OPINION OF ADVOCATE GENERAL COSMAS

delivered on 15 June 1995 *

1. The High Court of Justice, Queen's Bench Division, has submitted a series of questions to the Court of Justice for a preliminary ruling relating to the premium systems in the sheepmeat and goatmeat sector on the one hand and the beef and veal sector on the other, as they apply since they were fundamentally reformed in 1992. The questions relate, in particular, to certain provisions in the regulations in question aimed at resolving problems which might arise in contractual relationships between producers who do not own all the land which they farm and owners of that land.

I — The Community provisions

2. The common organization of the market in sheepmeat and goatmeat is governed by Regulation (EEC) No 3013/89 of 25 September 1989. [1] It is based on intervention measures which can be taken in the form of private storage aid (see Article 6 of that regulation) and, primarily, on the grant of the premium provided for in Article 5 of the regulation. That premium, which is aimed at offsetting an income lost by producers during a marketing year, is calculated per ewe or she-goat on the basis of the difference which might arise between, on the one hand, the relevant 'basic price' established for each marketing year by the Council and, on the other hand, the arithmetic mean of the annual market price (see Article 5(1) to (3) and (5)) and is paid at the full rate for 1 000 animals per producer in certain less-favoured areas and for 500 animals per producer in other areas. Over and above those limits, the premiums payable are only 50% (see Article 5(7), as it applied before it was amended by Article 1(1) of Council Regulation (EC) No 233/94 of 24 January 1994 (OJ 1994 L 30, p. 9)).

3. The common organization of the market in the beef and veal sector is governed by Regulation (EEC) No 805/68 of the Council of 28 June 1968 [2] and includes an intervention regime in the context of which, in order to prevent or mitigate a substantial fall in prices, aid may be granted for private storage or intervention agencies may buy in (see

* Original language: Greek.

1 — Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organization of the market in sheepmeat and goatmeat (OJ 1989 L 289, p. 1).

2 — Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187).

Article 5(1) of the regulation), as well as a premium system under which *inter alia* it is provided that a premium will be paid for maintaining suckler cows (hereinafter the 'suckler cow premium'). That latter premium, which was introduced by Council Regulation (EEC) No 1357/80 of 5 June 1980, [3] consists in the payment for each marketing year of a specific monetary amount per suckling cow and is aimed at encouraging the production of quality beef by way of maintaining the necessary breeding cows.

4. In 1992 the system of premiums in the sheepmeat and goatmeat sector was amended on several significant points. In particular Article 1(2) of Council Regulation (EEC) No 2069/92 of 30 June 1992 [4] inserted into Regulation No 3013/89 Article 5a, pursuant to which:

— an *individual limit per producer* was introduced in respect of the grant of the premium per ewe or she-goat provided for in Article 5 of Regulation No 3013/89. [5] Thus for the 1993 marketing year and subsequent years the premium was to be paid within the limits of the number of animals for which the premium had been paid for the 1991 marketing year, adjusted by a certain coefficient (Article 5a(1) and (5));

— the right to premium was *attached to producers* who had been granted the premium in respect of the 1991 marketing year (Article 5a(4)(a));

— it was provided that when a producer sold or otherwise transferred his holding, he could *transfer all his premium rights* to the person who took over his holding and a producer was also given the possibility of transferring (in whole or in part) his rights to the premium *without transferring his holding* (Article 5a(4)(b)).

5. Of central significance for the present case is the provision in Article 5a(4)(f), according to which: 'The Commission shall lay down the detailed rules for implementing this paragraph in accordance with the procedure provided for in Article 30, and in particular those rules ... enabling Member States to resolve specific problems linked to the trans-

3 — Council Regulation (EEC) No 1357/80 introducing a system of premiums for maintaining suckler cows (OJ 1980 L 140, p. 1).

4 — Council Regulation (EEC) No 2069/92 of 30 June 1992 amending Council Regulation (EEC) No 3013/89 on the common organization of the market in sheepmeat and goatmeat (OJ 1992 L 215, p. 59).

5 — As follows from the third recital in the preamble to Regulation No 2069/92, the introduction of an individual limit resulted from the need to apply severe measures to counter the serious repercussions on the market balance caused by the upward trend in ewe numbers in the Community and the resulting substantial drop in prices.

fer of premium rights by producers who do not own the areas on which their holdings are situated.'

