JUDGMENT OF THE COURT (Sixth Chamber)
17 July 1997 *

In Case C-354/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the High Court of Justice, Queen's Bench Division (United Kingdom), for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Minister for Agriculture, Fisheries and Food,

***ex parte* National Farmers' Union and Others,**

on the interpretation and validity of Article 9 of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36),

* Language of the case: English.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini (Rapporteur), President of the Chamber, J. L. Murray and P. J. G. Kapteyn, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— the National Farmers' Union and Others, by E. H. Pijnacker Hordijk, of the Amsterdam Bar, T. P. J. Van Oers, of the Hague Bar, and P. Duffy, Barrister, instructed by W. J. Neville, Solicitor,

— the United Kingdom Government, by L. Nicoll, of the Treasury Solicitor's Department, acting as Agent, and P. Watson, Barrister,

— the Commission of the European Communities, by J. MacDonald Flett, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the National Farmers' Union and Others, the United Kingdom Government and the Commission at the hearing on 22 January 1997,

after hearing the Opinion of the Advocate General at the sitting on 6 March 1997,

gives the following

Judgment

1 By order of 31 October 1995, received at the Court on 20 November 1995, the High Court of Justice, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the Treaty several questions on the interpretation and validity of Article 9 of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36).

2 Those questions were raised in proceedings between the National Farmers' Union, the national trade association for farmers in England and Wales (hereinafter 'the NFU') and 120 individual farmers, on the one hand, and the Minister for Agriculture, Fisheries and Food (hereinafter 'the MAFF'), on the other, regarding the penalties which had been imposed on them by the MAFF under Article 9 of Regulation No 3887/92, of which they contest both the interpretation and actual application by the MAFF.

The Community Rules

The aid scheme for bovine animals

Council Regulation No 805/68

3 Articles 4a to 4l of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187), as amended by Council Regulation (EEC) No 2066/92 of 30 June

1992 amending Regulation (EEC) No 805/68 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), provide for the grant of various premiums, including the special premium for male bovine animals and the premium for suckler cows.

4 Under Article 4g the total number of animals qualifying for those two premiums is limited by the application of a stocking density on the holding, which is expressed in livestock units ('LU') per unit of forage area of the holding used for the animals carried on it.

Commission Regulation No 3886/92

5 Article 42(1) of Commission Regulation (EEC) No 3886/92 of 23 December 1992 laying down detailed rules for the application of the premium schemes provided for in Regulation No 805/68 and repealing Regulations (EEC) No 1244/82 and (EEC) No 714/89 (OJ 1992 L 391, p. 20) provides that, for each producer who submits an 'area' aid application and a special premium or suckler cow premium application, the competent authorities are to establish the number of LU corresponding to the number of animals for which a premium may be granted, taking account of the forage area of his holding.

The aid scheme for arable crops and set-aside

Council Regulation No 1765/92

6 Article 2(1) of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12)

provides that Community producers of arable crops may apply for a compensatory payment under the conditions set out in Title I of that regulation. The second subparagraph of Article 2(2) provides that the compensatory payment is to be granted for the area which is down to arable crops or subject to set-aside.

7 Article 2(5) of Regulation No 1765/92 makes entitlement to that payment subject to the requirement that producers set aside part of the land of their holding in return for compensation.

The detailed rules applying the aid schemes

Council Regulation No 3508/92

8 Article 6(1), first indent, of Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1) provides that, in order to be eligible under one or more Community schemes, each farmer must submit, for each year, an 'area' aid application indicating the agricultural parcels, including areas under forage crops, and agricultural parcels covered by a set-aside measure for arable land and those laid fallow.

Commission Regulation No 3887/92

9 According to the seventh recital in the preamble to Regulation No 3887/92, 'compliance with the provisions on Community aid must be effectively monitored'.

10 The ninth recital indicates that provisions should be adopted to prevent and penalize irregularities and fraud effectively but that, having regard to the specific features of the various schemes, there should be sanctions graded according to the gravity of the irregularity committed, going as far as total exclusion from a scheme.

11 According to Article 4(4), set-aside declarations and crop declarations are to be made along with the 'area' aid application or to comprise part of it. Article 4(1) specifies which information is to be included in such applications.

12 According to Article 6(1), administrative and on-the-spot checks are to be made in such a way as to ensure effective verification of compliance with the terms under which aids and premiums are granted.

