OPINION OF ADVOCATE GENERAL STIX-HACKL

delivered on 12 July 2001 [1]

I — Introductory remarks

1. In this case, the national court (Länsrätten i Norrbottens län (Sweden)) refers for a preliminary ruling the question whether under Community law the right to a compensatory allowance for farming in mountain, hill and certain less-favoured areas, which is granted *inter alia* for milk cows, does not exist, irrespective of the actual number of the animals in question, if none of the animals for which a compensatory allowance (hereinafter 'aid') is claimed has been entered in the keeper's register (hereinafter 'stall journal').

II — Facts

2. Ingemar Nilsson, a keeper of animals, applied for such aid for the year 1997 by application dated 2 April 1997. He made the application for a total of fifteen bovine animals, including nine milk cows. An on-the-spot check was carried out on 16 October 1997 to determine the number of bovine animals he had and that a stall journal existed. In this check it was established that, although Mr Nilsson possessed a stall journal, it contained no information about his animals. However, it is not disputed that on the day of the on-the-spot check Mr Nilsson possessed the number of bovine animals stated in the application, subject to the proviso that only seven of the nine milk cows listed in his application were present.

III — The relevant Community provisions

Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes [2]

3. Article 5 reads:

'The system for the identification and registration of animals to be taken into

1 — Original language: German.

2 — OJ 1992 L 355, p. 1.

account for the granting of aid governed by this Regulation shall be set up in accordance with Articles 4, 5, 6 and 8 of Directive 92/102/EEC.'

Council Directive 92/102/EEC of 27 November 1992 on the identification and registration of animals [3]

4. *Articles 4 to 6 and 8 and 9* of Directive 92/102 contain provisions dealing with the stall journal. The Member States are required to ensure that keepers of animals have an officially approved stall journal, which must be kept up to date. Items entered must include the following: the numbers of animals concerned by each entering and leaving operation, and in the case of bovine animals the eartag identifying each animal with an individual alphanumeric code consisting of 14 characters.

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, [4] *as amended by Commission Regulation (EC) No 1648/95 of 6 July 1995 amending Regulation (EEC) No 3887/92 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes* [5]

5. Implementing Regulation No 3887/92 was enacted on the basis of Article 12 of Regulation No 3508/92.

6. Its *Article 6(6)* reads in part:

'Notwithstanding the second subparagraph of the preceding paragraph, where a special premium on slaughter or on the first placing on the market of animals with a view to their slaughter is granted in accordance with the provisions foreseen in the Commission Regulation establishing detailed rules relating to the premium regime foreseen in Articles 4a to 4k of Council Regulation (EEC) No 805/68 [6] each on-the-spot check shall comprise:...'

3 — OJ 1992 L 355, p. 32.
4 — OJ 1992 L 391, p. 36.
5 — OJ 1995 L 156, p. 27.
6 — OJ L 148 of 28 June 1968, p. 24.

7. *Article 10(2)* reads in part:

'2. If the number of animals declared in an aid application exceeds that found during checks the aid shall be calculated on the number of animals found. However, except in cases of *force majeure* and after paragraph 5 has been applied, the unit amount of the aid shall be reduced:

(a) in cases where an application concerns a maximum of 20 animals

— by the percentage corresponding to the difference found if this is not more than two animals,

— by twice the percentage corresponding to the difference found if this is more than two but not more than four animals.

If the difference is greater than four animals, no aid shall be granted;

(b) in other cases:

— by the percentage corresponding to the difference found if this is not more than 5%,

— by twice the percentage, if the difference is more than 5% but not more than 20%.

If the difference found is more than 20% no aid shall be granted...'

8. *Article 10(3)* reads:

'3. Without prejudice to the preceding paragraph, where an on-the-on-the-spot check effected by virtue of Article 6(6) reveals that the number of animals present on the holding and for which an application is likely to be submitted does not correspond to the number of animals entered in the private register the total amount of the special premiums to be

granted to the applicant during the calendar year concerned shall, except in cases of *force majeure*, be reduced proportionately.

