OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 8 May 2001 [1]

Introduction

1. In order to compensate for the losses which European farmers would suffer as a result of the adoption of the euro for the purposes of the common agricultural policy, the European Community laid down transitional legislation fixing compensatory aid designed to offset the loss in value of direct aid which would be caused when equivalences were determined as between national currencies and the new monetary unit. 'Direct aid' is understood as meaning flat-rate amounts paid per hectare of cultivated land or per livestock unit, premiums for sheep or she-goats, and certain amounts of a structural or environmental nature.

By this action, the Italian Republic calls in question the validity of certain provisions adopted by the Commission in order to fix the maximum amount of the portion of this compensatory aid payable to Italian farmers in respect of direct aid where the operative event took place on 1 July 1999.

Legislative framework

2. The aim of the agrimonetary arrangements is to reduce the impact on the income levels of Community farmers of rate fluctuations between the currency or unit of account in which common agricultural policy legal instruments are expressed and the currency or unit of account in which they are paid.

3. For a detailed explanation of how this complex system has developed over time, I refer to the Opinion delivered by Advocate General Jacobs on 15 March 2001 in *Italy* v *Council and Commission.* [2]

4. The introduction of the euro with effect from 1 January 1999 involved a far-reaching reform of the agrimonetary arrangements which had hitherto been in force. Since it is the single currency of 11 of the Member States, the euro logically became

1 — Original language: Spanish.

2 — Case C-100/99 [2001] ECR I-5217, p. I-5219.

the new unit of account of the common agricultural policy, in place of the ecu.

5. Council Regulation (EC) No 2799/98 [3] accordingly provided that prices and amounts fixed in legal instruments relating to the common agricultural policy should be expressed in euro (Article 2(1)). Aid, like other payments, is granted to farmers in participating Member States in euros, while in all other cases it is converted into national currency by means of the applicable exchange rate (Article 2(2)). The applicant is one of the participating Member States.

6. In order to guarantee stable income for farmers, the new legislation continues to provide for compensatory aid to be granted to the recipients of direct aid who have been adversely affected by a variation between the evolution of the euro and that of the currency in which the aid is paid (the situation where the currency of payment is revalued).

7. In pursuit of that aim, Article 5(1) of Regulation 2799/98 provides that: 'In cases where the exchange rate applicable on the date of the operative event [for direct aid] is below that applicable previously, the Member State concerned may make compensatory payments to farmers in three successive tranches lasting 12 months each, starting on the date of the operative event.' This compensation must be granted in the form of an addition to the direct aid whose amount has decreased in national currency.

8. It is quite clear that, since the introduction of the euro, these variations cannot arise in relation to the Member States by which it was adopted because, since its introduction, the single currency has been used to express amounts relating to the common agricultural policy.

9. However, in view of the possibility that the conversion rates between the euro and national currencies — which were to be fixed irrevocably by Regulation (EC) No 2866/98 [4] — might be different from the rates that had been applied to the ecu, [5] until then the unit of account of the common agricultural policy, resulting in losses to farmers whose currency of payment was revalued, the Council, by means

3 — Regulation of 15 December 1998 establishing agrimonetary arrangements for the euro (OJ 1998 L 349, p. 1).

4 — Council Regulation of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro (OJ 1998 L 359, p. 1).

5 — In fact, the conversion mechanism for the ecu was more complex, since monetary fluctuations were not immediately reflected in the agricultural rates (the 'green rate' system).

of Regulation (EC) No 2800/98,[6] adopted a series of transitional provisions.

10. Among those provisions, Article 3(1) of Regulation No 2800/98 provided that compensatory aid was to be granted where 'the conversion rate for the euro into national currency units... applicable on the day of the operative event in 1999 [to direct aid] is lower than the rate applied previously'. The amount of the compensation was calculated pursuant to Article 5 of Regulation No 2799/98.

In other words, the legislature decided to equate possible falls in the conversion rate resulting from the replacement of the ecu by the euro with a hypothetical revaluation of the currency of payment and, as far as the present proceedings are concerned, the arrangements they applied were identical.

11. In implementation of the transitional legislation, the Commission adopted Regulation (EC) No 2813/98.[7]

12. Article 4(2) of Regulation No 2813/98 provides that the amounts of compensatory aid are to be determined in accordance with Regulation No 2799/98.

13. Article 5 of Regulation No 2813/98 provides that, in the case of participating Member States, for the purpose of converting aid into national currency, the conversion rates for the euro, fixed irrevocably by the Council, are to apply.