13 Article 9 of Regulation No 3887/92 was worded as follows:

'1. If the area actually determined is found to be greater than that declared in the "area" aid application, the area declared shall be used for calculation of the aid.

2. If the area actually determined is found to be less than that declared in an "area" aid application, the area actually determined on inspection shall be used for calculation of the aid. However, except in cases of *force majeure*, the area actually determined on inspection shall be reduced:

— by twice the difference found if this is more than 2% or two hectares but not more than 10% of the determined area,

— by 30% if the difference found is more than 10% but not more than 20% of the determined area.

If the difference is more than 20% of the determined area no area-linked aid shall be granted.

However, in the case of a false declaration made intentionally or as a result of serious negligence:

— the farmer in question shall be excluded from the aid scheme concerned for the calendar year in question, and

— in the case of a false declaration intentionally made, from any aid scheme referred to in Article 1(1) of Regulation (EEC) No 3508/92 for the following calendar year, in respect of an area equal to that for which his aid application was rejected.

...

For the purposes of this Article, "determined area" means the area for which all of the conditions laid down in the rules have been met.

3. Forage areas, set-aside areas and each arable crop area for which a different aid rate is applicable shall be treated exclusively and separately for the purposes of applying paragraphs 1 and 2.

4. The areas determined in accordance with the provisions of paragraphs 1 and 3 of this Article for aid calculation purposes shall be used:

— where set aside provisions are involved, for the calculation of the maximum area eligible for compensatory payments to arable crop producers,

— for calculation of the limit on the premiums referred to in Articles 4g and 4h of Regulation (EEC) No 805/68, as well as for the compensatory allowance.

However, in the cases mentioned in paragraph 2, first subparagraph, first and second indents, the calculation of the maximum area eligible for the payment of compensatory allowances to arable producers shall be made on the basis of the area of set aside actually determined.

5. ...'

14 However, whereas all the other language versions of the first subparagraph of Article 9(4) referred to paragraphs 1 to 3 or to Article 9 as a whole, the English, Finnish and Swedish versions referred to paragraphs 1 and 3.

15 Commission Regulation (EC) No 229/95 of 3 February 1995 amending Regulation No 3887/92 and Regulation (EC) No 762/94 (OJ 1995 L 27, p. 3) corrected the latter versions of the first subparagraph of Article 9(4), which now correspond to the other versions of the regulation. That provision, as amended, now refers to 'paragraphs 1 to 3' of Article 9 and no longer to 'paragraphs 1 and 3'.

Commission Regulations No 229/95 and No 1648/95

16 Article 1(3) of Regulation No 229/95 amends Article 9(4) of Regulation No 3887/92 to provide as follows:

'4 (a) The areas determined in accordance with the provisions of paragraphs 1 to 3 for aid calculation purposes shall be used:

— in the context of set aside, for the calculation of the maximum area eligible for compensatory payments to arable crop producers,

— for calculation of the limit on the premiums referred to in Articles 4g and 4h of Regulation (EEC) No 805/68, and also for the calculation of the compensatory allowance.

However, in the cases mentioned in the first and second indents of the first subparagraph of paragraph 2, the calculation of the maximum area eligible for the payment of compensatory allowances to arable producers shall be made on the basis of the area of set-aside actually determined and on a pro rata basis for each crop concerned.

(b)...'

17 The fourth recital in the preamble to Commission Regulation (EC) No 1648/95 of 6 July 1995 amending Regulation No 3887/92 (OJ 1995 L 156, p. 27) states that 'in the interests of simplification of the "area" and "livestock" sanctions the provisions with regard to their application should be amended; ... as the rules concern-

ing set-aside have been modified since the adoption of Commission Regulation (EEC) No 3887/92, as amended by Regulation (EC) No 229/95, in particular with the adoption of provisions allowing the transfer of the set-aside obligation from producer to producer and of voluntary set-aside, it is appropriate to amend the sanctions'.

18 Article 1(5) and (6) of Regulation No 1648/95 amended Article 9(2) and (4) of Regulation No 3887/92 as follows:

'5. In Article 9(2), first subparagraph, the first and second indents shall be replaced by the following:

"... by twice the difference found if this is more than 3% or 2 hectares but not more than 20% of the determined area."