Citing *inter alia* the latter provision, the Commission adopted Regulation (EEC) No 3567/92 of 10 December 1992; [6] Article 13 thereof provides as follows:

'Member States, if necessary, shall take appropriate transitional measures with a view to finding equitable solutions to problems which might arise in contractual relationships existing at the time this Regulation enters into force between producers who do not own all the land they farm and owners of these lands, in the event of a transfer of premium rights or of other actions having equivalent effect. Such measures may only be taken in order to resolve the difficulties connected with the introduction of a premium rights system linked to the producer and must in any event respect the principles governing that link.'

Article 15 of Commission Regulation No 3567/92 states, finally, that

'Member States shall adopt all other suitable measures necessary to ensure that the system of individual limits is applied properly. They shall inform the Commission thereof.'

6. Amendments similar in approach and content were introduced regarding the system of premiums in the beef and veal sector by Council Regulation (EEC) No 2066/92 of 30 June 1992. [7] In particular, Article 1(2) of that regulation inserts Articles 4d and 4e into Regulation No 805/68, pursuant to which:

— a limit was laid down to the producers' right to the suckler cow premium by the application of an *individual ceiling* equal to the number of animals for which a premium was granted in respect of the reference year selected by each Member State (1990, 1991 or 1992), reduced so

6 — Commission Regulation (EEC) No 3567/92 of 10 December 1992 laying down detailed rules for the application of the individual limits, national reserves and transfer of rights provided for in Articles 5a to 5c of Council Regulation (EEC) No 3013/89 on the common organization of the market in sheepmeat and goatmeat (OJ 1992 L 362, p. 41). The citation incorporates the corrigendum contained in OJ 1993 L 6, p. 16.

7 — Council Regulation (EEC) No 2066/92 of 30 June 1992 amending Regulation (EEC) No 805/68 on the common organization of the market in beef and veal and repealing Regulation (EEC) No 468/87 laying down general rules applying to the special premium for beef producers and Regulation (EEC) No 1357/80 introducing a system of premiums for maintaining suckler cows (OJ 1992 L 215, p. 49).

that a national reserve could be set up (Article 4d(2)); [8]

— it was laid down that the right to premium should *apply exclusively to producers* to whom the premium was granted in respect of the reference year and who also requested the premium for the years up to and including 1992 (Article 4d(4));

— it was provided that where a producer sells or otherwise transfers his holding, he may *transfer all his suckler cow premium rights* to the person taking over his holding and a producer was also given the option of transferring, in full or in part, the said rights *without transferring his holding* (Article 4e(1)).

7. Finally, under Article 4e(5) (which will be examined in detail below), it was laid down that the Commission was to adopt detailed rules for the application of that article which were to 'concern in particular provisions enabling the Member States to resolve problems relating to the transfer of premium rights by producers who are not the owners of the land occupied by their holdings'.

Citing *inter alia* that last provision, the Commission adopted Regulation (EEC) No 3886/92 of 23 December 1992, [9] Article 39 of which provides: 'Where necessary, Member States shall adopt the appropriate transitional measures in order to find fair solutions to any problems which may arise on entry into force of this Regulation in the existing contractual relations between producers who are not owners of all the land which they farm and the owners of this land in the event of the transfer of premium rights or other actions having equivalent effect. Such measures may be taken only to resolve difficulties involved in the introduction of a producer-linked premium rights scheme, and in any event must comply with the principles governing such link.' [10] Article 55 provides: 'Member States shall adopt all other suitable measures necessary to ensure that this Regulation is applied properly. They shall inform the Commission thereof.'

8 — As may be inferred from the preamble to Regulation No 2066/92, the imposition of a limit to the right to the suckler cow premium was judged expedient if the maintenance of the premium (which was necessary because of the developments in the market in question which led to a reduction in intervention prices) was not to bring about an increase in the overall production and further disturbance in the Community market which was already suffering a structural disproportion between supply and demand (see the first, second third and fourth recitals in the preamble to the regulation).

9 — Commission Regulation (EEC) No 3886/92 of 23 December 1992 laying down detailed rules for the application of the premium schemes provided for in Council Regulation (EEC) No 805/68 on the common organization of the market in beef and repealing Regulations (EEC) No 1244/82 and (EEC) No 714/89 (OJ 1992 L 391, p. 20).

10 — I should point out that the Greek text of that provision deviates slightly from the corresponding English text, which is closer to the formulation of Article 13 of Regulation No 3567/92.

8. In summary, the basic amendments laid down in Regulations Nos 2069/92 and 2066/92 consist in limiting the right of producers to certain premiums (the ewe and she-goat premium, the suckler-cow premium) by way of setting individual limits per producer, linking entitlement to the premium to the person of the producer and the establishment of the entitlement of producers to transfer their rights to the said premiums either on the transfer of their holdings or without such transfer.