14. Article 6 of Regulation No 2813/98, the correct interpretation of which is at issue between the parties, provides:

'The maximum amount of the compensatory aid referred to in Article 4(2) resulting from a reduction in the agricultural conversion rate frozen until 1 January 1999 shall be increased by the inverse of the relation between the rate referred to in Article 5 and the agricultural conversion rate referred to above.'

15. Specifically to implement the foregoing legislation, the Commission adopted Regulation (EC) No 1639/1999 of 26 July 1999 fixing the maximum compensatory aid resulting from the rates for the conversion of the euro into national currency units and the exchange rates applicable on 1 July 1999.[8] The Annex lists the maximum amounts of the first tranche of aid granted

6 — Regulation of 15 December 1998 on transitional measures to be applied under the common agricultural policy with a view to the introduction of the euro (OJ 1998 L 349, p. 8).

7 — Regulation of 22 December 1998 laying down detailed rules for applying the transitional measures for the introduction of the euro to the common agricultural policy (OJ 1998 L 349, p. 48).

8 — OJ 1999 L 194, p. 33.

in order to compensate for the reduction recorded on 1 July 1999 in the conversion rate for the euro against the agricultural conversion rate previously applicable.

Regulation No 1639/1999 does not provide for the application of Article 6 of Regulation No 2813/98. It is precisely that omission which forms the basis of the application for annulment brought by Italy.

Analysis of the application

16. The Italian Government puts forward two pleas in law to substantiate its application for annulment. According to the first plea in law, Regulation No 1639/1999 is invalid because it is contrary to the provisions of Regulation Nos 2799/98, 2800/98 and 2813/98, because it does not contain an adequate statement of reasons and because its adoption involved a misuse of powers. According to the second plea in law, the defect justifying the annulment of Regulation No 1639/1999 arises from an infringement of the principle of equal treatment of Community farmers, laid down in Article 34 EC.

The first plea in law

17. In the applicant government's view, the contested provision infringes Article 6 of Regulation No 2813/98 which establishes a general criterion, applicable to all categories of direct aid affected by the freezing of conversion rates, irrespective of the operative events giving rise to entitlement to aid in each case.

18. For its part, the Commission argues that Article 6 of Regulation No 2813/98 is exceptional in nature and applies only to direct aid subject to a frozen conversion rate where the date of the operative event was 1 January 1999.

19. The Commission explains in detail the legislative origin of Regulation No 2813/98, the principal stages of which can be summarised as follows:

— pursuant to Article 3 of Regulation (EC) No 1527/95 [9] and subsequent analogous provisions, the Community legislature froze the conversion rate

9 — Council Regulation of 29 June 1995 regulating compensation for reductions in the agricultural conversion rates of certain national currencies (OJ 1995 L 148, p. 1).

applicable to direct aid up to and *including* 1 January 1999;

— in accordance with Article 123(4) EC, the Commission provided in Article 5 of Regulation No 2813/98 that, from 1 January 1999, the applicable conversion rate, irrevocably approved by the Council, would apply to direct aid to participating Member States;

— compensatory aid was determined using the new conversion rate and, in relation to recipients in, *inter alia*, the applicant Member State, that resulted in a slight loss of income; [10]

— in the light of the principle of the protection of legitimate expectations, it was appropriate to compensate for that slight loss by drawing up a suitable legal instrument (which I shall call 'the corrective increase');

— that measure was only to have favoured farmers whose subsidies had changed as a result of the introduction of the euro, in other words *from* 1 January 1999, and who were also entitled to expect freezing of their direct aid, in other words, *up to* and including 1 January 1999;

— for those reasons, Regulation No 1639/1999, the purpose of which is to calculate the amount of aid where the operative event occurred after 1 January — that is to say, on 1 July 1999 — does not apply the corrective increase.

20. This historical and teleological interpretation (the Commission prefers to call it 'systematic') is, in the defendant's view, supported by the literal exegesis of Article 6, which provides for an increase in aid in order to compensate for 'a reduction in the agricultural conversion rate frozen until 1 January 1999'. Possible reductions in aid where the operative event occurred *after* 1 January are, therefore, excluded because, once that date had passed, it was no longer possible to talk about 'frozen rates'.