6. Article 9(4)(a) is replaced by the following:

"(a) the areas established in accordance with the provisions of paragraphs 1 to 3 for the purpose of calculating the aid shall be used for the calculation of the limit of the premiums referred to in Article 4(g) and 4(h) of Regulation (EEC) No 805/68, as well as for the calculation of the compensatory allowance.

The calculation of the maximum eligible area for the compensatory payments to arable crop producers shall be made on the basis of the area of set-aside land actually determined and on a *pro rata* basis for each crop concerned"'.

The effect in time of administrative penalties provided for by Community measures

Council Regulation No 2988/95

19 Article 1(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1) provides: 'For the purposes of protecting the European Communities' financial interests, general rules are hereby adopted relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Community law'.

20 Under Article 1(2), 'irregularity' means any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

21 Article 2(2) provides: 'No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively.'

The main proceedings

22 According to the order for reference, the main proceedings concern farmers who innocently overstated by more than 20% the areas of their land when making declarations in their aid applications, so that they have suffered grave financial problems as a result of the penalties imposed by the MAFF pursuant to Article 9 of Regulation No 3887/92.

23 Moreover, according to the High Court of Justice, where the set-aside area is overstated by more than 20%, by virtue of Article 9 of that regulation the MAFF does not grant any aid linked to set-aside or arable crops. Furthermore, an overstatement of more than 20% of the area under forage crops or of land used for the production of a specific arable crop deprives the farmers of any associated compensation.

24 Again according to the order for reference, the United Kingdom authorities informed the Commission by letter of 22 February 1995 that they considered that the refusal of any payments linked to arable crops was disproportionate to the gravity of the irregularity committed. In reply the Commission stated that those penalties were not unduly harsh, but added that it had already drawn up a draft proposal to amend Regulation No 3887/92 so as to enable farmers to receive compensatory payments for arable crops on the basis of the set-aside area actually found.

25 The NFU and 120 individual farmers contest the MAFF's application of Article 9(2) to (4) of Regulation No 3887/92 and have therefore brought proceedings before the High Court of Justice.

The questions referred

26 Taking the view that the result of the dispute brought before it required an interpretation of Regulation No 3887/92 and an assessment of its validity, the High Court of Justice decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are Article 9(2) to (4) of Commission Regulation 3887/92 (prior to the entry into force of Regulation 1648/95) to be construed as requiring that all area related payments be refused to farmers whose set aside land actually determined is found to be less than that declared in an aid application when the difference is more than 20% but when no false intention or serious negligence has been found?

(2) Are Article 9(2) to (4) of Commission Regulation 3887/92 (prior to the entry into force of Regulation 1648/95) to be construed as requiring that all beef premiums be refused to farmers whose forage area actually determined is found to be less than that declared in an area aid application when the difference is more than 20%, but when no false intention or serious negligence has been found?

(3) If the answer to Question (1) and/or (2) is "yes", are Article 9(2) to (4) of Commission Regulation 3887/92 (prior to the entry into force of Regulation 1648/95) invalid, wholly or in part, by reason of breach of any principle of Community law, particularly legal certainty, non-discrimination and/or proportionality?

(4) If the answer to Question (1) and/or (2) is "no", how are Article 9(2) to (4) of Commission Regulation 3887/92 (prior to the entry into force of Regulation 1648/95) to be construed?

(5) Regardless of the answers to Questions (1) to (4), is it valid and lawful for Commission Regulation 3887/92 to impose the sanction of loss of the entire specific area related payment on a farmer whose area actually determined is found to be less than that declared in the aid application when the difference [is] more than 20% but when no false intention or serious negligence has been found?'

Question 1 and the first part of Question 4

27 By its first question, the High Court of Justice asks essentially whether, prior to the entry into force of Regulation No 1648/95, Article 9(2) to (4) of Regulation No 3887/92 must be interpreted as precluding any payment linked to the arable areas when the difference between the area of set-aside land declared and that determined upon inspection by the competent authorities exceeds 20% and there is no false intention or serious negligence. If that question is to be answered in the negative, the first part of its fourth question seeks to ascertain how those provisions should be construed.

28 First of all, it should be noted that, as stated in paragraphs 13 to 15 of this judgment, the error in the initial English version of the first subparagraph of Article 9(4) of Regulation No 3887/92 was corrected when Regulation No 229/95 was adopted.