However:

— if the difference found during an on-the-on-the-spot check is greater than or equal to 20% of the number of animals present or if a difference of at least 3% or at least two animals is found during two checks in the same year, no premium shall be granted for that calendar year,

— if inaccurate entries in the register are found to be intentional or the result of serious negligence by the applicant in question, he shall be excluded from the special premium scheme for the current calendar year and the following calendar year.'

9. *Article 10(4)*, *subparagraph 1*, reads:

'4. Male bovine animals present on the holding shall not be counted unless identified in the aid application, or, in the case where paragraph 3 is applied, those identified in the register.'

10. Article 11 provides *inter alia* that the penalties laid down in this Regulation shall be without prejudice to additional penalties laid down at national level.

11. Article 13 provides that an application shall be rejected if an on-the-spot check cannot be made through the fault of the farmer.

12. Article 14 provides *inter alia* that the farmer will be required to make reimbursement in cases of wrong payment.

IV — Original proceedings and question submitted by the national court

13. By a decision of 17 December 1997, the Norrbotten county administration (Länsstyrelsen i Norrbottens län) required Mr Nilsson to repay the aid in the amount of SEK 22 632.00 which had been paid to him for nine milk cows in accordance with his application. The reason it stated for its decision was that the on-the-spot check carried out at Mr Nilsson's farm had shown that, although an officially approved stall journal existed there, no information about animals had been entered in it. It was therefore to be assumed that the number of milk cows was nil. The authority based this decision essentially on Article 5 of Regulation No 3508/92. Mr Nilsson then filed a

non-judicial appeal to the Agricultural Board (Jordbruksverk) against the order to repay the aid *in full*. He submitted that it was not denied that, when the on-the-spot check was carried out, he had seven of the nine milk cows for which the aid had been sought. Two milk cows became ill and were slaughtered after the date of the application. The authority dismissed his appeal. Mr Nilsson has appealed to the national court against that decision.

14. In this connection, the Swedish court refers the following question to the Court of Justice for a preliminary ruling:

'With reference to Article 5 of Council Regulation (EEC) No 3508/92, the Court of Justice is requested to give a preliminary ruling on the question whether that article is to be understood as meaning that entitlement to aid is excluded where no notes have been made in the animal keeper's register (stall journal).'

V — The question submitted by the national court

15. It should first be noted that Mr Nilsson has made no submissions and that the defendant authority has largely limited itself to supplying copies from the file of the national administrative proceedings, without considering in more detail the question referred for a preliminary ruling. Only the Commission made more detailed submissions on various aspects of the question referred for a preliminary ruling.

A — *The legal situation at the relevant time*

16. The present case relates to the grant of aid, which, in accordance with the third indent of Article 1(1)(b) of Regulation No 3508/92, is within the scope of that regulation. Article 5 of Regulation No 3508/92 provides that the system of registration of animals which is the subject of this case is to be set up in accordance with Directive 92/102. However, that directive ceased to apply to bovine animals as a result of Regulation (EC) No 820/97. [7]

17. In this connection, the Commission explains that under Article 22 of Regulation No 820/97, the provisions of that regulation apply in principle from 1 July 1997. But by virtue of the second sentence of Article 1(2) of that regulation, the provisions of Title I of that regulation which apply to the registration of bovine animals

7 — Council Regulation (EC) No 820/97 of 21 April 1997 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products (OJ 1997 L 117, p. 1, see Article 1(2), second sentence).

and which are under consideration here replace Directive 92/102 'from the date on which the animals are to be identified under that regulation.' Article 4 of that regulation provides that 'all animals... born after 1 January 1998 or intended for intra-Community trade after 1 January 1998 shall be identified...'. The implementing Regulation for Regulation No 820/97, which contains *inter alia* provisions on the stall journal, applies only from 1 January 1998.[8] From all this the Commission concludes that regulation No 820/97 is not relevant in answering a question referred for a preliminary ruling in connection with national litigation concerning aid for the financial year 1997.

