OPINION OF ADVOCATE GENERAL LÉGER

delivered on 4 February 1999 *

1. Is entitlement to a special premium for beef producers, as provided for under Community rules, transferable to a producer to whom the applicant has transferred his agricultural holding by way of a gift *inter vivos* and who meets the conditions for the granting of that premium?

2. This, in essence, is the question referred by the Bundesverwaltungsgericht (Federal Administrative Court).

Relevant regulations

3. Until 1987 support for the market in beef and veal, [1] designed to prevent or control a significant fall in prices, was principally provided through public buying-in. However, finding that 'public intervention has gradually lost its original function as a safety net and has become an outlet in its own right', [2] the Council decided that year, by adopting Regulation No 467/87, to limit public buying-in but at the same time to offset the effect of the adjustment thus adopted through provision for supporting producers' income while temporarily maintaining the existing premium schemes. [3]

4. This was the background against which provision was made for producers in the Member States who were not already entitled to premiums under the existing regulations to be granted 'a special premium paid once only for each animal kept'. [4]

5. Initially intended as a temporary mechanism to reduce the need for intervention and gradually to restore the original purpose of intervention, which was to provide a safety net, [5] the special premium has now been introduced for an unlimited period. [6]

* Original language: French.

1 — The basic regulation in this field is Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187).

2 — First recital in the preamble to Council Regulation (EEC) No 467/87 of 10 February 1987 amending Regulation No (EEC) 805/68 on the common organisation of the market in beef and veal and the system of premiums granted in the beef and veal sector (OJ 1987 L 48, p. 1).

3 — Ibid., sixth recital.

4 — Ibid., seventh recital. The regulations under which the existing premiums referred to were paid are as follows: '... Regulation (EEC) No 1346/86 of 6 May 1986 on the granting of a calf birth premium in Greece, Ireland, Italy and Northern Ireland and on the granting of an additional national premium in Italy, as amended by Regulation (EEC) No 4049/86, and Council Regulation (EEC) No 1347/86 of 6 May 1986 on the granting of a premium for the slaughter of certain adult bovine animals in the United Kingdom, as amended by Regulation (EEC) No 4049/86'.

5 — Article 1 of Regulation No 467/87 provided originally that the special premium could be granted from 6 April 1987 to 31 December 1988. This period was extended by the amending Council Regulation (EEC) No 4132/88 of 20 December 1988 (OJ 1988 L 362, p. 4), until 5 March 1989.

6 — The fourth recital in the preamble to the amending Council Regulation (EEC) No 571/89 of 2 March 1989 provides for: 'maintenance beyond 2 April 1989 of the special premium scheme' (OJ 1989 L 61, p. 43).

6. The detailed rules for granting that premium are laid down in Article 4a of Regulation No 805/68, as amended by Regulation No 571/89, paragraph 1 of which reads:

'1. Beef and veal producers may qualify for a special premium. It shall be granted at the producers' request for male animals at least nine months old which are fattened on their holdings.

The premium shall be limited to 90 animals per calendar year and per holding; the amount of the premium shall be set at ECU 40 per animal.

The premium shall be granted once only for each animal. It shall be paid to the producer or passed on to the producer.

...'

7. As those basic regulations provided,[7] the Community legislature subsequently laid down the general rules governing that special premium scheme for beef producers and, in particular, clarified the terms 'producer' and 'holding' in the context of Council Regulation (EEC) No 572/89 of 2 March 1989,[8] amending Council Regulation (EEC) No 468/87 of 10 February 1987 laying down general rules applying to the special premium for beef producers.[9]

8. A 'producer' is thus defined in Article 1 of that regulation as 'an individual farmer, whether a natural or legal person, who farms on the territory of the Community and who raises cattle'.

9. Article 1(2) defines a 'holding' as 'all the production units operated by the producer on the territory of a single Member State'.

10. Lastly, the detailed rules applying to the special premium were adopted by the Commission[10] in Regulation (EEC) No 714/89 of 20 March 1989,[11] which lays down the conditions for granting the special premium provided for in the above-mentioned Article 4a.

7 — Article 4a, cited above, paragraph 2.

8 — OJ 1989 L 63, p. 1.

9 — OJ 1987 L 48, p. 4.

10 — As provided in Article 4a(3) of the original Regulation No 805/68.

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

11. Those conditions are that '... applications [should] be accompanied by declarations and undertakings by recipients and [should] be subject to both administrative and on-the-spot checks by Member States regarding a minimum number of holdings, and give rise to total recovery of the sums paid should they turn out to be inexact'. [12]

12. In particular, the second indent of Article 2 of Regulation No 714/89 provides that applications for the premium must include 'an undertaking by the producer to retain the male animals for which he applies for the premium on his holding for the period fixed pursuant to Article 8(2)... at least until they are nine months old'.