However, the questions referred by the High Court of Justice do not directly relate to those key aspects of the reform of the premium systems. They focus on those rules of the said Council regulations and of Regulations 3567/92 and 3886/92 which apply to a particular aspect of the reform, that is to say, to the cases of existing contractual relationships between producers who do not own the land which they farm on the one hand and the owners of that land on the other.

II — The main proceedings — The questions referred for a preliminary ruling

9. The court which has made this reference is rather sparing in the details that it provides as regards the precise content of the judicial remedy sought in the case before it. From the order for reference, in conjunction with the observations submitted by the Country Landowners Association ('CLA'), the applicant for judicial review, the legislative and factual background to the dispute would appear to be as follows:

10. The legislative text adopting the measures considered necessary for the implementation in the United Kingdom of the reforms introduced in 1992 of the Community premium systems in the sheepmeat and goatmeat and beef and veal sectors (the Sheep Annual Premium and Suckler Cow Premium Quotas Regulations 1993 [11]) did not provide for a compensation scheme for the losses to which the new regulations might give rise for the owners of land farmed under a tenancy agreement by those entitled to the premiums. In the view of the competent Ministry of Agriculture, Fisheries and Food (MAFF) the introduction of such a scheme could not be founded on Article 13 of Commission Regulation No 3567/92 and Article 39 of Commission Regulation No 3886/92 in view of the fact that both those provisions refer to the resolution by the Member States of difficulties linked to the *transfer* of premium rights by producers who are not owners of the land which they farm whereas, still according to

11 — Statutory Instrument 1993 No 1626.

MAFF, the loss caused to the landowners occurs on the *grant* to the producers who are tenants of their land of the rights to premium which are henceforth linked to the person of those producers.

11. The CLA (which, according to the observations which it submitted to the Court, is an association of owners of agricultural land formed to promote and safeguard the legitimate interests of its members, and particularly to safeguard the capital invested in the ownership of land and to secure the returns therefrom) considers that the said provisions in the Commission regulations, together with the provisions of the Council Regulations on the basis of which they were made, impose an *obligation* on Member States to introduce a compensation scheme for loss which, regardless of when it occurs, falls in any event on the landowners solely because of the fact that *it is provided that entitlement to the premium is transferable*. The Association accordingly applied for judicial review.

12. The application was examined by the High Court of Justice, Queen's Bench Division which, by order of 12 January 1994, referred the following questions to the Court of Justice for a preliminary ruling:

'1. Is Article 13 of Commission Regulation (EEC) No 3567/92 (OJ 1992 L 362, p. 41) and/or Article 39 of Commission Regulation (EEC) No 3886/92 (OJ 1992 L 391, p. 20) to be interpreted as enabling and/or requiring a Member State to introduce a compensation mechanism for the owners of agricultural land only where there is a detriment to landowners consequent upon a transfer of premium rights away from the landowner's holding by the tenant-producer?

2. Is Article 13 of Commission Regulation (EEC) No 3567/92 and/or Article 39 of Commission Regulation (EEC) No 3886/92 to be interpreted as enabling and/or requiring a Member State to introduce a compensation mechanism for the owners of agricultural land in circumstances where there is a specific problem

(i) related to the transferability, or

(ii) arising on or after the transfer

of premium rights away from the landowner's holding by the tenant-producer caused by the introduction and allocation of quotas to tenant-producers resulting in the creation of an asset in the hands of tenant-producers?

3. Is Article 15 of Commission Regulation (EEC) No 3567/92 and/or Article 55 of Commission Regulation (EEC) No 3886/92 to be interpreted as conferring upon Member States separate powers and/or obligations, beyond those conferred by Article 13 of Commission Regulation (EEC) No 3567/92 and/or Article 39 of Commission Regulation (EEC) No 3886/92, to introduce a compensation scheme for landowners?

4. Does Article 5a(4)(f) of Council Regulation (EEC) No 3013/89, as inserted by Council Regulation (EEC) No 2069/92 (OJ 1992 L 215, p. 59), and/or Article 4e(5) of Council Regulation (EEC) No 805/68 (OJ, English Special Edition 1968 (I), p. 187), as inserted by Council Regulation (EEC) No 2066/92 (OJ 1992 L 215, p. 49), affect the interpretation and/or validity of Article 13 of Commission Regulation (EEC) No 3567/92 and/or Article 39 of Commission Regulation (EEC) No 3886/92 and/or Article 15 of Commission Regulation (EEC) No 3567/92 and/or Article 55 of Commission Regulation (EEC) No 3886/92?

