. The question put to the Court is whether the compensatory allowance may be granted to a farmer who does not live on a farm situated in a less-favoured area of Finland but lives outside the said area for most of the year.

22. The relevant Community rules, namely Directive 75/268 and Regulation No 2328/91, cited above, do not explicitly require the farmer applying for the allowance to live on the farm concerned.

23. As we have seen, Article 18 of Regulation No 2328/91 states merely that a compensatory allowance may be granted to

3 — See in particular, Case 61/65 *Vaassen-Göbbels* [1966] ECR 261; Case 246/80 *Broekmeulen* [1981] ECR 2311; Case 14/86 *Pretore di Salò* v *X* [1987] ECR 2545; Case 109/88 *Danfoss* [1989] ECR 3199; and Case C-54/96 *Dorsch Consult* [1997] ECR I-4961, paragraph 23.

'farmers with at least three hectares of usable agricultural area who undertake to pursue a farming activity in accordance with the aims of Article 1 of Directive 75/268/EEC for at least five years from the first payment of a compensatory allowance'

and that

'where a farmer gives up farming and the area concerned continues to be worked, he may be released from such undertaking'.

24. Similarly, the 10th recital of the preamble to Directive 75/268, echoed in the 37th recital of the preamble to Regulation No 2328/91, refers to

'farmers permanently engaged in agriculture in such areas'.

25. The French Government considers, however, that a residence requirement is implicit in the provisions as drafted by the Community legislature. Indeed, it would not be possible effectively to pursue a farming activity, for the purposes of the objectives of the rules, without living on the farm concerned. Moreover, the objective of the Community legislature was also to maintain the social fabric of less-favoured areas. This could not be achieved if a farmer receiving the allowance had the option of not living on the farm in the less-favoured area.

26. The Finnish Government also stresses the significance of this consideration, in particular as regards the maintenance of essential services for the local population. Unlike the French Government, it does not conclude from this that it is absolutely necessary for a farmer to live on the farm in order to receive the allowance.

27. Mrs Jokela considers that as far as she is concerned, it is possible to meet the objectives of the rules, namely to pursue a farming activity in a less-favoured area, without necessarily living on, or in the immediate vicinity of, the farm in respect of which the allowance is sought. In particular, she claims that the nature of the crops grown on her farm and the presence on the spot of members of her family enable her to ensure continuity on the farm without being there herself.

28. In the absence of any express provision in the rules cited above, reference should, as the Finnish Government and the Commis-

sion contend, be made to the objectives sought by the Community legislature.

29. The fifth recital of the preamble to Directive 75/268, cited above, summarises the main aims sought by the Council:

'Whereas the steady decline in agricultural incomes in these areas as compared with other regions of the Community, and the particularly poor working conditions prevalent in such areas are causing large-scale depopulation of farming and rural areas, which will eventually lead to the abandonment of land which was previously maintained, and moreover jeopardising the viability and continued habitation of those areas the population of which is predominantly dependent on an agricultural economy'.

30. The legislature therefore intended, first and foremost, to halt the fall in agricultural incomes in the areas concerned in order to prevent a rural exodus which would eventually jeopardise the viability and habitation of the areas in question.

31. This is also clear from Article 1 of Regulation No 2328/91, paragraph 1(iii) of which mentions income support as a means of maintaining the viability of less-favoured areas. These two concepts appear also in Article 1(2)(e).

32. The fourth recital of the preamble to Directive 75/268 mentions also conservation of the countryside in less-favoured areas, an objective which is reiterated in Article 1(1)(iv) of Regulation No 2328/91.

33. The objective of the Community rules is therefore essentially to support farming in areas where it would be jeopardised without such support, with all the negative consequences which that would involve for habitation and conservation of the countryside in the areas concerned.

34. As the Commission has stated, a farmer may in any case, in certain circumstances, keep his farm running without necessarily living on it.