Article 8(2) gives Member States the power to set that minimum period, but it must not be less than two nor more than five months. In Germany it is three months.

13. The competent authorities of each Member State are called upon to verify that those conditions are complied with by carrying out administrative checks and on-farm inspections. Article 8(1) of Regulation No 714/89 provides: 'The control measures shall cover in particular:

(a) the presence on the holding run by the producer of the number of male cattle covered by the application...;

(b) the correctness of the required declarations and fulfilment of the undertakings made by the producer;

(c) compliance with the provisions on identification and marking...'

14. Failure to comply with the conditions for granting the premium leads to application of a system of penalties as provided for in Article 9 of Regulation No 714/89.

Facts and procedure

15. Karl-Heinz Wettwer (hereinafter referred to as 'the plaintiff in the main proceedings') applied for the premium in May 1991 in respect of ten animals being raised on his holding. Subsequently, in July 1991,

12 — Third recital in the preamble to Regulation No 714/89.

he transferred his entire agricultural holding to his son, who also farms a holding as tenant. [13]

16. The Bezirksregierung (district authority), the defendant in the main proceedings, used that transfer as grounds for refusing to grant the premium sought. It argued in particular that the applicant for the premium did not meet the condition that he should have kept the animals concerned on his holding for at least three months; the person receiving the premium must be the same as the person applying for it, and it is not possible for rights to be transferred to the legal successor to the holding.

17. In support of his appeal against that refusal, the plaintiff in the main proceedings argues that the conditions for granting the premium are still met because, since taking over the holding, his son has continued to comply with the obligations laid down. The defendant in the main proceedings contends, however, that the special premium at issue attaches to persons and not to holdings.

18. The Verwaltungsgericht (Administrative Court) dismissed that appeal, ruling that the Bezirksregierung's interpretation of Article 4a(1) of Regulation No 805/68, as amended by Regulation No 571/89, was correct; according to that interpretation, the premium is granted to persons and not to holdings, as is apparent from the definition of the term 'producer'. The plaintiff in the main proceedings was no longer a producer after he transferred his holding, so he was not entitled to claim the premium.

In the view of the court hearing the case, the son was unable, for the same reason, to claim that the premium was transferred to him at the same time as the holding, since the conditions for granting the premium must be met in the person of the applicant, in particular the condition regarding the holding of stock during the surveillance period.

19. On appeal by the plaintiff in the main proceedings, the Niedersächsisches Oberverwaltungsgericht (Higher Administrative Court, Lower Saxony) reversed the first-instance judgment. Unlike the court below, the Niedersächsisches Oberverwaltungsgericht ruled that the special premium should be granted to holdings and not to persons. It held that the conditions for granting the premium were therefore met and that the premium should consequently be granted, following notification of the transfer, to the transferee.

20. It was in the course of the 'Revision' proceedings brought by the Bezirksregierung against that judgment that the Bundesverwaltungsgericht, finding that there were arguments in favour of both propositions, referred the following question to the Court for a preliminary ruling:

'Is entitlement to a beef and veal producers' special premium for the year 1991 trans-

13 — The transfer was made by way of '*vorweggenommene Erbfolge*' (anticipated succession *inter vivos*).

ferred to a producer to whom, during the compulsory stock holding period, the applicant transferred his agricultural holding by way of anticipated succession *inter vivos* and who carried out the prescribed keeping and fattening of the bovine animals in question?'

Comment

21. As the court hearing the case at first instance pointed out, [14] by contrast with the system for granting other Community premiums, such as the premiums for the non-marketing of milk and milk products and for the conversion of dairy herds under Regulation No 1078/77, [15] or the premium for maintaining suckler cows introduced by Regulation (EEC) No 1244/82, [16] Community legislation concerning the beef and veal producers' premium made no provision for the assumption of the obligations in question by a legal successor.

22. Such an undertaking on the part of the successor would be essential, however, if it were accepted that entitlement to the original applicant's premium could be transferred to him at the same time as the holding. Just consider one of the requirements for granting the premium: the premium is limited to 90 animals per calendar year and per holding and is granted once only for each animal. An undertaking given by the applicant for the premium cannot be sufficient to ensure compliance with that condition by his successor. It is in fact quite possible that the transferee of the holding, if he himself is a producer as in the present case, has already used up the quota. As a holding is defined as 'all the production units operated by the producer on the territory of a single Member State', [17] the transferee cannot seek to receive the premiums originally applied for if he has already received the maximum permitted amount for the animals which he has been keeping previously. I find it difficult, therefore, to accept the automatic transfer of entitlement to the premium when the legislation at issue makes no provision for an individual undertaking to be given by the transferee of the holding.