5. Depending on the answers to questions 1, 2, 3 or 4, what are the principles that Member States must apply in devising such a compensation scheme?'

III — First, second and fourth questions

13. I consider it expedient to treat the first, second and fourth questions referred for a preliminary ruling together in view of the fact that to answer them it is necessary to examine the following closely-linked issues:

(a) To what 'problems' precisely do Article 13 of Regulation No 3567/92 and Article 39 of Regulation No 3386/92 refer?

(b) Do those provisions prescribe any concrete solutions for the above 'problems'?

(c) Do those provisions confer powers or impose obligations on the Member States?

(d) Does the need to interpret the regulations at issue in a way that is consistent with the provisions constituting the legal authority for them (Article 5a(4)(f) of Regulation No 3013/89 and 4e(5) of Regu-

lation No 805/68) and/or the higher-ranking general principles of Community law [12] impose an interpretation to the effect that the Member States are obliged by those provisions to undertake to adopt measures with a specific content?

14. The formulation of the two provisions in question, which are moreover almost identical, is, in my opinion, perfectly clear: the problems to which they refer are those which are likely to arise in already-existing contractual relationships between producers who are not owners of the land which they farm and the owners of that land *in the case of transfer* of premium rights.

15. I believe that in the view of the Community legislature:

(a) Where a producer who, on the basis of a certain legal relationship which was already in existence at the time when the above provisions entered into force farms on land which belongs to another person, transfers his premium rights to a third person (who farms on other land) either by way of sale (or by another form of transfer) of his holding, or independently of any such transfer, that transfer of rights, although it does not make it impossible for the landowner or other producer to farm on the land, nevertheless makes it less profitable and the profits of the holding will depend completely on market price fluctuations, the likely losses not being covered or reduced by the payment of the premium.

(b) For that reason, the transfer of the premium right can reduce the value of land when it is transferred away or can lead to a reduction in the level of periodic income from the land under a contractual relationship entered into after the premium is transferred.

(c) Those consequences of the transfer of the premium right which could not, at the time when the contractual relationship was entered into, be foreseen by the owner of the land away from which the premium right has been transferred and the producer who transfers it, are likely to reverse, to the detriment of the landowner, the facts on the basis of which the above relationship was entered into [13] or give rise to other forms of damage to his interests. [14]

16. The CLA, the applicant in the main proceedings claims, however (see, in particular,

12 — On the question of the interpretation of the provisions of secondary law in a way consistent with the general principles of Community law, see for example the judgments in Case C-98/91 *Herbrink* [1994] ECR I-223, at paragraph 9; Case C-81/91 *Twijnstra* [1993] ECR 2455, at paragraph 24; and Case C-314/89 *Rauh* [1991] ECR I-1647, at paragraph 17.

13 — Thus it might be supposed that if, at the time when the tenancy relationship was entered into, for example, it was already known that the premium right which the tenant would obtain by his farming activities on the land leased would be linked to his person and could subsequently be transferred away from the land, the landowner would have sought to set the rent at a level which would reflect the contribution of the land, as a factor of production, in the creation of the premium right.

14 — The transfer by the producer of the premium right might possibly (because, for example, the land was objectively incapable of any other use except the feeding of ewes or cows) lead to its being completely impossible to lease it to a tenant to farm.

paragraphs 3.5 and 3.6 of its observations to the Court) that 'problems' within the meaning of Article 13 of Regulation No 3567/92 and Article 39 of Regulation No 3886/92 must be understood as those inherently due to the fact that the producer may transfer the premium right linked to his person and the point in time at which the losses are in fact suffered by the landowner is immaterial.

17. The position of the CLA, as I understand it, is that the provisions cited relate to problems caused by the establishment *per se* of the transferability of the premium rights and the fact *per se* that they are linked to the person of the producer, since the disturbance of the contractual relationship between the landowner and the producer arises solely on the introduction of those principles which drastically strengthen the position of the producer under the contractual relationship between him and the landowner. [15] In the second question submitted, the formulation of which is not absolutely clear, the national court is seeking, I believe, clarification on the question whether the CLA's position as set out corresponds to the exact meaning of the provisions in question.