21. The Italian Government replies that there can be no doubt that Article 6 of Regulation No 2813/98 applies to all aid affected by the freezing of conversion rates, prescribed until 1 January 1999 without any reference to operative events. Since that is a clear, unequivocal rule, it is not

10 — An example will clarify the problem. Let us suppose that the frozen conversion rate for the lira had been ECU 1 = ITL 1 000 and that, when the euro was adopted, the lira had been revalued by 10%, making EUR 1 equal to ITL 900. Compensatory aid of EUR 0.10 would then have been granted, which would have been equal to the revaluation. However, converting that EUR 0.10 into Italian currency at the new revalued rate would only have produced ITL 90. The amount converted at the new rate plus the compensatory aid would not have completely cancelled out the loss of income caused by the revaluation (900 + 90 = 990 > 1000).

appropriate to replace it with the presumed intention of the legislature, which would have to be inferred from the preparatory documents.

Furthermore — the Italian Government goes on to say — the same problem of legitimate expectations arises, in similar terms, in the case of farmers whose entitlement to aid arises after 1 January.

22. First of all, the applicant government's last argument should be rejected. As the Commission rightly asserts, operators with interests in aid for which the operative event occurred after 1 January 1999 were not entitled to rely on any legitimate expectations because the guarantees from the Community legislature regarding the freezing of conversion rates expired after that date.

23. Second, attention should be drawn to the fact that the applicant accepts, or at least does not contest, the Commission's attempt to explain the *raison d'être* of Article 6 of Regulation No 2813/98.

24. At the hearing, contrary to what had previously been its position in these proceedings, the Italian Government questioned the relevance and plausibility of the Commission's explanation, formulating its own theory concerning the reasons for the introduction of the corrective increase. That argument, which, unlike the Commission's contention, has no basis anywhere in the pleadings, should, in any event, be ruled out of time, since it was put forward after expiry of the period allowed for submissions by the parties.

25. It remains to be seen whether, as the Italian Government claims, a literal interpretation of Article 6 of Regulation No 2813/98 implies incontrovertibly that the Commission acted unlawfully in restricting the corrective increase to direct aid the entitlement to which arose on 1 January 1999.

26. In Italy's view, Regulation No 1639/1999 is invalid owing to the general and unambiguous wording of Article 6 of Regulation No 2813/98. Under that provision — as construed by the applicant — all direct aid for which the operative event took place in 1999 is eligible for the corrective increase provided for in Article 6.

27. A first reading of the contested provision does not provide a clear understanding of its temporal scope. The mechanism in Article 6 purports to supplement the excep-

tional compensatory aid provided for in Article 4(2) of the same regulation, to which Article 6 refers. However, no useful guidance can be found in the wording of Article 4(2) either, since it merely determines the method of calculating the transitional compensatory aid by reference to the ordinary arrangements laid down in Article 5(2) of Regulation No 2799/98. Article 4(1) of Regulation No 2813/98 alone points us in the right direction: Article 6, together with the remaining provisions of Title II, is one of the 'detailed rules for granting the compensatory aid referred to in Article 3 of Regulation (EC) No 2800/98'. Article 3(1) of Regulation No 2800/98 restricts the granting of compensatory aid to situations where 'the conversion rate for the euro into national currency units or the exchange rate for the euro into national currency applicable *on the day of the operative event* in 1999... is lower than the rate applied previously'. [11] Although the purpose of the words I have highlighted appears only to be to determine the applicable exchange rate in temporal terms, given that the conversion rates are fixed and irrevocable, it can be inferred from the scheme of the transitional arrangements that the aid to which they refer is all aid for which the operative event took place in 1999, and that aid alone.

28. That being the situation, it appears that Title II of Regulation No 2813/98, which includes the provision whose interpretation is in dispute, contains the implementing rules for *all* direct aid the entitlement to which arose in 1999.

29. However, doubts soon begin to emerge.

30. First, Title II of Regulation No 2813/98 states that it implements Article 3 of Council Regulation No 2800/98, which thus appears to become the legal basis for Title II. However, there is no provision in that regulation authorising the Commission to determine the corrective increase under Article 6. The validity of Article 6 would be open to question, there being no provision for it in the enabling legislation, were it not for the fact that neither party has raised the point and, in particular, the fact that Regulation No 2799/98, which in principle concerns the agrimonetary arrangements for the euro, contains, in its Article 10(1), a curious enabling clause which, in broader terms than usual, empowers the Commission to adopt the transitional measures which 'prove necessary to facilitate the initial application of [Regulation No 2799/98]', which will 'remain applicable for the period strictly necessary to facilitate the introduction of the new arrangements'. While it is true that the purpose of Regulation No 2813/98 is to implement Regulation No 2800/98, it is also true that Regulation No 2800/98 refers to Regulation No 2799/98 as regards calculating the amount of the aid. This complex series of references could be used by the Commission to *create* the arrange-

11 — Emphasis added.

ments for corrective increases, relying on Article 10 of Regulation No 2799/98. This, in all probability, is how the second reference in the preamble to Regulation No 2813/98, which mentions Regulation No 2799/98, 'and, in particular, Article 10 thereof', should be interpreted.

31. These considerations lead me to conclude that, appearances notwithstanding, the legal basis for Article 6 of Regulation No 2813/98 is not Article 3 of Regulation No 2800/98 but rather Article 10 of Regulation No 2799/98. Consequently, rather than the reference to 'the day of the operative event in 1999' in Article 3 of Regulation No 2800/98, I prefer the statement in Article 10 of Regulation No 2799/98 that the measures will remain applicable 'for the period strictly necessary to facilitate the introduction of the new arrangements'. This limited power of intervention is not conducive to the interpretation put forward by the Italian Government, which, by extending the corrective increase to all aid for which the operative event occurred in 1999, amounts to a redefinition of the method of calculating the amount of compensatory aid, and is different from the method laid down by the Council in Article 5 of Regulation No 2799/98.

That will be the first basis of my interpretation.

32. Second, I would point out that the wording of Article 6 of Regulation No 2813/98 is unusual, if one accepts the applicant government's interpretation as correct. What the provision actually states is that there will be an increase in 'the maximum amount of the compensatory aid referred to in Article 4(2) *resulting from a reduction in the agricultural conversion rate frozen until 1 January 1999*'. [12] If, as Italy claims, the increase were to apply to all direct aid the entitlement to which arose in 1999, that clarification would be superfluous because, under Regulation No 1527/95 and other relevant provisions, all direct aid granted under the common agricultural policy was frozen until 1 January 1999.

33. It is necessary to go beyond that first superficial reading to understand that the significant, defining element of the provision is not so much the 'compensatory aid' as the 'reduction' which gives rise to it: the compensatory aid which results from a reduction in the frozen conversion rate is eligible for the corrective increase. It so happens that *reducción*, *réduction*, *reduction*, *riduzione* and *Verringerung* — to cite just the main language versions — all contain the same ambiguity; the word 'reduction' implies both the *action* and the *effect* of reducing. There is, thus, no distinction between the *action* designed to make a specific variable smaller — such as the adoption of a lower conversion rate by the legislature — and the *outcome* of that action. It is this aspect of the word which, at first sight, makes the Italian Govern-

12 — Emphasis added.

ment's suggested interpretation of the provision appear feasible.

However, if, as we must, we undertake a more thorough semantic analysis, we discover that not only is the verb 'to reduce' transitive but that the amount whose reduction is predicated is necessarily also the direct object of the sentence. [13] In other words, the verb 'to reduce' presupposes the existence of a subject to whom the reduction of the variable in question can be attributed; in order to reduce, there must be someone who reduces. This does not happen with other verbs of similar semantic content, such as 'decrease'.

34. Therefore, of the possible interpretations of Article 6 of Regulation No 2800/98, only intervention by the legislature, in the form of lowering the agricultural conversion rates which it had itself previously frozen, amounts to a reduction in the strict sense indicated above. If a comparison of the frozen agricultural conversion rate with the exchange rate applicable on a date after the freeze on rates was lifted — as contemplated in Article 5(2) of Regulation No 2799/98, to which Regulation No 2813/98 refers — indicated a downward trend, that would, perhaps, involve a 'decrease' but never, in the absence of a subject to whom the action could be imputed, a 'reduction'.

13 — Thus, we talk about 'reducing inflation', 'reducing the money supply' and 'reducing unemployment'.

35. It could be argued that, since the decrease is caused by the irrevocable fixing of conversion rates between the euro and national currencies, adopted by the Council in Regulation No 2866/98, the decrease in agricultural conversion rates should be attributed to that measure. However, to do so would overlook the fact that Regulation No 2866/98 does not deal at all with agricultural conversion rates, that the agri-monetary arrangements for the euro do not provide for such legal instruments and that, accordingly, the legislature has equated the arrangements for 'compensation for reductions in the rates applied to direct aid' (the heading of Title II of Regulation No 2813/98) with a situation where there has been a decrease in the applicable exchange rate, which is governed by Article 5 of Regulation No 2799/98.

In other words, for the purposes of the arrangements for direct aid, variations in the rates applied to the common agricultural policy as a result of the adoption of the euro are similar to an evolution of the exchange rates in line with the market. However, this evolution is characterised by the fact that it is subject to rises and falls in relation to the earlier prevailing situation, rather than to increases and reductions.

