JUDGMENT OF THE COURT (Grand Chamber)

11 March 2008 *

In Case C-420/06,

REFERENCE for a preliminary ruling under Article 234 EC by the Verwaltungsgericht Schwerin (Germany), made by decision of 24 August 2006, received at the Court on 16 October 2006, in the proceedings

Rüdiger Jager

v

Amt für Landwirtschaft Bützow,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts and A. Tizzano, Presidents of Chambers, R. Silva de Lapuerta, K. Schiemann, A. Ó Caoimh (Rapporteur), J.-C. Bonichot and A. Arabadjiev, Judges,

* Language of the case: German.

Advocate General: Y. Bot,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the written procedure and further to the hearing on 18 September 2007,

after considering the observations submitted on behalf of:

— Mr Jager, by K. Mueller, Rechtsanwältin,

— the Amt für Landwirtschaft Bützow, by E. Schäfer, acting as Agent,

— the Greek Government, by V. Kontolaimos and E. Svolopoulou, acting as Agents,

— the Commission of the European Communities, by F. Erlbacher, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 27 November 2007,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 57 to 63 of 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 provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2003 L 141, p. 18), as amended and corrected by Commission Regulation (EC) No 239/2005 of 11 February 2005 (OJ 2005 L 42, p. 3) ('Regulation No 796/2004'), and Article 2(2) of 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).

2 The reference was made in the context of proceedings between Mr Jager, a farmer, and the Amt für Landwirtschaft Bützow (Office for Agriculture, Bützow; 'the Amt') regarding the grant of suckler cow premia for the year 2001.

Legal context

Community legislation

Identification and registration of bovine animals

3 Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ 1997 L 204, p. 1) lays down, in Articles 1 to 10, the obligations to be complied with concerning the identification and registration of bovine animals.

4 Under Article 24(2) of Regulation No 1760/2000, references to Regulation No 820/97 are to be construed as references to Regulation No 1760/2000.

The aid scheme applicable to bovine animals

— Regulation (EC) No 1254/1999

5 Pursuant to Article 6(1) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal (OJ 1999 L 160, p. 21), a producer keeping suckler cows on his holding may qualify, on application, for a premium for maintaining suckler cows, called 'the suckler cow premium', per calendar year and per producer within the limits of individual ceilings.

6 According to Article 21 of that regulation, to qualify for that premium, an animal must be identified and registered in accordance with Regulation No 820/97.

— Regulation (EC) No 1782/2003

7 With effect from 1 January 2005, the above two provisions of Regulation No 1254/1999 were repealed by 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 and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1, and corrigendum, OJ 2004 L 94, p. 70).

8 Recitals 2 and 24 in the preamble to Regulation No 1782/2003 state:

'(2) The full payment of direct aid should be linked to compliance with rules relating to agricultural land, agricultural production and activity. Those rules should serve to incorporate in the common market organisations basic standards for the environment, food safety, animal health and welfare and good agricultural and environmental condition. If those basic standards are not met, Member States should withdraw direct aid in whole or in part on the basis of criteria which are proportionate, objective and graduated. Such withdrawal should be without prejudice to sanctions laid down now or in the future under other provisions of Community or national law.

...

(24) Enhancing the competitiveness of Community agriculture and promoting food quality and environment standards necessarily entail a drop in institutional prices for agricultural products and an increase in the costs of production for agricultural holdings in the Community. To achieve those aims and promote more market-oriented and sustainable agriculture, it is necessary to complete the shift from production support to producer support by introducing a system of decoupled income support for each farm. While decou-

pling will leave the actual amounts paid to farmers unchanged, it will significantly increase the effectiveness of the income aid. It is, therefore, appropriate to make the single farm payment conditional upon cross-compliance with environmental, food safety, animal health and welfare, as well as the maintenance of the farm in good agricultural and environmental condition.'

9 According to Article 1 of Regulation No 1782/2003:

'This Regulation establishes:

— common rules on direct payments under income support schemes in the framework of the common agricultural policy which are financed by the "Guarantee" Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) [listed in Annex I], except those provided for under [Council] Regulation (EC) No 1257/1999 [of 17 May 1999 on support for rural development from the EAGGF and amending and repealing certain Regulations (OJ 1999 L 160, p. 80)],

— an income support for farmers (hereinafter referred to as the "single payment scheme");

— support schemes for farmers producing … beef and veal …'

10 'Direct payment' is defined in Article 2(d) of Regulation No 1782/2003 as referring to 'a payment granted directly to farmers under an income support scheme listed in Annex I' of that regulation. That Annex mentions, inter alia, the suckler cow premium in the beef and veal sector.

11 The common rules on direct payments appear under Title II of Regulation No 1782/2003, entitled 'General Provisions', Chapter 1 of which, itself entitled 'Cross-compliance', contains Articles 3 to 9 of that regulation.

