OPINION OF ADVOCATE GENERAL ELMER

delivered on 24 October 1996 *

Introduction

1. In this case the Consiglio di Stato, Italy, has referred to the Court for a preliminary ruling questions concerning the interpretation of the Community rules on aid for the extensification of production of surplus products in the agricultural sector.

The basic regulation

2. Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures, [1] as amended by Council Regulation (EEC) No 1760/87 of 15 June 1987, [2] and by Council Regulation (EEC) No 1094/88 of 25 April 1988, [3] (hereinafter 'the basic regulation') introduced a system of aid for investments in agricultural holdings which enable production costs to be reduced and living and working conditions to be improved, or which are aimed at restructuring production.

3. The basic regulation contains *inter alia* the following provisions:

'TITLE 01

Set-aside of arable land

Article 1a

1. Member States shall introduce an aid scheme designed to encourage the set-aside of arable land.

2. Aid for set-aside may be granted for all arable land, irrespective of the crops grown, provided that the land has in fact been cultivated for a reference period to be determined. Land growing crops not covered by a common market organization are excluded from the aid scheme.

* Original language: Danish.

1 — OJ 1985 L 93, p. 1.

2 — OJ 1987 L 167, p. 1.

3 — OJ 1988 L 106, p. 28.

3. The arable land withdrawn from production must represent at least 20% of the arable land referred to in paragraph 2 ...

TITLE 02

Extensification of production

4. Member States shall determine:

Article 1b

...

1. Member States shall introduce an aid scheme to promote extensification for surplus products. Surplus products shall be defined as products for which there are consistently, at Community level, no normal unsubsidized outlets.

(b) the reference period referred to in paragraph 2;

...

(c) the undertaking to be given by the beneficiary for the purposes in particular of verifying that, throughout the entire farm, the area farmed has in fact been reduced.

2. Extensification shall be defined as a reduction of at least 20%, for a period of at least five years, in the output of the product concerned without any increase in other surplus production capacity. However, such an increase shall be permitted in proportion to any increase in the utilized agricultural area of the farm.

...

3. Member States shall determine:

(a) the conditions for granting the aid, including those for reducing output of the various products. In the case of beef and veal, it may be stipulated that, in order to achieve the reduction in output referred to in paragraph 2, the number of livestock units must be reduced by at least 20%. ....

(b) ...

(c) the reference period for the product concerned, for the purposes of calculating the reduction;

(d) the undertaking to be given by the beneficiary for the purposes of, in particular, verifying that production has in fact been reduced.'

The implementing regulation

4. Commission Regulation (EEC) No 4115/88 of 21 December 1988 laying down detailed rules for applying the aid scheme to promote the extensification of production [4] (hereinafter 'the implementing regulation') provides, in Article 2 in conjunction with Annex I, that beef and veal are covered by the aid scheme for the extensification of production.

The implementing regulation also includes the following provisions relevant to this case:

'*Article 3*

1. In order to qualify for extensification aid, producers must give an undertaking to make a real reduction in their output of one or more of the products referred to in Annex I ...

4 — OJ 1988 L 361, p. 13.

Article 4

1. The reduction in output shall be ensured by the farmer according to the procedure laid down by the Member States in relation to the normal output of his agricultural holding on the basis of average annual output during a given reference period.

The detailed rules to be determined by the Member States may provide for the following two methods:

— a "quantitative" method based on the actual reduction in quantitative terms, in accordance with Article 6, and/or

— ...

2. The reference period to be fixed by the Member States must be such that it is possible to determine the normal annual level of production of the holding concerned to be used as a reliable basis for calculating the reduction in each producer's output and for verifying, where appropriate, the effect of the conversion of production to less intensive methods.

The normal annual level of production of the agricultural holding shall be established on the basis of technical and economic administrative documents; when the "production methods" method is used the normal annual level of production may be estimated on a flat-rate basis by reference to appropriate technical criteria in the various sectors.