18. The conclusion of the Commission's submissions is to be affirmed, but not the reasoning. For on closer consideration the subject of the national litigation is the fact that Mr Nilsson had not registered any of his animals in the stall journal although he applied for aid for several bovine animals; this infringement was punished by the Swedish authorities by a repayment order. The proceedings therefore concern the interpretation of the Community law basis for any — complete — repayment, that is, for a sanction. But in principle the relevant rules can be determined only by the law prevailing at the date of the presumed infringement.[9] The first event that suggests itself as the act constituting the infringement is the breach of the duty to keep the stall journal properly. In the present case, this breach was committed by omission. Then there is the application for aid. The first-mentioned duty is a permanent duty; the documents before the court indicate no specific date for its breach (for example, breach committed for the first time when the first of the animals which might give a right to receive aid was acquired). But since the failure to make entries in the stall journal fundamentally becomes wrongful only at the point when an application for aid is made for the unregistered animals, the offence, in our opinion, occurred at the latest on this date. In the present case, the application was made at the beginning of April 1997.

19. Taking this date as a basis, it must be concluded that, since Regulation No 820/97 replaced Directive 92/102 (in part) at the earliest from 1 July 1997, this regulation must be disregarded in answering the question referred for a preliminary ruling. The question referred relates to the interpretation of Article 5 of Regulation No 3508/92, and therefore it is necessary to proceed on the assumption that the 'system for identification and registration' mentioned there must be considered in the light of the provisions of Directive 92/102, which at that date was still fully valid.

8 — See Article 10 of Commission Regulation (EC) No 2629/97 of 29 December 1997 laying down detailed rules for the implementation of Council Regulation (EC) No 820/97 as regards eartags, holding registers and passports in the framework of the system for the identification and registration of bovine animals (OJ 1997 L 354, p. 19).

9 — See also Article 49(1) of the Charter of Fundamental Rights of the European Union (OJ C 364, p. 1, of 18 December 2000).

20. In identifying the duties that serve to implement the system (for example, the proper keeping of a stall journal), implementing Regulation No 3887/92, which, according to the second sentence of Article 19, applied from 1 February 1993, must also be taken into account.

B — *The interpretation of Article 5 of Regulation No 3508/92*

21. The Commission considers that the legal consequences of non-registration of bovine animals in the stall journal follow from Article 5 of Regulation No 3508/92 in conjunction with Articles 4 to 6 and Article 8 of Directive 92/102 and also with Articles 10, 11, 13 and 14 of implementing Regulation No 3887/92.

22. In this connection, the Commission stresses the importance of a properly kept stall journal for the effectiveness of the monitoring and identification system required by Article 5 of Regulation No 3508/92. In its written submissions, however, it limits itself mainly to quoting from the Community legislation, giving visual emphasis to some passages. In explanation, it merely submits that Articles 4 and 5 of Directive 92/102 impose on the Member States a duty to ensure that the keepers of animals have a properly kept stall journal in which they must enter information on the animals, the identification numbers and all changes relevant in this respect. This is intended to ensure, in the Commission's opinion, that every animal which may give a right to aid can be identified and all its movements from its birth to its death can be followed.

23. It is true, the Commission submits, that Article 5 of Regulation No 3508/92 does not in itself provide for any sanctions for this eventuality, but this provision is to be seen in conjunction with those of Regulation No 3887/92. Here, it cites certain provisions of Regulation No 3887/92, in particular Article 10(3) and (4), again giving visual emphasis to some passages. It submits that these provisions show that the right to aid must be excluded if the stall journal does not contain the necessary entries.

24. The Commission argues that the complete loss of the right to aid can be an 'appropriate' sanction and in support refers to the judgment in the *Schumacher* case, relating to a similar duty on the part of a person receiving aid, in which the Court of Justice held that, if this duty was disregarded, 'the complete loss of the special premium, although it was a severe sanction, was appropriate and necessary to achieve the goal of the provision in question, that is, to prevent irregularities and deception'. [10]

10 — Judgment in Case C-365/92 [1993] ECR I-6071, at paragraph 30.

25. The question therefore arises as to whether Article 5 of Regulation No 3508/92, in conjunction with Directive 92/102 and implementing Regulation No 3887/92, give rise to sanctions, and if so which sanctions, where aid is applied for in respect of animals not entered in the stall journal.

