OPINION OF ADVOCATE GENERAL VAN GERVEN
delivered on 15 October 1992 *

Mr President,
Members of the Court,

1. The Tribunale Amministrativo Regionale per il Veneto (Regional Administrative Court for the Veneto) has referred to the Court of Justice a number of questions concerning the interpretation of various provisions relating to the Community aid scheme to promote the extensification of production in sectors where there is a surplus. Those questions arose in a dispute between Antonio Lante and the Regione Veneto as to the question whether Mr Lante was eligible for aid under that scheme.

I shall first review the relevant Community provisions and their implementation in Italy. I shall then briefly summarize the underlying dispute before turning to the questions referred to this Court.

The relevant provisions

2. By Regulation (EEC) No 1760/87 of 15 June 1987 [1] the Council laid down the obligation for the Member States to introduce an aid scheme to encourage *inter alia* the extensification of production in certain sectors where there are surpluses, including the beef and veal sector. To that end, Article 1a and Article 1b were inserted in Council Regulation (EEC) No 797/85 of 12 March 1985. [2] By Regulation (EEC) No 1094/88 of 25 April 1988 [3] the Council made adjustments to the aid scheme laid down in Regulation No 1760/87 without altering it in any essential respect (see the eleventh recital in the preamble to Regulation No 1094/88). By virtue of Regulation No 1094/88 the provisions regarding the extensification of production were grouped in a new Article 1b of Regulation No 797/85 which constitutes the only article in Title 02 on 'Extensification of production'. [4]

Pursuant to Article 1b(1) of Regulation No 797/85 the Member States are to introduce an aid scheme to promote extensification of production for surplus products, which are defined as products for which there are consistently, at Community level, no normal unsubsidized outlets.

Article 1b(2) of Regulation No 797/85 defines extensification as 'a reduction of at least 20%, for a period of at least five

* Original language: Dutch.

1 — Regulation amending Regulations (EEC) No 797/85, (EEC) No 270/79, (EEC) No 1360/78 and (EEC) No 355/77 as regards agricultural structures, the adjustment of agriculture to the new market situation and the preservation of the countryside (OJ 1987 L 167, p. 1).

2 — Regulation on improving the efficiency of agricultural structures (OJ 1985 L 93, p. 1).

3 — Regulation amending Regulations (EEC) No 797/85 and (EEC) No 1760/87 as regards the set-aside of arable land and the extensification and conversion of production (OJ 1988 L 106, p. 28).

4 — In Regulation (EEC) No 2328/91 of 15 July 1991 (OJ 1991 L 218, p. 1) the Council has adopted a codified version of Regulation No 797/85. However, Regulation No 2328/91 was not yet applicable at the material time.

years, in the output of the product concerned without any increase in other surplus production capacity'.

Pursuant to Article 1b(3) of Regulation 797/85 the Member States are to determine:

'(a) the conditions for granting the aid, including those for reducing output of the various products. In the case of beef and veal, it may be stipulated that, in order to achieve the reduction in output referred to in paragraph 2, the number of livestock units must be reduced by at least 20% ...;

(b) the amount of the aid, on the basis of the undertaking given by the beneficiary and the loss of income incurred, and the way in which it is to be paid;

(c) the reference period for the product concerned, for the purposes of calculating the reduction;

(d) the undertaking to be given by the beneficiary for the purposes of, in particular, verifying that production has in fact been reduced.'

Finally, Article 1b(6) of Regulation No 797/85 gives the Commission the power to lay down implementing provisions.

3. Pursuant to that provision, the Commission, by Regulation (EEC) No 4115/88 of 21 December 1988, [5] laid down rules for applying the aid scheme to promote the extensification of production.

Article 2(1) of Regulation No 4115/88 provides that the products listed in Annex I are eligible for aid for the extensification of production. Annex I mentions *inter alia* beef and veal.

Pursuant to Article 4(1) of Regulation No 4115/88 the Member States may provide for the following two methods of reducing output: a 'quantitative' method or a 'production methods' method.

Article 7 of Regulation No 4115/88 provides that where the 'quantitative' method is applied in the beef and veal sector, the reduction in output may be achieved via an equivalent reduction in the number of livestock units comprising the herd. In that case, the Member States must ensure that the livestock in question are slaughtered or exported permanently to a third country. They must also see that the remainder of the herd is not subject to any intensification of production.

Article 10(3) of Regulation No 4115/88 provides, finally, that where extensification is

5 — OJ 1988 L 361, p. 13.

applied to livestock farming, the producer must undertake to see that:

'production capacity, in particular buildings and fixed plant and equipment, released as a result of extensification, is not used either by the farmer or by any third party to increase the output of the products referred to in Annex I or of pigmeat or poultry products,

fodder production areas continue to be used to provide feed for the livestock on the holding'.

4. In Italy the aforesaid provisions were implemented by Ministerial Decree No 34 of 8 February 1990. [6] It provided that all farmers who farm products listed in Annex I to Regulation No 4115/88 are eligible for aid for the extensification of production. It further provided that *inter alia* the regions were responsible for the detailed implementation of the grant of aid.

By Circular No 24486 of 5 September 1990 addressed *inter alia* to the regions the Italian Ministry of Agriculture clarified a number of points regarding such implementation. According to the Ministry, livestock producers who do not hold land are not eligible for the grant of aid. Producers engaging in livestock-rearing on an industrial scale could not, it was said, be regarded as agricultural holdings within the meaning of Regulation No 797/85. Only livestock producers who had sufficient fodder-growing areas were eligible for the aid scheme and the Circular stated that the ratio of livestock units to fodder production area had to be determined taking account of the local situation.

For the Regione Veneto the implementing provisions were laid down by Decision No 4258 of the Giunta of 19 July 1990. Further to the abovementioned Ministerial Circular, the Giunta decided to refuse aid to undertakings not holding land and to undertakings where less than a quarter of the fodder for the livestock came from its own land.

The national court's questions

5. Mr Lante owns an establishment for the intensive rearing of beef cattle in the province of Verona. The Regione Veneto refused him aid for the extensification of his beef production on the grounds that less than a quarter of the fodder for his livestock stemmed from land forming part of his holding. Mr Lante has challenged that refusal before the Tribunale Amministrativo Regionale per il Veneto. That court considered that its judgment was dependent on the manner in which the relevant provisions of Community law were to be interpreted and therefore referred the following questions to the Court of Justice:

6 — *Gazzetta Ufficiale della Repubblica Italiana* No 48 of 27 February 1990.

(1) Must Article 1b(3)(a) of Regulation No 1094/88 be interpreted as allowing the Member States, when laying down the conditions for the granting of the aid to promote the extensification of production in accordance with the procedure laid down by their domestic public law, to exclude certain categories of activities such as, for example, livestock rearing which is 'intensive' (that is to say, not carried out in connection with agricultural land) from the benefit of the aid on the basis that that type of aid is intended exclusively for agricultural holdings?

Is that interpretation permissible in view of the general objectives of the policy on agricultural structures pursued by Regulation No 797/85 (and its subsequent amendments and supplements) and by present trends in the common agricultural policy, as discerned from Community legislation, of the fact that it is impossible to find in Community law any general uniform definition of 'agricultural holding' (judgment of the Court of Justice of 28 February 1978 in Case 85/77 *Societa Santa Anna Azienda* v *INPS* [1977] ECR 527) and, finally, in view of the fact that Article 2 and Annex I of Commission Regulation No 4115/88 provide that 'Cattle (beef/veal)' are eligible for the aid in question?

(2) If the preceding question is answered in the affirmative, can the second indent of Article 10(3) of Regulation No 4115/88, which provides that fodder production areas should continue to be used for the livestock on the holding, be interpreted as meaning that farms on which cattle are reared on feed of which less than a quarter is obtained from the holding are ineligible for the aid for the promotion of extensification of production, whose detailed rules are also laid down in Regulation No 4115/88?

6. The national court's questions seek to ascertain whether the Community provisions relating to the extensification of production of surplus products, in particular Article 1b(3)(a) of Regulation No 797/85 and the second indent of Article 10(3) of Regulation No 4115/88 enable a Member State to refuse aid to a beef producer who either has no farmland (Question 1) or has farmland but produces less than a quarter of the fodder for his livestock on that land (Question 2). What those questions are essentially asking is whether the Member State may make the grant of aid to a beef producer dependent on the condition that he produces part of the fodder for his livestock himself.

7. In answering that question, it is necessary to note first of all that pursuant to Article 1b(1) of Regulation No 797/85 in conjunction with Article 2(1) and Annex I to Regulation No 4115/88 the Member States are under an obligation to introduce an aid scheme to promote extensification of the

production of beef and veal. It follows from Article 1b(3) of Regulation No 797/85 that the Member States are, however, left a certain margin of assessment: a number of matters are left for them to determine themselves, including '(a) the conditions for granting the aid, including those for reducing output of the various products'.

I shall go on to consider how wide that empowerment of the Member States must be deemed to be and in particular whether it includes the possibility for a Member State to exclude from the scope of the scheme cattle rearers who do not have their own fodder production. Before doing that, I would point out that the relevant regulations do not contain any explicit provision on the matter. It is true that certain provisions were clearly written with only agricultural holdings linked to land in mind. [7] However, the central idea in the regulations is the reduction of production of surplus products to which the scheme applies, including beef and veal. [8] In this respect, no distinction is drawn between production by livestock rearers linked to land and by livestock rearers without land. Moreover, it is apparent from the answer given by the Commission to the question put to it by the Court of Justice that no such distinction has been drawn by the other eleven Member States. The provisions of the regulations in question thus do not give any explicit answer to the question of the applicability of the aid scheme to livestock rearers without land.

8. Since the regulations in question do not contain any explicit answer, it is necessary to examine whether any indications can be found in those regulations which implicitly provide an answer to the question of the extent of the implementing powers left to the Member States. A first indication is to be found in the abovementioned part of Article 1b(3) itself which mentions as an example of the conditions to be determined by the Member States 'those for reducing output of the various products'. The following sentence adds that in the case of beef and veal, the reduction in output referred to can be sought by reducing the number of livestock units by at least 20%.

A further indication is to be found in the implementing regulation, Commission Regulation No 4115/88. At the end of the third recital in the preamble it is stated that 'it is for Member States to determine the method or methods best suited to the local production conditions' in order to achieve a reduction in output.

It is apparent from those indications that the powers of the Member States are limited and of a technical nature. They relate to the prac-

7 — For example, in Article 1b(2) of Regulation No 797/85 'extensification' is defined as a reduction of production 'without any increase in other surplus production capacity. However, such an increase shall be permitted in proportion to any increase in the utilized agricultural area of the farm'. The same applies to Article 10(3) of implementing Regulation No 4115/88 which provides that where extensification is applied to livestock farming, the producer must undertake to see that 'fodder production areas continue to be used to provide feed for the livestock on the holding'.

8 — See Article 1b(2) and (3)(a) of Regulation No 797/85 and Articles 2, 3, 4 and 7 and Annex I to Regulation No 4115/88.

tical implementation of the aid scheme, adapted to the local situation, and in particular the way in which production is actually to be restricted. I cannot perceive any power to restrict the group of persons eligible for aid by, in particular, excluding beef producers without their own fodder production.

9. Confirmation that the Member States do not have the fundamental power to limit the number of persons eligible for aid is provided, moreover, by Article 4(3) of Regulation No 4115/88 which states that the Commission may authorize Member States, following a justified request, 'to determine specific conditions for the granting of aid in areas where production or production systems are already extensive'. That provision confers on the Member States a special power to adopt rules, subject to authorization by the Commission, in the event that extensification has already been achieved in certain areas. From that provision it is again apparent, in my view, that the Member States, except in that particular case and then only with the authorization of the Commission, do not have power to restrict the scope of the grant of aid by imposing specific conditions or by other means.

10. From the foregoing, I conclude that the power conferred on the Member States by Article 1b(3) of Regulation No 797/85 does not allow a Member State to make the grant of aid for extensification subject to the condition that the beef producer receiving the aid must produce part of the fodder for his cattle himself. [9]

Conclusion

11. I therefore suggest that the Court of Justice give the following answer to the national court's questions:

Article 1b of Regulation No 797/85, as amended by Regulation No 1094/88, does not allow the Member States to make aid for the extensification of beef and veal production subject to the condition that the person receiving the aid produces part of the fodder for the cattle himself.

9 — I do not consider it necessary to consider further the Italian Government's arguments regarding the desirability of the Community scheme for aid for extensification to be better adapted to the situation of livestock rearers who do not possess land. Those are arguments that must be submitted to the Community legislature and not to the Court of Justice in the course of judicial proceedings.