OPINION OF ADVOCATE GENERAL LENZ

delivered on 9 July 1992 *

Mr President,
Members of the Court,

A — Facts

1. This reference for a preliminary ruling concerns the provisions of Article 7 of Regulation (EEC) No 1442/88. [1]

2. It stems from proceedings before the Tribunal d'Instance, Béziers. The plaintiff, Mr Teulie, was a wine-grower and member of the defendant cooperative. In 1988 he decided to abandon some of his wine-growing areas in order to obtain the grubbing-up premiums. He applied for the premium on 30 November 1988, whereupon the competent French authority paid 85% of the premium to him and the remainder to the defendant.

3. The authorities relied for that purpose on the French administrative rules adopted under Article 7(1) of Regulation No 1442/88 or the corresponding provision in the preceding Regulation, No 777/85. [2] Article 7(1) of Regulation No 1442/88 provides:

'Member States may provide that, for holders who are members of a wine cooperative or other association of wine-growers, the premiums provided for in Article 2(1) shall be reduced by up to 15%. In such case, the sums corresponding to this reduction shall be paid to the cooperatives or associations in question.'

4. The plaintiff, not prepared to countenance the deduction, sued the cooperative for the amount it had been paid by the French authorities. He argued that the regulation in question, which provided for a levy of between one and fifteen per cent to be paid to the cooperative, was directly applicable. Consequently a Member State was not entitled to adopt a fixed rate to apply across the board: the specific amount in any given case fell to be negotiated between the cooperative and the member concerned. Moreover, such a deduction could only be contemplated where the cooperative had suffered loss; in the present case no such loss had been sustained.

* Original language: German.

1 — Council Regulation (EEC) No 1442/88 of 24 May 1988 on the granting, for the 1988/1989 to 1995/1996 wine years, of permanent abandonment premiums in respect of wine-growing areas (OJ 1988 L 132, p. 3).

2 — Regulation (EEC) No 777/85 of 26 March 1985 on the granting, for the 1985/1986 to 1989/1990 wine years, of permanent abandonment premiums in respect of wine-growing areas (OJ 1985 L 88, p. 8).

5. The national court has referred two questions for a preliminary ruling. The text of the questions is set out in the Report for the Hearing.

B — Observations

The first question

6. The national court's first question is whether a cooperative must have shown that it has sustained a loss before, under Article 7(1) of Regulation No 1442/88, the amount of the premium payable to a recipient is reduced and the difference paid to the cooperative [3] to which he belonged.

7. The Commission, the French Government and the defendant in the main proceedings submit that no such inference may be drawn from the text of Article 7(1). In their view, the premium payable to a member of a cooperative may be reduced in all cases, and the question whether the cooperative has sustained any loss does not have to be considered.

8. The context of Article 7(1) appears to bear out that view. Under Article 7(2), Member States may provide for measures comprising national compensation for wine cooperatives which furnish proof that they have had to reduce their activity as a result of the lower level of deliveries from their members by at least 10% compared with that cultivated during the reference period specified in the regulation. The second sentence of Article 7(2) provides that such compensation may not exceed the 'the losses due to the reduction in activity'. The wording of Article 7(2) ('without prejudice to paragraph 1') makes it clear that the procedures provided for in paragraphs 1 and 2 rank equally, the Member States being free to elect which to apply. Since Article 7(2) refers explicitly to losses sustained by the cooperative whereas Article 7(1) does not, it might be inferred that the legislative intention was to preclude the question of whether the cooperative had sustained a loss from being raised in regard to the Article 7(1) scheme.

9. However, where Community rules allow Member States a measure of discretion, the exercise thereof is circumscribed by the requirements attendant *inter alia* on the purpose of the rules in question. [4] The purpose of the rules contained in Article 7 of Regulation No 1442/88 is described as follows in the eighth recital:

'the abandonment of wine-growing areas by holders who are members of cooperative organizations jointly processing grapes harvested by their members may reduce the

3 — Article 7(1) speaks of 'a wine cooperative or other association of wine-growers'. For simplicity, I shall use the expression 'wine cooperative' in all cases.

4 — See for example Case C-16/89 *Spronk* [1990] ECR I-3185, paragraph 13.

quantities of grapes delivered and thereby increase processing costs; ... it is therefore fair to provide that such negative effects may be compensated for; ... bearing in mind the differences which exist in wine-growing structures within the Community, any compensation scheme should be adopted by the Member States'

10. Clearly, therefore, the intention underlying Article 7 of the regulation is to grant wine cooperatives compensation for the disadvantages consequent upon their members' abandonment of wine-growing areas prompted by the premiums made available by the regulation. In my view, it follows that the rules contained in Article 7 Paragraph 1 also serve that purpose, being intended, in the words of paragraph 2, to compensate for 'the losses due to the reduction in activity'.