1. Is a sanction imposed as in the present case justified on the basis of Article 5 of Regulation No 3508/92, in conjunction with Directive 92/102 and implementing Regulation No 3887/92?

(a) Article 5 of Regulation No 3508/92

26. Article 5 of Regulation No 3508/92 requires, only generally, a 'system to be established for the identification and registration of animals which are to be taken into account for the granting of aid' and otherwise simply refers — as explained above — to Articles 4 to 6 and Article 8 of Directive 92/102.

(b) Directive 92/102

27. It is apparent from the provisions of Directive 92/102 cited above in particular that the Member States have an obligation to ensure that the keepers of animals have a stall journal, that they make therein the entries required by the directive and that they keep the stall journal in accordance with particular provisions and that they keep it available.

28. The directive itself contains neither general nor implied references to sanctions. Under Article 189(3) of the EC Treaty (now Article 249(3) EC) and Article 5 EC Treaty (now Article 10 EC), it is, of course, for the Member States to take 'measures necessary to guarantee the application and effectiveness of Community law' [11] and, when they choose a sanction, to ensure that it is 'effective and... acts as a deterrent'. [12]

29. According to the national court, the Kingdom of Sweden has passed the following legislation: Rule 7 of the State Agricultural Board's Rules (Statens jordbruksverks föreskrifter: SJVFS 1994:190) provides that the keepers of animals must record the number of their bovine animals in a register (stall journal) approved by the Agricultural Board. According to the order for reference, Article 15 of the Swedish Regulation 1995:1174 on aid for farming in mountain,

11 — Judgment in Case 68/88 *Commission* v *Greece* [1989] ECR 2965, at paragraph 23; see also the judgments in Case 48/*75 Royer* [1976] ECR 497 and Case C-208/90 *Emmott* [1991] ECR I-4269.

12 — See, for example, Case 14/83 *von Colson and Kamann* [1984] ECR 1891, at paragraph 28.

hill and less-favoured areas states that 'the provisions on controls and penalties regarding aid for animals are to be found in Council Regulation No 3508/92 of 27 November 1992 and Council Regulation (EEC) No 3887/92 of 23 December 1992.'

30. It must therefore be concluded that the Kingdom of Sweden has clearly implemented the provisions of Directive 92/102 on the stall journal in national law with regard to the substantial conditions, but not with regard to controls and penalties. It seems therefore that the penalties are transposed by way of a reference to directly applicable Community law. [13] Since Regulation No 3508/92 — as set out above — does not itself contain any general or specific statements on the matter of sanctions, it is necessary in addition to consider implementing Regulation No 3887/92 in order to answer the question of interpretation referred by the national court.

(c) Implementing Regulation No 3887/92

31. Regulation No 3887/92 is an implementing regulation adopted by the Commission, on the basis of the powers conferred by Article 12 of Regulation No 3508/92. According to the second sentence of Article 12 of that regulation, the implementing regulations relate 'in particular to... d) the administrative and on-the-spot checks and the checks by remote sensing'. So, Regulation No 3887/92, in so far as it relates to 'provisions for the identification and registration of animals', serves to put Article 5 of Regulation No 3508/92 into specific terms.

32. In order to answer the question referred for a preliminary ruling, therefore, it is necessary to consider whether it is possible to derive from this implementing regulation as a whole or from one of its provisions an indication regarding the applicable sanctions for failing to enter animals in the stall journal. Such provisions are in particular contained in Article 10 of the implementing regulation, which I will now consider in more detail, for this article also deals with checks in the case of aid provisions for 'animals'.

