27 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Tribunal Administratif, Rennes, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Tribunal Administratif, Rennes, by judgment of 7 July 1976, hereby rules.

1. **Article 2 of Regulation (EEC) No 2195/69 requires the competent authority, in calculating the number of adult bovine units on a farm, to take such animals into account in proportion to the time for which they have been there;**

2. **In making that calculation the competent authority must exclude the period during which the cattle were under the age of 4 months.**

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 1 March 1977.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL CAPOTORTI DELIVERED ON 16 FEBRUARY 1977 [1]

Mr President,
Members of the Court,

1. The questions of interpretation which the Court is called upon to resolve in Case 84/76 *(Collic)* are concerned with an aspect of the system of premiums for withholding milk and milk products from the market, which was introduced by Regulation (EEC) No 1975/69 of the Council of 6 October 1969, the detailed rules for implementation of which are

1 — Translated from the Italian.

laid down in Regulation (EEC) No 2195/69 of the Commission of 4 November of that year.

I ought to begin by describing the main features of the system which, of course, represents one of the methods devised by the Community in order to deal with production surpluses in the sector concerned. The premiums are granted to farmers who fully and finally discontinue the sale of milk and milk products. Their main object is to compensate farmers for the loss of income resulting from such cessation; the concept of compensation is expressly referred to in the seventh recital to Regulation No 1975/69. But during the proceedings the Commission maintained that the premiums in question are also designed to encourage the investment necessary for the conversion of herds for purposes of meat production.

The said regulation of the Council restricts the grant of premiums to farms on which the production of milk and milk products is relatively high. Article 5 of the regulation accordingly provides that premiums are available only to farmers having more than 10 dairy cows. Under Article 6, the granting of the premium is to be 'subject, in particular, to a written undertaking from the recipient to discontinue fully and finally the sale of milk and milk products'.

Under Article 8 the premium is to be paid in five instalments: an amount of 100 u.a. per dairy cow is paid in the three months following the said written undertaking; the balance, which amounts to a further 100 u.a. is paid in four successive annual instalments 'if the recipient has satisfied the competent authority that the number of adult bovine units he holds is not less than the number of dairy cows held at the date of making the application and that the undertaking mentioned in Article 6 has been fulfilled' (second subparagraph of Article 8 (2)). If the recipient has not shown this, then, under Article 16 of Regulation (EEC) No 2195/69 of the Commission, 'Member States shall take steps to recover the amount referred to in the first subparagraph of Article 8 (2) of that regulation', namely the first amount, referred to above, of 100 u.a. per dairy cow.

Under Article 2 (1) of Regulation (EEC) No 2195/69, the number of adult bovine units which the recipient must have in order to maintain the right to the premium is calculated by excluding cattle of less than 4 months but including cattle of more than 4 months but less than 12 months on the basis of 0.4 adult bovine units.

2. It is this last provision which is the main subject of the questions of interpretation which the Tribunal Administratif, Rennes, has submitted for a preliminary ruling in connexion with proceedings brought by Mr Collic, a French farmer, against the Fonds d'orientation et de régularisation des marchés agricoles (hereinafter referred to as 'the FORMA') which is, in France, the institution competent to grant the premiums in question and to carry out the relevant inspections. He is seeking the annulment of an order issued by the FORMA against Mr Collic for recovery of the amount already paid of a premium for withholding milk and milk products from the market. Mr Collic had, in fact, signed the undertaking referred to in Article 6 of the said regulation of the Council and had received, as premium, an amount calculated on the basis of 14 dairy cows owned by him at the time when the application was made. Three payments were made to him namely on 14 May 1970, 25 August 1971 and 18 August 1972, the last two after inspections, both of which proved satisfactory, by the FORMA. However, when the third inspection was made, on 13 September 1973, the officials of the FORMA found that the farmer had on his premises only 4.4 adult bovine units, calculated in accordance with the said Article 2 of Regulation (EEC) No

2195/69. On account of this the farmer could therefore be considered to have failed to fulfil the obligations imposed on him by Community legislation (in particular by the second subparagraph of Article 8 (2) of Regulation (EEC) No 1975/69 under which he was required to show that he owned at least 14 adult bovine units).

