OPINION OF ADVOCATE GENERAL DARMON

delivered on 29 September 1993 *

Mr President,
Members of the Court,

1. The four questions referred to the Court for a preliminary ruling by the Verwaltungsgericht Hannover provide the opportunity to reconsider the principle of proportionality as applied to the refusal to grant a premium in the event of failure to comply with the relevant conditions laid down by the Community rules.

2. The common organization of the market in beef and veal was introduced by Regulation (EEC) No 805/68 of the Council of 27 June 1968. [1] Article 4a of that regulation, inserted by Article 1 of Council Regulation (EEC) No 467/87 of 10 February 1987, [2] introduced a system of special premiums for beef producers. The detailed rules for the application of the scheme are set out in Commission Regulation (EEC) No 714/89 of 20 March 1989 [3] (hereinafter 'the Regulation'), which is at the centre of the case before the Court.

3. The Regulation lays down the conditions for granting the special premium provided for by the said Article 4a.

4. It provides, in particular, that the producer must give an undertaking to keep the male cattle in respect of which the premium is sought [4] on his holding for a minimum period set by each Member State. That period may not be less than two or more than five months. [5]

5. Transitional provisions [6] allow derogations from that obligation in two cases provided for in Article 11(1) and (2) of the Regulation.

6. The following are exempted from that undertaking:

— producers in Member States applying the special premium for the first time (paragraph 1);

— in other Member States, and on their initiative, producers applying for a premium for animals whose fattening is almost completed. In that case, the application is subject to four conditions: (i) that it is made between 3 April and 4 June 1989, (ii) that the animals concerned are at least 12 months old at the date of lodging of the application, (iii) that they are kept on the holding for at least one month, (iv) that they will be slaughtered or exported

* Original language: French.

1 — Regulation on the common organization of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187).

2 — Regulation amending Regulation (EEC) No 805/68 on the common organization of the market in beef and veal and the systems of premiums granted in the beef and veal sector (OJ 1987 L 48, p. 1).

3 — Regulation laying down detailed rules applying to the special premium for beef producers (OJ 1989 L 78, p. 38).

4 — The animals giving entitlement to the premium are referred to as 'eligible' under the rules.

5 — Second indent of Article 2 and Article 8(2).

6 — Eighth recital in the preamble to the Regulation.

to third countries before 3 September 1989 (paragraph 2).

7. Article 8 states that 'The competent authority appointed by each Member State shall operate administrative checks and on-farm inspection in order to verify that the provisions governing the special premium are complied with'.

8. In the event of failure to comply with the conditions for the grant of the premium, a system of penalties is provided for in Article 9.

9. Under Article 9(1), 'where the number of eligible animals ascertained at the time of the inspection [7] is lower than the number in respect of which the premium application was lodged, no premium shall be paid'.

10. Entitlement to the premium subsists, however, where the reduction in the number of animals may be ascribed to 'natural circumstances affecting the herd' or 'reasons of *force majeure*', subject to the competent authority's being informed of the circumstances in due time (Article 9(2) and (3)).

11. Finally, Article 9(4) provides that, 'where the difference in the number of effectively eligible animals is less than 5%, (...) the premium less 20% shall be paid for the number of eligible animals (...)'.

12. On 25 April 1989, Mr Schumacher applied, under Article 11(2), for a special premium for 32 fattened male cattle, at least 12 months old, which were to be slaughtered before 3 September 1989.

13. The documents submitted by the producer to the competent national authority show that 27 animals were slaughtered between 20 June and 17 August 1989 and five others on 25 September 1989, that is to say, in respect of the latter, 22 days after the final date laid down in Article 11(2) of the Regulation.

14. On 12 October 1989, therefore, the Bezirksregierung Hannover rejected the application for the premium in its entirety, in pursuance of Article 9(1).

15. Mr Schumacher has challenged that decision before the Verwaltungsgericht Hannover, claiming that he is entitled to the special premium for at least 27 cattle, in respect of which he considers that he fulfilled all the conditions.

16. The court of reference points out that the situation before it has two distinct features: the difference between the number of animals eligible (27) and the number of animals declared (32) is not the result of 'natural circumstances' or 'reasons of *force majeure*' and, accordingly, Article 9(2) and (3) of the Regulation does not apply; Article 9(4) likewise does not apply, in its view, since the difference between the number of animals eligible and the number declared is greater than 5%. [8]

7 — See footnote 1 in the judgment in this case.