33. Article 10(3) of the implementing regulation governs the case where the number of animals in a holding does not correspond to the number of the animals registered in a stall journal ('special register'). In the first indent of this paragraph, provision is made for complete loss of aid if the stall journal and the number of animals found — as in the present case — differ by 20% or more. However, this is a provision relating

13 — The Court has consistently held that, for the interpretation of Community law, it makes no difference whether the Court is seised of a case because Community provisions are directly applicable or because national law refers to them: see the judgments in Joined Cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763, in Case C-231/89 *Gmurzynska-Bscher* [1990] ECR I-4003, in Case C-88/91 *Federazione italiana dei consorzi agrari* [1992] ECR I-4035, and in Cases C-130/95 *Giloy* [1997] ECR I-4291 and C-28/95 *Leur-Bloem* [1997] ECR I-4161.

expressly only to checks under Article 6(6) of Regulation No 3887/92; but Article 6(6) applies to checks in a case where the 'special premium on slaughter' or 'on the first placing on the market of animals with a view to their slaughter' is granted, which does not apply in the main proceedings.

34. However, it is clear that the Commission considers that a sanction in the form of a complete loss of aid where no entries at all have been made in the stall journal can be justified on the basis of Article 10(3) of Regulation No 3887/92 because under the first subparagraph of Article 10(4) of that regulation, 'male bovine animals shall not be counted [for the grant of aid] unless these are the animals identified in the aid application, or in the case where paragraph 3 is applied, if they can be identified with the help of the register.'

35. It is not possible to follow the Commission's submissions since Article 10(3) of the implementing regulation — as shown — applies only to particular forms of aid, based on provisions of Community law expressly mentioned there, and the aid that is the subject of the main proceedings is not one of these. Further, Article 10(4) subparagraph 1 of the implementing regulation is not suited to extend the factual scope of Article 10(3) beyond the forms of aid mentioned there, since by its subject-matter it deals with cases where animals cannot be identified. If no animals are entered in the stall journal, then the animals are deemed under Article 10(4) subparagraph 1 not to be identified, with the legal consequence that they are 'not counted' (i.e., the claim fails in full); however, this applies expressly only 'in the case where paragraph 3 applies', and therefore the application of paragraph 3 is a *requirement*.

36. In addition to Article 10(3), Article 10(2) of the implementing regulation also contains a provision under which in certain circumstances the claim to aid may be completely lost. The scope of this provision, unlike that of paragraph 3, is not restricted to specific types of aid.

37. The Commission did not cite this provision to support its position. However, it appears that the Swedish authority, according to the remarks of the national court and as shown by some of the supporting documents provided by it (without commentary), substantially based its demand for reimbursement on this article. But nowhere does Article 10(2) of the implementing regulation refer to the stall journal; it relates only to the cases where there is a difference between the number of animals in the aid application and the number found at the on-the-spot check. In the present case, this difference was found when it was established that two of the nine milk cows giving a right to aid were missing. In the case of an application like

the present one, therefore, in which fewer than 20 animals were stated to exist and this difference was a difference of exactly two animals, under Article 10(2)(a) first indent of the implementing regulation, the only possibility is a pro rata reduction of the aid. The Swedish authority — as can be seen from the supporting documents to its observations — decided that there was a 100% difference, because it evidently equated the number of animals determined in an *on-the-spot check*, which is one of the necessary elements, with the number of animals recorded in the stall journal.

38. It must therefore be considered that Regulation No 3887/92 likewise contains no express or implied provisions to the effect that, as a general rule, a failure to enter animals in the stall journal is, or could be, penalised by total loss of the right to aid.

2. Could a sanction such as that imposed in the present case be based on the general context of the Community provisions relating to the stall journal?

39. In this connection, it should first be observed that the Commission's reliance on the judgment of the Court of Justice in the *Schumacher* case [14] is inappropriate here in that both in the judgment cited and in numerous other judgments of the Court [15] the question was whether a sanction that *existed* in Community law was incompatible with the general principles of Community law to the extent that it had to be considered as 'disproportionate' as defined in the case-law of the Court. Unlike in those cases, however, the question to be answered now is whether in the present case any sanction at all follows from the relevant Community law and if so, which.

40. As a first step, therefore, it would be necessary to investigate whether the general context of the Community provisions relating to the stall journal provides a legal basis for a sanction such as that in the present case, that is to say the total loss of entitlement to aid where the animal keeper has applied for such aid for animals without having entered the animals in the stall journal.