18. In my view the construction advocated by the CLA does not find support in the provisions at issue of Regulations Nos 3567/92 and 3886/92 or in the relevant recitals in the preambles to those regulations (see the eighth recital in the preamble to Regulation No 3567/92 and the sixteenth recital in the preamble to Regulation No 3886/92). The phrase 'problems which might arise ... in the event of a transfer of premium rights' leads necessarily to the conclusion that those problems are connected to the *act* of transfer [16] and not to the mere introduction of the rules making transfer possible. [17]

19. At this juncture I should point out that the United Kingdom, while, according to its submissions to the Court, sharing the view that the provisions to be interpreted refer to problems arising *in the event of a transfer* of premium rights (recalling that at the time of

15 — The position of the CLA, which the Commission understands in the same way (see point 6 of its observations), would enable it, for instance, to be regarded as a problem arising from the contractual relationships between landowners and producers within the meaning of the provisions submitted to the Court for interpretation that the transferability of premium right could be used by the producer as a bargaining weapon in the context of renewal of the tenancy linking him with the landowner or of rent readjustments. The CLA emphasizes, at all events, that in any case the question of the payment of compensation to the landowner would only arise after the transfer of the premium right and provided loss was shown.

16 — It is telling, from that point of view, that the first phrase of Article 13 of Regulation No 3567/92 speaks of problems in the event of a transfer of premium rights or of *other actions* having equivalent effect.

17 — It is true that the second sentence of Article 13 of Regulation No 3567/92 states that measures may be taken by the Member States in order to 'resolve the difficulties *connected with the introduction of a premium rights system linked to the producer*' (emphasis added). I consider that that sentence, the principal function of which is moreover to underline the transitional nature of the measures taken, cannot affect the interpretation which I believe to be correct given that, as the Commission rightly pointed out, while beginning with the words 'such measures' it refers directly to the first sentence of that article, which is clearly connected with the resolution of problems arising *in the event of a transfer of premium rights*.

the Council discussions it was insistent that the regulations being drafted should contain provisions allowing the Member States to establish compensation arrangements for landowners in respect of the losses they would suffer on the transfer by the entitled producer of premium rights), points out in those same observations (see in particular points 3.9 to 3.12), that it has now changed its opinion and that, from the financial point of view, the loss to the owner of the land farmed by the producer entitled to the premium (that consisting in the loss of the rental or sale value of the land and its value as a capital asset) does not occur on the transfer of the right but solely on allocation of the quota to the producer and the fact that it is linked to the latter's person.

20. I consider that the economic analysis on the basis of which that view is formulated cannot have any effect on the interpretation of the provisions in question, the wording of which (as, moreover, the United Kingdom itself accepts) is clear as regards the fact that 'problems' which might need to be resolved means those problems which are due to the transfer of the premium right. That economic analysis cannot, on the other hand, affect the *validity* of the said provisions. As the Court has repeatedly held, [18] in matters concerning the common agricultural policy the Community legislature has a broad discretion which corresponds to the political responsibilities given to it by Articles 40 and 43 of the Treaty and accordingly the lawfulness of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate, having regard to the objective which the competent institution is seeking to pursue. If the purpose of the provisions at issue is taken to be the easing of the change to the new system governing premiums in the sheepmeat and goatmeat and beef and veal sectors, the basic characteristic of which is the introduction of the transferability of the rights in question attaching to the person of the producer, I do not think that the remarks made in the United Kingdom's observations in connection with the underlying cause of the loss suffered by landowners suffice to show that the identification by the Community legislature of the transferability of the above rights as the cause of the problems arising in existing contractual relationships between landowners and producers that might require to be resolved renders the measures manifestly inappropriate for attaining the objective pursued by their adoption.

21. Although the provisions at issue evidently specify the conditions under which the 'problems' to which reference is made arise and allow the nature of those problems to be deduced indirectly, they nevertheless

18 — See *inter alia* the judgments in Case C-306/93 *SMW Winzersekt* [1994] ECR I-5555, at paragraph 21; Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, at paragraphs 89 and 90; Case 331/88 *Fedesa and Others* [1990] ECR I-4023, at paragraph 14; and Case 265/87 *Schräder* [1989] ECR 2237, at paragraph 22.

do not bind the Member States as regards the nature of the measures to be taken to resolve them, except on one particular point: the measures must, at all events, be of a transitional nature. [19] For the rest, the Community legislature confines itself to giving very general guidelines: it provides simply that the measures should be taken with a view to finding equitable solutions and (which was, at all events, evident) should respect the basic principle of the new system in the sheepmeat and goatmeat and beef and veal sectors, in other words the link of the premium right to the person of the producer.