12 Article 3(1) of the regulation provides as follows:

'A farmer receiving direct payments shall respect the statutory management requirements referred to in Annex III, according to the timetable fixed in that annex, and the good agricultural and environmental condition established under Article 5.'

13 According to Article 4(1) of Regulation No 1782/2003, the statutory management requirements referred to in Annex III concern public, animal and plant health, the environment and animal welfare. Among those statutory requirements, contained in 18 directives and regulations, Section A.8 of that annex mentions Articles 4 and 7 of Regulation No 1760/2000.

14 Article 6(1) of Regulation No 1782/2003 provides:

'Where the statutory management requirements or good agricultural and environmental condition are not complied with, as a result of an action or omission directly attributable to the individual farmer, the total amount of direct payments to be granted in the calendar year in which the non-compliance occurs, and after application of Articles 10 and 11, shall be reduced or cancelled …'

15 According to Article 7(1) of that regulation, detailed rules for the reductions and exclusions are to be laid down by taking into account, in particular, the severity, extent, permanence and repetition of the non-compliance found.

16 Article 10(1) of Chapter 2, headed 'Modulation and financial discipline', of Title II of that regulation provides that all the amounts of direct payments to be granted in a given calendar year to a farmer in a given Member State are to be reduced for each year until 2012 by the percentages determined in that provision.

17 Pursuant to Article 11 of Regulation No 1782/2003, also contained in Chapter 2, those amounts may, each year, be subject to an adjustment decided by the Council of the European Union for reasons of financial discipline.

18 Title III of that regulation, entitled 'Single payment scheme', contains in Chapters 1 to 4 thereof, the basic rules applicable to that system of income support for farmers which is 'decoupled' from production. It follows from Articles 33(1)(a), 38 and 41 of that regulation that farmers who have benefited, in a reference period comprising the

calendar years 2000 to 2002, from a payment under at least one of the aid schemes referred to in Annex VI to the regulation, which includes the suckler cow premium, are entitled to aid calculated on the basis of a reference amount obtained for each farmer from the annual average, for that period, of the total payments granted under those systems. The sum of the reference amounts is not to be higher than the national ceiling fixed for each Member State in Annex VIII to the regulation.

19 Chapter 5 of Title III, entitled 'Regional and optional implementation', permits Member States to decide, by 1 August 2004 at the latest, to apply the single payment scheme provided for in Chapters 1 to 4 of Title III, in particular, at regional level or partially.

20 Section 1 of Chapter 5 of Title III, entitled 'Regional implementation', is composed of Articles 58 to 63. Pursuant to Articles 58(1) and (3) and 59(1) and (2) of Regulation No 1782/2003, a Member State may regionalise the single payment scheme by dividing its national ceiling, not individually among the farmers of that State on the basis of their respective reference amounts, but among the different regions which make up its territory, and by distributing the amount of each regional ceiling thus obtained at a standard rate between all the farmers of the region concerned, each of them receiving entitlements the unit value of which is calculated by dividing that regional ceiling by the number of eligible hectares established at regional level.

21 Section 2 of Chapter 5, entitled 'Partial implementation', is composed of Articles 64 to 69. Pursuant to the provisions of that section, the Member States may maintain at national or regional level, under a 'recoupling' system, certain direct payments linked to production. Article 68 of Regulation No 1782/2003, headed 'Beef and veal payments', provides, in that connection, in the first and third subparagraphs of paragraph (2)(a)(i) thereof, that Member States may continue to pay the suckler cow premium under conditions provided for in Chapter 12 of Title IV of that regulation.

22 Title IV, entitled 'Other aid schemes', contains provisions relating to those last mentioned systems of 'decoupled' direct payments. In that title, Article 138 of Regulation No 1782/2003, which falls under Chapter 12, entitled 'Beef and veal payments', provides that, in order to qualify for direct payments for beef and veal, including the suckler cow premium referred to in Articles 125 to 128 of the regulation, an animal must be identified and registered in accordance with Regulation No 1760/2000.

Detailed rules for applying the aid schemes applicable to bovine animals

— Regulation (EEC) No 3887/92

23 Article 10c 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 (OJ 1992 L 391, p. 36), as amended by Commission Regulation (EC) No 2801/1999 of 21 December 1999 (OJ 1999 L 340, p. 29), ('Regulation No 3887/92') lays down the rules applicable to the reduction of aid for non-compliance with the registration requirements for bovine animals in respect of which no request for aid has been presented. That article is worded as follows:

'1. As regards bovine animals other than those covered by Article 10b, where on-the-spot checks reveal that the number of animals present on the holding and eligible for or relevant to Community aids does not correspond to:

(a) the animals notified to the computerised database in accordance with Article 7 of Regulation … No 820/97;

(b) the animals entered in the farmer's register in accordance with Article 7 of Regulation … No 820/97;

(c) the passports of animals held on the holding in accordance with Article 6 of Regulation … No 820/97,

the total amount of the aid granted to the applicant for the aid scheme concerned for the 12 months prior to the on-the-spot check revealing such findings shall, except in cases of *force majeure*, be reduced proportionately.