29 The NFU claims that the words 'no area-linked aid' in the second subparagraph of Article 9(2) of Regulation No 3887/92 mean that no aid is to be granted in relation to the overstated area, namely the set-aside area. It claims that this interpretation is confirmed by Article 9(3) which provides that forage areas, set-aside areas and areas for various arable crops are to be taken into account separately. Consequently, whilst a farmer might lose the benefit of all compensatory payments linked to his set-aside area, he would still retain his right, based on the set-aside area actually determined upon inspection, to obtain aid for cropped arable areas

under Article 9(4) of Regulation No 3887/92. The NFU claims that the amendments made by Regulation No 1648/95 merely clarify the application of Article 9(4) and do not lead to any material change.

30 The United Kingdom Government, however, considers that it follows from Article 9(2) of Regulation No 3887/92 that, when an overstatement exceeds 20% of the set-aside area, there is no determination of set-aside area. It therefore considers that such an overstatement has the same effect as a situation where no area has been found, for the purposes of the regulation. Since the set-aside area determined in accordance with Article 9(2) is used as the basis for calculating the maximum eligible area for compensatory payments, no area-linked aid can be granted.

31 The Court finds that it is clear from Article 9(2) of Regulation No 3887/92, in particular from the words 'no area-linked aid shall be granted', that where the difference between the area of set-aside land actually determined on inspection and that declared in the aid application is more than 20%, the farmer is deemed not to have set aside any land for the purposes of the regulation. Since the area of set-aside land actually determined is used as the basis for calculating the area eligible for arable area aid, the farmer loses any entitlement to that aid.

32 Although Article 9(4) of Regulation No 3887/92 does provide, it is true, that calculation of the maximum area eligible for payment of compensatory allowances to arable producers is to be based on the area of set-aside land actually determined, nevertheless that provision applies only when the difference between the area of set-aside land actually determined and that declared as a result of an innocent error is between 2% and 20%. Article 9(4) does not, therefore, apply to errors, even those committed innocently, in excess of 20%, such as those referred to in the main proceedings.

33 Moreover, the amendments made to Article 9 of Regulation No 3887/92 by Regulation No 1648/95 were based on the interpretation that, prior to the entry into force of the latter regulation, when the declaration of the set-aside area in the aid application exceeded that determined on inspection by more than 20%, there was no determination of set-aside area and thus no basis on which compensatory payments for arable crops could be calculated.

34 Prior to the entry into force of Regulation No 1648/95, therefore, Article 9(2) to (4) of Regulation No 3887/92 must be interpreted as precluding any payment linked to the arable areas when the difference between the area of set-aside land declared and that determined on inspection by the competent authorities exceeds 20% and there is no false intention or serious negligence.

35 However, it should also be observed that Article 9(4) of Regulation No 3887/92, as amended by Regulation No 1648/95, provides for reduced penalties when the farmer has committed an innocent error in declaring his set-aside area in his aid application. Under that amendment, calculation of the maximum area giving entitlement to compensatory payments for arable crop producers is to be made on the basis of the area of set-aside land actually determined and on a *pro rata* basis for the various crops. Those provisions entered into force after the events which are the subject-matter of the proceedings before the High Court.

36 By letter of 9 December 1996 the Court of Justice asked the NFU, the United Kingdom Government and the Commission whether, in the light of Articles 1(2) and 2(2) of Regulation No 2988/95, under which less severe penalties introduced by subsequent amendments to Community provisions must be applied retroactively, the amendments made by Regulation No 1648/95 affected the answers to be given to the national court's questions.

37 The NFU submits that, if its proposed interpretation of Article 9(2) to (4) of Regulation No 3887/92 is not upheld, the Court may and should rule, on the basis of Article 2(2) of Regulation No 2988/95, that the less severe penalties provided for by Regulation No 1648/95 must be applied retroactively to the farmers who innocently overstated their areas of set-aside land by more than 20%. The Commission, too, submits that a relaxed penalty should be applied where the set-aside area was overstated by more than 20% since, by virtue of Article 2(2) of Regulation No 2988/95, an innocent overstatement of more than 20% in such a case no longer leads to the loss of all payments for arable crops.

38 The United Kingdom Government, however, contends that there is no provision in Regulation No 2988/95 for the retroactive application of the provisions of Regulation No 1648/95 to situations arising prior to its adoption.