Despite this, the FORMA did not at that time take any steps against Mr Collic and decided to carry out a further inspection five months later, when 6.4 adult bovine units were found to be on his premises. At this juncture an order was served on the farmer to repay the sum of FF 11 633.79 of the amount of premium received. (This demand for repayment was, however, later reduced by approximately one-third.)

Before the Tribunal Administratif, Rennes, the applicant contested the correctness of the method followed by the FORMA in calculating the number of adult bovine units held by him; in his view, if the calculation were carried out by the correct method it would show that at the material time he fully complied with Community legislation. He referred to the fact that, at the time of the last two inspections, he had, over and above the adult bovine units referred to by the FORMA, 150 calves less than 4 months old which he claims to have subsequently sold after they reached the age of 4 1/2 months. His contention is that the age of the calves to be taken into account for the purposes of the said Article 2 (1) of Regulation (EEC) No 2195/69 is that of each animal at the time of sale. On the other hand, the FORMA argues that, even if, at the time of the inspection, account were taken of the calves intended to be sold on reaching the age of 4 months, it would nevertheless be necessary to calculate the number of adult bovine units held by the farmer in proportion to the time for which they had been on his premises, assuming a reference period of one complete year as the normal criterion. The calves should, accordingly, be counted from the date on which they reached the age of 4 months and in proportion to the time for which, with effect from that date, they were on the farmer's premises. In this connexion, the FORMA also relies on a circular from the French Ministry for Agriculture (No 4038 of 15 January 1971) in which it is laid down that, for the purposes of applying the Community legislation in question, cattle remaining on the farm for a period of less than one year 'shall count in their category in proportion to the length of time for which they are there'.

On the basis of this criterion and in view of the fact that the person concerned sold his 150 calves at the age of 4 1/2 months, the FORMA contends that they can count for at most 15 days. Accordingly, multiplying their number by the length of time for which they were on the farm, expressed in fractions of a year

(namely $150 \times \frac{0.5}{12}$),

and applying to the result of this calculation the rate of conversion of 0.4 laid down in Article 2 (1) (b) of the said regulation of the Commission would produce a figure of 2.5 adult bovine units existing, over and above those counted during the inspections, on the premises of the applicant during the year in question.

On the other hand, Mr Collic contests the *pro rata temporis* criterion and contends, first, that there is need to do no more than multiply the number of calves sold after reaching the age of 4 months by the rate of conversion referred to above, and that, secondly, in any case, even if the contested criterion is applied, account must be taken of all the time required for the rearing of the calf (in the present case, 4 1/2 months).

By a judgment of 7 July 1976, amended by a further judgment of the following 6 August, the Tribunal Administratif, Rennes, referred the following questions

to the Court of Justice under Article 177 of the EEC Treaty:

1. Does Article 2 of Regulation (EEC) No 2195/69 permit cattle on a farm to be taken into account in proportion to the time for which they have been there?
2. In order to establish the rate of conversion must account be taken of the age of the cattle at the date of the inspection or at the date on which they are marketed if the person in receipt of the premium produces evidence that his cattle were marketed after reaching the age of 4 months?
3. Does the interpretation of that regulation, in particular Article 2 thereof, require further details which are necessary for the solution of the case?

3. In order to answer the questions submitted by the national court it is in my opinion necessary to interpret the said second subparagraph of Article 8 (2) of the regulation of the Council even before interpreting Article 2 (1) of the regulation of the Commission. As I stated earlier, that provision makes the payment of each of the four annual instalments, into which 50% of the premium is divided, subject to the condition that the recipient 'has satisfied the competent authority' of two things: 'that the number of adult bovine units he holds is not less than the number of dairy cows held at the date of making the application' and that he has fulfilled the undertaking to discontinue fully and finally the sale of milk and milk products. This makes it abundantly clear that, in addition to the obligation to withhold such goods from the market, the farmer who receives the premium also undertakes the obligation to own, for at least five years, as many adult bovine units as the number of dairy cows which previously belonged to him. This demonstrates the truth of what the Commission stated during the proceedings, namely that Regulation (EEC) No 1975/69 was also designed to encourage the raising of cattle for the market in meat.