The reduction shall be calculated on the basis of the number of all animals present for the scheme concerned or entries in the computerised database in accordance with Article 5 of Regulation … No 820/97 or passports or farmer's register entries whereby the lowest figure shall be taken.

…

3. If the difference found during an on-the-spot check is greater than 20% of the number of eligible animals established, no premium shall be granted for the 12 months prior to the on-the-spot check.'

— Regulation (EC) No 2419/2001

24 Regulation No 3887/92 was repealed by Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 1992 L 327, p. 11, and corrigendum, OJ 2002 L 7, p. 48). According to the second sentence of Article 53(1) of Regulation No 2419/2001, Regulation No 3887/92 continues to apply, however, in respect of aid applications relating to marketing years or premium periods starting before 1 January 2002.

25 Articles 36 to 43 of Regulation No 2419/2001, which come under Title IV, entitled 'Basis for the calculation of the aid, reductions and exclusions', contain the rules applicable to findings in relation to 'livestock' aid applications.

26 Under the heading 'Non-compliance with the provisions concerning the identification and registration of unclaimed bovine animals', the first subparagraph of Article 39(1) of that regulation states as follows:

'Where cases of non-compliance with the provisions of the system for the identification and registration of bovine animals are found as a result of an on-the-spot check concerning unclaimed bovine animals, the total amount of aid to which the farmer is entitled pursuant to Article 36(3) under the bovine aid schemes for the premium period concerned, where appropriate after the application of reductions in accordance with Article 38, shall, except in cases of *force majeure* or exceptional circumstances within the meaning of Article 48, be reduced by an amount to be calculated on the basis of the formula set out in paragraph 2.'

27 In accordance with that paragraph 2, the amount of the reduction is determined by applying to the total amount of aid to which the farmer is entitled under the bovine aid schemes for the premium period concerned a coefficient corresponding to the relationship between the number of cases of non-compliance and the number of bovine animals present on the holding at the time of the on-the-spot check, that coefficient being weighted to take into account the average number of bovine animals on the holding during the year in which the on-the-spot check is carried out.

28 Article 1(11)(a) of Commission Regulation (EC) No 118/2004 of 23 January 2004 amending Regulation No 2419/2001 (OJ 2001 L 17, p. 7) added the following sentence to the first subparagraph of Article 39(1):

'However, the amount of aid to be reduced shall not be more than 20% of [the] total amount [of the aid] to which the farmer is entitled [under the bovine aid schemes for the premium period concerned].'

— Regulation No 796/2004

29 Regulation No 796/2004 repealed Regulation No 2419/2001. Pursuant to the second paragraph of Article 81, Regulation No 796/2004 is to apply to aid applications relating to marketing years or premium periods starting as of 1 January 2005.

30 Recitals 12, 55 and 56 in the preamble to Regulation No 796/2004 are worded as follows:

> '(12) Regulation … No 1782/2003 leaves a choice for the Member States with regard to the application of certain of the aid schemes provided for therein. This regulation, therefore, has to make provisions for the administration and control needs in view of any possible choice that might be taken. These provisions to be established in this Regulation may, therefore, only apply to the extent as the Member States have taken such choices.
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> …
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> (55) To protect the Community's financial interests effectively adequate measures should be adopted to combat irregularities and fraud. Separate provisions should be made in cases of irregularities found with regard to eligibility criteria for the different aid schemes concerned.
>
> (56) The system of reductions and exclusions envisaged in Regulation … No 1782/2003 with regard to cross-compliance obligations however targets … a different aim, namely to set an incentive for farmers to respect the, already existing, legislation in the different fields of cross-compliance.'

31 Title III of Regulation No 796/2004, dealing with controls, contains a Chapter III, entitled 'Controls relating to cross-compliance'. In that chapter, Article 48(1) and its

subparagraphs (b) and (c) provide that every on-the-spot check is to be the subject of a control report to be established by the competent control authority, which includes a number of parts. One of those must reflect separately the checks carried out in respect of each of the acts and standards, while another part, called 'evaluation', must give an assessment of the importance of the non-compliance in respect of each act and/or standard on the basis of the criteria 'severity', 'extent', 'permanence' and 'repetition' with an indication of any factors that should lead to an increase or decrease of the reduction to be applied.

32 Title IV of Regulation No 796/2004 defines the rules concerning the basis for the calculation of the aid, reductions and exclusions.

33 Under that title, Chapter I, entitled 'Findings in relation to eligibility criteria', contains, at Articles 57 to 63, provisions which apply in that regard to livestock premia, including Article 59, fixing the 'reductions and exclusions in respect of bovine animals claimed for aid'.