41. In its decisions in the *Hopermann* cases, [16] concerning the interpretation of another implementing regulation in the field of agriculture, the Court stated as a

14 — Cited above at footnote 10.

15 — See, for example, the judgments in Case 179/84 *Bozzetti* [1985] ECR 2301, in Case 265/87 *Schräder* [1989] ECR 2237, in Case C-118/89 *Lingenfelser* [1990] ECR I-2637, in Case C-319/90 *Pressler* [1992] ECR I-203, in Case 181/84 *Man* [Sugar] [1985] ECR 2889, in Case 122/78 *Buitoni* [1979] ECR 677, in Case 240/78 *Atalanta* [1979] ECR 2137, in Case 272/81 *Ru-Mi* [1982] ECR 4167, and in Case 287/96 *Kyritzer* [1998] ECR I-4729.

16 — Judgments in Cases C-357/88 and C-358/88 *Hopermann* [1990] ECR I-1669 und I-1687.

general principle that loss of a right to aid as a sanction for failure to comply with obligations under Community law can be derived from a regulation even if the provisions of the regulation which is to be implemented do not themselves contain any statements as to the legal consequences of failure to comply with them.

42. That is the case here. For it has been shown that in the present case, at the date relevant to the question referred for a preliminary ruling, the duty to possess a properly kept stall journal arose from Article 5 of Regulation No 3508/92 in conjunction with Directive 92/102. The Swedish statutory provisions applicable to controls and penalties, however, refer to implementing Regulation No 3887/92, which in turn contains no express or implied legal basis for a sanction such as that imposed in the present case.

43. In the *Hopermann* rulings, the Court held that, where the requirements for sanctions for non-compliance with an obligation under Community law are not mentioned in the Community law provisions themselves, those requirements are fulfilled if compliance with the Community law obligation which is to be implemented is 'essential in order to ensure the proper functioning of the scheme of aid in question' and it follows 'from the purpose of this obligation' that 'only ... loss of entitlement to the aid' is an effective sanction for failure to observe it. [17]

17 — Cited above at footnote 16, Case C-357/88, at paragraph 8, and Case C-358/88, at paragraphs 9 and 11.

44. It must therefore be investigated, in a second stage, what purposes entries in the stall journal serve and whether, under the case-law cited, the loss of aid as a sanction can be seen as essential in order to attain one of those purposes. [18]

45. Could the identification of the animals be seen as one of these purposes of the stall journal?

46. In order to emphasise the importance of a properly kept stall journal for an effective monitoring system, the Commission set out what information is to be entered into the stall journal under Directive 92/102. It also referred to the first subparagraph of Article 10(4) of Regulation No 3887/92, which provides that animals are not taken into account for the grant of aid if it is not possible to identify them in an on-the-spot check or, in the case of paragraph 3, by means of the stall journal.

47. There is no doubt that the existence of properly kept stall journals makes it easier to monitor the aid covered by Regulation

18 — Here, a particularly strict standard, particularly with regard to the principle of legality laid down in Article 49(1) of the Charter of Fundamental Rights of the European Union (cited above at footnote 9), should be applied.

No 3508/92. However, this appears to be 'essential', as defined in the case-law cited, not so much in order to determine the number of animals as — and the Commission itself emphasises this — in order to *identify* them.

48. This conclusion follows firstly from the fact that Article 10(2) of Regulation No 3887/92 contains a system for determining the *number* of animals which appears to consist largely in an on-the-spot check on the number of animals actually present. If the number deviates from the number given in the application, in other words if it is lower, the graduated sanction mechanisms mentioned above apply. Only in the case of particular types of aid, that is to say, those that are within the scope of Article 10(3) in conjunction with Article 6(6) of Regulation No 3887/92, does it appear that the number of animals is also to be determined *additionally* by way of the entry in the 'special register' mentioned there.

49. To support its view that the implementing regulation contains a legal basis for sanctions such as those in the present case, the Commission cites Article 10(4) subparagraph 1, but this subparagraph, too, tends rather to support the assumption that a properly kept stall journal serves mainly to *identify* the animals. In addition, even under this provision the identification may in principle be made without a stall journal. It is only for the aid under Article 10(3) of the implementing regulation that the identification of the individual animals (which is clearly particularly important for this aid) is linked to their entries in the stall journal.