However, the obligation to own a specific number of cattle for a specified period of time does not amount to an obligation to keep the same cattle on the farm without interruption for the prescribed period. Such an interpretation would clearly conflict with the requirements of the market since cattle for slaughter are usually sold at ages varying from a few months to 2 or 3 years. And the second suparagraph of Article 8 (2) rightly imposes the express obligation on the farm to have a number of adult bovine units not less than the number of dairy cows previously held without prejudice to any changes in the composition of the herd on the farm.

On a strict interpretation of this obligation, he must have the prescribed number of units always on his farm for five years, and the sale of one animal or more must be matched by the acquisition of others in order to maintain at all times the minimum number of units required. A continuing obligation would in fact mean continued ownership. It is also possible to accept that, if there is a short break in this continuity, periods when the number of cattle on the farm is less than the minimum prescribed may be offset by the existence, at other times, of a number of units in excess of it. But all this makes it essential to determine on what basis to calculate the bovine units which were on the farm only for a certain time and were later replaced by a greater or smaller number of other units. In this connexion it appears not only appropriate but fully in accord with Community legislation that the time factor should be taken into account.

As for the way in which this should be done, the fact that the evidence which the farmer must furnish in order to obtain payment of the instalment of the premium must be provided at annual intervals suggests that the fractions of a year during which each animal was on the farm must be taken into account. An alternative solution would be simply to

count the number of animals at a particular point in time (the date of the inspection or the date on which the right to a specific instalment accrues), but this would not accord with the continuous character of the obligation involved. In my view this alternative solution would create unfairness by treating alike a farmer who had the required number of units on his farm only at the time when the count took place and got rid of them for the rest of the year and the farmer who complied with his undertaking to have the required number of units throughout the year. It might, moreover, penalize a farmer who, although he had had the prescribed number of units for the greater part of the year, might momentarily, at the time of the inspection, have a lesser number of units.

The so-called *'pro rata* principle' applied by the French intervention agency, which takes account of the length of time for which the cattle were on the farm during the year covered by the inspections, seems to me, therefore, to be fully consonant with the objectives of the Community rules on the subject.

It should be noted that, since the national court, in its first question, refers exclusively to Article 2 of Regulation (EEC) No 2195/69 and asks whether it *permits* cattle on a farm to be taken into account in proportion to the time for which they have been there, it appears to nurse a suspicion that it is illegal to change the bases of calculation in the said article by multiplying them by the fraction of a year for which each animal was there. This suspicion is unjustified. Article 2 (1) does no more than lay down the 'rates of conversion' to be applied in calculating the number of adult bovine units but does not in any sense prevent the time factor from *also* being taken into account in order to meet the implied requirements of Article 8 of Regulation (EEC) No 1975/69.

4. Since each inspection carried out by the national intervention agency prior to the payment of the individual instalments of premium serves to determine whether, *during the whole of the annual period which has elapsed since the previous inspection,* the farmer has complied with his obligations, it is essential, in order to determine the rate of conversion referred to in the said Article 2 that reference should be made to the actual age of the cattle held by the farmer at the close of that period, which is specifically the date of the inspection. On the other hand, in the case of the cattle which the farmer had during the year but sold prior to the inspection, the age of the animal at the time of marketing must be taken into account for, in accordance with the interpretation which I have placed on Article 8 of Regulation (EEC) No 1975/69, these cattle also form part of the total number of adult bovine units which the recipient must own. Of course, as I have already said, the *pro rata temporis* principle must be applied to both groups of cattle.

However the fact that, on the date of one of the annual inspections, the recipient of the premium shows that calves of less than 4 months then on the farm will be sold after they have reached the age of 4 months cannot, in my view, affect the calculation of the number of adult bovine units. Only if, in the following year, a fresh inspection were called for, would it be necessary to take into account the fact that, for a certain period, calves of more than 4 months of age were still on the farm and to take the age of the calves at the time of sale as the basis for the application of the conversion rates.