34 Chapter II of that same title, entitled 'Findings in relation to cross-compliance' contains inter alia the following provisions:

'*Article 66*

Application of reductions in the case of negligence

1. Without prejudice to Article 71, where a non-compliance determined results from the negligence of the farmer, a reduction shall be applied on the overall amount

of direct payments, as defined in Article 2(d) of Regulation … No 1782/2003, that has been, or has to be, granted to the farmer concerned following aid applications he has submitted or will still submit in the course of the calendar year of the finding. That reduction shall, as a general rule, be 3% of that overall amount.

However, the Paying Agency may, on the basis of the assessment provided by the competent control authority in the control report in accordance with Article 48(1)(c), decide either to reduce that percentage to 1% or to increase it to 5% of that overall amount or, in the cases referred to in the second subparagraph of Article 48(1)(c), not to impose any reductions at all.

2. Where more than one case of non-compliance with regard to various acts or standards of the same area of cross-compliance have been determined, those cases shall, for the purposes of the fixing of the reduction in accordance with paragraph 1, be considered as one non-compliance.

3. Where more than one non-compliance with regard to different areas of cross-compliance have been determined, the procedure for the fixing of the reduction as set out in paragraph 1 shall be applied individually to each non-compliance.

However, a non-compliance with a standard which also constitutes a requirement shall be considered to be one non-compliance.

The resulting percentages of reductions shall be added together. However, the maximum reduction shall not exceed 5% of the overall amount referred to in paragraph 1.

4. Without prejudice to cases of intentional non-compliance in accordance with Article 67, where repeated non-compliances have been determined, the percentage fixed in accordance with paragraph 1 with regard to the first non-compliance shall, in respect of the first repetition, be multiplied by the factor three. For this purpose, the Paying Agency shall, in the case where that percentage was fixed in accordance with paragraph 2 determine the percentage that would have been applied to the first non-compliance with the requirement or standard concerned.

In the case of further repetitions the multiplication factor three shall be applied each time to the result of the reduction fixed in respect of the previous repeated non-compliance. The maximum reduction shall, however, not exceed 15% of the overall amount referred to in paragraph 1.

Once the maximum percentage of 15% has been reached, the Paying Agency shall inform the farmer concerned that if the same non-compliance is determined again, it shall be considered that he has acted intentionally within the meaning of Article 67. Where a further non-compliance is determined thereafter, the percentage reduction to be applied shall be fixed by multiplying the result of the previous multiplication, where applicable, before the limitation to 15% as provided for in the last sentence of the second subparagraph has been applied, by a factor of three.

5. In the case where a repeated non-compliance is determined together with another non-compliance or another repeated non-compliance, the resulting percentage reductions shall be added together. Without prejudice to the third subparagraph of paragraph 4, the maximum reduction shall, however, not exceed 15% of the overall amount referred to in paragraph 1.

Article 67

Application of reductions and exclusions in cases of intentional non-compliance

1. Without prejudice to Article 71, where the non-compliance determined has been committed intentionally by the farmer, the reduction to be applied to the overall amount referred to in the first subparagraph of Article 66(1) shall, as a general rule, be 20% of that overall amount.

However, the Paying Agency may, on the basis of the assessment provided by the competent control authority in the control report in accordance with Article 48(1)(c), decide to reduce that percentage to no less than 15% or, where appropriate, to increase that percentage to up to 100% of that overall amount.

2. Where the intentional non-compliance relates to a particular aid scheme, the farmer shall be excluded from that aid scheme for the calendar year in question.

In cases of extreme extent, severity or permanence or where repeated intentional non-compliances have been determined, the farmer shall, moreover, be excluded from the aid scheme concerned in the following calendar year.'

Temporal application of the administrative penalties for which the Community acts provide

35 Article 1 of Regulation No 2988/95 states:

'1. For the purposes of protecting the European Communities' financial interests, general rules are hereby adopted relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Community law.

2. "Irregularity" shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.'

36 The second sentence of Article 2(2) of that regulation is worded as follows:

'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.'

National legislation

37 In Germany, the Law transposing the reform of the common agricultural policy (Gesetz zur Umsetzung der Reform der Gemeinsamen Agrarpolitik) of 21 July 2004 (BGBl. 2004 I, p. 1763), provides that, as from 1 January 2005, the suckler cow premium must be paid as part of the single payment scheme referred to in Title III of Regulation No 1782/2003. In addition, that law applies the single payment scheme to the regions.

The main proceedings and the question referred for a preliminary ruling

38 During May 2001, Mr Jager applied to the Amt for suckler cow premia in respect of 71 bovine animals for the year 2001.

39 By a decision of 24 January 2002, the Amt rejected his application in its entirety, on the ground that an on-the-spot check had revealed irregularities within the meaning of Article 10c(1) of Regulation No 3887/92, and that the discrepancy which had been found represented more than 20% of the eligible animals.

40 When his objection was unsuccessful, Mr Jager brought judicial proceedings, on 25 July 2002, before the Verwaltungsgericht Schwerin (Administrative Court, Schwerin).