11. Consequently, the difference between the two procedures available to the Member States in order to grant such compensation is that under Article 7(2) the wine cooperatives have to prove the existence of circumstances indicative of a loss within the meaning of the regulation, their compensation being limited to the amount of such loss. No such proof is, however, required under Article 7(1) which, as Counsel for the Commission correctly observed, embodies a 'presumption' that the cooperative has suffered loss. The important question is therefore whether the rule concerned permits a person whose premium has been reduced to adduce evidence that the wine cooperative suffered either no loss at all, or that its losses fell short of the amount allocated to it.

12. A point raised by the Commission seems to me to be critical here. It pointed out that the purpose of Article 7(1) is to enable the compensation payable to the wine cooperatives to be determined as simply and swiftly as possible; however, Member States are free to opt for the Article 7(2) procedure, whereby the loss suffered in each individual case must be precisely determined. This is, I believe, a correct and convincing interpretation. Were it to be permissible, under the Article 7(1) procedure, to prove that the amount of the loss actually suffered was not the same as the amount of the flat-rate compensation (the amount deducted from the premium and allocated to the wine cooperative), it is probable, especially given the difficulties attendant on making out such a case, that a large number of long-drawn-out legal disputes would ensue and the abovementioned objective would not be attained. In that connection, it must be borne in mind that paragraph 1 does not contain a rule corresponding to the rule in the second sentence of Article 7(2) limiting the compensation payable: if the amount payable to the cooperative exceeds the loss suffered, this is something the wine-grower concerned must simply accept.

13. However, a different approach should, I believe, be adopted where it is alleged that the cooperative has sustained no loss at all. Since the purpose of Article 7 is to offset loss *actually* sustained (even though, as has been seen, Article 7(1) permits flat-rate payments), it must follow, I believe, that no compensation is payable when there has been no loss at all. In that respect, the purpose of the rules — offsetting a loss sustained by a cooperative — must take precedence over the concern to ensure that the procedure is swift and simple.

14. It is probably only in cases where the grower who receives a premium transfers his membership of the cooperative to a third party, that it can be concluded that the cooperative has not made a loss. [5] If the relevant rules (deriving from the rules governing the cooperative and statutory provisions) permit a member to transfer the rights and obligations arising out of his membership to a third party, and if a member avails himself of that possibility, there is no reason for the cooperative to receive part of the grower's premium. Since the new member replaces the outgoing member, the grubbing-up of vines on the latter's land will not in itself adversely affect the cooperative. Any loss or disadvantage that was sustained would be attributable to the transfer of membership, as permitted by law or contractual arrangements. The compensation provided for in Article 7(1), however, is not intended to offset that kind of loss.

5 — The case of a member leaving a cooperative does not fall to be considered here; it may be resolved relatively easily by interpreting Article 7 (which refers to 'members').

15. Obviously, the question whether, in a given case, the cooperative, exceptionally, sustained no loss, is a matter for the national court alone.

16. The Commission has made it clear that the basic aim of Article 7 of Regulation No 1442/88 is to encourage wine cooperatives, through the grant of compensation, not to oppose the policy pursued by the Community of reducing wine-growing areas by paying grubbing-up premiums. The interpretation that I advocate is in conformity with objective. In the Member States which have opted for the Article 7(1) procedure, the wine cooperative receives that portion of the premium granted to the member which has been determined by the Member State, the only exception being cases in which the member succeeds in proving that the cooperative has sustained no loss whatsoever as a result of the grubbing-up. But of course, in such circumstances, the cooperative would have no legitimate interest in resisting the grubbing-up.

17. On the basis of the above considerations I conclude that the reduction in the amount of the premium provided for in Article 7(1) of Regulation No 1442/88 does not depend on the cooperative proving that it has

sustained a loss. However, exceptionally, no reduction of the premium is possible where the recipient is able to prove that the cooperative has not sustained any loss whatsoever.

It must also be presumed that the choice of a rate not exceeding that laid down in Article 7(1) enables wine cooperatives to be afforded appropriate compensation for losses sustained.

The second question

18. The second question in the order for reference is whether a Member State which avails itself of the procedure set out in Article 7(1) may lay down a set percentage to apply generally. The answer is a prompt Yes — indeed, my foregoing remarks on the first question were based on an assumption to that effect. Pursuant to Article 7(1), Member States may provide that the grubbing-up premium payable to wine-growers be reduced 'by up to 15%'. The regulation thus allows Member States a measure of discretion, circumscribed by the exigences which follow from the text of the Community provisions, their purpose, and the prohibition of discrimination. [6] In the light of those requirements, the setting of single percentage to apply generally to all cases would appear to be unobjectionable, provided that the maximum rate of 15% laid down in Article 7(1) is not exceeded. [7] Moreover, setting a uniform rate in that way is in line with the aforementioned objective of establishing a compensation scheme that is clear and easy to operate.