35. It must therefore follow that the answer to the question should be in the affirmative.

36. Article 1 of Directive 75/268, quoted by the French Government in its arguments in

favour of a negative answer, seems to me on the contrary also to endorse the preceding considerations.

37. As we have seen, that provision states that Member States are authorised to introduce a special system of aids

'in order to ensure the continuation of farming, *thereby* maintaining a minimum population level *or* conserving the countryside in certain less-favoured areas'. [4]

38. This provision therefore confirms that the population level is not the primary objective, still less the sole objective, of the system to be introduced. On the contrary, the population level, together with conservation of the countryside, should result from maintaining agriculture, and this is what the rules are designed to promote.

39. It does not therefore seem to me to be possible to accept the view that the significance of the objective of maintaining the population level means that the rules implicitly contain a residence clause of the type alluded to by the court making the reference.

40. As a secondary point, the French Government claims that if the residence clause is not one of the implicit requirements of the Community rules Member States are free to introduce such a clause in the national implementing measures provided for in Article 18(3) of Regulation No 2328/91 cited above.

41. That provision permits Member States to lay down additional or limiting conditions for the grant of the compensatory allowance. They may therefore stipulate requirements which exceed those explicitly contained in the Community rules. This is moreover what the Finnish Government did in its Decision No 861/1995 which is at issue in the main proceedings.

42. The fact remains that such additional conditions must comply with the objectives of the Community rules.

43. However, there is no need to go further into this line of argument, which was raised as a subsidiary point by the French Government, since the question raised by the court

4 — Emphasis added.

making the reference is whether a Member State is entitled not to require a farmer to live on his farm and not whether it is entitled to require him to do so.

The first question, subparagraphs (a) and (b)

44. I think it would be appropriate to take subparagraphs (a) and (b) of the first question together since they are closely linked.

45. The system introduced by Decision No 861/1995 of the Finnish Government provides in Paragraph 6, under the heading 'Residence on the farm', that a compensatory allowance may be paid to a farmer if he lives on the farm or within a distance of not more than 12 kilometres.

46. Paragraph 6(3), however, allows municipal authorities to decide, for special reasons, that compensation is to be paid also to a farmer who does not satisfy the residence requirement specified in Paragraph 6(1). In that case it is a condition that the farmer run the farm himself [5] or, according to a more literal translation, that he carry on the agricultural or horticultural activity himself and makes a personal commitment to it, 'on his own initiative'. [6] Furthermore, he must obtain at least 50% of his total income from agriculture, horticulture, forestry or from some of the other rural industries referred to in the said subparagraph.

47. We have here a rule and an exception to that rule. The rule states that the applicant must live on the farm itself or in the immediate vicinity of it. The exception permits a derogation from that principle for special reasons provided that certain minimum conditions are met.

48. Thus, if the rule is compatible with Community law, the exception must be also, according to the principle that 'he who can do most can also do least'.

49. However, it has not been claimed by either the appellant or the Finnish Government, or indeed by the French Government or the Commission, that the rule was incompatible with Community law. Not at all: the doubts of the court making the reference expressed in the first question relate solely to the point of whether Community law

5 — Translation of the order for reference.

6 — Literal translation of 'omatoimisesti'. So the text does not say 'himself' = 'itse', or 'by his own efforts' = 'omin voimin', or 'on his own account' = 'omaan lukuunsa'.

permits exceptions to the rule relating to residence on the farm, and not to the legality of the rule itself.

50. One may therefore conclude that since the rule itself is compatible with Community law the derogation, which is less strict than the rule, must also be compatible.

51. The national court, however, questions whether the exception is not incompatible with the principle of equality of treatment and the related rule prohibiting discrimination, since it requires not only that the applicant for the allowance should obtain at least 50% of his total income from activities carried out on the farm, but also that he should run the farm himself. This is the point of subparagraph (a) of the first question.

52. Let us see in relation to whom persons in a similar situation to the appellants in the main proceedings could suffer discrimination.