22. Accordingly, the Community legislature did not provide for measures with a specific content but, by formulating the provision in broad terms, leaves it to the Member States to determine the form in which they will take such measures. It is true that such a measure might consist in setting up a scheme under which landowners would be paid compensation for their losses in the form of money from public resources or from the producers with whom they had a contractual relationship. It is, however, equally true that such a scheme cannot be regarded, as the CLA submits, as the *only* scheme which could ensure an equitable solution to the difficulties that arose. The Community rules do not in any way preclude the adoption by the Member States of provisions by which they would seek to counteract in ways other than by payment of a sum of money the negative effects for a landowner of the transfer by the producer farming a holding on his land of premium rights. [20]

23. Consequently, the provisions to be interpreted confer on the Member States a wide discretion as to the type and content of the measures that they may adopt to resolve the

19 — The Community legislature clearly considers that measures of a fixed character could affect the effective application of the basic principle of the system introduced, according to which the premium right is linked to the person of the producer. Moreover, in contractual relationships entered into after the introduction of the new premium system, the parties negotiate in full knowledge of the principles governing the system; they are accordingly in a position to provide for the consequences of their application and make appropriate adjustments to the terms of the contract which they draw up.

20 — Before the national court, MAFF stated that in the United Kingdom measures other than the introduction of a compensation mechanism had been adopted to resolve the problems which arose as a result of the transfer of premium rights.
As is apparent from the order for reference, together with the observations submitted by the United Kingdom before the Court (see point 11 of its observations), those measures included: (1) the fixing at the maximum permitted level (15%) of the proportion of premium rights transferred separately from the holding to be diverted, without compensation, to the national reserve which each Member State set up, so as to discourage the transfer of premium rights by producers; (2) the allocation of premium rights by the national reserve giving priority to producers who took over land from which previously the departing producer who had worked the holding on the basis of a particular legal relationship had removed the premium right linked to his person; (3) measures to prevent the transfer of premium rights from certain sensitive areas.
I consider that measures with characteristics analogous to the above rules cannot be regarded as performing the special function of the measures referred to in the provisions in question here. In fact, regardless whether they have their legal basis in other provisions (see Articles 5a(4)(b), third indent, and (g), first indent, and 5b(2)(e) of Regulation No 3013/89, Article 4e(1), second indent, and 4e(2)(a) of Regulation No 805/68), they do not in any event refer specifically and directly to the problems relating to contractual relationships between owners and producers that existed when the new system was introduced, even though their application may possibly mitigate the extent of those problems.

difficulties referred to in the provisions. I would add that, in my opinion, from the wording of those provisions, [21] it follows that a discretion is also conferred on the Member States as to whether or not to adopt such measures, [22] after weighing up the special circumstances in each Member State and, where appropriate, the particular way in which the difficulties of transition to the new premium system manifest themselves in that State.

24. In view of the content of the fourth question referred to the Court for a preliminary ruling, the question arises whether the provisions of Article 13 of Regulation No 3567/92 and Article 39 of Regulation No 3886/92 as construed above are compatible with their legal basis. I can only reply in the affirmative. In fact both Article 5a(4)(f) of Regulation No 3013/89 as inserted by Council Regulation No 2069/92 and Article 4e(5) of Regulation No 805/68, as inserted by Council Regulation No 2066/92, authorize the Commission to lay down rules *enabling* Member States to resolve specific *problems linked to the transfer of premium rights*, without requiring the Commission to provide for the adoption by the Member States of measures of a specific type and content. [23]

25. Do, however, the general principles of Community law require a different interpretative approach to the above enabling provisions and consequently to the provisions of Articles 13 and 39 of Regulations Nos 3567/92 and 3886/92 respectively, which were adopted on the legal basis of the former? In other words, did the above general principles require the Community legislature to provide for the mandatory adoption by the Member States of measures, and, furthermore, measures having a specific content (for example the adoption of a compensation scheme for the landowners affected), in order to resolve the problems arising in contractual landowner-producer relationships after the introduction of the new premium system?

26. That question is not put directly either by the court which made the reference or by the CLA. For the sake of completeness, however, I consider that the question should be examined.

21 — See Article 13 of Regulation No 3567/92, according to which 'Member States, *if necessary*, shall take appropriate transitional measures (...)' and Article 39 of Regulation No 3886/92, according to which ' *[w]here necessary* Member States shall adopt the appropriate transitional measures' (emphasis added). The corrigendum to the English version of the said Article 13 whereby 'Member States, may, if necessary, take' in was subsequently amended to 'Member States, if necessary, shall take' does not, I believe, alter the situation since the words 'if necessary' are not affected by the change.

22 — For cases where a similar discretion was conferred on the Member States by the Community legislature in application of the Community provisions concerning the common agricultural policy in the judgments in Cases 196/88 to 198/88 *Cornée and Others* [1989] ECR 2309, particularly at paragraph 13, and Case C-16/89 *Spronk* [1990] ECR I-3185, particularly at paragraphs 11 and 12.