41 In its order for reference, that court notes that, having regard both to the second sentence of Article 2(2) of Regulation No 2988/95 and the judgment in Case C-295/02 *Gerken* [2004] ECR I-6369, establishing the principle that the more lenient penalty is

to be applied, Regulation No 118/2004 is, in any event, relevant in the main proceedings, that regulation having introduced, in the first subparagraph of Article 39(1) of Regulation No 2419/2001, an upper limit, namely that the reduction in the aid may not be more than 20% of the total amount to which the farmer is entitled under the bovine aid schemes for the premium period concerned.

42 The national court takes the view, however, that Regulation No 796/2004, which applies to aid applications relating to marketing years or premium reference periods starting as of 1 January 2005, is even more favourable for Mr Jager. Articles 57 to 63 of that regulation, which largely reproduce the provisions of Articles 36 to 43 of Regulation No 2419/2001, do not, however, contain a provision analogous to Article 39 of the latter regulation. The least severe penalty imaginable for Mr Jager is the absence of any penalty.

43 The Verwaltungsgericht Schwerin queries, however, whether that more favourable provision applies in the case in the main proceedings, because, in Germany, since 1 January 2005, the suckler cow premium has been granted in the form of a single payment, with the result that the provisions relating to 'livestock' premia contained in Articles 57 to 63 of Regulation No 796/2004 are not applicable in that Member State.

44 In those circumstances the Verwaltungsgericht Schwerin decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is a provision imposing a more favourable penalty (concerning livestock aid) to be applied retroactively even if that provision in principle only applies for a period of

time during which livestock aid in the Member State concerned is no longer granted, as a direct payment has been introduced?'

The question referred for a preliminary ruling

Preliminary observations on the scope of the question for a preliminary reference

45 By its question the national court asks, essentially, whether the second sentence of Article 2(2) of Regulation No 2988/95 is to be interpreted as meaning that the provisions laid down by Articles 57 to 63 of Regulation No 796/2004 apply retroactively to an application for 'livestock' aid falling within the scope *ratione temporis* of Regulation No 3887/92, which gave rise to an exclusion from the benefit of aid under Article 10c of the latter regulation, even though the provisions of Regulation No 796/2004 are not applicable *ratione materiae* in the Member State concerned.

46 In the procedure laid down by Article 234 EC providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it (Case C-286/05 *Haug* [2006] ECR I-4121, paragraph 17, and Case C-45/06 *Campina* [2006] ECR I-2089, paragraph 30).

47 Moreover, the Court has a duty to interpret all provisions of Community law which national courts need in order to decide the actions pending before them, even if those

provisions are not expressly indicated in the questions referred to the Court of Justice by those courts (see Case C-304/00 *Strawson and Gagg & Sons* [2002] ECR I-10737, paragraph 58, and *Campina*, paragraph 31).

48 It is clear from the order for reference that the question referred for a preliminary ruling is based on the premiss that — as regards the irregularity at issue in the case in the main proceedings, namely non-compliance, in respect of bovine animals not claimed for aid, with the rules on identification and registration laid down by Regulation No 1760/2000 — Regulation No 796/2004, which came into force in the course of the main proceedings, no longer provides for any sanction, unlike Regulation No 3887/92 or Regulation No 2419/2001, which repealed and replaced Regulation No 3887/92.

49 As Mr Jager, the Greek Government and the Commission of the European Communities rightly submit, that premiss is false.

50 As the national court pointed out, unlike Articles 36 to 43 of Regulation No 2419/2001, which contained the provisions, applicable with regard to the basis for calculation, reductions and exclusions relating to 'livestock' aid applications, Articles 57 to 63 of Regulation No 796/2004, which have the same subject-matter, contain no provision analogous to Article 39 of Regulation No 2419/2001, which, like Article 10c of Regulation No 3887/92, which it replaced, specifically concerned the reduction of the amount of aid for bovine animals in the case of non-compliance with the rules on identification and registration established by Regulation No 1760/2000, in respect of bovine animals not claimed for aid.

51 However, it cannot be deduced from this that Regulation No 796/2004 no longer contains any provision to that effect.

52 In the context of the reform of the common agricultural policy (CAP) instituted by Regulation No 1782/2003, for which Regulation No 796/2004 sets out certain detailed rules of application, the rules on registration and identification laid down by Regulation No 1760/2000 are, henceforth, as follows from Article 3(1) of Regulation No 1782/2003, read in conjunction with Annex III, Section A.8 thereto, subject to the statutory management requirements which all recipients of direct payments must respect pursuant to cross-compliance, both in Member States which have adopted the single payment scheme to which Title III of Regulation No 1782/2003 refers and in those which have opted, pursuant to Article 68 of the regulation, for the partial 'recoupling' of payments for beef and veal referred to in Title IV of that regulation and, accordingly, as regards both bovine animals not claimed for aid and those claimed for aid.