23. It seems to me that this lacuna actually reflects a deliberate choice on the part of the legislature to exclude transfer of entitlement to the premium in the event of the transfer of the holding, and that, on the contrary, it is not an oversight which can be remedied by reference to general principles or by analogy with other provisions of Community law.

24. The fact is that, if we look at other common organisations of markets where

14 — Section I, paragraph 9 of the English translation of the order for reference.

15 — Council Regulation of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (OJ 1977 L 131, p. 1).

16 — Commission Regulation of 19 May 1982 laying down detailed rules implementing the system of premiums for maintaining suckler cows (OJ 1982 L 143, p. 20), as amended by Commission Regulation (EEC) No 1662/89 of 13 June 1989 (OJ 1989 L 163, p. 11).

17 — Point 9 of this Opinion.

provision has been made for systems of equivalent aid or premiums, they are generally designed to relate to the person of the applicant and not to the holding. In the event of the holding being transferred, save where express provision or special arrangements have been made, entitlement to the premium lapses and does not follow the property.

25. In certain common organisations of markets, the legislature itself has taken care to state expressly that entitlement to a premium relates to the producers to whom the premium is granted.

26. This is the case in the sheepmeat and goatmeat sector. [18]

27. The same applies in the beef and veal sector, which concerns us here, as regards the grant of premiums other than the one at issue. Thus, entitlement to the premium for maintaining suckler cows has, since 1992, expressly attached to the producers to whom the premium was granted in respect of the reference year and who also requested the premium for the years up to and including 1992. [19] The same rules provide that where a producer sells or otherwise transfers his holding, he may transfer all his suckler cow premium rights to the person taking over his holding. He may also transfer, in full or in part, his rights to other producers without transferring his holding. [20]

28. It is more usual for attachment of the premium to the person who applied for it to be implicit; moreover, there is scarcely any doubt about this in the light of the case-law of the Court.

29. This is the case as regards premiums for the non-marketing of milk and milk products, in respect of which the Court has held that 'the undertaking entered into by the recipient of a premium not to dispose of milk or milk products... binds the recipient *personally* and does not attach to the property. In the event of a disposal of the property or of the right to farm the land, the recipient loses his entitlement to the premium'. [21] For that reason, the Court has held: 'In the event of the disposal of the dairy cows which were held on the farm at the time when the application was made and which gave entitlement to the premium, the burden of the undertaking given by the recipient to withhold milk and milk products from the market does not pass to the buyer of those cows by virtue of that disposal'. [22]

30. The Court ruled along the same lines a few years later when reference quantities

18 — See, in particular, Article 5a(4)(a) of Council Regulation (EEC) No 3013/89 on the common organisation of the market in sheepmeat and goatmeat, as amended by Council Regulation (EEC) No 2069/92 of 30 June 1992 (OJ 1992 L 215, p. 59).

19 — As provided in Article 4d(4) of Regulation No 805/68, as amended by Council Regulation (EEC) No 2066/92 of 30 June 1992 (OJ 1992 L 215, p. 49).

20 — Ibid. Article 4e(1).

21 — Case 77/79 *Damas* [1980] ECR 247, paragraph 8, emphasis added.

22 — Ibid. paragraph 11.

introduced under the new rules were at issue also in the milk and milk products sector. To an applicant who inferred from that new system that the right to property requires a Member State to introduce a scheme for payment by a landlord of compensation to an outgoing tenant, the Court made the general comment that 'the right to property safeguarded by the Community legal order does not include the right to dispose, for profit, of an advantage, such as the reference quantities allocated in the context of the common organisation of the market, which does not derive from the assets or occupational activity of the person concerned'. [23]

31. Recently the Court has been even more explicit, clearly extending the scope of that case-law beyond premiums granted within the common organisation of the market in milk and milk products. In Case C-38/94, [24] the Court ruled that neither the relevant provisions relating to the common organisation of the market in sheepmeat and goatmeat nor any general principle of Community law require Member States to introduce a mechanism for compensating detriment caused to owners of agricultural land by the introduction of a system of premium rights linked to producers of sheepmeat, goatmeat or beef and veal. It made clear in particular that no such obligation can be derived from the principle of protection of the right to property because the introduction of a system of premium rights attaching to producers, even if it has a detrimental effect on the capital value of land as a result of the transfer of premium rights by producers who do not own the land on which they farm, does not impair the right to property *inasmuch as advantages allocated under a common market organisation cannot be regarded as a right derived from the assets or occupational activity of the persons concerned*, the attribution or transfer of which should be accompanied by an obligation to pay compensation on the part of one of the parties to a lease. [25]