23 — On the question (which is also posed in the fourth question referred to the Court for a preliminary ruling) of the effect of the provisions of Article 5a(4)(f) of Regulation No 3013/89 and Article 4e(5) of Regulation No 805/68 on the interpretation of Article 15 of Regulation No 3567/92 and Article 55 of Regulation No 3886/92 see below, at point 28.

It could be argued, in fact, that the linking of the premium right with the person of the producer and the fact that the latter is allowed to dispose of the right away from the land which he farms or even the act of transfer infringes a fundamental right of the landowner, that is to say, the right to property safeguarded by the Community legal system [24] with the further consequence that the Community legislature is placed under an obligation to provide for the mandatory adoption by the Member States of a compensation scheme for landowners.

27. Such a view would not be well founded. It is true that in its judgment in Case C-2/92 *Bostock* [25] the Court, in answering the question whether, in view of the rules concerning the additional levy on milk which entailed, on the expiry of a lease, the transfer to the lessor of the reference quantity (the exceeding of which gives rise to an obligation to pay the additional levy), the need to protect the fundamental right to property requires Member States to introduce a system for compensation of an outgoing tenant by a lessor or gives the tenant directly a basis for bringing an action for such a claim against the owner, held (at paragraph 19), referring to its previous judgment in *Von Deetzen II*, [26] as follows: 'The right to property safeguarded by the Community legal order does not include the right to dispose, for profit, of an advantage, such as the reference quantities allocated in the context of the common organization of a market, which does not derive from the assets or occupational activity of the person concerned.'

However, in that light, the premium right for which provision is made under the common organization of the market in sheepmeat and goatmeat and beef and veal, as an advantage given by the Community rules in question, cannot be regarded as constituting an asset for the owner of the land which must be safeguarded by the principle of the protection of the right to property and, consequently, neither the fact that the Community legislature linked that right to another person (in this case, the producer who exercises his activity on the said land on the basis of a specific contractual relationship) and laid down that the producer could transfer the premium right to a third person, nor the act of transfer of the right, can be regarded as constituting an infringement of the right of the landowner in the above sense. [27]

24 — See, for instance, the recent judgment in Case C-280/93 *Germany* v *Council* (cited in footnote 18), at paragraph 78.

25 — [1994] ECR I-955.

26 — Judgment in Case C-44/89 *Von Deetzen II* [1991] ECR I-5119, at paragraph 27.

27 — Since, according to the text, the premium right cannot be regarded as an asset safeguarded by the protection given in the Community legal order to the right to property, it would appear fruitless to examine the awkward question whether, under the converse interpretation, protection of the right to property under the Community legal order operates not only as against the Community institutions (or the national authorities of the Member States when acting under Community provisions) but also as against individuals, in this case, the producers who exercise their activity on land which is the property of a third person (see in this connection point 39 of the Opinion of Advocate General Gulmann in the *Bostock* case cited in point 27).

IV — Third and fifth questions

28. I can be brief in answering the third question referred for a preliminary ruling. Article 15 of Regulation No 3567/92 and Article 55 of Regulation No 3886/92 confine themselves to imposing on Member States an obligation on the one hand to ensure that the said regulations are applied properly (an obligation which flows moreover from Article 5 of the Treaty), and on the other to inform the Commission of the measures that they adopt for that purpose. Their very general formulation does not in fact allow for an interpretation of the above provisions to the effect that, on the question of resolving the difficulties that might arise in existing contractual relationships between landowners and producers, the Member States are granted any powers other than those which the relevant specific provisions of Article 13 of Regulation No 3567/92 and Article 39 of Regulation No 3886/92 afford them. *A fortiori* it is not possible to found on the above general provisions alone obligations on the Member States relating particularly to the question at issue here. Moreover, in view of the foregoing (see above, at point 24), in connection with the wide powers given to the Commission by Article 5a(4)(f) of Council Regulation No 3013/89 and Article 4e(5) of Council Regulation No 805/68, a different view as regards the meaning of the general provisions of Articles 15 and 55 of Regulations Nos 3567/92 and 3886/92 respectively cannot be justified by the need to interpret them in a way that is compatible with the said enabling provisions.