19. The plaintiff in the main proceedings objects that this could lead to different rules applying in the various Member States, but that argument is misconceived. First, such disparities might in any case ensues from the fact that Article 7 allows Member States to choose between the procedure laid down in paragraph 1 and the scheme under paragraph 2. Above all, the measure of discretion allowed in Article 7(1) and the consequent possibility that the rules in force in the various Member States might vary are objectively justified. In view of the differences between Member States regarding wine-growing structures and the size of the cooperative sector, it was permissible for the Community to do no more than adopt a framework of rules which Member States would supplement in the light of the features peculiar to them.

20. Nor may the plaintiff in the main proceedings rely in that connection on the direct applicability of the regulation in the Member States. It does not follow from Article 7(1) of Regulation No 1442/88 that, in adopting rules pursuant thereto, a Member State must do no more than lay down the detailed rules for determining, within the limits provided for in the regulation, the amount to be

6 — See the judgment in Case C-16/89 *Spronk*, cited above, paragraph 13.

7 — Contrary to the view of the national court, Article 7(1) prescribes a maximum limit but no minimum limit. A Member State could therefore choose a rate of less than 1%.

deducted in each individual case. Rather, that provision empowers the Member States to determine a fixed percentage.

21. In another context, however, the direct applicability of the regulation is significant. Since pursuant to Article 7 of the regulation a system of compensation is to be established for the benefit of wine cooperatives in the Member States — *vide* the text of that article, and of the eighth recital in the preamble to the regulation — a reduction in the amount of the premium payable to wine-growers can only be considered if it is provided for in a provision of national law, and if that provision is valid.

22. The plaintiff in the main proceedings stated that it was not clear that the national rules in question had been notified to the Commission as provided for in Article 7(3) of the regulation. The French Government replied that the provisions which it had adopted in implementation of Article 7(1) were notified to the Commission by letter of 20 July 1989.

23. I do not need to consider here in any greater detail the question whether, and if so to what extent, any such infringement of Article 7(3) would affect the validity of the national provisions concerned, since the referring Court has sought no ruling from the Court of Justice on that point. However, I believe it is worth noting that a breach of the duty to notify laid down in that provision would probably leave the relevant national provisions unaffected. Article 7(3) places Member States under a duty to give notice of any provisions 'they may adopt'. But the regulation cannot be read as meaning that the provisions in question have to be notified to the Commission before they come into force, let alone before they are adopted. It follows that the purpose of the duty to notify is solely to inform the Commission; it is not to protect the interests of the parties involved. Consequently that duty does not have to be discharged in order for the national provisions in question to be effective. [8]

24. It follows from the foregoing that, in applying rules contained in Article 7(1) of Regulation No 1442/88, a Member State may establish a uniform rate not exceeding 15% for the deduction from the premium payable under Article 2(1) of the regulation.

25. I would add for the sake of completeness that the question submitted could be read literally as enquiring whether the setting of a uniform rate was the only method permitted under Article 7(1), or whether other possibilities were available. Since it is not apparent how any answer to the question thus construed could be pertinent to the decision to be given in the main action, I consider such an interpretation to be very unlikely. However, I shall adopt a cautious approach and reiterate what I said earlier, namely that Article 7(1) of Regulation No 1442/88 allows a degree of latitude to the Member States. The application of a uniform percentage is not therefore necessarily the only possibility.

8 — Joined Cases C-251/90 and C-252/90 *Procurator Fiscal* v *Kenneth Gordon Wood and James Cowie* [1992] ECR I-2873, paragraph 2.

26. I therefore suggest that the Court give the following answers to the questions referred to it by the Tribunal d'Instance, Béziers:

(1) Article 7(1) of Regulation (EEC) No 1442/88 does not presuppose that, in order to reduce the premium payable to the recipient thereof under Article 2(1) of the regulation, it must be established that the wine cooperative has suffered a loss. However, by way of exception, the premium cannot be reduced where the recipient is able to prove that the wine cooperative has suffered no loss whatsoever.

(2) For the purpose of applying Article 7(1) of Regulation (EEC) No 1442/88, a Member State may set a uniform figure not exceeding 15% for reduction of the premium to be paid to the recipient thereof under Article 2(1) of the regulation.