Article 6

Where the "quantitative" method is applied, the reduction of at least 20% in output for each individual holding shall be calculated, for each of the products covered by the undertaking, in terms of the holding's entire output of those products.

...

Article 7

Where the "quantitative" method is applied in the beef and veal sector, the reduction in output may be achieved via an equivalent reduction in the number of livestock units comprising the herd. In this case, Member States shall:

— ensure that the livestock that are the subject of the reduction are slaughtered or exported permanently to a third country;

— see that the remainder of the herd is not subject to any intensification of production.

Article 9

1. In their aid applications, producers shall provide information ... with particular reference to:

...

(b) for the products affected by extensification:

— where the "quantitative" method is applied, the average annual output of the holding,

— ...

2. In the event of extensification of livestock production, the applicant shall also specify:

— the average composition of the grazing stock during the reference period and its annual feed needs,

— the average amounts of feed purchased outside the holding during the reference period.

3. The application for aid shall be accompanied by:

— the technical or economic data on the basis of which the average output within the meaning of the first indent of paragraph 1(b) was determined or, in the absence of such data, a detailed assessment of that average output;

— the undertaking given by the producer, subject to aid being granted, in accordance with Article 10.

Article 10

1. The producer shall undertake on the basis of the rules laid down by the Member States either:

— where the "quantitative" method is applied, to reduce output of the product or products affected by extensification by at least 20% as compared with the annual level of output determined during the reference period, or

— ...'

The national legislation

5. In implementation of the abovementioned Community provisions and in order to adapt them to national conditions, the Italian Ministry of Agriculture and Forestry issued Decree No 34 of 8 February 1990 [5] (hereinafter 'the Decree').

Under Article 2(1) and (2) of the Decree, aid may be granted on request for the extensification of production in respect of products listed in Annex I to the implementing regulation. In that connection producers are to undertake to make a real reduction in their output of one or more products for a period of five years.

Article 4(6) provides that where the quantitative method of reducing output provided for in Article 4 of the implementing regulation is applied, the reduction in output for each of the products in respect of which an undertaking is given must be of at least 20% compared with the holding's entire output of that product during the reference period.

5 — GURI, General Supplement No 48 of 27.2.1990.

Article 5(1) and (3) provides that the reference period to be used in order to verify the conversion to extensive methods, with regard to livestock products, are the years 1986/87 and 1987/88. The period of the undertaking may start to run no earlier than the marketing year 1989/90.

6. By Circular No 245 of 5 September 1990 (hereinafter 'the circular'), the Ministry of Agriculture and Forestry laid down a number of detailed rules for the application of the aid scheme to promote the extensification of production. The circular thus contains *inter alia* rules concerning fluctuations in production in the period between the reference period fixed (marketing years 1986/87 and 1987/88) and the beginning of the period of the undertaking (marketing year 1989/90). I shall use the term 'the intermediate period' to describe the period constituted by marketing year 1988/89.

According to the circular, the beneficiary of aid must undertake, for a period of 5 years, to reduce annual output by at least 20% in relation to average output during the reference period. During and by the end of each individual marketing year to which the undertaking relates, the number of domestic animals can therefore in no circumstance increase in relation to the number of animals in the herd during the reference period. Only reductions in the number of domestic animals are permissible.

The circular further provides that increases in the number of animals for breeding in the intermediate period do not affect a producer's entitlement to aid, since there is a duty to reduce the number of animals in relation to the average number of animals in the herd during the reference period. In cases where there is a reduction in the number of animals for breeding in the intermediate period, the stockbreeder is not, however, entitled to aid if the further reduction in the number of animals over the period of the undertaking proves to be less than 20% in relation to the number of animals during the reference period.

7. It appears from the documents in the case that when preparing the circular the Italian Government consulted the Commission as to whether that interpretation of the rules was correct. The Commission sent a note approving the Italian construction of the Community rules.

Facts of the case

8. S. Agri SNC (hereinafter 'Agri') and Agricola Veneta Sas (hereinafter 'Veneta')

applied on 31 March 1990 to the Ispettorato Regionale per l'Agricoltura di Padova (Regional Agricultural Inspectorate, Padua) for aid for the extensification of their production, consisting of stockbreeding.

9. The size of the two companies' output in the relevant marketing years is shown in the table below, where various types of cattle are included as grown animals.

Number of grown animals	Average in reference period	Intermediate period	First year of the period of the undertaking
Agri	868.42	529.30	459.95
Veneta	1 124.15	507.63	441.72

10. The reason for the large reduction in production in the intermediate period was, in respect of both holdings, that in marketing year 1988/89 Italy was badly afflicted with foot-and-mouth disease. Agri and Veneta's herds were not themselves directly affected by the disease, but the holdings had to reduce their output since demand for meat from Veneto fell as a result of the foot-and-mouth disease affecting the region.

11. By decisions of 18 March 1991, the Ispettorato Regionale dell'Agricoltura di Padova rejected the companies' applications for extensification aid for stockbreeding, referring to the fact that the reduction which occurred in the course of the first year of the period of the undertaking, excluding the reduction in the number of animals that had already taken place in the intermediate period, constituted less than 20% in relation to the average number of stock animals per year during the reference period.

Questions referred for a preliminary ruling

12. Agri and Veneta brought actions against those decisions which are now pending before the Consiglio di Stato; by order of 21 March 1995 that court stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. Is a provision of national law which, in the event of a period of time elapsing

between the end of the reference period and the beginning of the period of the undertaking, takes into account not only the output (the number of units of livestock) for the reference period, in relation to output to be achieved during the period of the undertaking, but also fluctuations in output occurring during that intermediate period, compatible with the Community legal order, in particular Article 1b(3)(c) of [the basic regulation] and with Articles 4(1) and (2), 7 and 10(1) of [the implementing regulation]?

2. If so, is a provision of national law compatible with the Community legislation referred to above where, in the case of a reduction in the heads of livestock raised during the intermediate period between the end of the reference period and the beginning of the period of the undertaking, it not only excludes those animals from the aid but also provides that they must be excluded from the calculation of the minimum 20% reduction in output between the reference period and the period of the undertaking, which is a prerequisite for the grant of the aid (with the result, in particular, that the aid is not payable even in respect of the actual reduction in livestock envisaged in the period of the undertaking, where that reduction is less than 20% of the average number of livestock raised in the reference period)?'

13. By these questions the national court is, essentially, asking the Court to state whether the said provisions in the basic regulation and the implementing regulation must be interpreted to the effect that it is the average output during the reference period or the output during the intermediate period that is to be reduced before aid for extensification may be granted to a producer.

Procedure before the Court

14. Agri and Veneta have claimed that a national provision which, where there is a gap between expiry of the reference period and the beginning of the period of the undertaking, does not simply take account of the size of output during the reference period compared with the output to be achieved during the period of the undertaking, but also takes account of fluctuations in output which occurred during the intermediate period, in the assessment as to whether aid may be granted for extensification, cannot be regarded as compatible with Community law.

15. The Italian Government takes the view that the relevant Community provisions must be interpreted to the effect that account should be taken not only of the size of output during the reference period as compared with the production to be achieved in the period of the undertaking, but also of fluctuations in output which took place during the intermediate period. If output has been reduced during the intermediate period, no

aid can therefore be granted for extensification unless the output that has already been reduced is reduced further.

16. The Commission has stated that the Community provisions should be interpreted to the effect that account should be taken of reductions in output which occurred during the intermediate period in connection with the assessment of the extent to which a producer is entitled to aid, since the reduction must be a consequence of the producer's undertaking to reduce output and constitute a *quid pro quo* for the payment of aid. It must therefore be a requirement that the producer actually reduces his output by 20% in relation to output during the reference period.

Analysis

17. In its judgment in Case C-190/91 *Lante* v *Regione Veneto* [6] the Court of Justice specified the powers of the Member States in relation to the aid scheme for extensification and stated that:

'Under the Community rules in question, the Member States' authority is confined to questions of a technical nature and they are not permitted to determine the class of beneficiaries. Their authority extends only to the practical application of the aid scheme, that is to say, its adaptation to local situations, and more particularly the specific conditions for reducing production.'

In the administration of the scheme for aid for extensification, the Member States must thus confine themselves strictly to the powers accorded to them in relation to the Community provisions. The authorities of an individual Member State are not entitled to introduce criteria for the award of aid other than those laid down in the Community provisions.

18. Under Article 1b(2) and (3)(c) of the basic regulation, the conditions under which a producer can obtain aid for extensification are that, for a period of a least five years, he reduces his output of the product concerned by at least 20% of output during a reference period fixed by the Member States.

19. For entitlement to aid there must first be a 'reduction' (see Article 1b(2) of the basic regulation). That is emphasized in the implementing regulation by the phrase 'make a real reduction' (Article 3(1)) and 'actual reduction in quantitative terms' (Article 4(1), first indent of the second subparagraph). Where the quantitative method is applied in the beef and veal sector, the reduction in output may be achieved by 'an equivalent

6 — [1993] ECR I-67.

reduction in the number of livestock units comprising the herd', but in that case Member States must not simply ensure that the livestock are slaughtered or exported permanently to a third country, but also that 'the remainder of the herd is not subject to any intensification of production' (Article 7). In my view the formulations quoted emphasize that what is determinant is that output is actually reduced during the period of the undertaking and that that can be verified.

Those formulations show, in my view, that verification of the fact that the required reduction has actually been achieved in the period of the undertaking is to take place by comparing actual output in the period of the undertaking with previous normal output, thus average output during the reference period.

In order to give the authorities a sure basis for calculating the required reduction, the producer must, in connection with his application for extensification aid, provide a certain amount of information concerning the situation of the holding. Thus it follows from Article 9 of the implementing regulation that producers are to indicate the average yearly output of the holding in the reference period, the average composition of the grazing stock during the reference period and its annual feed needs, and the average amounts of feed purchased outside the holding during the reference period. Lastly the application for aid is to be accompanied by the technical or economic data on the basis of which the average output was determined, and the undertaking given by the producer in order to obtain aid. By comparing all that information it can be verified whether the information on output in the reference period is correct.

20. There must further be a reduction 'of at least 20% for a period of at least five years', in the output of the product concerned (see Article 1b(2) of the basic regulation). The Member States are to determine 'the reference period for the product concerned, for the purposes of calculating the reduction' (see Article 1b(3)(c) of the basic regulation). That is amplified in Article 4(1) of the implementing regulation, according to which the reduction in output is to be ensured 'in relation to the normal output of [the farmer's] agricultural holding on the basis of average annual output during a given reference period'. Under Article 4(2), the reference period to be fixed by the Member States must 'be such that it is possible to determine the normal annual level of production of the holding concerned to be used as a reliable basis for calculating the reduction in each producer's output and for verifying, where appropriate, the effect of the conversion of production to less intensive methods.'

21. What is to be reduced by the quantities thus calculated is 'output of the product concerned' (see Article 1b(2) of the basic regulation). That expression is not absolutely clear. By its context, in juxtaposition with the words 'a reduction of at least 20% ...', it can be concluded that the term 'output of the product concerned' refers to something quantitative, thus to something which can be

measured. But how can output of beef and veal be measured? As far as I know no barometer of output exists which can show a producer's production of beef and veal at any given time. Even if an expert can quite possibly give a qualified estimate as to how much a given herd will produce in the course of a certain period, such an estimate will, like other forecasts, be subject to some uncertainty, for example the uncertainty ensuing from the possibility of an infectious disease afflicting the herd. With the application of the quantitative method — which should be seen as a simplified method for implementing the real reduction in output — Article 7 of the implementing regulation indicates, as mentioned above, that there should not simply be a reduction in the number of animals in the herd, but that the Member States must also ensure that the remainder of the herd is not subject to any intensification of production in the period of the undertaking, which must presuppose verification of the actual situation during the period of the undertaking.

22. As far as I can see, there are thus no methods of measurement for 'output of the product concerned' other than examining how many livestock units *have actually been taken for slaughter in the course of a particular period.* That period must thus be a period that has already expired and not a future period, so that the period of the undertaking will be when the producer gives an undertaking to take, or refrain from taking, steps in order to achieve a reduction. The situation is different if, during the period or on its expiry, verification can take place that output during the period of the undertaking has actually been at the level which the producer has undertaken to achieve.

23. The regulations appear to have been drafted on the assumption that there will be no intermediate period between the reference period and the period of the undertaking. The regulations 'cater for' the normal situation where the Member States lay down a reference period which represents normal output and the producer provides information concerning his output during that reference period; on that basis the authorities in the Member State calculate the reduction required and when the period of the undertaking begins the producer reduces his output which at that point, in normal circumstances, would quantitatively be more or less the same as during the reference period. The calculation of the volume of the reduction and verification that the reduction has actually taken place do not give rise to any difficulties in the normal situation. Moreover, in the normal situation there cannot be any doubt that the term 'output' refers to average production during the reference period. In that connection it is worth emphasizing that in all the cases where the regulations do not simply use the word 'output' but further qualify that term, they use expressions which refer to the reference period in terms such as 'normal output', 'normal annual level of production', 'average output' and 'level of output determined during the reference period'.

24. The average annual output of a holding in a specific reference period covering several years' output could be regarded as misleading, for example if output in one or several of the years comprised in the reference period has been abnormally low because of natural disasters, parasite infestation or disease in the herd. In my view the Member States must in such cases be entitled, and, in some circumstances, also bound, to lay down rules to the effect that such years should not be taken into account during the reference period or to take account of periods other than the reference period if output for all the years comprised in the reference period was abnormally low because of exceptional circumstances. Moreover, the Italian Government implemented such provisions, since in Article 5(2) of the Decree it introduced a rule that the reference period fixed should be disregarded in cases where there had been natural disasters, parasite infestations or disease in the herd which had brought about a significant drop in output.

25. The term 'output of the product concerned' in Article 1b(2) of the basic regulation must therefore, in the cases assumed by the regulation to be normal, and where expiry of the reference period is followed directly by the period of the undertaking, be regarded as referring to the actual output in the reference period, possibly adjusted for years with an abnormally low output as a result of exceptional circumstances.

26. The question which must be examined next is whether it makes any difference if a Member State has inserted an intermediate period between expiry of the reference period and the beginning of the period of the undertaking.

27. No explanation has been given as to why the Italian Government did not include marketing year 1988/89 as part of the reference period. If it had done so, the problem of the intermediate period would not have arisen and, as stated above, it would have been possible to disregard an abnormal marketing year for producers affected by exceptional circumstances. According to Article 4(2) of the implementing regulation, the Member States are required to fix the reference period so that it is possible to determine the 'normal annual level of production' of the holding concerned to be used as a reliable basis for calculating the reduction in each producer's output and for verifying, where appropriate, the effect of the conversion of production to less intensive methods. In the circumstances, the possibility cannot be disregarded that the Italian Republic generally regarded marketing year 1988/89 as an abnormal marketing year, so that the reference period would have been misleading as regards normal output if 1988/89 had been included in it. Support for that view is also to be found in the information that it was precisely in 1988/89 that a foot-and-mouth epidemic occurred, which was the reason why Agri and Veneta specifically had to decrease output in that period because of a sharp drop in demand.