36. The interpretation which I propose is, furthermore, supported by the legislature's choice of terminology which is, on the whole, consistent. Article 5(1) of Regulation No 2799/98, in describing situations where there is an entitlement to grant compensatory aid, talks not of a *reduction*

in the rate but of a rate which 'is below that applicable previously'. Regulation No 1527/95, which introduced the freezing of the rates was, according to Article 1 of the French version, intended to apply in the event of a 'baisse' (fall) in the agricultural conversion rate.

37. I do acknowledge, however, that it is not uncommon for 'reduction' to be used — albeit incorrectly — intransitively and that there is no shortage of contradictions in the wording of Community legislation in the different languages.

38. In any event, the other aspects of a literal interpretation lead me to the same conclusion as the semantic analysis above. I refer to the punctuation marks — or, rather, to their absence — in the single sentence of Article 6 of Regulation No 2813/98. In order for the applicant's claim to be successful, the phrase 'frozen until 1 January 1999' would need to serve an unequivocally epithetic function, for which it would need to be placed between commas. Then, irrespective of the meaning assigned to the word 'reduction', the circumstances covered could be taken to include any change in the agricultural conversion rate, which just happened to have been frozen until the date indicated. The absence of commas means that there is a precise definition of the conversion rate whose decrease — or reduction, if that word is preferred — is relevant: so only conversion rates which were frozen until 1 January 1999 are covered.[14] As the Commission rightly points out, any subsequent fall would fall outside the scope of the provision, since the agricultural conversion rates are no longer frozen.

39. It can therefore be inferred from the arguments relating to this aspect of the application that an interpretation in accordance with the wording of Article 6 of Regulation No 2813/98, compatible with the historical and teleological explanation put forward by the Commission, which has not been validly contested by the Italian Government, is, at least, possible and must accordingly be preferred by virtue of the presumption of legality which attaches to legal instruments adopted by the competent authority. An interpretation along those lines complies, moreover, with the enabling rule upon which the contested provision is based, namely, Article 10(1) of Regulation No 2799/98, pursuant to which the transitional measures necessary will remain 'applicable for the period strictly necessary to facilitate the introduction of the new arrangements'.

40. As part of this first plea in law, the Italian Government also argues that Reg-

14 — In fact, 'the rate which was frozen' is not the same as 'the rate, which was frozen', and likewise the phrase 'European currencies which were devalued' should not be confused with 'European currencies, which were devalued'. The first construction singles out the subject, whereas the second merely characterises it but lacks the capacity to define.

ulation No 1639/1999, which is the object of the application, lacks a statement of reasons, contrary to Article 253 EC, and that it was adopted as a result of a misuse of powers. These allegations, which have barely merited any further discussion, are apparently based on the 'unforeseen' nature attributed by the applicant to the legislative amendment which it claims that the contested regulation contains. Since I have reached the opposite conclusion in relation to the main argument, I must propose that these secondary arguments should be rejected, as should, accordingly, the plea in law as a whole.

The second plea in law

41. It appears from the various stages of the written procedure that the Italian Government also contests Regulation No 1639/1999 on the ground that it breaches the principle of equal treatment for farmers laid down in Article 34 EC. There would be intolerable discrimination between the treatment of farmers in receipt of direct aid for which the operative event was 1 January 1999, and to whom the increase prescribed by Article 6 of Regulation No 2813/98 would therefore apply — under Regulation (EC) No 755/1999 [15] — and that of farmers who, by virtue of receiving aid the entitlement to which arose on a later date, are not eligible for the corrective increase.

42. If the interpretation which I propose is accepted, the difference in treatment to which the applicant government refers would arise not from the contested regulation but from Regulation No 2813/98, which is not at issue in these proceedings, with the result that this plea in law must be rejected. In any event, it is my view that the arguments put forward by the Commission to explain the legislative origin of the corrective increase, particularly the desire not to frustrate the legitimate expectations of the recipients, are well founded and suffice to justify the difference in treatment.

43. The second plea in law must accordingly be rejected.

Costs

44. Since I have proposed that the application be dismissed in its entirety, the Italian Government should be ordered to pay the costs, pursuant to Article 69(2) of the Rules of Procedure.

15 — Commission Regulation of 12 April 1999 fixing the maximum compensatory aid resulting from the rates for the conversion of the euro into national currency units and the exchange rates applicable on 1 and 3 January 1999 (OJ 1999 L 98, p. 8).

Conclusion

45. In view of all the foregoing considerations, I propose that the Court of Justice dismiss the action brought by the Italian Government and order the Italian Government to pay the costs.