39 The Court notes that one of the aims of Regulation No 2988/95, as stated in the 10th recital in its preamble, is to adopt 'appropriate provisions ... while respecting the *acquis communautaire* and the provisions laid down in specific Community rules existing at the time of entry into force of this Regulation, to prevent any overlap of Community financial penalties and national criminal penalties imposed on the same persons for the same reasons.' Consequently, that regulation clearly applies equally to Community regulations in existence when it entered into force, including Regulation No 3887/92.

40 Since the false declaration referred to in Article 9(2) to (4) of Regulation No 3887/92 is an irregularity within the meaning of Article 1(2) of Regulation No 2988/95 and forfeiture of aid for crops constitutes an administrative penalty within the meaning of Article 2(2), Regulation No 2998/95 therefore applies to the case in the main proceedings.

41 The answer to the first question must therefore be that Article 9(2) to (4) of Regulation No 3887/92, prior to the entry into force of Regulation No 1648/95, must be interpreted as precluding any payment linked to the arable areas when the difference between the area of set-aside land declared and that determined on inspection by the competent authorities exceeds 20% and there is no false intention or serious negligence. However, in the light of Articles 1(2) and 2(2) of Regulation No 2988/95, under which less severe penalties introduced by subsequent amendments to Community provisions must be applied retroactively, the amendments made to Article 9(4) of Regulation No 3887/92 by Regulation No 1648/95 apply to circumstances which occurred before its entry into force. Consequently, the calculation of the maximum eligible area for the compensatory payments for arable crop producers must be made, under Article 9(4) of Regulation No 3887/92, as amended by Regulation No 1648/95, on the basis of the area of set-aside land actually determined and on a *pro rata* basis for each crop concerned.

Question 2 and the second part of Question 4

42 By its second question, the High Court of Justice asks essentially whether Article 9(2) to (4) of Regulation No 3887/92 must be interpreted as precluding any payment linked to bovine animals for holdings when the forage area as actually determined on inspection by the competent authorities is found to be more than 20% smaller than that declared in the aid application and there is no false intention or serious negligence. If that question is to be answered in the negative, the second part of the fourth question of the High Court of Justice seeks to ascertain how those provisions must be construed.

43 Since, under Article 9(4) of Regulation No 3887/92, the forage area actually determined must be used to calculate the premiums and since, for the reasons set out in paragraphs 31 to 33 of this judgment, when the difference between that area and the forage area declared in the aid application exceeds 20%, the farmer is deemed

not to have set aside any land for the purposes of that regulation and will be refused any premium for bovine animals, the reply to that question must be — and this is not disputed by the parties — in the affirmative.

44 Although Regulation No 1648/95 has reduced the penalties applicable to farmers who have overstated their set-aside area by more than 20%, it has not changed the position as regards farmers who have made an innocent mistake of more than 20% of the forage area, so that the penalties applicable to such errors have remained the same.

45 Consequently, even after the entry into force of Regulation No 1648/95, any premium for bovine animals is refused to farmers who overstate their forage area by more than 20%. The second part of the fourth question is therefore redundant.

46 The answer to the second question must therefore be that Article 9(2) to (4) of Regulation No 3887/92 must be interpreted as precluding the payment of any premium for bovine animals to farmers when the forage area as actually determined is found to be more than 20% smaller than that declared in the 'area' aid application and there is no false intention or serious negligence.

Question 3

47 By its third question, the High Court asks essentially whether Article 9(2) to (4) of Regulation No 3887/92 is valid in the light, particularly, of the principles of legal certainty, non-discrimination and proportionality.

48 Having regard to the answers to the first question and to the first part of the fourth question, the validity of Article 9(2) to (4) of Regulation No 3887/92 is not called into question as regards farmers who, without false intention or serious negligence, have overstated the area of set-aside land declared in their aid applications by more than 20%. Consequently, the third question aims, essentially, to ascertain whether that provision is valid in so far as it precludes the payment of any premium for bovine animals to farmers when the forage area as actually determined is found to be more than 20% smaller than that declared in the 'area' aid application and there is no false intention or serious negligence.

49 As regards, first of all, the principle of proportionality, it is settled law that, in order to establish whether a provision of Community law complies with that principle, it must be ascertained whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it (see, *inter alia*, Case 426/93 *Germany* v *Council* [1995] ECR I-3723, paragraph 42).