28. In my opinion the fact that an intermediate period was inserted which, moreover, according to the information available was marked by abnormally low output, makes no difference to the interpretation of the term 'output'. Actual output in respect of which the authorities have information and which they can verify as correct continues to be solely actual output in the reference year. There is nothing in the regulations to indicate that the intermediate period should have any significance whatsoever for the calculations; on the contrary, Article 4(1) of the implementing regulation shows clearly that the *reduction* in output is to take place *in relation to* the normal output of the farmer's agricultural holding on the basis of average *annual output during a given reference period.*

29. The construction of the rules for which the Commission and the Italian Government argue, in a situation such as that in this case, where there was an intermediate period, means that if a producer in an intermediate period has actually already reduced his output in relation to output during the reference period, he cannot obtain aid to maintain that reduction during the period of the undertaking. Even if the producer thus actually produces 20% less beef and veal during the entire period of the undertaking in relation to output during the reference period, according to that construction he is not entitled to obtain aid, since output at the time when the period of the undertaking begins is not further reduced. I see no indication in the regulations for importing such a restriction into the aid regulation. The real effect of such an application of the rules would be that — completely contrary to the structure of the system as a whole — it would not be a holding's normal output (the number of animals raised in the reference period, which the Member States are to ensure reflects the normal situation) which was reduced but possibly an abnormally low output (the number of animals raised in an abnormal intermediate period). The view of the Commission and the Italian Government thus entails in fact that it is actually output in the intermediate period, that is to say, in this specific case, marketing year 1988/89, which is to be reduced and not output in the reference period, regardless of the fact that it is the latter which, in the Member State's view, reflects normal output. The end result of the view of the Commission and the Italian Government is that the situation in the (abnormal) intermediate period is made the starting point for the calculation and insult is added to injury by the requirement that abnormally low output should be reduced by 20% of the normal (higher level of) output.

30. The Commission's view can also be tested by examining the converse situation, where output in the intermediate period is taken as being abnormally high. Thus, at the hearing, the Commission replied that a producer who, during the reference period, had produced an average of 100 grown animals per marketing year and who, in the intermediate period, had increased output to 150 grown animals, would be entitled to support if he simply reduced output during the period of the undertaking to 130 grown

animals. It appears to me that such a construction would not simply undermine the objective of the extensification system but would also open the way for patent and unacceptable means of circumventing the system. An Italian producer who wished to cheat the system and maintain his normal output (during the reference period) of 100 grown animals over the period of the undertaking and at the same time obtain aid from the EC would thus simply have to ensure his output was increased to 120 during the intermediate period. That cannot be right! Moreover there is nothing in the regulations to indicate that any reduction or increase over the intermediate period should be subject to different rules as is provided for in the Italian circular.

31. It must further be pointed out that the aim of the aid scheme for promoting extensification is to adapt output of, in this case, beef and veal, to the needs of the market, since there is surplus production of those products. A requirement that the reduction should relate to output in a particular marketing year, in which, by chance, the level of output in a particular region or Member State, as a result of various circumstances, appears in that particular year abnormally high or low, is incompatible with the aim. In order to achieve the desired result, it must necessarily be the holding's normal output that is regulated. By that means too equal treatment is ensured not simply for the individual producers, but also for the producers in the various Member States. A situation might be imagined where beef and veal production in an individual Member State in a marketing year constituting an intermediate period amounted to only 40% of normal output because of an infectious disease. A requirement that the producers in that Member State should reduce their already low level of production in the intermediate period by 20% of normal output during the reference period would lead to producers in the Member State in question having to reduce their output to 20% of normal output, whereas producers in other Member States would obtain the same aid simply by reducing their output to 80% of normal output. With such an interpretation there would thus be manifest discrimination between producers in the various Member States.

32. In support of its argument that fluctuations in the period between the expiry of the reference period and the beginning of the period of the undertaking can be taken into account in the assessment as to whether a producer is entitled to aid, the Commission has stated that there is a close connection between entitlement to aid and the undertaking under the agreement to reduce output during the period of the undertaking. In the Commission's view it must be carefully verified that when the period of the undertaking begins the producer reduces his actual production by 20%. The Commission thus stated that if a producer had already reduced his output by, for example, 20% in the intermediate period, it must be a requirement that when the period of the undertaking begins he must further reduce his output by 20% of output in the reference period in order to be able to obtain aid Otherwise, in the Commission's view, there would no longer be any question of the producer, under the agreement entered into, giving a *quid pro quo* for the aid paid to him.

33. I do not agree. Extensification in the sense of the Community-law provisions means a reduction of a holding's *normal output* for at least five years under a specifically concluded agreement in exchange for the payment of aid. If the Commission's view was followed, first of all there would not be a reduction of normal output. But secondly, the fact that the producer in question, for a short period before the period of the undertaking began, temporarily reduced his output for one reason or another does not preclude the producer from giving something in exchange for aid. If he had not entered into the agreement on extensification he would, as soon as possible, have increased his production again to the normal level, or possibly an even higher level, so that he could earn the same as or more than he previously earned. The aim of the regulation on aid for extensification is thus achieved, namely that an amount should be paid to a producer which enables him for a certain period to maintain a lower level of output and thereby prevent the production of surpluses. The producer gives his *quid pro quo* for the premium by maintaining the reduced output.

34. It was suggested in the course of proceedings that it would be unreasonable if a producer whose reduction in output during the intermediate period was due, for instance, to foot-and-mouth disease in the herd, and who had already obtained aid for the purchase of a new herd to replace the one that had been slaughtered, could obtain aid for extensification merely by maintaining an output that was 20% lower than in the reference period and thus omitting to restock part of the earlier herd which would correspond to 20%. I do not, however, see anything shocking in that. Two different systems are involved. The purpose of the first is to compensate for the producer's loss in being affected by a cattle disease which requires the herd, which is the basis for the producer's output and hence his income, to be slaughtered. All things being equal, the producer will seek to restore his holding's assets, and thus the herd, so that he can ensure the continued operation of his business and thus maintain his income from it. The second system is aimed at giving producers aid to produce less than previously.

A producer whose herd is by chance affected by disease and must be slaughtered receives, for example ECU 100 000, which presumably more or less corresponds to the value of the herd and hence to the assets of the holding. An equivalent farmer who has a healthy herd will therefore also have holding assets of a value of ECU 100 000. If both producers have reduced their herd to 80% of their previous output, or have restocked accordingly, on the interpretation proposed they will both have holding assets in the form of a herd representing ECU 80 000 besides the ECU 20 000 cash corresponding to the value of the herd which no longer forms part of the output. From a financial point of view the reduced herd has in both cases the effect that the income generated by production is 20% lower than previously, but in exchange

both receive the said aid which should enable them to continue to derive a reasonable income from the holding.

Under that interpretation the two producers are treated absolutely equally, which would not be the case on the interpretation for which the Commission argues.

35. The fact that it is the holding's normal output that is to be reduced is, moreover, supported also by the slightly clearer formulation of the rules in the basic regulation concerning set-aside of arable land. It thus follows from Article 1a(2) that aid for set-aside can be granted for all arable land, provided that *the land has in fact been cultivated for a reference period* to be determined. It is apparent from Article 1a(3) that the arable land withdrawn from production must represent at least 20% of the *arable land referred to in paragraph 2* on the farm concerned. That formulation makes it clear that it is the land cultivated during the reference period which must be reduced, not land which might have been cultivated at any other time.

36. The reply to the questions referred to the Court must accordingly, in my view, be that Article 1b(3)(c) of the basic regulation and Article 4(1) and (2), Article 7 and Article 10(1) of the implementing regulation should be interpreted to the effect that a beef and veal producer who has already reduced his output during the period between the expiry of the reference period and the beginning of the period of the undertaking is entitled to aid provided his production in the period of the undertaking is actually 20% lower than average output during the reference period.

Conclusion

37. I would therefore suggest that the Court reply to the question referred to it as follows:

Article 1b(3)(c) of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures, inserted by Article 1 of Council Regulation (EEC) No 1094/88 of 25 April 1988, and Articles 4(1) and (2), 7 and 10(1) of Commission Regulation (EEC) No 4115/88 of 21 December 1988 laying down detailed rules for applying the aid scheme to promote the extensification of

production must be interpreted to the effect that a beef and veal producer who has already reduced his output during the period between the expiry of the reference period and the beginning of the period of the undertaking is entitled to aid provided his production in the period of the undertaking is actually 20% lower than average output during the reference period.