53 In accordance with Articles 6(1) and 7(1) of Regulation No 1782/2003, and as is clear from recital 2 in the preamble to that regulation, infringement of the cross-compliance rules gives rise to the reductions and exclusions set out in Articles 66 and 67 of Regulation No 796/2004.

54 Consequently, non-compliance with the rules on identification and registration laid down by Regulation No 1760/2000, in respect of bovine animals which, as in the case in the main proceedings, are not claimed for aid, falls under Articles 66 and 67 on cross-compliance.

55 On the other hand, Articles 57 to 63 of Regulation No 796/2004, to which the national court refers, are not applicable in a situation such as that in the main proceedings, since they provide for reductions and exclusions applicable in the case of non-compliance with eligibility criteria concerning applications for 'livestock' aid.

56 First, as is clear from Article 138 of Regulation No 1782/2003 and Article 59 of Regulation No 796/2004, those provisions, as rules regarding infringement of the eligibility criteria, are intended to apply only where the identification and registration requirements referred to in Regulation No 1760/2000 are not complied with in respect of bovine animals claimed for aid.

57 Second, and for the same reason, such provisions, as is clear from recital 12 in the preamble to Regulation No 796/2004, will apply only in Member States which have opted for the partial 'recoupling' of payments for beef and veal, so that they do not apply in Member States, like the Federal Republic of Germany, which have, from the outset, adopted the single payment scheme.

58 In the light of the foregoing, to provide the national court with an answer which will be of use to it, it is necessary to reformulate the question referred and to consider that, by its question, the court is seeking to ascertain whether the second sentence of Article 2(2) of Regulation No 2988/95 is to be interpreted as meaning that the provisions laid down by Articles 66 and 67 of Regulation No 796/2004 apply retroactively to an application for 'livestock' aid falling within the scope *ratione temporis* of Regulation No 3887/92, which gave rise to an exclusion from the benefit of aid under Article 10c of the latter regulation.

Interpretation of the second sentence of Article 2(2) of Regulation No 2988/95

59 According to the Court's case-law, the principle of the retroactive application of the more lenient penalty forms part of the constitutional traditions common to the Member States and, accordingly, must be considered to be one of the general principles of Community law, which the Court ensures are respected and which national courts are required to abide by (see, to that effect, Joined Cases C-387/02, C-391/02 and C-403/02 *Berlusconi and Others* [2005] ECR I-3565, paragraphs 67 to 69, and *Campina*, paragraph 32).

60 That principle is expressed more specifically in the second sentence of Article 2(2) of Regulation No 2988/95, pursuant to which the competent authorities are required to apply retroactively to conduct constituting an irregularity within the meaning of Article 2(1), subsequent amendments made by provisions contained in Community sectoral rules introducing less severe administrative penalties (see, to that effect, Case C-354/95 *National Farmers' Union and Others* [1997] ECR I-4559, paragraph 41; *Gerken*, paragraph 61; *Campina*, paragraph 33; and Case C-45/05 *Maatschap Schonewille-Prins* [2007] ECR I-3997, paragraph 55).

61 As the Court has already held, in the area of checks and penalties for irregularities committed under Community law, the Community legislature has, by adopting Regulation No 2988/95, laid down a series of general principles and has required that, as a general rule, all sectoral regulations comply with those principles (see, to that effect, Case C-94/05 *Emsland-Stärke* [2006] ECR I-2619, paragraph 50, and the case-law cited).

62 It must be ascertained whether the conditions set out at paragraph 60 of this judgment are fulfilled in circumstances such as those of the case in the main proceedings.

63 In that regard, it is necessary, first, to note that, as regards bovine animals not claimed for aid, non-compliance with the rules on identification and registration introduced by Regulation No 1760/2000, to which Article 10c of Regulation No 3887/92 is applicable *ratione temporis* in the main proceedings, constitutes an 'irregularity' within the meaning of Article 1(2) of Regulation No 2988/95, where that infringement of a provision of Community law is capable of prejudicing the general budget of the Communities (see, par analogy, *Gerken*, paragraph 49).

64 Second, it should be borne in mind that a complete exclusion from the benefit of the 'livestock' aid scheme in question for the period of twelve months prior to the check, provided for in Article 10c(3) of Regulation No 3887/92, such as that imposed in the case in the main proceedings, clearly constitutes an 'administrative penalty' within the meaning of Article 2(2) of Regulation No 2988/95 (see, to that effect, Case C-63/00 *Schilling and Nehring* [2002] ECR I-4483, paragraphs 26 to 27, and *Gerken*, paragraph 50; see also, by analogy, *National Farmers' Union and Others*, paragraph 40, and *Haug*, paragraph 21).

65 As to whether, third, that system of penalties has been the subject of 'subsequent amendment' within the meaning of the second sentence of Article 2(2) of Regulation No 2988/95, it must be pointed out that, after the 'livestock' aid application at issue in the main proceedings was lodged, Regulation No 3887/92 was repealed and replaced by Regulation No 2419/2001.

