OPINION OF ADVOCATE GENERAL LÉGER

delivered on 21 March 2002 [1]

1. The High Court of Justice of England and Wales, Queen's Bench Division (Crown Office), requests the Court of Justice to interpret Article 9 of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes. [2]

The national court asks, in essence, whether Article 9(2) of the Regulation must be interpreted as authorising the competent national authority to apply 'retroactively' [3] the penalties provided for in that article for farmers who have committed an error in good faith when declaring the agricultural area in respect of their application for 'area' aid. [4]

I — The Community legislation

A — *The scheme applicable to arable crops and set-aside*

Regulation (EEC) No 1765/92 [5]

2. Regulation No 1765/92 establishes a support scheme for producers of certain arable crops.

3. Article 2(1) of Regulation 1765/92 provides that Community producers of arable crops may apply for a compensatory payment under the conditions set out in Articles 2 to 13 of that regulation.

4. Article 2(2), second subparagraph, of Regulation No 1765/92 states that 'the

1 — Original language: French.

2 — OJ 1992 L 391, p. 36 (hereinafter also referred to as 'the Regulation').

3 — This notion will be explained in point 44 of this Opinion. It is used here in its usual, but legally incorrect, sense.

4 — This is Community aid the amount of which is proportional to the area cultivated. Payment of the aid is subject to compliance with certain requirements, in particular the need to declare the area of the agricultural holding which is under cultivation. I will return to this question when setting out the legal background to this case.

5 — Council Regulation of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12).

compensatory payment is granted for the area which is down to arable crops or subject to set-aside in accordance with Article 7[6] of this Regulation...'.

B — *The rules implementing the aid system*

Regulation (EEC) No 3508/92[7]

5. In order to simplify the administration of the various aid schemes, in particular the scheme laid down in Regulation No 1765/92, Regulation No 3508/92 established an integrated administration and control system for that aid.[8]

6. Article 6 of Council Regulation No 3508/92 provides:

'1. In order to be eligible under one or more Community schemes governed by this regulation, each farmer shall submit, for each year, an "area" aid application indicating:

— agricultural parcels, including areas under forage crops, and agricultural parcels covered by a set-aside measure for arable land and those laid fallow,

— where applicable, any other necessary information provided for either by the regulations relating to the Community schemes, or by the Member State concerned.

...

3. A Member State may decide that an "area" aid application need contain only changes with respect to the "area" aid application submitted for the previous year.

...

6. For each of the agricultural parcels declared, farmers shall indicate the area and its location which information must

6 — Article 7 sets out the provisions applicable to set-aside.

7 — Council Regulation of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1)

8 — Hereinafter also referred to as 'the integrated system'.

enable the parcel to be identified in the alphanumeric identification system for agricultural parcels.'

Regulation No 3887/92

7. The Regulation defines the detailed rules for the application of the integrated system.

8. Article 4(1) of the Regulation sets out the information which must be contained in an application for 'area' aid. This must include, *inter alia*, particulars permitting identification of all the agricultural parcels on the holding, their area, location, use and the aid scheme concerned.

9. According to Article 6(1) of the Regulation, administrative and on-the-spot checks are to be made in such a way as to ensure effective verification of compliance with the terms under which the aid and premiums are granted.

10. Article 6(4) of the Regulation provides that applications which are to be subjected to on-the-spot checking are to be selected by the competent authority on the basis of a risk analysis and an element of representativeness of the aid applications submitted. The risk analysis is to take account of the amount of aid, the number of parcels and the area or number of animals for which aid is requested, changes from the previous year, the findings of checks made in the past years, and other factors to be defined by the Member State.

11. Article 6(7) of the Regulation is worded as follows:

'Agricultural parcel areas shall be determined by any appropriate means defined by the competent authority which ensure measurement of a precision at least equivalent to that required for official measurements under the national rules. The competent authority shall set a tolerance margin taking account of the measuring method used, the accuracy of the official documents available, local factors (such as slope, shape of parcel) and the provisions of the following subparagraph.

The total area of an agricultural parcel may be taken into account provided that it is fully utilised according to the customary standards of the Member State or region concerned. In other cases the area actually utilised shall be taken into account.'

