of "agricultural holding" universally applicable in all the provisions laid down by law and regulation relating to agricultural production.

Kutscher Sørensen Bosco

Donner Pescatore Mackenzie Stuart Touffait

Delivered in open court in Luxembourg on 28 February 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 31 JANUARY 1978 [1]

Mr. President,
Members of the Court,

The plaintiff in the main action has a holding in Italy producing eggs and raising poultry. It markets eggs, day-old chicks and fattened poultry. The holding occupies three hectares of land partly belonging to the plaintiff and partly leased; some of the land is cultivated but the produce does not suffice for the holding and for this reason it is necessary to purchase feeding-stuffs.

According to the plaintiff such holdings were always regarded as agricultural for the purposes of social security. This was apparently on the basis of the definition contained in Article 2135 of the Codice Civile, the interpretation of which, in particular with regard to holdings of this kind, is not uniform in the case-law. Accordingly for workers employed on the holding social security contributions apparently at the lower rate applicable to agriculture were paid to the Servizio Contributi Agricoli Unificati which moreover considered this correct.

After the holding was modernized however the Istituto Nazionale della Previdenza Sociale claimed that payment should be made to it at the higher rates applicable to industrial undertakings. It alleged that poultry raising was equivalent to cattle raising within the meaning of Article 2135 of the Italian Codice Civile only if it were linked to the exploitation of the soil, that is if it were an ancillary agricultural activity but not if the necessary feeding-stuffs were purchased.

The plaintiff thereupon brought an action against the Istituto Nazionale for a declaration that it, the plaintiff, was to be regarded for social security purposes as an agricultural holding and had to pay contributions to the Servizio Contributi Agricoli. It relies on the

1 — Translated from the German.

Italian Law No 419 of 3 May 1971 concerning the application of Regulation (EEC) No 1619/68 (Official Journal, English Special Edition 1968 (II), p. 489) and Regulation (EEC) No 95/69 (Official Journal, English Special Edition 1969 (I), p. 7) on the marketing of eggs according to which the decisive factor is the number of persons employed. Further it refers to a resolution of the Council of State of 24 October 1972 on the treatment of poultry raising concerns as regards social security. According to this the raising of animals in general, that is including poultry raising, is to be regarded as stockfarming within the meaning of Article 2135 of the Codice Civile. It considers as particularly significant the fact that this resolution referred to Article 38 of the EEC Treaty and the list of agricultural products mentioned therein. In its opinion in the interests of the uniformity of the Common Market the question whether there is an agricultural holding must be answered by reference to the definitions of Community law and not least having regard to the rules of secondary Community law. The plaintiff considers the answer to this question important not only because the liability for social security contributions depends on it but also because the grant of other advantages is affected such as in the sphere of taxation or subsidies or advantages in connexion with bank credits, cheap fuel, electric energy and environmental pollution. The competitive position of the particular holding is therefore very much affected by the disputed classification.

After serving notice of the proceedings on Servizio Contributi Agricoli Unificati the court before which the matter was brought stayed the proceedings by order of 19 May 1977 and made a reference to the Court for a preliminary ruling under Article 177 of the EEC Treaty.

The order for reference for a preliminary ruling seeks the interpretation of Article 38 (1), (3) and (4) of the EEC Treaty in relation to Annex II thereof (list referred to in Article 38 of the EEC Treaty), Regulation No 70 of 14 June 1966 published in the Journal Officiel No 112 of 24 June 1966, in so far as the following points are concerned:

" 'Agricultural holding' means a farm business situated within a limited geographical area, operated as a single unit under a single management and producing ... cereals, vegetables, ..., and with regard to animals: cattle, horses, sheep, goats, pigs, hens and chickens, other poultry, rabbits, game, silk-worms, bees and chicks" (Article 2 (a) and Annex I); "Businesses where the agricultural area is less than one hectare and those without any agricultural area utilized for farming also constitute agricultural holdings" (Article 3 (a) and (b));

and Regulation No 91/66/EEC of 29 June 1966 (Official Journal, English Special Edition 1965-1966, p. 112) in so far as the following point is concerned:

" 'Agricultural holding' means a farm business situated within a limited geographical area, operated as a single unit, under a single management and producing ... cereals ... hens and cockerels, other poultry ... chicks."