66 As the national court itself pointed out, and as all the interested parties who submitted observations to the Court have also accepted, Article 39(1) of the latter regulation — which, as amended by Article 1(11)(a) of Regulation No 118/2004, introduced an upper limit on the reduction applicable for non-compliance with the rules on identification and registration laid down by Regulation No 1760/2000, in respect of bovine animals not claimed for aid — constitutes such a 'subsequent amendment' of the system of penalties defined in Article 10c of Regulation No 3887/92. Article 39(1), which replaced Article 10c, is aimed, in the context of the rules on aid for bovine animals established by Regulation No 1254/1999, at limiting the severity of the penalties applicable for that irregularity (see, by analogy, *Campina*, paragraphs 36 to 38).

67 On the other hand, those interested parties disagree as to whether the system of penalties laid down in Articles 66 and 67 of Regulation No 796/2004, which came into force after Regulation No 118/2004, also constitutes a 'subsequent amendment' within the meaning of the second sentence of Article 2(2) of Regulation No 2988/95.

68 The Commission contends that application of the latter provision implies a revised assessment by the Community legislature as regards the irregularity concerned. The Commission raises the point, as did, in essence, the Amt and the Greek Government, that Regulation No 796/2004 completely restructured and adapted the provisions on penalties to the revised requirements of the single payment scheme and cross-compliance instituted by Regulation No 1782/2003. Neither the recitals in the preamble to Regulation No 796/2004 nor the general context of that regulation justify the conclusion that the penalties referred to in Articles 66 and 67 of that regulation were adopted with the aim of penalising less severely in the future certain irregularities committed under the previous system.

69 Mr Jager claims, on the other hand, that the application of Regulation No 796/2004 cannot automatically be excluded on the sole ground that that regulation forms part of the CAP reform. The national court and the competent national authorities are obliged to take the regulation into account as far as possible, in order to determine, by a comparative calculation based on the facts specific to the case in the main proceedings, whether application of Articles 66 and 67 thereof results in a less severe penalty for the irregularity found.

70 In that regard, it must however be pointed out, as the Advocate General indicated at points 71 to 73 of his Opinion, that the system of penalties established in Articles 66 and 67 of Regulation No 796/2004 is not designed to change the nature or severity of the penalties applicable in the context of the aid system for bovine animals established by Regulation No 1254/1999, but is aimed at adapting those penalties, from the entry into force of Regulation No 1782/2003, to the new regulatory context resulting from the CAP reform introduced by the latter regulation, in order to maintain the coherence of the system of penalties applicable to the aid schemes concerned in the light of the principles underlying that reform. The system introduced by Articles 66 and 67 of Regulation No 796/2004 does not therefore reflect a revised assessment by the Community legislature as to whether the penalty is commensurate with the gravity of the irregularity at issue.

71 As is clear, in particular, from Article 4(1) of Regulation No 1782/2003, recitals 2 and 24 in the preamble to that regulation and recitals 55 and 56 in the preamble to Regulation No 796/2004, the system of reductions and exclusions applicable with regard to cross-compliance is intended to encourage farmers to comply with the already existing Community legislation in the various fields of cross-compliance, in order to incorporate into the CAP standards relating, in particular, to public and animal health, the environment and animal welfare.

72 It is true that, as the Commission itself stated at the hearing, since Articles 10c of Regulation No 3887/92 and 39(1) of Regulation No 2419/2001, as amended by Regulation No 118/2004, provide for penalties to be applied for non-compliance with the rules on identification and registration introduced by Regulation No 1760/2000, in respect of bovine animals not claimed for aid, they can be regarded as pursuing an objective analogous to cross-compliance.

73 However, the fact remains that, following the CAP reform, compliance with those same rules now forms part of a fundamentally different regulatory context providing for a system that no longer supports production but the producer, in the form of a single payment which is subject to compliance with a series of standards in areas such as public and animal health, the environment and animal welfare. Those rules thus fall under an overall system whereby, in accordance with Article 3(1) of Regulation No 1782/2003, on the one hand, they apply to all recipients of direct payments as common rules applicable to all the aid schemes referred to by that regulation and, accordingly, extend beyond solely the aid schemes for bovine animals, and, on the other hand, constitute merely some of the standards to be complied with under cross-compliance.

74 In the light of that objective, the Community legislature was prompted to adapt the system of reductions and exclusions applicable for non-compliance with the identification and registration rules for bovine animals laid down by Regulation No 1760/2000 as regards both the basis and the amount of the penalty, in order to avoid a clash with the cross-compliance rules introduced in the meantime by Regulation No 1782/2003.

75 Thus, as regards the basis of the penalty, since those rules of identification and registration of bovine animals now form part of the common rules with which every recipient of direct payments must comply, the reductions and exclusions applicable in the case of non-compliance with the rules, as laid down in Articles 66 and 67 of Regulation No 796/2004, no longer apply solely to the amounts received under the aid schemes for bovine animals, but also, as provided for in Article 6(1) of Regulation No 1782/2003, to the total amount of direct payments referred to by the latter regulation.