8 — See the explanations of the court of reference on that point (order for reference, pages 7 to 9 of the French translation)

17. The court of reference raises the question of the conformity of the penalty provided for under Article 9(1) of the Regulation with the principle of proportionality and refers to the Court four questions, which may be summarized as follows: [9]

1. Does that article apply to claims for special premiums under Article 11(2)?

2. Does 'inspection' in Article 9(1) include verification of documents?

3. Does Article 9(1) apply if Article 9(4) does not apply?

4. If so, does it breach the principle of proportionality?

18. The first and third questions seek to ascertain whether Article 9, as a whole, applies to the premiums provided for in Article 11(2) of the Regulation. I shall consider them together.

19. Article 9 penalizes the failure to comply with the conditions for eligibility of the animals.

20. It is intended to 'reinforce the measures for preventing and sanctioning irregularities and frauds'. [10]

21. For both the general system of special premiums (Article 2 of the Regulation) and the transitional scheme applicable to States applying the premium for the first time or to animals whose fattening is almost completed (Article 11 of the Regulation), the risk of fraud is identical.

22. An animal is ineligible where (i) there has been late slaughter (third indent of Article 11(2)), (ii) it has been kept for an insufficient period on the holding (second indent of Article 11(2)), (iii) the requirements regarding the age of the animals are not complied with (first indent of Article 11(2)), (iv) the number of eligible animals is exceeded (Article 1(2)), and so on.

23. Article 9 operates whatever the cause of the ineligibility or the scheme under which the application is made. In circumstances where the Regulation makes no distinction, there is no need to distinguish.

24. There is therefore no doubt that an animal which has not been slaughtered before the date specified in the third indent of Article 11(2) is not eligible within the meaning of Article 9(1).

25. Where the difference between the number of animals eligible and the number of animals declared exceeds 5%, Article 9(4) does not apply.

26. It follows that Article 9(1) applies to a producer who, having applied for a special premium on the basis of Article 11(2), has five animals which are ineligible — owing to late slaughter — out of a total of 32. That is,

9 — Their wording appears in the Report for the Hearing (I, 2 *in fine*).

10 — Fourth recital in the preamble to the Regulation.

moreover, the opinion of both the court of reference [11] and the Commission. [12]

27. As to the meaning of 'inspection' for the purposes of Article 9(1), which is the subject of the second question, I also agree, as does the Commission, [13] with the view taken by the court of reference. [14]

28. Under Article 8 of the Regulation, Member States operate two types of check: on-farm inspection and 'administrative checks'. It must be possible for administrative checks to consist in verifying the documents submitted by the applicant. Thus the comparison between the number of animals indicated in an application for the premium and the lists drawn up by a slaughterhouse [15] enables a check to be made on whether the animals have in fact been slaughtered before the last date specified in the third indent of Article 11(2). To disallow that type of check would make Article 8 nugatory.

29. But what of the principle of proportionality, the subject of the fourth question?

30. I would first of all point out that the Court is not called upon to decide, in the light of the principle of proportionality, upon the validity of measures imposing financial charges on economic operators, [16] in the light of the principle of proportionality. The failure to comply with the conditions for obtaining the special premium for beef producers results solely in the loss of the advantage which that premium represents.

31. As the Court pointed out in its judgment in Case C-319/90 *Pressler* v *Germany*, [17] the Court must consider 'in the light of the principle of proportionality, measures which provide for the exclusion from a benefit in the event of failure to comply with certain conditions or certain time-limits for carrying out operations or submitting requests or documents'. [18]

32. In such a case, the Court has stated, it is necessary to consider 'whether the measures introduced by that provision exceed the limits of what is appropriate and necessary in order to attain the objective pursued by the rules which have been breached. More particularly, it should be verified whether the means which the provision in question applies in order to achieve the aim pursued correspond to the importance of that aim and (...) are necessary in order to achieve it (...)'. [19]

33. The common organization of the market in beef and veal is designed to prevent or mitigate a substantial fall in prices, in partic-