29. I shall also be brief in connection with the last question referred to the Court. I have already stated that the provisions in question do not provide for the adoption of measures of a specific content but give the Member States a discretion to introduce, in order to resolve difficulties which arise in contractual relationships between landowners and producers in the event of the transfer of premium rights, those measures which they judge to be appropriate to attain an equitable solution to those problems. I also stated that one of those measures might be the establishment of a scheme on the basis of which landowners would be paid a certain amount of money as compensation for the loss caused to them by the transfer of premium right. The choice, however, of the principles governing such a scheme is left to the Member States, given that the fact that the problems to remedy which the scheme would be set up manifest themselves in contractual relationships which are governed in their entirety by national rules of law. [28]

Community law does, however, set bounds within which the national legislature is to act when it lays down the relevant provisions, and this it does in two ways: the first set of restrictions flows from the actual wording of Article 13 of Regulation No 3567/92 and Article 39 of Regulation No 3886/92. The scheme adopted by a Member State must, first, be of a transitional nature only and, secondly, it must not result in the basic principle governing the premium system introduced by Regulations 2066/92 and 2069/92,

28 — See on this point the case cited in point 27, *Bostock*, at paragraphs 25 and 26.

that is to say the linking of the premium right to the producer, being overturned. In addition, however, the national legislature, when establishing such a scheme, is also, since it is exercising a power granted to it by Community legislation, bound by the general principles of Community law, [29] and in particular by the principle of equal treatment which the Community legislature has first and foremost in mind, I believe, when the provisions at issue in this case speak of seeking *equitable* solutions to problems which might arise in contractual relationships between landowners and producers.

V — Opinion

30. In view of the foregoing, I would suggest that the Court answer the questions referred to it for a preliminary ruling as follows:

'1. Article 13 of Commission Regulation (EEC) No 3567/92 of 10 December 1992 and Article 39 of Commission Regulation (EEC) No 3886/92 of 23 December 1992 should be interpreted as conferring on the Member States a power to adopt measures of a transitional nature to resolve problems which might arise in contractual relationships already existing when the above regulations entered into force between producers who do not own all the land which they farm and the owners of that land in the event of the transfer by the producers of the premium rights belonging to them. Under that power, the Member States may also adopt *inter alia* a scheme to compensate for the losses suffered by landowners by reason of the transfer on the part of producers of premium rights.

2. Article 13 of Commission Regulation (EEC) No 3567/92 of 10 December 1992 and Article 39 of Commission Regulation (EEC) No 3886/92 of 23 December 1992 do not impose an obligation or confer a power upon the

29 — See *inter alia* the judgments in Case 5/88 *Wachauf* [1989] ECR 2609, at paragraph 19, Case 201/85 and 202/85 *Klensch* [1986] ECR 3477, at paragraphs 8 and 9, and the judgments already cited in footnote 22 *Cornée and Others* (paragraph 14) and *Spronk* (paragraphs 13, 17 and 28).

Member States to introduce a scheme aimed at resolving problems which might be caused in existing contractual relationships between producers who are not owners of all the land which they farm and the owners of that land solely by reason of the fact that, under the premium systems in the sheepmeat and goatmeat sector and beef and veal sector as they applied after the adoption of Regulations Nos 2069/92 and 2066/92 respectively, those premium rights are linked to the person of the producer and are provided to be transferable.

3. Article 15 of Commission Regulation (EEC) No 3567/92 of 10 December 1992 and Article 55 of Commission Regulation (EEC) No 3886/92 of 23 December 1992 do not confer upon the Member States any powers other than those granted by Article 13 and Article 39 of the said Regulations No 3567/92 and 3886/92 respectively in connection with the question of resolving the problems which might arise in contractual relationships between producers who are not owners of all the land which they farm and the owners of that land, nor do they impose any obligations in that connection.

4. The provisions of Article 13 of Commission Regulation (EEC) No 3567/92 of 10 December 1992 and Article 39 of Commission Regulation (EEC) No 3886/92 of 23 December 1992, as interpreted above, are entirely compatible with the provisions of Article 5a(4)(f) of Council Regulation (EEC) No 3013/89 of 25 September 1989 and Article 4e(5) of Council Regulation (EEC) No 805/68 of 28 June 1968, on the basis of which they were adopted. Nor do the latter provisions in any way affect the interpretation and/or validity of Article 15 and Article 55 of the above Regulations Nos 3567/92 and 3886/92 respectively.

5. If a Member State, availing itself of the relevant power conferred upon it by Article 13 of Commission Regulation (EEC) No 3567/92 of 10 December 1992 and Article 39 of Commission Regulation (EEC) No 3886/92 of 23 December 1992, introduces a scheme providing for compensation for any losses sufferedby a landowner by reason of the transfer of premium rights by

the producer who farms the former's land, the rules of that scheme must be of a purely transitional nature, observe the principle that the premium right is linked to the person of the producer and be enacted within the bounds set by the general principles of Community law and, in particular, the principle of equality.'