12. Article 9 of Regulation No 3887/92, as it applied to aid applications submitted in 1993, 1994 and 1995, provides as follows:

'1. If the area actually determined is found to be greater than that declared in the "area" application, the area declared shall be used for calculation of the aid.

2. If the area actually determined is found to be less than that declared in an "area" aid application, the area actually determined on inspection shall be used for calculation of the aid. However, except in cases of *force majeure*, the area actually determined on inspection shall be reduced:

— by twice the difference found if this is more than 2% or two hectares but not more than 10% of the determined area,

— by 30% if the difference found is more than 10% but not more than 20% of the determined area.

If the difference is more than 20% of the determined area no area-linked aid shall be granted.

However, in the case of a false declaration made intentionally or as a result of serious negligence:

— the farmer in question shall be excluded from the aid scheme concerned for the calendar year in question,

and

— in the case of a false declaration intentionally made, from any aid scheme referred to in Article 1(1) of Regulation (EEC) No 3508/92 for the following calendar year, in respect of an area equal to that for which his aid application was rejected.

These reductions shall not be applied if the farmer can show that his determination of the area was accurately based on infor-

mation recognised by the competent authority.

...

For the purposes of this Article, "determined area" means the area for which all of the conditions laid down in the rules have been met.'

13. Article 9(2) of Regulation No 3887/92 was subsequently amended by Commission Regulation (EC) No 1648/95.[9] The first and second indents of that provision were replaced by the following words:[10]

'... by twice the difference found if this is more than 3% or two hectares but not more than 20% of the determined area'.

14. That amendment applies to aid applications submitted in respect of 1996 onwards. However, by virtue of Article 2(2) of Regulation (EC, Euratom) No 2988/95,[11] it also applies retroactively to infringements committed under the provisions of the Regulation. Article 2(2) of Regulation No 2988/95 provides that 'in the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively'.[12]

15. Pursuant to Article 14(1), first subparagraph, of Regulation No 3887/92, in cases of wrong payment the farmer concerned is required to reimburse the amount in question plus interest for the period between payment and the reimbursement by the beneficiary.

9 — Commission Regulation of 6 July 1995 (OJ 1995 L 156, p. 27).

10 — See Article 1, point 5, of Regulation No 1648/95.

11 — Council Regulation of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 11).

12 — On the basis of that provision, the Court held in Case C-354/95 *National Farmers' Union and Others* [1997] ECR I-4559, paragraphs 40 and 41, that the less severe penalties provided for by Article 9(2), first and second subparagraphs, of Regulation No 3887/92, as amended by Regulation No 1648/95, had to be applied retroactively.

II — Facts and procedure

A — *Background to the main proceedings*

16. Since the reform of the Common Agricultural Policy in 1992,[13] farmers are entitled to receive a Community aid, the amount of which depends on the area down to crops. In accordance with the objectives of that reform and of the implementation of the integrated system, producers are compensated for the loss of income resulting from reductions in agricultural support prices imposed by the Community in order to bring them closer into line with world market prices. In the United Kingdom, that aid system is known as the Arable Area Payments Scheme.

17. W.H. Strawson (Farms) Ltd and J.A. Gagg & Sons (a firm) ('the applicants in the main proceedings') are farmers who applied for 'area' aid payments for the 1997 calendar year.

18. They had previously received payments of the same kind in respect of the 1993 to 1996 calendar years.

19. In order to calculate the area of the holding for which an application for aid was made, the applicants in the main proceedings relied essentially on maps drawn up by the Ordnance Survey.[14] Since 1993 the Ministry of Agriculture, Fisheries and Food,[15] the competent authority responsible for administration in the United Kingdom of the integrated system and for the making of payments under the 'area' scheme, had stated in its guidance notes that the areas shown in OS maps would generally be acceptable in the preparation of aid applications. However, on the occasion of several inspections carried out by the MAFF during 1997, it discovered that the area and the application relating to some fields had been overstated, whereas they had been understated in relation to other fields.

20. According to the order for reference, the errors made by the applicants in the main proceedings were not made as a result of serious negligence or intentionally. Following the inspections, the MAFF determined the area concerned by the 'area' aid in 1997 and applied the penalties set out in Article 9 of Regulation No 3887/92. The order for reference also states that the dispute between the applicants in the main proceedings and the MAFF does not relate to the way in which the MAFF dealt with the 'area' aid applications for the 1997 calendar year but to the way in which it dealt with the applications made for the 1993 to 1996 calendar years.

13 — As to the causes, the objectives pursued by that reform and the mechanisms established in order to achieve them, see points 3 to 6 of my Opinion in the *National Farmers' Union* case.

14 — Hereinafter 'the OS maps'.

15 — Hereinafter 'the MAFF'.

21. After it had set off underpayments against overpayments, the MAFF recalculated the payments made for each of those years, relying on the provisions of Article 9 of the Regulation, which provides for penalties in the event of the over-declaration of areas in applications for 'area' aid. In other words, the amount of 'area' aid claimed for the 1993 to 1996 calendar years was calculated on the basis of the area actually determined on the occasion of the inspections carried out in 1997. That area was then reduced in accordance with the rules laid down in Article 9(2), first and second subparagraphs, of Regulation No 3887/92, as amended by Regulation No 1648/95. Where the difference between the area claimed and the area determined was between 3% and 20%, the MAFF reduced the area by twice the excess amount. Where the excess was greater than 20%, the MAFF decided that no area linked aid was payable. Accordingly, the MAFF informed the applicants in the main proceedings that it was imposing penalties for the years 1993 to 1996 in respect of the compensation payments under the support system for producers of certain arable crops.

22. The applicants in the main proceedings disputed that they were under an obligation to repay to the MAFF the sums of GBP 21 052.90 and GBP 6 770.06 respectively and brought an action before the national court. They accept the MAFF's decision with regard to the measures adopted by it in relation to the applications for the 'area' aid in respect of the 1997 calendar year. Moreover, they accept that, pursuant to Article 14 of the Regulation, they must also repay overpayments in respect of the years 1993 to 1996. They merely claim that the penalties provided for in Article 9(2), first and second subparagraphs, of the Regulation cannot be applied to the aid paid in respect of the years 1993 to 1996. They base their claim on the principle that penal provisions may not have retroactive effect.

23. The High Court took the view that the outcome of the dispute depended upon an interpretation of certain provisions of Community law. It therefore decided to stay proceedings and to submit a question to the Court for a preliminary ruling.

B — *The High Court's question*

24. 'In circumstances where

(i) as a result of an inspection, the competent authority discovers that an applicant under Arable Area Payments Scheme has made an error (otherwise than intentionally or as a result of gross negligence) which has resulted in an over-declaration of area in the application for aid payments; and

(ii) the competent authority is satisfied by reason of that inspection and other checks that the applicant has made a corresponding error in previous years resulting in each of those years in an overdeclaration of area in the application for aid payments,

is the competent national authority required to reduce the area actually determined on inspection pursuant to Article 9(2) of Commission Regulation (EEC) No 3887/92 for the purpose of calculating the aid due in respect of previous years?'

III — Assessment

25. In essence, the national court is asking whether on a proper construction of Article 9(2), first and second subparagraphs, of the Regulation the competent authority is authorised, by reason of errors committed when determining the area which are discovered following an inspection in one year, to apply the reductions in eligible areas, as a penalty, to aid paid in respect of years preceding that inspection.

26. At the outset, I would point out that it is settled case-law,[16] that a preliminary reference is a direct means of cooperation between the national court and the Court of Justice. Similarly, the Court of Justice has invariably held that assessment of the facts is a matter for the national court and that the Court of Justice may not alter the substance of questions referred for a preliminary ruling.[17]

27. However, in the context of proceedings under Article 234 EC, the Court has also always held that in order to provide an answer which is useful to the national court, it may, taking into account the facts communicated by that court,[18] extract from the wording of the questions formulated by the national court those matters which pertain to the interpretation of Community law.[19]

28. On the basis of that case-law, the Court has already reformulated questions in order to take account of the object of the dispute and the real needs of the national court, as set out in the grounds of the order for reference.

16 — Since the judgment in Case 16/65 *Schwarze* [1965] ECR 877.

17 — See, in particular, Case C-352/95 *Phytheron International* [1997] ECR I-1729; Case C-235/95 *Dumon and Froment* [1998] ECR I-4531, paragraphs 25 and 26, and also Case C-131/97 *Carbonari and Others* [1999] ECR I-1103.

18 — See, in particular, Case 78/70 *Deutsche Grammophon* [1971] ECR 487.

19 — See, in particular, Case 16/83 *Prantl* [1984] ECR 1299.

29. In other words, in the context of the cooperation between the national courts and the Community judicature established by Article 234 EC, the Court of Justice may extract from the fundamental facts those matters which pertain to the interpretation of the relevant Community legislation and give to the national court the answer necessary to decide the substance of the dispute in the main proceedings. [20]

30. The Court of Justice may therefore reformulate the question referred to it in such a way as to enable the national court to resolve the dispute in the main proceedings in compliance with the relevant provisions of Community law.

31. Consequently, in my opinion, in order to provide an appropriate answer to the national court, the Court of Justice may also take into account the facts, where they are:

— capable of legal classification under the Community legislation which the Court of Justice is being asked to interpret;

— set out in the grounds of the order for reference;

— omitted by the national court in the question submitted to the Court of Justice; and

— such as to enable the national court to decide on the dispute before it in compliance with the relevant provisions of Community law.

32. In the present case, it is clear from the grounds of the order for reference that the High Court is essentially asking whether the penalty, namely the reduction of the area determined following the investigations during 1997, is lawful in regard to the aid paid in respect of the 1993 to 1996 calendar years. However, in its question to the Court of Justice, the High Court fails to include one fundamental fact. [21]

33. The order for reference explains that:

'The applicants calculated the area in respect of which the application [for the 1993 to 1997 calendar years] was made by reference to Ordnance Survey maps. MAFF Guidance notes on [the integrated system] payments had, since 1993, stated that the area shown in Ordnance Survey maps

20 — See, to that effect, Case C-61/98 *De Haan* [1999] ECR I-5003, paragraphs 27 and 28.

21 — Applying the criteria which I have set out in point 31 of this Opinion.

would generally be acceptable in the preparation of aid applications.' [22]

34. That fact must lead the Court of Justice to conclude that the High Court considers that the applicants in the main proceedings established the areas eligible for the aid for which they applied in respect of the 1993 to 1997 calendar years by relying on information which was recognised (and thus regarded as reliable) by the MAFF. [23]

35. Article 9(2), fourth subparagraph, of Regulation No 3887/92 provides expressly as follows:

'These reductions shall not be applied if the farmer can show that his determination of the area was accurately based on information recognised by the competent authority.'

36. This subparagraph therefore expressly covers situations such as those with which the High Court is concerned in the main proceedings. Article 9(2), fourth subparagraph, of Regulation No 3887/92 is clear and precise. Pursuant to that provision, when the competent authority calculates the aid, the area actually determined upon inspection may not be reduced in accordance with the rules laid down in Article 9(2), first and second subparagraphs, of Regulation No 3887/92 where, in determining the eligible area, the farmer correctly relied on information recognised by the competent authority.

37. Nor, quite clearly, may similar errors committed in years preceding that inspection result in areas eligible for 'area' aid be reduced by applying the rules laid down in the Article 9(2), first and second subparagraphs, of Regulation No 3887/92. [24]

22 — Paragraph 4.

23 — Which, it should be recalled, is the competent authority with responsibility in the United Kingdom for administering the integrated system and for making payments under the 'area' aid schemes.

24 — In the present case, the High Court's question relates exclusively to the reduction of the area determined in respect of the aid granted for the 1993 to 1996 calendar years (that is to say, prior to the 1997 investigation and inspection measures) in application of the rules laid down in Article 9(2), first and second subparagraphs, of the Regulation. As the question whether the reductions provided for in that provision apply to the aid granted in respect of the 1997 calendar year has not been referred to the Court of Justice, the Court should not answer it. In that regard, I would point out that, in proceedings for a preliminary ruling, it is not for the Court of Justice to involve itself in the resolution of national issues which fall within the scope of the national court's jurisdiction (see, for example, Joined Cases C-10/97 to C-22/97 *IN. CO. GE.'90 and Others* [1998] ECR I-6307, paragraph 14). The preliminary reference procedure is based on a clear separation of functions between national courts and tribunals on the one hand and the Community judicature on the other (see, for example, Case 5/77 *Tedeschi* [1977] ECR 1555). The question of the reductions due in respect of 1997, the calendar year in which the inspections took place, might therefore have been the subject of a final decision under the national procedure. To suggest to the Court of Justice that its answer to the national court should be that the applicants for 'area' aid may not have such aid paid in respect of the calendar year of the inspections reduced in accordance with Article 9(2), first and second subparagraphs, of Regulation No 3887/92, would be tantamount to suggesting that the Court should intervene in issues falling exclusively within the national legal system.

38. In the light of the above considerations, I propose that the Court should reformulate the High Court's question in such a way as to allow it to decide on the dispute it in a way which complies with the relevant provisions of Community law. Consequently, the Court of Justice will need to answer the question concerning the interpretation of Article 9(2), fourth subparagraph, of Regulation No 3887/92 by reference to the situation described by the national court. In essence, it will be necessary to rule whether that provision authorises a competent authority to apply, in the circumstances of the present case, the penalties which it has applied. [25]

39. In the light of the above considerations, I also propose that the Court should answer that question in the negative.

40. However, I cannot ignore an important aspect which came to light at the hearing. On that occasion, the relevant facts and national procedure set out by the High Court were the subject of considerable comment by the representative of the United Kingdom Government, who claimed that the High Court's presentation of those matters is incomplete. He submitted that the agricultural areas indicated in OS maps are recognised by the competent authority only upon the express condition that the fields thus measured have not been altered after publication of those maps. He stated that a manual concerning the application of those maps provides all necessary explanations in that regard. He thus contended that, contrary to what is stated in the order for reference, the OS maps are recognised by the competent authority only if the applicant has complied with the recommendations set out in the manual. He went on to state that the applicants in the main proceedings had not complied with the instructions in the manual and that, accordingly, the dispute in the main proceedings relates to errors in the declarations of agricultural areas which do not originate in information recognised by the competent authority. Those various matters had been discussed before the High Court, which had found in favour of the MAFF. The High Court held that the applicants in the main proceedings had not proved that they had in fact taken information recognised by the competent authority as a basis for determining the eligible areas. Consequently, the High Court ruled out the application of Article 9(2), fourth subparagraph, of the Regulation. The applicants in the main proceedings did not dispute that presentation of the facts.

41. It should be recalled that the Court of Justice has held that the appraisal of the relevant facts is a matter falling within the

25 — See the facts set out in paragraph 4 of the order for reference. It should also be observed that the French Government and the Commission have also understood the terms of the national court's order in that sense, since they suggest that the Court should consider interpreting Article 9(2), fourth subparagraph, of the Regulation.

exclusive jurisdiction of the national court[26] and that in proceedings under Article 234 EC the national court must set out the facts which will allow the Court of Justice to gain sufficient knowledge of the subject matter of the dispute and the matters at stake in it to give an interpretation of Community law which is of use to the national court.

42. The dispute regarding the facts and the national procedure set out by the High Court must be determined by the competent national court in accordance with the applicable national rules.

43. However, as a subsidiary point, I believe that I must continue my line of reasoning. For if the factual and procedural framework presented by the United Kingdom Government at the hearing before the Court of Justice is in fact correct[27] it would be better to enable the High Court to avoid having to make a new reference for a preliminary ruling and thus to avoid the additional delay inherent in such a procedure. If the High Court considers that the errors committed in good faith by the applicants for 'area' aid did not originate in information recognised by the competent authority, it will be necessary to state whether the competent authority is authorised, by reason of errors committed when determining the area which are discovered following an inspection in a given year, to apply the reductions in eligible areas, as a penalty, to aid paid in respect of years preceding that inspection.

44. Like the French Government in its observations, I consider that the applicants in the main proceedings are confusing the 'retroactivity' of penalties with the 'limitation' of the action imposing those penalties. The principle of the non-retroactivity of penalties is a principle common to all the legal systems of the Member States and enshrined in Article 7 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. It is also an integral part of the general principles of law whose observance is ensured by the Court of Justice.[28] The Court has already held that provisions of Community law cannot have the effect of determining or aggravating the liability in criminal law of persons who have committed offences before the entry into force of those provisions.[29] Retroactivity therefore refers to the application of a legal measure to events which have taken place before it entered into force. Limitation, on the other hand, is a means whereby a right or a right of action is extinguished as a result of the failure to exercise it before the expiry of the period laid down by law.

45. In the present case, although the inspections took place only in 1997, the fact giving rise to the penalties, namely the error in determining the eligible areas, might have occurred when action in respect of those penalties had not yet become

26 — See, in particular, the judgments cited in footnote 17 above.

27 — Which it would, in any event, be for the national court to decide.

28 — See, in particular, Case 63/83 *Kirk* [1984] ECR 2689, paragraph 22.

29 — See, in particular, Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraphs 42 to 44.

time-barred. It is therefore necessary to ascertain whether action by the MAFF in respect of the years 1993 to 1996 was time-barred.

46. Article 9(2), first and second subparagraphs, of the Regulation, as amended by Regulation No 1648/95, provides that, in the event of an error committed in good faith relating to the area declared, the amount of the aid is to be calculated on the basis of the area actually determined on inspection, reduced by a percentage which takes account of the magnitude of the error. The Court of Justice has held that those penalties, when applied to applicants who have committed an error in good faith, are in accordance with the principle of proportionality. [30]

47. The Regulation does not contain a provision on the limitation period in respect of action by the competent authorities where they find such errors. However, Article 3 of Regulation No 2988/95, which applies in the present case, [31] provides that the limitation period in respect of penalties and demands for repayment of excess amounts resulting from irregularities is four years as from the time when the irregularity was committed [32] or, in the case of a continuous or repeated irregularity, from the day on which the irregularity ceased. [33]

48. In the light of the above considerations, I propose, in the alternative, that the Court's answer to the High Court should be that in a factual situation such as that set out by the United Kingdom Government, Article 9(2), first and second subparagraphs, of the Regulation, as amended by Regulation No 1648/95, does not preclude a competent authority from applying reductions in the eligible area, by reason of errors committed in determining the agricultural areas discovered following an inspection in one year, as a penalty to aid paid in respect of the years preceding that inspection. The competent authority's action must, however, observe the limitation periods laid down by Article 3 of Regulation No 2988/95.

30 — See *National Farmers' Union and Others*, paragraph 55.

31 — Although Regulation No 2988/95 entered into force after the first errors had been committed, the provisions in question laid down procedural rules. They introduced an element of legal certainty which had not previously existed, as they allow persons committing an infringement to ascertain the period after which the infringement will no longer be subject to penalties. By that regulation, the Community legislator wished to lay down general rules applicable to Community administrative penalties, for example, rules on the limitation and the non-retroactivity of provisions for penalties (see the seventh recital in the Council's Proposal for Regulation (EC, Euratom) on the protection of the Community's financial interests (COM 94/214 final, OJ 1994 C 216, p, 11)). Those procedural provisions therefore benefit the public and should be applied with immediate effect. Moreover, it follows from the Court's settled case-law that procedural rules apply to all proceedings pending at the time when they enter into force (since Joined Cases 212/80 to 217/80 *Salumi* [1981] ECR 2735, paragraph 9).

32 — Article 3(1), first subparagraph, of Regulation No 2988/95.

33 — *Ibidem*, second subparagraph.

Conclusion

49. In those circumstances, I propose that the Court should reply as follows to the High Court of Justice of England and Wales, Queen's Bench Division (Crown Office):

Article 9(2), fourth subparagraph, of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes must be interpreted as meaning that:

(i) where as a result of an inspection the competent authority discovers that:

— an applicant for 'area' aid has made an error which has resulted in an over-declaration of the area eligible for aid and that similar errors have been committed in previous years, but that

— the applicant can show that he correctly relied on information recognised by the competent authority in order to determine the eligible areas;

(ii) the competent authority is not required to reduce the area actually determined on inspection pursuant to Article 9(2), first and second subparagraphs, of Regulation No 3887/92 for the purpose of calculating the aid due in respect of previous years.