OPINION OF ADVOCATE GENERAL VAN GERVEN
delivered on 18 May 1994 *

Mr President,
Members of the Court,

1. The case before you concerns a request for a preliminary ruling from the First Civil Division of the Corte d'Appello di Roma (Court of Appeal, Rome) arising in proceedings between UNAPROL (National Association of Olive Producer Groups), on the one hand, and AIMA (the national intervention agency for agricultural products) and the Ministry for Agriculture and Forestry, on the other. Those proceedings concern the procedure for payment of Community aid for the production of olive oil and, more particularly, the question of entitlement to any interest accruing in respect of sums passing through the bank accounts used by UNAPROL in order to pay the aid to the beneficiaries.

The national court's question and its background

2. The question relates to the interpretation of Community provisions governing aid for the production of olive oil and, more particularly, of Council Regulations (EEC) No 2959/82 [1] and No 2261/84. [2] In chronological order, [3] these regulations lay down the conditions for the granting of aid for the production of olive oil and set out the procedure for payment of the aid and for checking entitlement to it. For present purposes, there is little to differentiate them.

3. The conditions for granting the aid vary according to whether or not the oil producer belongs to a producer organization recognized under the Community rules. [4] If the olive grower does not belong to such an organization, he is entitled to aid granted on the basis of the number, the production potential and the yield, fixed according to a flat rate, of his olive trees, on condition that the olives produced have been harvested. If, on the other hand, the olive grower does belong to a producer organization, he is entitled to aid granted on the basis of the quantity of oil *actually* produced. The difference in treatment is justified by the important role played by the producer organizations with regard to checks, in particular the examina-

* Original language: French.

1 — Council Regulation (EEC) No 2959/82 of 4 November 1982 laying down general rules in respect of production aid for olive oil for the 1982/83 marketing year (OJ 1982 L 309, p. 30).

2 — Council Regulation (EEC) No 2261/84 of 17 July 1984 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organizations (OJ 1984 L 208, p. 3).

3 — As is clear from its title Regulation No 2959/82 applies to the 1982/83 marketing year whereas Regulation (EEC) No 2261/84 applies as from the 1984/85 marketing year.

4 — See paragraph 1 of Article 20c of Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats (OJ 172, English Special Edition 1965-1966, p. 221), as amended by Council Regulation (EEC) No 1917/80 of 15 July 1980.

tion of the accounts both of olive growers and of approved mills. The organizations also assist with coordinating applications, allocating advances and paying the balance of the aid.

4. One of the differences between Regulation No 2959/82 and Regulation No 2261/84 is that in the latter account is taken of the associations of olive oil producer organizations and not just of the organizations themselves. In particular, in accordance with Regulation (EEC) No 1413/82, [5] it reserves to associations the right to receive and distribute the advances on production aid. According to Article 10 of Regulation No 2261/84, the associations of producer organizations:

— coordinate the activities of the organizations of which they are composed and ensure that those activities accord with the provisions of the regulation;

— lodge with the competent authorities the crop declarations and the aid applications forwarded to them by the organizations of which they are composed;

— receive from the Member State concerned advances on the production aid, and the balance of the aid, and divide them forthwith amongst the producers who are members of the organizations of which they are composed.

5. Article 11(5) of Regulation No 2261/84 provides that 'Producer Member States shall lay down rules regarding allocation of the aid and the time-limits for payment to olive growers'. Regulation No 2959/82 contained an equivalent provision in the first subparagraph of Article 6(2). [6]

6. In implementation of those provisions, the Italian Minister for Agriculture adopted two decrees, on 29 December 1983 [7] and 2 January 1985. [8] The provision at issue is Article 17 of the Decree of 2 January 1985, [9] the first six paragraphs of which are worded as follows:

'The recognized associations of producer groups shall, in respect of their members, effect payment of the advance on and the

5 — Council Regulation (EEC) No 1413/82 of 18 May 1982 amending Regulation No 136/66/EEC on the establishment of a common organization of the market in oils and fats (OJ 1982 L 162, p. 6).

6 — 'The Member States concerned shall determine the procedure for payment of the aid and the advance by producer organizations to their members.'

7 — GURI No 28 of 28 January 1984.

8 — GURI No 17 of 21 January 1985.

9 — The provision is identical to that contained in the first decree, save that the words 'recognized producer organizations' are replaced by 'the recognized associations of producer groups' in the second decree.

balance of the aid by bank transfers or by non-transferable cheques issued by a credit institution chosen by the organizations themselves and to be sent by registered letter to the recipients' address.

The amount of the advance and the balance referred to in the previous paragraph shall be equal to the corresponding amount certified by AIMA on the basis of the memoranda summarizing the applications considered to be eligible for aid in accordance with Community legislation and this decree.

Relations between the recognized associations and the credit institution responsible for payment of Community production aid shall be governed, according to Presidential Decree No 532 of 4 July 1973, by a special agreement to the effect that payment to recipients is to be made at the latest within 10 working days from the date on which the credit operations involving the said sums, ordered by AIMA, result in their being made available. With regard to members of oil-producing cooperatives belonging to producer groups, the non-transferable cheques payable to the various producers may be forwarded through the cooperatives themselves, in order to facilitate payment operations.

Similarly, relations between AIMA and the associations shall be governed by an agreement which must provide that, in the case of cheques returned on account of death or non-delivery to the address given on the beneficiary's application, the sums involved are to be paid to the credit institution responsible for payment into a special blocked current account pending the issue of new duly updated documentation.

Bank statements showing the progressive increase in interest accruing on the sums deposited shall be sent to AIMA every six months by the associations concerned.

Any bank interest accruing shall belong solely to AIMA to whom it must be credited by the producer organizations, after deduction only of sums payable to the Treasury, by the deposit of Treasury bonds into non-interest-bearing current account No 416 in the name of AIMA — Financial Management.'

7. The subject of the proceedings before the national court is precisely the ownership of the interest accruing on the amounts of aid either during the brief period between the time when then the sum paid by AIMA is credited and the time when it is debited on payment by the association to the beneficiary, or as a result of the temporary non-payment of the aid owing to a cheque being

returned on account of death or non-delivery to the address shown on the beneficiary's application, pending the issue of new payment documentation. Unaprol, an association recognized under the Community legislation, disputes the lawfulness of the ministerial decrees in so far as they confer entitlement to the interest on AIMA, the national intervention agency, and not on the beneficiaries of the aid which AIMA represents. The Italian ministerial decrees are alleged to be contrary to Council Regulations No 2959/82 and No 2261/84.

In the course of those proceedings, the First Civil Division of the Corte d'Appello di Roma referred the following question to the Court:

'Do the Community provisions governing aid to olive producers, and particularly Council Regulations (EEC) No 2959/82 of 4 November 1982 and No 2261/84 of 17 July 1984, provide that AIMA (the national intervention agency) acts simply as an intermediary in the name and on behalf of the European Economic Community (without ever becoming entitled to the sums granted, which belong, therefore, together with the ancillary interest accruing during the course of the payment procedure, to the individual beneficiaries from the time of their grant), or is AIMA exclusively entitled to those sums, and therefore to the interest thereon, until such time as they are paid over to the beneficiaries?'

Relevant Community legislation

8. At the hearing, Unaprol pointed out that the national court's question related solely to AIMA's capacity to act as intermediary as regards payment of the aid. It seems to me, however, that in order to give the national court an appropriate answer enabling it to decide the case before it, it is also necessary to ascertain to whom the interest belongs. It follows from the wording of the question referred that what is actually at issue in the domestic proceedings is the ownership of the interest. In that connection, it is necessary to examine carefully both the instruments governing the constitution of the different bodies involved in payment of the aid and the procedure for payment and, to that end, to analyse various regulations concerning not only the common agricultural policy, in general, but also the common organization of the markets in oils and fats and aid for the production of olive oil.

9. The grant of aid for the production of olive oil is a Community operation financed by the Community budget, and, more particularly, by the Guarantee Section of the

European Agricultural Guidance and Guarantee Fund (EAGGF). The basic regulation on financing the Common Agricultural Policy is Regulation (EEC) No 729/70 of the Council. [10] Article 4 [11] of that regulation refers to *intervention bodies*, such as AIMA in the present proceedings, and to the procedure for payment:

'1. Member States shall designate the authorities and bodies which they shall empower to effect, from the date of application of this regulation, the expenditure referred to in Articles 2 [12] and 3. [13] They shall communicate to the Commission, as soon as possible after the entry into force of this regulation, the following particulars concerning those authorities and bodies:

— their name and, where appropriate, their statutes;

— the administrative and accounting conditions in accordance with which payments are made relating to the implementation of Community rules within the framework of the common organization of agricultural markets.

They shall inform the Commission forthwith of any change in those particulars.

2. The Commission shall make available to Member States the necessary credits so that the designated authorities and bodies may, in accordance with Community rules and national legislation, make the payments referred to in paragraph 1.

The Member States shall ensure that those credits are used without delay and solely for the purposes laid down.'

10. Commission Regulations (EEC) No 380/78 [14] and No 3184/83, [15] adopted in implementation of Article 4 of Regulation No 729/70, both expressly state that the Commission is to place at the disposal of the Member State the necessary means for payment by the disbursing authorities of expenditure financed by the Guarantee Section of the EAGGF into 'an account opened for this

10 — Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition, 1970 (I) p. 218).

11 — In the version in force when proceedings were instituted before the national court, that is to say prior to the amendment made by Council Regulation (EEC) No 3183/87 of 19 October 1987 introducing special rules for the financing of the common agricultural policy (OJ 1987 L 304, p. 1).

12 — Article 12 concerns refunds on exports to third countries.

13 — Article 3 concerns intervention intended to stabilize the agricultural markets.

14 — Commission Regulation (EEC) No 380/78 of 30 January 1978 on the operation of the system of advances in respect of expenditure financed by the Guarantee Section of the EAGGF (OJ 1978 L 56, p. 1). That regulation was in force from 1 January 1978 to 30 November 1983 (repealed by Regulation (EEC) No 3184/83).

15 — Commission Regulation (EEC) No 3184/83 of 31 October 1983 on the operation of the system of advances in respect of expenditure financed by the EAGGF Guarantee Section (OJ 1983 L 320, p. 1). That regulation was in force as from 1 December 1983. Several of its provisions were identical to those of Regulation No 380/78. That is the case of Article 1, quoted above.

purpose by each Member State within the Treasury or some other financial institution' (Article 1(1)). According to Article 1(3); 'Each Member State shall ensure that the Community funds are properly managed and shall distribute them among the disbursing authorities ...'. The regulations specify, moreover, the accounting obligations of the disbursing authorities as well as the supporting documents which are to be forwarded by the Member States to the Commission.

11. The Council encouraged the formation of *producer groups* and *associations of such groups* in order to remedy deficiencies in the structure of supply perceived in various countries or regions, for certain products, and owing, principally, to the inadequate level of organization amongst producers. By Regulation (EEC) No 1360/78, [16] the Council provided for the granting of aid to cover part of the formation and operating expenses of producer groups in regions where the structural deficiencies affecting supply had been noted. A system of recognition was introduced to ensure that the grouping of holdings takes place within bodies with the appropriate production and marketing discipline, which offer sufficient guarantees as to the stability and effectiveness of their actions and do not, by virtue of their position and their economic activity, conflict with the operation of the Common Market and the general objectives of the Treaty. [17] The regulation provided, moreover, for the creation of associations, consisting of recognized producer groups and pursuing the same objectives as those groups, but on a larger scale.

12. By Regulation (EEC) No 1917/80, [18] and subsequently by Regulation (EEC) No 1413/82, [19] the Council established the principle of involving associations of producer groups recognized under Regulation No 1360/78 in the management of aid for the production of olive oil. The associations' involvement enables applications for the aid and its distribution and the appropriate checks to be centralized. As a result of those factors and, in particular, of its role in carrying out the checks, an association's involvement permits aid to be granted on the basis of the oil *actually* produced (as opposed to a flat-rate assessment of production), as well as *advances* on the definitive amount of the aid. The advantage, for oil producers, of receiving aid on the basis of the oil actually produced is highlighted furthermore by Regulation No 1917/80 which provides for the possibility that producers whose production is in principle intended for their own consumption and who, accordingly, have no reason to become members of a producer group may none the less qualify for aid calculated in this way if they undergo checks carried out by a recognized producer group association. [20] Since, for the producer group, that is a task not provided for in Regulation No 1360/78, which covers only improvements to the supply structure, and that it is the recipients of the aid who benefit from

16 — Council Regulation (EEC) No 1360/78 of 19 June 1978 on producer groups and associations thereof (OJ L 166, p.1).

17 — Seventh recital in the preamble to Regulation No 1360/78, cited above.

18 — Council Regulation (EEC) No 1917/80 of 15 July 1980 amending Regulation No 136/66/EEC on the establishment of a common organization of the market in oils and fats and supplementing Regulation (EEC) No 1360/78 on producer groups and associations thereof (OJ 1980 L 186, p. 1).

19 — Cited above, footnote 5.

20 — Fourth recital in the preamble to, and Article 1 of, Regulation (EEC) No 1917/89, cited above.

the associations' involvement in the management of the aid, the regulation provides that the financing of that new activity on the part of the associations is to be assured by means of a contribution amounting to a percentage (to be determined) of the production aid paid to them. Despite the associations' involvement, however, the regulation expressly states that 'the ultimate responsibility for supervising the management of production aid and consumption aid lies with the Member State concerned'. [21]

The answer to the national court's question

13. It follows from consideration of the various regulations that aid for the production of olive oil is part of an overall sum to be paid by the Commission to a Member State into an account opened by that State 'within the Treasury or some other financial institution' in accordance with Article 1(1) of Commission Regulations No 380/78 and No 3184/83, [22] cited above. Pursuant to Article 1(3), the Member State is to forward the amounts of aid to the intervention agency, in this case AIMA. The procedure for payment of the aid by AIMA to the beneficiaries (individual oil producers or associations of producer groups) is referred to in Article 11(5) of Regulation No 2261/84 which provides that 'Producer Member States shall lay down rules regarding allocation of the aid and the time-limits for payment to olive growers'. [23] It is therefore pursuant to that provision that the Italian decrees whose lawfulness is at issue were adopted.

14. It appears from those different provisions that, once the Commission has paid the overall amount into the Member State's account, Community law ceases to apply. It is for the Member State to determine which bodies it will recognize as intervention agencies authorized to make payments in accordance with the rules adopted under the common organization of agricultural markets and what their status will be. It is also the Member State who makes the transfer from its account into that of the intervention agency. The Member State also lays down the procedure for payment of the aid by the intervention agencies to the beneficiaries, whether the sums are transferred by way of an intermediary (association of producer groups) or not (payment direct to an oil producer who does not belong to an association). If the payments are made through an association, it is always the Member State which determines the procedure for payment by the association to the beneficiary.

21 — Eighth recital in the preamble to Regulation No 1917/80, cited above. Different rules deal with the consumption of olive oil.

22 — The wording of Article 1 of both of those regulations is identical.

23 — Provision equivalent to the first paragraph of Article 6(2) of Regulation No 2959/82, cited above.

15. It is not surprising that Member States have been empowered to determine the procedure for payment of the aid, at each stage. Article 8 of Regulation No 729/70 [24] on the financing of the common agricultural policy not only empowers them but also requires them, in accordance with national provisions laid down by law, regulation or administrative action, to take the measures necessary to satisfy themselves that transactions financed by the Fund are actually carried out and are executed correctly, to prevent and deal with irregularities, and to recover sums lost as a result of irregularities or negligence. The Court has on several occasions confirmed those obligations of Member States and their related powers to apply the provisions of national law. [25]

16. However, the Member States' freedom to apply their national law is not absolute. Still in connection with the application of Article 8(1) of Regulation No 729/70 of the Council, [26] the Court has held that 'recourse to rules of national law is possible only in so far as it is necessary for the implementation of provisions of Community law and in so far as the application of those rules of national law does not jeopardize the scope and effectiveness of Community law.' [27] Likewise, in the *Deutsche Milchkontor* case, [28] which concerned the rules for the recovery of aid unduly paid under Community law, the Court pointed out that the possibility for Member States when implementing Community regulations to act in accordance with the procedural and substantive rules of their own national law must be reconciled with the need to apply Community law uniformly so as to avoid unequal treatment of traders.

17. The question before the Court relates, indirectly, to the provisions adopted by a national legislature with regard to the procedure for payment of Community aid by an intervention agency within the framework of the common agricultural policy. As I have already shown, the national legislature was clearly acting within its powers since, in addition to the general provisions relating to the implementation of the common agricultural policy, the regulations dealing specifically with aid for the production of olive oil also expressly stated that it was for the national authorities to determine the allocation of the aid and the time-limits for payment thereof. Determining the time-limit for payment of the aid implies, to my mind, the power both not only to define precisely the time, the operation, from which payment is to be made and, therefore, the time when the beneficiary of the aid becomes the owner of the amount to which he is entitled and of the interest that sum may earn, but also to determine to whom those sums and that interest belong in the interim.

24 — Cited above, footnote 10.

25 — See, for example, the judgment in Case C-366/88 *France* v *Commission* [1990] ECR I-3571 with regard to the detailed rules for supervision, and the judgment in Joined Cases 205/82 to 215/82 *Deutsche Milchkontor* v *Germany* [1983] ECR 2633 with regard to recovery of aid unduly paid.

26 — Cited above, footnote 10.

27 — Judgment in Joined Cases 146/81, 192/81 and 193/81 *BAYWA* v *BALM* [1982] ECR 1503, paragraph 29.

28 — Cited above, footnote 25, paragraph 17 of the judgment.

18. The only possible check seems to me to be verification that the implementation of the contested national provision does not jeopardize either the scope and effectiveness of Community law or its uniform application.

It is difficult to see how that provision, in so far as it allocates to AIMA the interest accruing on the sums of aid passing through the bank accounts used by the associations for payment of the beneficiaries, jeopardizes the scope, effectiveness or uniform application of Community law. What is at stake is the interest earned on sums which the Commission has placed at the disposal of the Member State concerned and which the latter has transferred to the intervention agency for payment of the aid to the beneficiaries. It seems wholly consistent with the scheme devised by Community legislation to consider that payment as having been made only once the amount of aid reaches those beneficiaries and, until such time, to consider the interest as belonging to the intervention agency (which is an extension of the Member State concerned).

19. Furthermore, the allocation to AIMA of the interest accruing on the sums passing through the account opened with the credit institution can only be conducive to making the associations comply with the deadline of ten working days set by the Italian decree for payment of the aid to the oil producers, since it is entirely in their interest to be paid the sums to which they are entitled as soon as possible, rather than to see those sums yield interest for AIMA's benefit. Such rules are entirely consistent with Article 10 of Regulation No 2261/84, which provides that the associations are to divide the aid *forthwith* amongst the producers who are members of the organizations of which they are composed. Finally, a measure of that kind ensures transparency of the associations' financial situation and spares them a tiresome accounting process designed to allocate between the beneficiaries of the aid the *bank* interest, the rate of which frequently varies therefore, accruing on the sums over very brief periods of time.

20. In conclusion, the Italian legislature was acting within its powers when it adopted the contested decrees and there is nothing in Community law to suggest that Article 17 of the Decree of 2 January 1985 in any way jeopardizes the scope, effectiveness or uniform application of Community law. For that reason, I propose

that the Court answer the question referred by the Corte d'Appello di Roma as follows:

'The Community provisions applicable to the common agricultural policy, and particularly Council Regulations (EEC) No 2959/82 and No 2261/84 laying down general rules in respect of production aid for olive oil, are to be interpreted as reserving to the Member States the power to determine, according to national law, the procedure for the allocation of aid to olive growers, and the time-limits for payment of the aid.

A Member State does not exceed the limits of that power where it settles the question of the allocation of the bank interest accruing on the sums of aid passing through the accounts of associations of producer groups, either in the interval between the time when the sum paid by the intervention agency is credited and the time when it is debited on payment by the association to the beneficiary, or by reason of the temporary non-payment of the aid on account of the return of a cheque owing to death or non-delivery to the address shown on the beneficiary's application, pending the issue of new payment documentation.'