53. There could not be any discrimination in relation to farmers whose farms are situated in a less-favoured area and who are not subject to any condition relating to residence, the running of the farm or the income obtained from it. These farmers cannot in fact claim the compensatory allowance. They are therefore in a completely different situation.

54. It is perfectly legitimate for Member States to make the grant of allowances provided in response to particular problems suffered by certain regions subject to compliance with certain conditions designed to ensure that the objectives pursued by such a special system should be attained.

55. Does this amount to discrimination between farmers who live less than 12 kilometres from the farm, on the one hand, and those who live further away, on the other hand?

56. This cannot be the case. The situations of both these categories of farmers are not comparable either.

57. As the Finnish Government has remarked, a farmer who lives on the farm or in the immediate vicinity of it contributes directly towards the objective of maintaining a minimum population level in the less-favoured area. On the other hand, a farmer who lives for a large part of the year outside the less-favoured area does not automatically contribute to that objective. Conditions designed to ensure a minimum link between such a

person and the farm cannot therefore constitute an infringement of the principle of equality of treatment or of the principle of non-discrimination.

58. Let us remember also that the condition of running the farm oneself is less strict than that of permanently living on the farm and, for this reason also, one cannot speak of discrimination to the detriment of persons living further away.

59. In the first question, under subparagraph (b), the national court asks whether it is consistent with the principle of legal certainty to be observed in the Community legal order always '*also*' [7] to require that a special reason should exist?

60. For my part I think that the 'special reason' does not constitute so much an additional condition as an entry point (or a key) in order to be able to gain access to a system which is more favourable than the normal system.

7 — Emphasis added.

61. A person who wishes to be exempt from compliance with the normal rule must have a valid reason in order to escape it. That is the 'special reason'. Furthermore, if the clause concerning special reasons did not appear in the text we should be faced with two possible equivalent alternatives:

— either the applicant resides less than 12 kilometres from the farm,

— or he runs it and obtains 50% of his income from it.

62. If such a choice were offered it might lead to a proliferation of absentee landlords.

63. Many owners could indeed decide to run their farms from a distance, by telephone and fax, with the help of an agricultural worker, and only spend a month there during the summer.

64. They would not then be contributing themselves to the objective of maintaining the population level in the less-favoured area.

65. The reference to a special reason is therefore completely in accordance with the objectives of the system of compensatory allowances.

66. It only remains to be seen whether the concept of a 'special reason' infringes the principle of legal certainty. This principle requires that the legal rules should be clear and precise, and aims to ensure that situations and legal relationships governed by Community law remain foreseeable. [8]

67. The concept of a 'special reason' is of course vague and the individual does not know *a priori* what types of situation might come within that category.

68. It would be impossible however to predict all such situations in advance. Besides, it is not a condition which has to be met by all applicants, but a flexible clause intended to contribute towards solving particular problems.

69. If the Court were, however, to take the view that it was an additional or limiting condition, that condition would certainly come within the margin of discretion which Article 18(3) of Regulation No 2328/91 gives to Member States for laying down such conditions.

The second question

70. In both the cases in the main proceedings the second question refers to the principle of non-discrimination. It is to be assumed that the national court means the absence of arbitrary discrimination. Since the question is raised in the context of a special system which derogates from the ordinary law, the discrimination concerned must be understood to concern not just any difference in treatment, but only differences in treatment which lack any objective justification.

71. This is confirmed moreover by the provisions of the Treaty relating to the common agricultural policy, since Article 39(2) of the EC Treaty requires that account should be taken of the 'structural and natural disparities between the various agricultural regions'.

72. In Case C-9/97, the Court is being asked whether it is contrary to the principle of non-discrimination and that of proportionality, or any other principles of Community law, for a farmer who lives for most of the year in

8 — See Case C-63/93 *Duff and Others* [1996] ECR I-569 and Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 67.

another Member State with her husband, who is a diplomatic representative of the Finnish State and the joint owner of part of the said farm, to be excluded from eligibility for the compensatory allowance.

73. Mrs Jokela points out in the first place that in its original version the first indent of Paragraph 5(3) of Decision No 861/1995 of the Finnish Council of State contained a clause requiring a permanent residence in Finland, to which the Commission raised objections under the procedure provided for in Articles 29 and 30 of Regulation No 2328/91. The indent concerned was then repealed by Decision No 1097/1995 of the Finnish Council of State.

74. Mrs Jokela considers, however, that by laying down a requirement that the farmer must live not more than 12 kilometres from his farm the Finnish Government has in practice reimposed the condition of a permanent residence in Finland, since it would be impossible to meet the 12 kilometre requirement without living in Finland.

75. I am unable to share this view, however. The residence clause in its present version does not involve discrimination between producers from different Member States since, as both the Finnish Government and the Commission point out, farmers established in Finland who live more than 12 kilometres from the operational centre of their farm are in the same situation as farmers established in other Member States. So the situation of the appellant in the main proceedings, who is regarded as living in Bonn, is exactly the same with regard to the Finnish rules, as if she were living in Helsinki.

76. Mrs Jokela also refers to freedom of movement for workers, which is adversely affected by the residence requirement laid down by the Finnish authorities. It should be noted, however, that in this particular case Mrs Jokela, by following her husband, a diplomat representing the Finnish State in another Member State, is not exercising her right of freedom of movement within the meaning of the Treaty. Her move, as it is described in the documents in the case, has no connection with freedom of movement for Community nationals as provided for in the Treaty and in secondary legislation.

77. The fact that Mr Jokela, the husband of the appellant in the main proceedings, is joint owner of part of the farm does not seem to me to have any bearing on this case since it is not claimed that he should be entitled to the allowance in any capacity.

78. Subject to the following considerations, it should therefore be concluded that the competent Finnish authorities are entitled to apply

the rules examined above in the case of Mrs Jokela.

79. Mrs Jokela puts forward a number of arguments intended to show that the fact that she followed her husband to Bonn does not prevent her in practice from carrying on, or arranging for others to carry on, farming on her farm and from thereby contributing to the attainment of the objectives of the regulation.

80. In addition, she states that the Finnish authorities are wrong in considering that she does not fulfil the conditions laid down in Paragraph 6 of the Finnish Council of State decision. In particular, her place of residence is in the less-favoured area concerned, both from the point of view of social security legislation and from the point of view of the tax law. Moreover the condition that a temporary absence may not exceed six months is complied with in her case and was applied wrongly by the competent authority. The same is true with regard to the condition relating to the proportion of her income which is derived from her activity on the farm.

81. None of these arguments concerns the question whether the conditions laid down by the Finnish legislation in respect of the grant of the compensatory allowance are in accordance with Community law, but rather how those conditions are being applied by the competent national authorities. More particularly, these arguments are intended to show that the decision of the national authorities is wrong, by putting forward specific practical considerations which do not relate in this case to Community law. These are therefore questions which it will be for the national court to settle.

82. The same applies as regards the possibility of taking into account, as a 'special reason', the fact that a wife has the perfectly normal wish to live with her husband who is engaged in different employment at a distance of more than 12 kilometres from the farm, be it in Finland or in some other country.

83. The national court should take into account in this context the fact that Paragraph 6(3) of the Finnish Council of State's decision does not in fact lay down the requirement of residence on the farm, and examine whether the provisions relating to temporary absence from the farm, which are covered in subparagraphs (4) and (5), refer only to persons who have no 'special reason', that is to say, those who come under paragraph (1).

84. In Case C-118/97 the Court has been asked whether it is contrary to principles of non-discrimination and proportionality, or other principles of Community law, for a minor living permanently with her legal guardian some 70 kilometres from the economic centre of the farm, which is not run either by herself or by her legal guardian, to

be excluded from eligibility for the compensatory allowance.