50 The Court has also stated on numerous occasions that, where the evaluation of a complex economic situation is involved, the Community institutions enjoy a wide measure of discretion. In reviewing the legality of the exercise of such discretion, the Court must confine itself to examining whether it is not vitiated by a manifest error or misuse of power or whether the institution in question has not manifestly exceeded the limits of its discretion (see, to that effect, Joined Cases C-296/93 and C-307/93 *France and Ireland* v *Commission* [1996] ECR I-795, paragraph 31).

51 It emerges clearly from paragraph 10 of this judgment that Regulation No 3887/92 aims to introduce provisions which effectively prevent and penalize irregularities and fraudulent acts. Moreover, according to the first recital to that regulation, the purpose of the integrated system is to enable the reform of the common agricultural policy to be implemented efficiently and in particular to solve the administrative problems caused by the introduction of several area-linked aid schemes.

52 It is therefore necessary to assess whether the integrated administration and control system for certain Community aid schemes is consistent with the importance of the aims so described and whether it is necessary in order to achieve them.

53 The penalty established, namely the loss of entitlement to the premium for bovine animals, is not absolute but reflects the extent of the error committed. Although a farmer making an innocent error makes his declaration without fraudulent intent, the extent of the error involved is none the less considerable. Given the wide measure of discretion enjoyed by the Community institutions in that area, it cannot be regarded as unjustified or disproportionate to impose in respect of such an error a dissuasive and effective penalty such as that provided for in the second subparagraph of Article 9(2) of Regulation No 3887/92.

54 In view of the specific features of the various schemes, Regulation No 3887/92 provides for sanctions graded according to the seriousness of the irregularity committed. Whilst the penalty imposed on a farmer who has made a declaration which overstates his set-aside area or forage area by more than 20% is one of the heaviest established by that regulation, even heavier penalties, namely exclusion from the aid scheme concerned for the calendar year in question for farmers who have made a false declaration as a result of serious negligence and the loss of all aid for a period of two years in the case of those who have intentionally made a false declaration, have been provided for by the third subparagraph of Article 9(2), irrespective of the extent of the overstatement found.

55 The system of penalties established by Article 9(2) to (4) of Regulation No 3887/92 for farmers whose forage area as actually determined is found to be more than 20% smaller than that declared in good faith in the 'area' aid application is therefore commensurate with the objectives pursued and necessary in order to achieve them. Consequently, that provision is not contrary to the principle of proportionality, the importance of which is, moreover, noted in the ninth recital in the preamble to that regulation.

56 Secondly, as regards the principle of legal certainty, the NFU submits that the interpretation of Article 9(2) of Regulation No 3887/92 put forward by the MAFF is ambiguous as to whether an overstatement by 20% of the set-aside area will or will not result in loss of all entitlements to payments linked to the arable areas and that the expression 'area-linked aid', used in the second subparagraph, is not defined.

57 As the Court has repeatedly held, the principle of legal certainty is a fundamental principle of Community law which requires in particular that rules imposing charges on a taxpayer be clear and precise so that he may be able to ascertain unequivocally what his rights and obligations are and take steps accordingly (Case C-143/93 *Van Es Douane Agenten* v *Inspecteur der Invoerrechten en Accijinzen* [1996] ECR I-431, paragraph 27).

58 Whilst Regulation No 3887/92 may present some difficulties of interpretation, it does not necessarily thereby infringe the principle of legal certainty. Those difficulties are due to the complexity of the matters involved and, as the Advocate General has observed at point 104 of his Opinion, if the regulation is read carefully, the sense and consequences of the application of its provisions, which are intended for those involved professionally in the area, can be grasped.

59 Having regard to those considerations, Article 9 of Regulation No 3887/92 does not infringe the principle of legal certainty.

60 Finally, the NFU submits, Article 9 of Regulation No 3887/92 infringes the principle of non-discrimination by treating innocent errors overstating forage or set-aside area by more than 20% in the same way as false declarations made by farmers intentionally or as a result of serious negligence.

61 The Court has consistently held that the principle of non-discrimination requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified (see, to that effect, Case C-56/94 *SCAC* v *Associazione dei Produttori Ortofrutticoli* [1995] ECR I-1769, paragraph 27).

62 It is clear from the second subparagraph of Article 9(2) of Regulation No 3887/92 that no area-linked aid is to be granted if, in his declaration, a farmer has overstated his set-aside or arable areas by more than 20%, or overstated his forage area by more than 20%. Under the third subparagraph of Article 9(2), however, and as is clear from paragraph 54 of this judgment, farmers who have made a false declaration intentionally or as a result of serious negligence are in any event excluded from the aid scheme concerned for the calendar year in question and even, in the case of a false declaration intentionally made, for the following calendar year. Those penalties are imposed whatever the extent of the difference between the areas declared and those found on inspection.