In addition an answer to the following questions is sought:

1 (a) Does the concept of an agricultural holding provided in the Treaty by express reference to goods produced through the establishment and running of a business, clarified by regulations separating such business from any territorial connexion (precisely where provision is made for agricultural holdings with an agricultural area less than one hectare and agricultural holdings without any agricultural area) apply only within the institutions of the EEC and is it accordingly not binding upon the Member States who are

thus free to define agricultural holdings with reference to criteria differing from or contrary to the criteria adopted by the Treaty of Rome and by the said regulations?

1 (b) Has the Community adopted a Community concept of an agricultural holding which applies in the individual Member States for the purposes of identifying holdings of this nature and are the Member States accordingly obliged to employ the concepts provided in the Treaty and the said regulations in order to identify the agricultural holdings to which must then be applied the principles laid down at Community level and those evolved by the various national legal systems with regard to social security?

If Question 1 (b) is answered in the affirmative,

2 (a) Can the individual Member States adopt provisions or maintain a practice derogating therefrom?

2 (b) Is the concept of an agricultural holding provided in the Treaty and in the regulations binding and directly applicable within the Italian legal system for the purposes laid down in the Community provisions and the said Italian legal system?

If Question 2 (b) is answered in the affirmative,

3 (a) Has the concept of an agricultural holding adopted by the EEC and incorporated into the several legal systems of the Member States established for individual holdings, defined and indentified as agricultural, individual rights which may be related to this classification and which the national courts must protect?

If Question 3 (a) is answered in the affirmative,

4 (a) Are the individual rights related to the duty of the Member States not to impose upon agricultural holdings charges which, although unconnected, according to the national legal systems, with the nature of agricultural holdings as defined with reference to the criteria supplied by the Treaty and by the Community regulations, are nevertheless capable of discriminating, for social security purposes, between Italian agricultural holdings raising poultry and such holdings in other countries in the Community?

In considering the proper position to adopt it is convenient to group the problems in the list of questions as follows. First it must be considered what the EEC Treaty and the secondary Community law have to say on the concept of "agricultural holding". Then the question must be considered whether this concept is binding on Member States and is directly applicable so that personal rights as regards the classification of businesses can be derived from it. An essential question is further whether this applies in the sphere of social security. Finally an investigation is necessary into the considerations, raised by the plaintiff in support of its case, relating to the prohibition of discrimination, the objectives of Article 39 of the EEC Treaty and the provisions on aids (Article 92 *et seq.*).

1. There is no express definition of the expression "agricultural holding" anywhere in the Treaty. At most in Part two, Title II, certain factors are discernible showing what the basic concept of the Treaty apparently is.

The main one is Article 38 which provides that the Common Market shall extend to agriculture and trade in agricultural products; it gives a definition of agricultural products and refers for

details to the list in Annex II. From this it may be inferred that the concept of "agriculture" means the producers of the said products. Since the extensive list mentions fish and stockfarming without qualification, it is also clear that the working of the soil is obviously not an indispensable factor.

Articles 39 and 42 of the EEC Treaty provide some confirmation of this. From the fact that in Article 39, which sets out the objectives of the Common Agricultural Policy, the concepts "agricultural productivity" and "agricultural production" have an important part to play, it may be inferred that agriculture means the production of certain products, namely those referred to in Article 38. According to Article 42 the chapter relating to rules on competition is to apply to production of and trade in agricultural products only to the extent determined by the Council. This provision can relate only to the producers of the products referred to in Article 38.

This however is all that is relevant in the Treaty on the definition in question.

2. A different picture is presented by secondary Community law in which a whole series of sometimes very detailed definitions is to be found. Some are mentioned in the order for reference; in the proceedings a number of others was mentioned in addition.

In chronological order of adoption of the relevant regulations the following may be mentioned:

— Regulation No 79/65/EEC of the Council of 15 June 1965 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Economic Community (Article 4) (Official Journal, English Special Edition 1965-1966, p. 70);

— Regulation No 70/66/EEC of the Council of 14 June 1966 on the organization of a basic survey as part of the programme of surveys on the structure of agricultural holdings (Articles 2 and 3) (Journal Officiel of 24 June 1966, p. 2065);

— Regulation No 91/66/EEC of the Commission of 29 June 1966 concerning the selection of returning holdings for the purpose of determining incomes of agricultural holdings (Article 1) (Official Journal, English Special Edition 1965-1966, p. 112);

— Council Directive No 72/159 of 17 April 1972 on the modernization of farms (Article 2) (Official Journal, English Special Edition 1972 (II), p. 324);

— Council Directive No 75/108/EEC of 20 January 1975 on the organization of a structures survey for 1975 as part of the programme of surveys on the structure of agricultural holdings (Article 2) (Official Journal L 42 of 15 February 1975, p. 21);

— Council Directive No 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas (Article 6) (Official Journal L 128 of 19 May 1975, p. 1);

— Commission Decision No 75/682/EEC of 2 October 1975 laying down for the purposes of a structures survey for 1975 as part of the programme of surveys on the structure of agricultural holdings the definitions relating to the list of characteristics and the list of agricultural products, including Annex I (Official Journal L 301 of 20 November 1975, p. 8);

— Council Regulation (EEC) No 1035/76 of 30 April 1976 relating to the organization of a survey on the earnings of permanent workers employed in agriculture (Article 2) (Official Journal L 118 of 5 May 1976, p. 3); and

— Council Regulation (EEC) No 3228/76 of 21 December 1976 on the organization of a survey on the structure of agricultural holdings for 1977 (Article 3) (Official Journal L 366 of 31 December 1976, p. 1).

It is significant however that no uniform definitions are to be found in these regulations. Compare only — I will not give detailed quotations — on the one hand Regulations Nos 70/66, 91/66, 3228/76 and Directive No 75/108 with Regulation No 1035/76 and Directive No 75/268 on the other hand. It is significant moreover that some of these regulations expressly provide that the national legislature shall make the necessary definitions or that it may lay down additional provisions and criteria (as for example the Directives No 72/159 and No 75/268).

It would accordingly be incorrect to assume that a uniform concept of the agricultural holding with a conclusive definition may be derived from secondary Community law and it can therefore in no way be said that any such concept so derived does not depend on the working of the soil.

3. After these first two observations which have caused no difficulty let me consider the question which has also been raised whether the definitions in Community law of the term "agricultural holding", in so far as there are any, are binding on Member States in the sense of being directly applicable and giving rise to individual rights. My observations on this can be quite brief for reasons which will easily be apparent later.

So far as the secondary Community law referred to is concerned I would observe that an answer in the affirmative to the question raised cannot be excluded, at least in so far as it is a question of clear and unambiguous provisions containing no discretionary powers for the Member States.

On the other hand so far as concerns the concept behind the provisions of Articles 38, 39 and 42 of the Treaty, the answer to the question raised depends on the subject-matter to which the term applies. This will have to be looked at more closely right away. Moreover in any case it depends whether the provisions in which it is contained or for which it is relevant are according to their subject-matter directly applicable and give rise to individual rights.

In my view there is no need to say anything further on this question in the present case.

4. Let us come then to what in my view must be regarded as the central issue of the reference for a preliminary ruling, namely the question whether the concept of "agricultural holding" in Community law, in so far as it is ascertainable, must be applied to the national social security law where, as in Italian law, there is a distinction between agricultural holdings and other businesses.

This is the view which the plaintiff in the main action takes. The plaintiff refers to the fact that in the sphere with which it is concerned (egg production and poultry raising) there are two common organizations of the market (Regulations Nos 2771/75 and 2777/75 (Official Journal No L 282 of 1 November 1975, p. 49 and p. 77). Therefore it may be inferred that to this extent legislative jurisdiction has been completely transferred to the Community and that the Member States have no rival powers in respect of regulations to influence the competitive position on the egg and poultry market. It refers moreover in support of its case to the case-law of the Court claiming that in this respect it is significant that in Case 34/70, *Syndicat National du Commerce Extérieur des Céréales and Others* v *Office National Interprofessionnel des Céréales and Minister for Agriculture* [1970] ECR 1233 the necessity is stressed of understanding

the words "every holder" [of cereals] in the sense they have in Community law and that in the judgment in Case 131/73, *Grosoli* [1973] ECR 1555 it was stressed in relation to a Community quota of frozen beef and veal that the Member States did not have authority to lay down rules governing the use of the quota and that accordingly it was not possible to lay down national restrictions on the sale of the said products.

Let me say at once that I have not been convinced by these arguments.

First it is significant — and here I refer to the concepts to be found in the secondary Community law — that their application is limited to the content of the particular rules. This is in part expressly stated in these particular Community measures and in part it may at least be clearly inferred from them. I refer now only to Regulations Nos 70/66, 91/66 and 3228/76 and Directives Nos 72/159 and 75/108. In so far as this limitation of the definition to the particular rule is not completely apparent from the rule itself, it may in my view, at least in so far as the general words "agricultural holding" are concerned, be inferred from the Treaty.

In my opinion it must be taken that this concept applies essentially only to the rules of the Common Agricultural Policy, that is, the areas covered in Part two, Title II. Sufficient authority for this is Article 38 (2) of the Treaty which provides that the rules laid down for the establishment of the Common Market shall apply to agricultural products save as otherwise provided in Articles 39 to 46.

In my view therefore it is irrelevant to claim that only by interpreting the words "agricultural holding" in the sense they have in Community law is it possible properly to apply the regulations on the grant of aids to agricultural holdings such as were adopted in 1969 and 1973 in favour of the German and Dutch agriculture (Regulation No 2464/69 of the Council of 9 December 1969 (Official Journal, English Special Edition 1969 (II), p. 527) and Regulation No 3141/73 of the Council of 19 November 1973 (Official Journal No L 321 of 22 November 1973, p. 1)). In this respect it should not be forgotten that these two regulations were concerned with the Common Agricultural Policy.

For the same reason the plaintiff's reference to the said two judgments, particularly the judgment in Case 34/70, does not help. This is also concerned with measures under a common organization of the market (the intervention arrangements in Regulation No 1028/68) and for that it is quite clear that a uniform concept in Community law of "every holder" [of cereals] must apply and that the Member States may not alter or restrict it.

So far as concerns social security law in particular, with which the main action is concerned, it is quite apparent from the system of the Treaty that its regulation and thus also the determination of the requisite definition is a matter for the Member States. In this respect reference may be made to Article 118 of the EEC Treaty which provides only for close co-operation between the Member States in the social field but not for establishing a single system or for harmonization and moreover according to what the Commission says no Community provisions have yet been adopted on this subject. Reference should also be made to Article 51 of the Treaty which provides only for co-ordination of the law on social security for the purposes of facilitating freedom of movement and assumes that different national social security systems will continue. In the same way the recitals in the preamble to Regulation No 1408/71 (Official Journal, English Special Edition 1971 (II), p. 416) refer to the considerable differences existing

between national social security legislations. Moreover the regulation is mainly directed to benefits from social security and the avoidance of the loss of rights in this respect whereas contributions are touched on only to a limited extent as in Article 91 which provides that an employer shall not be bound to pay increased contributions by reason of the fact that his place of business or the registered office or place of business of his undertaking is in the territory of a Member State other than the competent State.

In view of the foregoing remarks it may be said that in the sphere of social security, the regulation of which is basically for the Member States, the concept of "agricultural holding" under Community law is no criterion. This may well affect the holdings covered by the common organizations of the market since their production costs may differ according to their classification. The Commission is however right in stressing that this is not to be compared with the cases of national measures dealt with in the case-law (such as in the judgment of 25 May 1977 in Case 77/76, *Fratelli Cucchi* v *Avez S.p.A.* [1977] ECR 987) which relate directly and intentionally to the formation of prices and which because they affect the price formation mechanisms of Community law must be judged by the requirements of Community law.

5. This, it is true, does not yet completely dispose of the case. As intimated there remain additional considerations to be discussed which have been brought forward by the plaintiff in the main action to support its view that there must be a concept of the agricultural holding binding on the Member States. It was said that any other view would involve the danger of considerable discrimination; it was alleged that the objectives of Article 39 would be impeded if the requisite definition and accordingly the possibility of different social security contributions were left to the Member States and the view was put forward that such differentiation could take place only under the terms of the provisions on aids of Article 92 and subject to the conditions laid down therein.

On this the following observations are called for:

(a) So far as concerns the reference to the prohibition on discrimination no support may be derived from Article 7 or Article 40 (3).

Article 7 prohibits discrimination on the grounds of nationality. Italian social security law makes no such distinction. The fact that holdings are treated differently according to whether the soil is worked or not, obviously has nothing to do with nationality. The fact that certain Italian holdings may be treated differently in relation to the holdings of other Member States is a consequence of the limited effect of national law and the fact that the Community law does not seek to consolidate the social security law. This can be done in any case through the level of contribution quite apart from the present question of classification.

Article 40 (3) of the Treaty provides that the common organization of the agricultural market shall be limited to pursuit of the objectives set out in Article 39 and shall exclude any discrimination between producers or consumers within the Community. It therefore applies only to the common organizations of the market. In any case it is apparent that the provision is also directed to the Member States, as national authorities having duties in the common organizations of the market, in so far as a national intervention system complements a common organization of the market or in so far as national measures have an intentional effect upon the functioning of the common

organizations of the market and adversely affect that functioning. I can refer to the judgments of 23 January 1975 in Case 51/74, *Van der Hulst's Zonen* v *Produktschap voor Siergewassen* [1975] ECR 79 and of 22 January 1976 in Case 60/75, *Russo* v *Azienda di Stato per gli Interventi sul Mercato Agricolo* [1976] ECR 45 and to my opinion in Case 52/76, *Benedetti* v *Munari F.lli s.a.s.* [1977] ECR 163. It seems to me obvious that this does not arise where Member States regulate matters reserved to them and all that can be said is that there is an effect upon the production costs of the product subject to the organization of the market.

Further no help is to be derived from reference to the general principle of equality of treatment as also enshrined in the Italian Constitution and as referred to in the judgment of 19 October 1977 in Joined Cases 117/76 and 16/77, *Ruckdeschel & Co. and Hansa-Lagerhaus Ströh & Co.* v *Hauptzollamt Hamburg-St. Annen* and *Diamalt AG* v *Hauptzollamt Itzehoe* in connexion with a Community rule relating to a common organization of the market. It should be observed only that similar situations should not be treated differently if there are no objective reasons for distinction. In an instance such as the one in the cases referred to where it was a question of a measure relating to a product, this can mean that similar products may not be variously favoured. However, in the case of another type of rule such as the assessment of social security contributions relating to an undertaking, this does not prevent the amount of contributions from depending on size and structure and on factors such as the working of the soil. In any case it does not seem to me necessary in this connexion that everything which has to be considered as an agricultural holding for the purposes of agricultural law must be dealt with similarly in the context of social security.

(b) In so far as the plaintiff further alleges that since the interpretation of the Italian law (Article 2135 of the Codice Civile) is not clear, then in accordance with the obligation under Article 5 of the Treaty the Member States should adopt existing Community concepts and in so far as it then claims that the classification, considered correct by the defendant Istituto, of its holding as non-agricultural involves higher charges in various respects and that this is not compatible with the objectives of Article 39 of the Treaty, it must immediately be said that a Community concept — in the present case there is not even a uniform one — can be adopted only in areas for which the relevant definition was evolved.

So far as concerns on the other hand the reference to Article 39 of the EEC Treaty, paragraph 1 (a) of which speaks of increasing agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production, it seems to me doubtful whether these objectives are in fact adversely affected by the classification of the plaintiff's holding under the terms of the Italian social security law — and we must limit ourselves to this. Moreover it seems to me significant that it is an objective which the Common *Agricultural* Policy must pursue and moreover one of several which cannot all be pursued simultaneously and with the same effect. Accordingly it seems to me scarcely tenable to regard it as improper to apply a national provision in an area reserved to the Member States on the grounds of the said rule. Should Community requirements be jeopardized in the manner alleged, then the proper way to vindicate them would be an action under Article 169 of the EEC Treaty.

(c) I must confess that I find it hard to understand the plaintiff's reference to

the provisions of the Treaty on aid (Article 92 *et seq.*). At least I cannot see the plaintiff's interest in citing these provisions for should they in fact apply and there be an infringement of them, all the plaintiff would achieve would be that other holdings classified under Italian law as agricultural would not enjoy the lower rates of contribution to social security and not that the plaintiff would be entitled to pay only the lower rate.

Apart from this I would like to emphasize in this connexion that the plaintiff's reference to the judgment of 2 July 1974 in Case 173/73, *Italian Government* v *Commission of the European Communities* [1974] ECR 709 seems to me irrelevant because it concerned different facts. It is true that that case was concerned with the partial reduction of public charges devolving upon undertakings in a particular sector of industry and the relief from charges, namely from social contributions in respect of family allowances which are payable on the normal application of the general system of taxes and charges. The matter was accordingly judged under Article 92 of the Treaty. In the present case on the other hand it is apparent that in social security a special system was created for agriculture. I do not see how it is possible to classify the special assessment of contributions as said from State resources. In particular I do not see how the principles and rules of Article 92 can be relevant to the *definition* of this special system from which the plaintiff was excluded. Article 92 certainly gives no support to the claims made in the main action.

6. In my view the questions from the Tribunale Civile in Rome should be answered as follows:

Community law does not have any general definition of the concept of "agricultural holding" applicable in all sectors. In sectors where — as here in social security law — the Community definitions, whether derived from Article 38 of the Treaty or from special regulations in the agricultural sector, are not binding, the Member States are consequently free to determine the said concept themselves and accordingly to regard holdings as industrial undertakings even if they produce agricultural products within the meaning of the Treaty.