50. If it must therefore be assumed that a properly kept stall journal serves mainly to identify the animals and that the determination of the number of animals is in principle to be made by on-the-spot checks, then it must once again be emphasised that, according to the information provided by the national court, only the *number* of milk cows that may afford entitlement to aid is at issue in the main proceedings, in so far as the number did not coincide with the number in the application at the date of the on-the-spot check. As far as can be seen, the Swedish authority did not question that the animals for which the application was made were the same animals that were undisputedly in the possession of the keeper.

51. Nevertheless, it should be considered whether one of the purposes of the stall journal may also be related to the checking of the number of the animals.

52. Could, therefore, one of the purposes of a properly kept stall journal be seen to lie in establishing the number of animals?

53. With regard to the *number* of animals that may afford entitlement to aid, a properly kept stall journal appears to be important at most as a matter of evidence. This is important *inter alia* where the animal keeper — as in the present case — claims that a certain number of the animals listed in the application became ill and died or were slaughtered after the application was made but before the date of the on-the-spot check.

54. Thus, for the determination of the number of animals — which determines the amount of aid — the second sentence of Article 4(1)(a) of Directive 92/102 provides that there shall be an obligation, laid down in national law, for all movements in the animals present on a holding to be documented in the stall journal. Article 10(2) of Regulation No 3887/92 relies on the number of animals actually found in the on-the-spot check as a basis for reduction or cancellation of the right to aid. If — as in the present case — the animal keeper submits that the reduced number of animals on the holding results from changes that took place after the application was made, he will presumably be able to prove this only on the basis of a properly kept stall journal. In contrast to the pursuit of public interest purposes (for example, where the stall journal enables identification), the proper keeping of the stall journal is at all events mainly in the animal keeper's own interest and thus needs no sanction, let alone a sanction in the form of the complete loss of the right to aid — or, in other words, to quote from the case-law of the Court of Justice in the *Hopermann* cases, this sanction does not appear to be 'essential' in this case.

55. So, where — as in this case — it is not the identity of the animals which is actually in question, but the fact that the number of animals at the date of the on-the-spot check is lower than the number in the application for aid, then the failure to enter animals in the stall journal cannot in any event be regarded, according to the case-law quoted, as such a serious violation of a Community law obligation that no sanction other than the complete loss of the right to aid would guarantee attainment of the aim of that obligation.

56. In view of all the foregoing considerations, it cannot therefore be accepted that the general context of the Community law provisions relating to the stall journal affords, in the circumstances of the present case, a legal basis supporting a sanction for non-entry of animals in the stall journal by complete loss of the right to aid. [19]

19 — The argument that Article 5 of Regulation No 3508/92 in conjunction with implementing Regulation No 3887/92, as amended at the date relevant to the national litigation, still did not provide for a complete loss of aid where entries were missing is also supported by the fact that the current version of Article 10 of Regulation No 3887/92 now contains a provision dealing with defective register keeping for *all* forms of aid covered by the Regulation; this provision is based on the former rules in Article 10(3) of Regulation No 3887/92. Under the rules now in force, aid is in principle reduced in accordance with the difference between the number of animals stated in the application and animals entered in the stall journal.

VI — Conclusion

57. As put into specific terms by Regulation No 3887/92, Article 5 of Regulation No 3508/92 contains no legal basis to support the sanction in question in circumstances such as those in the present case where entries are not made in the stall journal. Even if this point is not important for the question referred for a preliminary ruling, the question how far a legal consequence such as that under consideration here could have arisen under national provisions implementing Directive 92/102 remains open.

58. I therefore propose that the Court should give the following answer to the national court's question:

At the date relevant in the main proceedings, Article 5 of Council Regulation (EEC) No 3508/92 was not to be interpreted as meaning that the right to aid is excluded if no information is entered in the animal keeper's stall journal, where the only matter in issue was the fact that the number of animals had changed since the application was made and this number could have been established by an on-the-spot check.