63 Consequently, different penalties are imposed, on the one hand, on farmers who, in their declarations, have overstated their set-aside or arable areas by more than 20% or on farmers who, in their declarations, have overstated their forage areas by more than 20% and, on the other hand, on farmers who have made a false declaration intentionally or as a result of serious negligence, so that Article 9(2) to (4) of Regulation No 3887/92 does not infringe the principle of non-discrimination.

64 Consideration of Article 9(2) to (4) of Regulation No 3887/92 has therefore disclosed no factors of such a kind as to affect its validity in the light of the principles of proportionality, legal certainty and non-discrimination.

Question 5

65 By its fifth question, the High Court of Justice asks essentially whether Article 9(2) to (4) of Regulation No 3887/92 is valid in so far as it imposes the sanction of loss of the entire payment linked to a specific area, namely an area devoted to a particular arable crop, on a farmer when the area of land as actually determined is found to be more than 20% smaller than that declared in his aid application and there is no false intention or serious negligence.

66 While the third question concerns the validity of the preclusion of the payment of any premium for bovine animals on account of an overstatement of the forage area and of any payment linked to the arable areas on account of an overstatement of the area set aside, the fifth question concerns the situation in which a farmer has overstated a specific arable crop area by more than 20% and, for that reason, has been refused any payment for that crop.

67 It suffices to point out that, for the same reasons as those given in paragraphs 51 to 64 of this judgment, Article 9(2) to (4) of Regulation No 3887/92 does not infringe the principles of proportionality, legal certainty and non-discrimination in so far as it imposes the sanction of loss of the entire payment linked to a specific area on a farmer when the area of land as actually determined is found to be more than 20% smaller than that declared in his aid application and there is no false intention or serious negligence.

68 The answer to the fifth question must therefore be that consideration of Regulation No 3887/92 has disclosed no factors of such a kind as to affect the validity of Article 9(2) to (4) thereof in so far as it imposes the sanction of loss of the entire payment related to a specific area on a farmer when the area of land as actually

determined is found to be more than 20% smaller than that declared in the aid application and there is no false intention or serious negligence.

Costs

69 The costs incurred by the United Kingdom Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the High Court of Justice, Queen's Bench Division, by order of 31 October 1995, hereby rules:

1. Article 9(2) to (4) of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes, prior to the entry into force of Commission Regulation (EC) No 1648/95 of 6 July 1995, must be interpreted as precluding any payment linked to the arable areas when the difference between the area of set-aside land declared and that determined on inspection by the competent authorities exceeds 20% and there is no false intention or serious negligence. However, in the light of Articles 1(2) and 2(2) of Council Regulation (EC, Euratom) No

2988/95 of 18 December 1995 on the protection of the European Communities' financial interests, under which less severe penalties introduced by subsequent amendments to Community provisions must be applied retroactively, the amendments made to Article 9(4) of Regulation No 3887/92 by Regulation No 1648/95 apply to circumstances which occurred before its entry into force. Consequently, the calculation of the maximum eligible area for the compensatory payments for arable crop producers must be made, under Article 9(4) of Regulation No 3887/92, as amended by Regulation No 1648/95, on the basis of the area of set-aside land actually determined and on a *pro rata* basis for each crop concerned.

2. **Article 9(2) to (4) of Regulation No 3887/92 must be interpreted as precluding the payment of any premium for bovine animals to farmers when the forage area as actually determined is found to be more than 20% smaller than that declared in the 'area' aid application and there is no false intention or serious negligence.**

3. **Consideration of Article 9(2) to (4) of Regulation No 3887/92 has disclosed no factors of such a kind as to affect its validity in the light of the principles of proportionality, legal certainty and non-discrimination.**

4. **Consideration of Regulation No 3887/92 has disclosed no factors of such a kind as to affect the validity of Article 9(2) to (4) thereof in so far as it imposes the sanction of loss of the entire payment related to a specific area on a farmer when the area of land as actually determined is found to be more than 20% smaller than that declared in the aid application and there is no false intention or serious negligence.**

Mancini Murray Kapteyn

Delivered in open court in Luxembourg on 17 July 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber