Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 10 March 2016[1]

Joined Cases C-333/15 and C-334/15

María del Pilar Planes Bresco
v
Comunidad Autónoma de Aragón

(Request for a preliminary ruling from the Tribunal Supremo (Supreme Court, Spain))

(Common agricultural policy — Regulation (EC) No 1782/2003 — Single farm payment — Eligible hectares — Permanent pasture — Misuse of rights)

I – **Introduction**

1. Because of its high ecological and indeed aesthetical value, pasture is an essential part of our agricultural landscape. It fulfils essential functions in terms of protecting the environment, the safeguarding of which is one of the policies of the Union, pursuant to Article 11 TFEU in conjunction with Article 191 TFEU, and is also of significant importance for biodiversity, which has indeed recently become the focus of attention.[2] In the light of this, one may wonder when farmers in a Member State are refused payments because they have converted into pasture areas previously farmed intensively as, for example, arable land. In the present reference for preliminary ruling, the Court is asked in essence to clarify whether Union law precludes such an approach.

2. This question arises against the backdrop of a legal dispute between the owner of an agricultural undertaking in Spain, Ms María del Pilar Planes Bresco, and the authorities of the Autonomous Community of Aragon. The latter had not recognised in full permanent pasture which Ms Planes Bresco had declared as eligible hectares in two applications for direct payments, because the areas identified were each larger than in a reference period of many years previously. In these circumstances, pursuant to a statutory provision the Autonomous Community was required to assume that on these areas, agricultural activity had been completely abandoned, and that there was thus an abuse. Both parties now rely on Union law in order to support their respective positions.

1 — Original language: German.

2 — See the Commission's paper 'An EU biodiversity strategy to 2020' (Communication dated 3 May 2011, COM (2011) 244 final), which was supported by the Council of the European Union and the European Parliament; see the Conclusions of the Council of 21 June 2011 (Document 11978/11) and 19 December 2011 (Document 18862/11), and the Decision of the European Parliament of 20 April 2012 (OJ 2013 C 258 E, p. 99). In this context it is also worth recalling that the United Nations declared 2011 to 2020 to be the Decade on Biodiversity.

3. The present case is of particular importance, in that for a number of years the European Court of Auditors has had its sights on failures in the proper assessment of eligibility of permanent pasture in Spain. [3] For that reason, this Member State defends the provision in question on the ground that it is a suitable counter-measure to the problems identified. However, as will appear from a more detailed consideration, it went beyond the aim pursued.

II – **Legal framework**

A – *Union law*

4. The Union law framework for these proceedings is formed by Regulation (EC) No 1782/2003, which has in the meantime ceased to be in force. [4] It fundamentally reformed the system of subsidies to owners of agricultural businesses in the Union. Subsidies which depended on production were replaced by, essentially, the 'single farm payment', whose amount was no longer affected by the actual production of the farm. [5]

5. Article 2 of Regulation No 1782/2003 ('Definitions') defines 'agricultural activity' as 'the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition as established under Article 5'.

6. Article 5 of Regulation No 1782/2003 ('Good agricultural and environmental condition') states *inter alia*:

'1. Member States shall ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition. Member States shall define, at national or regional level, minimum requirements for good agricultural and environmental condition on the basis of the framework set up in Annex IV …

2. Member States shall ensure that land which was under permanent pasture at the date provided for the area aid applications for 2003 is maintained under permanent pasture.

…'

7. Article 29 of Regulation No 1782/2003, headed 'Restriction of payment', provides:

'Without prejudice to any specific provisions in individual support schemes, no payment shall be made to beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of that support scheme.'

8. Article 36(1) of Regulation No 1782/2003 (headed 'Payment') states that aid under the single payment scheme shall be paid in respect of payment entitlements.

3 — See the Annual Reports of the Court of Auditors concerning financial year 2014 (OJ 2015 C 373, p. 1), paragraph 7.21 and box 7.8; financial year 2012 (OJ 2013 C 331, p. 1), box 3.1; financial year 2011 (OJ 2012 C 344, p. 1), paragraph 3.20 and Annex 3.2; financial year 2010 (OJ 2011 C 326, p. 1), paragraph 3.31 and Annex 3.2; financial year 2009 (OJ 2010 C 303, p. 1), paragraph 3.38 and Annex 3.2; and financial year 2008 (OJ 2009 C 269, p. 1), paragraph 5.36 and Annex 5.1.

4 — Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers … (OJ 2003 L 270, p. 1), repealed by Council Regulation (EC) No 73/2009 of 19 January 2009 … (OJ 2009 L 30, p. 16). The latter Regulation was in turn repealed by Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 … (OJ 2013 L 347, p. 608).

5 — To understand how the single payment scheme functions, see also points 23 to 25 of my Opinion in *Vonk Noordegraaf*, C-105/13, ECLI:EU:C:2014:64.

9. Article 43 of Regulation No 1782/2003 (headed 'Determination of the payment entitlements') governs how payment entitlements were originally to be determined. First, a reference amount was to be calculated, which Article 37 provides is the average of the payments which a farmer received under the old support schemes in the three years before the conversion, that is in the years 2000 to 2002. The reference amount was then allocated to the average area farmed during this period. Consequently, on this basis a farmer received a number of payment entitlements which corresponded to the number of identified hectares, each having a defined value.

10. In the version relevant in the present case, Article 44 of Regulation No 1782/2003 ('Use of payment entitlements') provides inter alia:

'1. Any payment entitlement accompanied by an eligible hectare shall give right to the payment of the amount fixed by the payment entitlement.

2. 'Eligible hectare' shall mean any agricultural area of the holding taken up by arable land and permanent pasture except areas under permanent crops, forests or used for non-agricultural activities. [6]

3. The farmer shall declare the parcels corresponding to the eligible hectare accompanying any payment entitlement. …

…'

11. In addition, relevant in the present case are the regulations enacted to implement Regulation No 1782/2003, namely Regulations No 795/2004[7] and No 796/2004,[8] both of which have been repealed in the meantime.

12. Article 2(a) of Regulation No 795/2004 defines 'agricultural area' as 'the total area taken up by arable land, permanent pasture and permanent crops'.

13. Article 2(e) of Regulation No 795/2004 defines 'permanent pasture' by reference to Article 2(2) of Regulation No 796/2004.

14. According to Article 2(2) of Regulation No 796/2004, 'permanent pasture', so far as relevant to the present case, is 'land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that is not included in the crop rotation of the holding for five years or longer'.

6 — When the wine sector was brought within the single payment scheme by Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine … (OJ 2008 L 148, p. 1), Article 44(2) of Regulation No 1782/2003 was amended by Article 123(5) of that Regulation to read: '"Eligible hectare" shall mean any agricultural area of the holding except areas under forests or used for non-agricultural activities.' Pursuant to Article 129(c) of Regulation No 479/2008, this amendment came into force on 1 January 2009 and is not relevant in the present case.

7 — Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 … (OJ 2004 L 141, p. 1, corrected at OJ 2004 L 291, p. 18), repealed by Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation (EC) No 73/2009 (OJ 2009 L 316, p. 1).

8 — Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system (OJ 2004 L 141, p. 18), as amended by Commission Regulation (EC) No 239/2005 of 11 February 2005 amending and correcting Regulation (EC) No 796/2004 (OJ 2004 L 42, p. 3), repealed by Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 (OJ 2009 L 316, p. 65).

B – *Spanish law*

15. Paragraph 13 of the Order of 24 January 2007 of the Department of Agriculture and Food[9] of the Autonomous Community of Aragon states:

'Permanent pasture shall be eligible only in the case of farms in respect of which a forage area has been calculated for the allocation of single payment entitlements, and for a maximum area not exceeding half the forage area taken into account for the purpose of allocation of single payment entitlements. Permanent pasture declared beyond the stipulations of this paragraph shall not be considered eligible on the grounds that in accordance with Article 29 of Regulation (EC) No 1782/2003 it is assumed that the beneficiary has artificially created the conditions for obtaining payment.'

16. The wording of Paragraph 16 of the Order of 24 January 2008 of the Department of Agriculture and Food of the Autonomous Community of Aragon[10] essentially corresponds to that of the foregoing provision, and in addition provides:

'The foregoing paragraph does not apply where the farmer proves that at the time of the application he was the owner of a business engaged in rearing livestock, and the permanent pasture identified was used to feed the livestock of the business.'

III – **Main proceedings and proceedings before the Court**

17. In 2007 and 2008 Ms Planes Bresco applied for direct payments based on surface area pursuant to Regulation No 1782/2003.

18. The competent authority of the Autonomous Community of Aragon reduced the areas identified in these applications to the extent that the areas declared as eligible permanent pasture exceeded the average of the forage areas previously taken into account in calculating the payment entitlements. According to the law of the Autonomous Community, in such a case it is to be assumed that the conditions for obtaining payment have been artificially created in respect of the excess area.

19. The actions brought against these decisions have so far been unsuccessful.

20. In this context, the Tribunal Supremo (Supreme Court, Spain), before which the case is pending, has doubts as regards the interpretation of Regulation No 1782/2003 and has referred the following questions to the Court:

'(1) Must Articles 43 and 44 of Council Regulation (EC) No 1782/2003 be interpreted as precluding national legislation which excludes from treatment as eligible hectares all areas of permanent pasture declared by a farmer in excess of those taken into account at the relevant time for the purpose of determining the normal entitlements due to that farmer, making the inclusion of those areas, and therefore the replacement of arable land with pasture, conditional on the pasture being genuinely given over to the rearing of livestock in the specific financial year in respect of which the farmer seeks to activate the payment entitlements?

9 — Orden de 24 de enero de 2007, del Departamento de Agricultura y Alimentación (*Boletin Oficial de Aragón* No 13 of 31 January 2007, p. 1310).

10 — Orden de 24 de enero de 2008, del Departamento de Agricultura y Alimentación (*Boletin Oficial de Aragón* No 12 of 30 January 2008, p. 956).

If the first question is answered in the negative:

(2) Must Article 29 of Regulation No 1782/2003, in excluding payments under support schemes for beneficiaries of such schemes "for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of that support scheme", be interpreted as not permitting Member States to adopt general measures which reduce the number of "eligible hectares" (of permanent pasture) in which the beneficiary will be presumed to have artificially created the conditions required for obtaining payment by laying down general situations in which the beneficiary will be presumed to have artificially created the conditions required for obtaining payment, without establishing, specifically and in relation to a particular farmer, the activity carried on by that farmer and his conduct?'

21. In the proceedings before the Court, written observations were submitted by the Commission and the Kingdom of Spain.

IV – **Legal analysis**

A – *The first question*

22. By its first question, the referring court asks in essence whether Regulation No 1782/2003 precludes a national provision under which, in the context of an application for payments under the single payment scheme, all areas of permanent pasture declared by a farmer which exceed the forage areas previously taken into account in his case in determining payment entitlements count as eligible areas only if those areas are in fact being used for rearing livestock.

23. To answer this question it is necessary to consider whether eligibility of permanent pasture may be made dependent on the existence, at the time a farmer's payment entitlements were calculated, of pasture areas of a corresponding size, or that the areas are otherwise currently used for rearing livestock, for example as forage areas.

24. Admittedly, the referring court's question refers both to Article 43 and Article 44 of Regulation No 1782/2003. However, for assessing whether an area is eligible it is only the latter provision which is relevant, because Article 43 of the Regulation governs only the original calculation of the payment entitlements.

25. Article 44(2) of Regulation No 1782/2003, in the version relevant to the present case, defines 'eligible hectare' as 'any agricultural area of the holding taken up by arable land and permanent pasture except areas under permanent crops, forests or used for non-agricultural activities'. It follows that three conditions must be met for an area to be regarded as eligible for the purposes of this provision: it must be an *agricultural area*, which is part of a *holding*, and which is used for *agricultural activities*.[11]

26. First, there must be an *agricultural area*. Article 2(a) of Regulation No 795/2004 defines this as 'the total area taken up by arable land, permanent pasture and permanent crops'.

11 — Judgment in *Demmer* (C-684/13, ECLI:EU:C:2015:439, paragraph 54).

27. In the present case, the eligibility of areas which have been declared as permanent pasture is in dispute. According to Article 2(e) of Regulation No 795/2004, read in conjunction with Article 2(2) of Regulation No 796/2004, permanent pasture is land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that is not included in the crop rotation of the holding for five years or longer. Whether the land at issue in fact meets these requirements is not disputed in the main proceedings, and would in any event be for the national authorities to decide.

28. Second, in order to be eligible within the meaning of Article 44(2) of Regulation No 1782/2003, an area must be part of *the holding* of the farm in question. [12] According to the case-law, to satisfy this test it is sufficient if the farmer enjoys a degree of autonomy with regard to that area sufficient for the carrying-out of his agricultural activity. [13] On this point too, there is no dispute in the main proceedings.

29. Third and lastly, eligibility of agricultural land requires that it be used for *agricultural activity*. [14] It is obvious that the production, rearing or growing of agricultural products should be regarded as such an activity. Therefore, these activities are also within the definition in Article 2(c) of Regulation No 1782/2003. Moreover, this provision also includes maintaining the land in good agricultural and *environmental* condition in accordance with Article 5 of the Regulation within the concept of agricultural activity.

30. Contrary to what the law of the Autonomous Community of Aragon appears to require, [15] the existence of an *agricultural activity* thus does not require that permanent pasture be used for production of agricultural products. According to the definition of agricultural activity in Article 2(c) of Regulation No 1782/2003, maintaining the land in good agricultural and environmental condition in itself counts as such activity. Moreover, according to Article 5 of the Regulation this is aimed specifically at land which is no longer used for production purposes. As the Court has already held in this context, for that reason land is to be regarded as eligible if the overriding objective of its use is landscape management and nature conservation. [16]

31. Thus, to the extent that land declared by a farmer in an application for assistance fulfils these three conditions, it qualifies as an ‘eligible hectare’ within the meaning of Article 44(2) of Regulation No 1782/2003. Each such hectare of this land, together with each payment entitlement to which the farmer has a claim, confers entitlement to payment of the amount fixed by the payment entitlement. By contrast, the Regulation does not confer on Member States any discretion to make eligibility subject to additional conditions.

32. For that reason, it is irrelevant whether areas declared as permanent pasture existed as such at the time payment entitlements were calculated — for example as forage areas — or were only subsequently converted, for example from arable land to permanent pasture. Instead, normal payment claims do not have any link to specific areas, because within the framework of the single payment scheme direct income support is granted, and this is independent of production. [17]

12 — Judgment in *Demmer* (C-684/13, EU:C:2015:439, paragraph 58).

13 — Judgments in *Landkreis Bad Dürkheim* (C-61/09, EU:C:2010:606, paragraphs 58 and 62), *Wree* (C-422/13, EU:C:2015:438, paragraph 44), and *Demmer* (C-684/13, EU:C:2015:439, paragraph 58).

14 — Judgment in *Demmer* (C-684/13, EU:C:2015:439, paragraph 63).

15 — See above, point 16 of this Opinion.

16 — Judgment in *Landkreis Bad Dürkheim* (C-61/09, EU:C:2010:606, paragraph 49).

17 — See the 24th recital of Regulation No 1782/2003, according to which ‘it is necessary to complete the shift from production support to producer support by introducing a system of decoupled income support’.

33. This conclusion is supported by schematic considerations. Thus, in the first place Article 46(2) of Regulation No 1782/2003 confirms that there is in principle no obligation to activate payment entitlements with specifically those areas to which they have at one time been allocated. According to this provision, payment entitlements may be transferred 'by sale or any other definitive transfer with or without land'.

34. In addition, one may refer to Article 53 of Regulation No 1782/2003, which contains a specific provision for calculating payment entitlements where in the reference period, that is the years 2000 to 2002, a farmer was subject to the obligation to set aside part of the land of his holding. By way of express derogation from Article 44(2), in this context Article 54(2) provides that in relation to a payment entitlement for set-aside land, in principle only agricultural areas taken up by arable land may be taken into account. It follows that by way of exception this provision links the payment entitlement to a specific type of eligible hectare. From this, it is *a contrario* clear that, as regards normal payment entitlements, the circumstances at the time of their calculation can have no further influence on which eligible hectares may subsequently activate payment entitlements.

35. Finally, it is also consistent with the purposes of Regulation No 1782/2003 to regard permanent pasture as eligible irrespective of any previous dedication or actual use for growing agricultural produce. Thus, the fourth recital of the Regulation emphasizes the positive environmental effect of permanent pasture.[18] Consistently with this aim, Article 5(2) of Regulation No 1782/2003 requires Member States to ensure that land which was under permanent pasture at the date provided for the area aid applications for 2003 is maintained under permanent pasture.

36. To this end, Article 4 of Regulation No 796/2004 in addition empowers Member States to take specific measures where there is a reduction in national or regional areas of permanent pasture. Thus, farmers for example who own permanent pasture which has been converted to use for other purposes may be obliged to re-sow the land as permanent pasture.[19]

37. Thus, far from preventing any increase in permanent pasture, Regulation No 1782/2003 instead seeks to ensure that it is maintained, because of its positive environmental effects. It is at most a *reduction* in permanent pasture area that authorizes Member States to take counter-measures.

38. It follows that the answer to the first question is that Regulation No 1782/2003, and in particular Article 44(2) thereof, is to be interpreted as precluding a national provision which regards all permanent pasture areas declared by a farmer in excess of forage areas previously taken into account in determining his payment entitlements as eligible hectares only if they have actually been used for rearing livestock.

B – *The second question*

39. The second question seeks clarification as to whether Article 29 of Regulation 1782/2003 precludes a national provision such as that in the main proceedings which, to the extent that permanent pasture notified in an application for single premium payments exceeds the forage areas previously taken into account in determining payment entitlements, creates a statutory presumption that the farmer has artificially created the conditions required for claiming such payments.

40. This question was referred in case the Court were to answer the first question in the negative. Having regard to my analysis above, it is thus unnecessary to answer it; nonetheless I will consider it on a subsidiary basis.

18 — According to the fourth recital of Regulation No 1782/2003, 'since permanent pasture has a positive environmental effect, it is appropriate to … encourage [its] maintenance … to avoid a massive conversion into arable land'.

19 — Article 4(2) of Regulation No 796/2004.

41. Article 29 of Regulation No 1782/2003 provides that no payment shall be made in favour of beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of the support scheme in question.

42. The Spanish Government is of the view that the national provision in dispute in the present case is compatible with this provision. It argues that it is necessary to prevent arable land which at one time led to the award of payment entitlements from being replaced by pasture areas, in an unjustified and abusive manner, within the framework of receiving payments under the single premium scheme, because in reality the substitution of arable land by pasture masks the abandonment of a real agricultural activity.

43. On its wording, Article 29 of Regulation No 1782/2003 corresponds essentially to Article 4(3) of Regulation No 2988/95,[20] which may itself be seen as a codification of the consistent case-law of the Court, according to which it is not possible to rely on Union law fraudulently or abusively.[21] Specifically, the application of a provision of Union law must in no case be extended to cover abusive practices by economic participants.[22]

44. According to the case-law of the Court, a finding of an abuse by a potential beneficiary requires, first, a combination of objective circumstances in which, despite formal observance of the relevant legal conditions laid down by the Union rules, the purpose of those rules has not been achieved, and second, the intention to obtain an advantage from the Union rules by creating artificially the conditions laid down for obtaining it.[23] That is a matter for the national court to determine. Evidence must be adduced in accordance with the rules of national law, provided that the effectiveness of Union law is not thereby undermined.[24]

45. Accordingly, the application of Article 29 of Regulation No 1782/2003 requires both an objective as well as a subjective element. It follows that a provision which raises a presumption, generally and independently of any analysis of the specific facts, that, as regards additional areas declared as permanent pasture, a farmer has artificially created the conditions for obtaining payment, is in any event not permitted by Article 29 of Regulation No 1782/2003.

20 — Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1). In a number of further acts of Union law there may be found provisions modelled on this provision: see for example Article 7 of Council Regulation (EC) No 1259/1999 of 17 May 1999 establishing common rules for direct support schemes under the common agricultural policy (OJ 1999 L 160, p. 113), or Article 193 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets … (OJ 2007 L 299, p. 1), which is specifically described as a 'Circumvention clause'; and Article 4(8) of Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005 … (OJ 2005 L 25, p. 8).

21 — To this effect, see the Opinion of Advocate-General Alber in *Emsland-Stärke* (C-110/99, EU:C:2000:252, paragraph 80). As regards the case-law, it is sufficient to consider the Judgments in *Kefalas and Others* (C-367/96, EU:C:1998:222, paragraph 20), *Diamantis* (C-373/97, EU:C:2000:150, paragraph 33), *Halifax and Others* (C-255/02, EU:C:2006:121, paragraph 68), *Agip Petroli* (C-456/04, EU:C:2006:241, paragraph 19), and *SICES and Others* (C-155/13, EU:C:2014:145, paragraph 29).

22 — Judgments in *Cremer* (125/76, EU:C:1977:148, paragraph 21), *General Milk Products* (C-8/92, EU:C:1993:82, paragraph 21), *Halifax and Others* (C-255/02, EU:C:2006:121, paragraph 69), *Agip Petroli* (C-456/04, EU:C:2006:241, paragraph 20), *Vonk Dairy Products* (C-279/05, EU:C:2007:18, paragraph 31), and *Christodoulou and Others* (C-116/12, EU:C:2013:825, paragraph 63).

23 — Judgments in *Emsland-Stärke* (C-110/99, EU:C:2000:695, paragraph 52 et seq.), *Eichsfelder Schlachtbetrieb* (C-515/03, EU:C:2005:491, paragraph 39), *Halifax and Others* (C-255/02, EU:C:2006:121, paragraph 74 et seq.), *Cadbury Schweppes* (C-196/04, EU:C:2006:544, paragraph 64), *Hungary* v *Slovakia* (C-364/10, EU:C:2012:630, paragraph 58), *Christodoulou and Others* (C-116/12, EU:C:2013:825, paragraph 64), and *Slancheva sila* (C-434/12, EU:C:2013:546, paragraph 29).

24 — Judgments in *Emsland-Stärke* (C-110/99, EU:C:2000:695, paragraph 54), *Christodoulou and Others* (C-116/12, EU:C:2013:825, paragraph 65), and *Slancheva sila* (C-434/12, EU:C:2013:546, paragraph 30).

46. As the Commission correctly submits, it is not possible to identify even any objective element of possible abuse. By means of the new subsidy scheme, the Union legislature aimed specifically to decouple income support for farmers as much as possible from production.[25] Therefore, if a farmer activates his payment claims with areas of permanent pasture which are eligible by reference to the requirements of Article 44(2) of Regulation No 1782/2003, this is entirely in accordance with the purposes of the single payment scheme.

47. Moreover, it is to be recalled that in its written observations the Spanish Government itself refers to cases of permanent pasture fraudulently declared by 'a few recipients'. In the light of that there is even less reason for assuming that the type of abuse described cannot be combatted by consistent application of the comprehensive provisions already adopted at Union level to ensure effective supervision.

48. Nor finally, are the submissions of the Spanish Government persuasive in so far as they draw a link between the disputed provision and the objections of the Court of Auditors as regards failures in the proper assessment of eligibility of permanent pasture.[26] Specifically, that criticism is aimed at the grant of payments for areas which do not meet the requirements for eligibility under Article 44(2) of Regulation No 1782/2003. However, it may be inferred from the information given by the referring court that in the proceedings pending before it there is no dispute between the parties as regards the existence of certain eligible areas which consist wholly of permanent pasture.

49. It follows that the answer to the second question is that Article 29 of Regulation No 1782/2003 precludes a national provision which, to the extent that permanent pasture notified in an application by a farmer for single premium payments exceeds the forage areas previously taken into account in his case in determining payment entitlements, creates a statutory presumption that the farmer has artificially created the conditions required for claiming such payments.

V – **Conclusion**

50. In conclusion, I suggest that the request from the Tribunal Supremo (Supreme Court, Spain) for a preliminary ruling should be answered as follows:

Regulation (EC) No 1782/2003, and in particular Article 44(2) and Article 29 thereof, are to be interpreted as precluding a national provision under which, in the context of an application for payments under the single payment scheme, all areas of permanent pasture declared by a farmer which exceed the forage areas previously taken into account in his case in determining payment entitlements count as eligible areas only if those areas have in fact been used for rearing livestock, and otherwise it is presumed that the farmer has artificially created the conditions for receiving the payments.

25 — Again, see the 24th recital of Regulation No 1782/2003.

26 — See the references in footnote 3 above.