As a matter of fact the possibility cannot be dismissed that the national authorities might be disposed to show a certain tolerance arising from the desire to take account of special circumstances and needs in the case of individual farms or the region concerned. Such tolerance would, however, have to keep within reasonable limits in order to avoid creating permanent situations in conflict

with the principle embodied in the legislation in question of continuity of the farmers' productive activity.

In the present case, the French authority certainly showed flexibility in allowing five more months to the person concerned after the negative outcome of the inspection of 13 September 1973 before undertaking further checks so as to enable him to regularize his position.

5. Finally, consideration must be given to a question which has arisen from the conflicting arguments of the parties and the solution of which may contribute to an interpretation of Article 2 of the regulation of the Commission and thus at the same time furnish a reply to the third question raised by the national court. As we have seen, the said Article 2 (1) provides for a rate of conversion of zero units in the case of cattle of less than 4 months. But if, among the bovine units on the farm at the time of the inspection or in the possession of the farmer during the year and subsequently sold, there are one or more calves older than 4 months, should the *pro rata temporis* calculation be carried out with reference only to the period during which each calf was on the farm after completing 4 months or to the whole time for which it was on the farm since birth?

It is arguable that, although an animal aged less than 4 months is too young to represent a sufficiency of meat production and is for that reason ignored for the purposes of calculating the number of adult bovine units on the farm, it would, in recognition of the work put in by the breeder, nevertheless be fair to take into account the whole of the period during which it was being reared on the farm once it had reached the minimum age laid down by the said Article 2 (1).

During the proceedings, however, the Commission stated that Article 2 of its regulation, which excludes from calculation the youngest animals since, until they are 4 months old, they are fed almost exclusively on cow's milk, and which, as they are still partly fed on the cow's milk, provides for a rate of conversion of less than one unit for cattle of more than 4 months but less than 12 months helps to ensure that the recipient of the premium uses the fodder produced on his farm for meat production.

Again, according to the Commission, it follows from this that the exclusion from calculation of the first 4 months of the animal's life must be absolute in accordance with the need to encourage the long-term change-over to meat production.

Since a regulation of the Commission is involved, it seems reasonable to accept its statements regarding the reasons for and the objects of the provision in question. It would certainly have been better for an important objective such as that under consideration here to be expressly laid down in the preamble to the regulation, especially as the Commission is under a duty to provide in the statement of the reasons on which its measures are based, including those of general application, the essential considerations of law and of fact on the basis of which it adopts its provisions. As the Court has often declared, this is necessary not only to enable those affected to know the reasons for and the actual effect of the provisions which concern them but also to enable the legality of such measures to be reviewed by the Court.

But those reservations as to form cannot mean that, in the interpretation of the provision in question, the purposes for which it was designed by the body which drafted it can be ignored in implementing the basic regulation of the Council. For this reason, the requirements, referred to above, which underlie the said Article 2 (1), justify the conclusion that the period spent on a farm by an animal from birth to 4 months is not to be taken into account, even for the purposes of applying the *pro rata temporis* principle.

6. I conclude by recommending the Court to answer the questions submitted under Article 177 of the EEC Treaty by the Tribunal Administratif, Rennes, by ruling as follows:

(1) Article 8 of Regulation (EEC) No 1975/69 of the Council and Article 2 of Regulation (EEC) No 2195/69 of the Commission require the calculation of adult bovine units, for the purposes of receiving the annual instalment of the premium for withholding milk and milk products from the market, to be based on the proportion of time for which the animals were on the farm.

(2) For the purposes of applying the rate of conversion laid down in Article 2 of Regulation (EEC) No 2195/69 of the Commission, account must be taken of the age of the cattle on the farm at the time of the inspection and of the age at the date of sale of the animals which have been on the farm during the preceding year.

(3) The calculation *pro rata temporis* of adult bovine units for the purpose specified in (1) above, must be carried out without taking account of the first four months of the life of the animal concerned.