11 — Page 7 of the French translation of the order for reference.
12 — Commission's observations, p. 7 of the French translation.
13 — Ibidem.
14 — Page 7 of the French translation of the order for reference.
15 — Ibidem, p. 6.
16 — See the judgments in Case 265/87 *Schrader* v *Hauptzollamt Gronau* [1989] ECR 2237, at paragraph 21, concerning a co-responsibility levy on processors of cereals and in Case C-24/90 *Werner Faust* [1991] ECR I-4905, at paragraph 12, concerning an additional levy on import duties.
17 — [1992] ECR I-203.
18 — Paragraph 11.
19 — Ibidem, paragraph 12

ular, by applying intervention measures. [20] When measures adjusting and limiting the effects of that intervention system were adopted, [21] Regulations (EEC) No 467/87, (EEC) No 468/87 and the Regulation being considered set up what was essentially a temporary [22] and transitional [23] *special premium* scheme, intended to support the income of producers during that period of adjustment. [24]

34. Since those provisional measures had been acknowledged by the Community as being justified for a limited period, it was important that they should not apply beyond the permitted period. It is therefore understandable that the Regulation should have specified a time-limit for slaughtering the animals in question.

35. The setting of a time-limit for slaughter which, when exceeded, is penalized by the loss of the premium, reflects not only concern for the proper operation of the system but also the need to ensure that the system is not diverted from its purpose.

36. Furthermore, Article 9(4) takes account of the significant disadvantage which would follow from loss of the whole aid in the event of a minor difference between the number of animals actually eligible and the number declared. In such a case the premium is only reduced. [25] That provision was adopted in order to take account, in 'an appropriate manner, of infractions of minor importance' [26] and shows that the Community legislature took account of the principle of proportionality.

37. Let us recall, finally, that entitlement to the premium subsists where the reduction in the number of animals is a result of natural circumstances or of *force majeure* of which the competent authority has been informed in due time.

38. Clearly, the loss of the premium in its entirety presupposes a *significant* reduction in the number of animals actually eligible, for which the cause is neither a natural circumstance affecting the herd nor *force majeure.*

39. It is therefore a matter of penalizing either negligence (the producer has known the time-limit for slaughter as from the date of lodging his application for premium and several months separate the latter from the former), or, as the case may be, fraud on the part of the producer.

40. Suffice it to say that in neither of those cases is there any place for Community aid.

41. The national court refers to an opinion of the Commission [27] which is said to have authorized the grant of premiums for all the animals in a herd, despite the failure to comply with the obligation of marking. It is

20 — See Articles 5 and 6 of Regulation (EEC) No 805/68.

21 — See fourth recital in the preamble to Regulation (EEC) No 467/87.

22 — See Article 4a of Regulation (EEC) No 805/68, inserted by Article 1 of Regulation (EEC) No 467/87.

23 — See Article 11 of the Regulation.

24 — See sixth recital in the preamble to Regulation (EEC) No 467/87.

25 — Cf. the judgment in Case 9/85 *Nordbutter* [1986] ECR 2831, at paragraph 17.

26 — Fourth recital in the preamble to the Regulation.

27 — Page 10 of the French translation of the order for reference.

sufficient in this instance to note that that opinion, apart from the fact that its import is disputed by the Commission and that it cannot bind the Court, was issued in 1987 and therefore has no bearing on a system of special premiums for producers of beef for which the detailed rules for application were established at a later date.

42. I would add, finally, that according to the consistent case-law of the Court, 'the Community institutions must ... be recognized as having a broad discretionary power in regard to the common agricultural policy which reflects the responsibilities which the Treaty imposes on them'. [28]

43. My view therefore is that consideration of Article 9(1) of the Regulation has disclosed no factor of such a kind as to affect its validity in the light of the principle of proportionality.

44. I therefore conclude that the Court should rule as follows:

(1) Since paragraphs (2) and (3) of Commission Regulation (EEC) No 714/89 of 20 March 1989 are inapplicable, paragraph (1) of that Article applies to claims for special premiums for beef producers under Article 11(2) of the Regulation.

(2) For the purposes of Article 9(1) 'inspection' includes verification of documents produced by the applicant to the competent national authority in order to prove that he meets the conditions required for payment of the premium.

(3) Consideration of Article 9(1) of the Regulation has disclosed no factor of such a kind as to affect its validity in the light of the principle of proportionality.

28 — Case C-256/90 *Mignini* [1992] ECR I-2651, paragraph 16.