85. Miss Pitkäranta has not submitted any observations to the Court and neither the Finnish Government nor the Commission have put forward detailed considerations on the subject of a case of this type.

86. I do not think that the exclusion of a minor because she does not run the farm constitutes discrimination which is contrary to Community law. As we have seen above, Member States are entitled to lay down additional conditions for granting the compensatory allowance in order to ensure that it is only awarded in cases where it is in accordance with the objectives of the regulation. In particular, they may in this context seek to ensure the existence of an adequate link between the farmer and the less-favoured area, by requiring for example not only that the recipient should receive half his income from the farm but also that he should run the farm himself.

87. This said, I do not think however that this is the end of the matter and I should like to make some further observations of a more general nature which apply also *mutatis mutandis* to Case C-9/97.

88. A neutral observer is struck by the fact that the way in which the directive has been transposed or is applied in Finland can lead to the paradoxical result that farms continue to operate in less-favoured areas without anyone seeming to be eligible to obtain the compensatory allowance, although the continued existence of the farms implies that there must be people on the spot who are carrying out agricultural work and also people, on the spot or elsewhere, who are engaged in managing them.

89. In an extreme case one could arrive at the paradoxical result that an existing agricultural activity which clearly contributes towards the attainment of the objectives of Directive 75/268 might disappear if its economic survival depends on the grant of the compensatory allowance.

90. The competent authorities should therefore examine whether the national conditions for granting the allowance are not so rigid that they are counter-productive in some situations. This might be because the granting of the allowance is too strictly linked to the person of the owner.

91. One can understand that this should be the case as a general rule. However, in special circumstances such as those of an owner who is married to a diplomat, or indeed those of an owner who is a minor who is not in a

position, either herself or through her legal guardian, to carry on agricultural work or to take decisions regarding the running of the farm, other people who carry out one or other of these tasks should be able to receive the allowance. This should be the case at least where the facts prove that both these tasks are being effectively carried on by someone.

92. One thinks here of the people who work on the farm (the court making the reference mentions the family of Miss Pitkäranta's father) or who live there and enjoy a right of usufruct over part of the farm and therefore take part in running it (the girl's grandmother).

93. One might also think of a manager who engages in his activity for and on behalf of the owner and is paid by him. A tenant who worked on the farm might also be considered.

94. We should note that Article 18 of Regulation No 2328/91 states that 'where Member States grant a compensatory allowance, farmers ... shall be eligible for such an allowance'. A farmer need not necessarily be the owner of the farm.

95. In order to give the national court an answer which is as helpful as possible, I should also like to examine whether one of the principles of Community law which it mentions precludes a Member State from implementing the system introduced by the directive in such a way that neither the owner of the land nor any other person who *de facto* carries on the agricultural work and/or actually runs the farm may be eligible for the compensatory allowance.

96. As we have seen above, Member States are entitled to lay down conditions which ensure that there exists an adequate link between the farmer and the less-favoured area.

97. In this regard they may, without infringing the principle of non-discrimination, treat situations which are not comparable differently.

98. However, the Court has also ruled that in order for the principle of non-discrimination to be infringed like situations must have been treated differently, thereby subjecting some traders to disadvantages as opposed to others, without such differentiation being justified by the existence of substantial objective differences. [9]

9 — See in particular the judgment in Case 250/83 *Finsider* v *Commission* [1985] ECR 131, paragraph 8.

99. There are without doubt differences between the case where the owner is a farmer living on his farm, running it himself and taking part in the farm work, and the case where the farm and the running of it are in the hands of a member of the owner's family, a manager or a tenant.

100. However, in both cases the objectives of Directive 75/268, namely the continuation of farming and maintaining the population level of the area, are achieved, even if, in the second case, the owner does not have any direct involvement.

101. It seems to me therefore that such a situation is sufficiently comparable to that of an owner-cum-farmer, or that the objective differences which exist are not significant enough to justify either the owner, or any of the people involved in the running of the farm or the day-to-day work not being eligible for the compensatory allowance.

102. It is understood that the 'special reason' clause plays an essential role since it makes it possible to ensure that each case is examined on its own merits and the risk of a spate of absentee landlords can be avoided.

103. The court making the reference also mentions the principle of proportionality.

104. It is apparent from the case-law that, in order to establish whether a provision of law is consonant with the principle of proportionality, it is necessary to establish in the first place whether the means it employs to achieve its aim correspond to the importance of the aim and, in the second place, whether they are necessary for its achievement. [10]

105. In this case the objectives sought are the continuation of farming and maintaining a minimum population level in a less-favoured area. If the effect of the national law which transposes the directive and which must, like the directive, also observe the principle of proportionality [11] were to be that none of the people responsible for working on the farm and/or managing it would be eligible for the allowance, the principle of proportionality would in my opinion be infringed.

106. Lastly, such a situation could also constitute an infringement of Article 18 of Regulation No 2328/91, which provides that 'where Member States grant a compensatory allowance, farmers with at least three hectares of

10 — See for example Case C-358/88 *Hopermann* [1990] ECR I-1687.

11 — See for example the need for a national measure to observe the principle of proportionality, Case C-29/95 *Pastoors* [1997] ECR I-285.

usable agricultural area who undertake to pursue a farming activity in accordance with the aims of Directive 75/268/EEC for at least five years from the first payment of a compensatory allowance shall be eligible for such an allowance'.

107. In my opinion, the additional or limiting conditions which Paragraph 6(3) authorises Member States to lay down should not mean that a farming activity which actually exists and is performed in accordance with the objectives of Directive 75/268 cannot be eligible for the compensatory allowance because that allowance may only be granted to the owner of the land.

108. I therefore propose to supplement the second question relating to the two cases by stating that both the principle of non-discrimination and the principle of proportionality and Article 18(1) of Regulation No 2328/91 are likely to be infringed if, under a national law neither an owner who lives more than 12 kilometres from the farm, nor any other person who is running the farm or carrying on the day-to-day work, is eligible for the compensatory allowance, although farming continues on the farm and the latter is still inhabited.

Conclusion

109. In the light of the foregoing I propose that the Court give the following answer to the questions submitted by the Maaseutuelinkeinojen Valituslautakunta:

(1) It is compatible with the aims of Articles 17 and 18 of Council Regulation (EEC) No 2328/91 on improving the efficiency of agricultural structures and Article 1 of Council Directive 75/268/EEC on mountain and hill farming and farming in certain less-favoured areas for a compensatory allowance for natural handicaps to be granted to a farmer if he does not live on a farm owned or controlled by him in Finland in a less-favoured area within the meaning of the said directive, but lives for most of the year outside the said area.

(a) Member States may lay down additional or limiting conditions for the grant of the compensatory allowance, for example that the farmer should receive

a certain proportion of his total income from activities pursued on the farm and that the farm should be run by the farmer himself, where the person eligible for the allowance does not live on the farm, without prejudice to the principle of equal treatment for farmers and the related principle of prohibition of discrimination, or the principle of proportionality or any another principle of Community law.

(b) Since a Member State may lay down additional or limiting conditions for the grant of the compensatory allowance, it may also, for special reasons, lay down conditions which are less strict than those which it has laid down as a general rule, without prejudice to the principle of legal certainty to be observed within the Community legal order.

(2) The principle of non-discrimination and the principle of proportionality do not prevent national laws adopted in pursuance of Directive 75/268 from excluding persons in the same type of situation as the persons appearing in the main proceedings from being eligible for the compensatory allowance.

However, those principles and Article 18(1) of Regulation No 2328/91 do prevent any other person in such circumstances from being eligible for the allowance where the farming continues and the farm is still inhabited.