76 In that regard, it must also be pointed out that the total amount of direct payments granted in the context of implementation of the CAP reform does not correspond to the total amount of direct payments received in the context of the rules applicable prior to that reform.

77 As is clear from Article 6(1) of Regulation No 1782/2003, the total amount of direct payments on the basis of which the reductions laid down by Regulation No 796/2004 are determined is subject to the modulation provided for in Article 10(1) of Regulation No 1782/2003 and, where appropriate, the financial discipline introduced by Article 11 thereof.

78 Moreover, that total amount is liable to be affected by the option open to Member States, in accordance with Articles 58 to 63 of Regulation No 1782/2003, and chosen by the Federal Republic of Germany, to regionalise the single payment scheme, such regionalisation entailing determination of the single payment at a standard rate for the beneficiaries established in the regions concerned.

79 As for the amount of the penalty, since the rules on the identification and registration of bovine animals introduced by Regulation No 1760/2000 now constitute only some of the standards to be respected pursuant to cross-compliance, that amount no longer consists of an automatic reduction of the aid, subject, where appropriate, to a ceiling, established on the basis of the number of cases of non-compliance in relation to the number of animals present on the holding, but results from the application of predefined reduction percentages of varying amounts, in accordance with Article 7(1) of Regulation No 1782/2003, according to the severity, extent, permanence and repetition of each case of non-compliance. On the basis of the latter criteria the competent authorities, after evaluating, in application of Article 48(1)(c) of Regulation No 796/2004, the importance of the non-compliance in respect of each of the rules on cross-compliance, may decide to decrease or increase the percentage of the reduction, or not to make any reduction.

80 Moreover, pursuant to Article 66(3) of Regulation No 796/2004, where more than one non-compliance with regard to different areas subject to cross-compliance are determined, the percentages of reduction relating to each case are, up to a certain ceiling, added together.

81 Since, before Regulation No 1782/2003 entered into force, the rules now imposed pursuant to cross-compliance other than those concerning the identification and registration of bovine animals introduced by Regulation No 1760/2000 did not fall under the conditions to be complied with for the grant of aid for bovine animals and, accordingly, they were not subject to the checks carried out by the competent authorities, it was not possible for those authorities to make a finding of infringement for the purpose of applying penalties regarding that aid.

82 In those circumstances, it must be found that the system of penalties provided for by Articles 66 and 67 of Regulation No 796/2004, being so directly and closely related to the CAP reform introduced by Regulation No 1782/2003, cannot, without distorting the system of cross-compliance as envisaged by the Community legislature in the context of that reform, be transposed to a case of non-compliance with the rules of identification and registration of bovine animals falling *ratione temporis* under Regulation No 3887/92.

83 Accordingly, there is no need for the Court to examine whether the application, were it possible, of the provisions of that system of penalties, or some of them, would entail a less severe administrative penalty in a situation such as Mr Jager's. It must be held that, as the system does not constitute a 'subsequent amendment', within the meaning of the second sentence of Article 2(2) of Regulation No 2988/95, of the system of penalties provided for by Regulation No 2419/2001, as amended by Regulation No 118/2004, it cannot be relied on in a context such as that in the main proceedings.

84 On the other hand, as the national court itself pointed out, and as all the interested parties who submitted observations to the Court also accepted, Article 39(1) of Regulation No 2419/2001, as amended by Regulation No 118/2004, may be relied on in such a context. That provision which, as stated at paragraph 66 of this judgment, does constitute such a 'subsequent amendment' of Article 10c of Regulation No 3887/92, inasmuch as it introduces inter alia an upper limit on the reduction applicable, contains a system of penalties which are less severe than those set out in the latter provision. It is therefore for the national court to apply Article 39(1) retroactively to Mr Jager.

85 It follows from the foregoing that, in answer to the question referred, the second sentence of Article 2(2) of Regulation No 2988/95 is to be interpreted as meaning that the provisions laid down by Articles 66 and 67 of Regulation No 796/2004 may not be applied retroactively to an application for 'livestock' aid falling within the scope *ratione temporis* of Regulation No 3887/92, which gave rise to an exclusion from the benefit of aid under Article 10c of that regulation.

Costs

86 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

The second sentence of Article 2(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communi-

ties' financial interests is to be interpreted as meaning that the provisions laid down by Articles 66 and 67 of 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 provided for in 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, as amended and corrected by Commission Regulation (EC) No 239/2005 of 11 February 2005, may not be applied retroactively to an application for 'livestock' aid falling within the scope *ratione temporis* 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, as amended by Commission Regulation (EC) No 2801/1999 of 21 December 1999, which gave rise to an exclusion from the benefit of aid under Article 10c of that regulation.

[Signatures]