32. Lastly, if one looks in particular at the Court's case-law relating to the legislation at issue, it is ultimately quite logical, in view of the way the case-law has developed, for the same interpretation to be given as regards linking the premium to the producer. When called upon to interpret Article 9 of Regulation No 714/89, which lays down the penalties applicable in the event of failure to comply with the conditions for granting the premium, the Court, in its judgment in Case C-365/92, [26] provided interesting clarification of the concept of the checks by competent national authorities on the basis of which a penalty may be imposed. By pointing out in particular, in the case of administrative checks, that they include 'an examination of the documents submitted by the *applicant for the premium* for the purpose of proving that he fulfils the conditions specified', [27] the Court was unambiguous in its ruling that the grant of a premium was dependent on compliance with conditions provided for *by the producer who applied for the premium*. It must be inferred from this as

23 — Case C-2/92 *Bostock* [1994] ECR I-955, paragraph 19, which refers in particular to the judgment in Case C-44/89 *Von Deetzen II* [1991] ECR I-5119, paragraph 27.

24 — *Country Landowners Association* [1995] ECR I-3875.

25 — See, in particular, paragraphs 14 and 21 and paragraph 1 of the operative part.

26 — *Schumacher* [1993] ECR I-6071.

27 — Paragraph 17, emphasis added. See also paragraph 19.

regards the present case that it is thus irrelevant whether the animals in respect of which a premium has been sought are kept on the holding for the prescribed period of three months: the condition of keeping them on the holding cannot be regarded as having been complied with unless it is complied with by the applicant for the premium, which is not the case where a transfer takes place before the period of three months during which that applicant has undertaken to keep the animals on his holding has expired.

33. The provision which formed the subject of that case-law seems to me, moreover, to be essential for the purposes of answering the question referred to the Court.

34. There are some cases in which, despite non-compliance with his obligations by the producer who applied for the premium, entitlement to that premium subsists, and these are listed in Article 9 of Regulation No 714/89.

35. Such cases are where the reduction in the number of animals which the producer has undertaken to keep on his holding for the minimum period can be ascribed to 'natural circumstances affecting the herd' (Article 9(2)), or where it is impossible to comply with the undertaking to keep cattle on the holding for that period for reasons of *force majeure*, such as the death of the beneficiary (Article 9(3)). [28]

36. The transfer at issue cannot be related to any of those mitigating circumstances.

37. Without dwelling on the circumstances referred to in Article 9(2) of Regulation No 714/89, which has not been cited at all, I should like to point out that the plaintiff in the main proceedings cannot hope to succeed with his claim that a transfer *inter vivos* can be assimilated under national law to succession, so as to conclude that the same legal consequences should be attached to it.

Whilst it is true that where the beneficiary of the aid dies, a circumstance which is regarded as *force majeure* under Article 9(3) of Regulation No 714/89, as we have seen, [29] entitlement to the premium is retained provided the producer has informed the competent authorities within ten days of the incident, the case we are considering here cannot have the same legal effects. This is not a case in which the beneficiary has died, which would have resulted in an open succession.

28 — This provision refers, as regards clarification of the term 'reasons of *force majeure*', 'especially' to those listed in Article 5 of Regulation No 1244/82, which include '(a) decease of the beneficiary...'.

29 — Point 35 of this Opinion.

A transfer *inter vivos*, even if it did have the same consequences in national law, cannot in any case be regarded as *force majeure*. That concept applies, according the Court's case-law, 'to unusual and unforeseeable circumstances beyond the control of the party by whom it is pleaded and the consequences of which could not have been avoided even if all due care had been exercised'. [30] A transfer is, on the contrary, a legal transaction voluntarily entered into by the transferor and the transferee, which takes place under normal circumstances, chosen and hence foreseeable by the parties. It does not therefore constitute an event which meets the criteria of *force majeure* within the meaning of Article 9(3) of Regulation No 714/89, such as the decease of the original applicant for the aid, justifying a transfer of the premium to the transferee.

38. Finally, confirmation of my opinion is to be found in the final circumstance provided for in Article 9(4) of Regulation No 714/89 exempting a producer from compliance with the conditions specified. That provision applies where the difference between the number of animals declared and the number of animals effectively eligible is less than 5%, or at most, one animal if the number of animals declared is equal to or less than twenty head, and that difference can be ascribed to reasons other than those referred to in paragraphs 2 (reduction in the number of animals attributable to natural circumstances affecting the herd) and 3 (impossibility of complying with the undertaking to keep the cattle on the holding for a minimum period for reasons of *force majeure*) of that article 'provided that according to the competent authority, there is no suggestion that a false declaration has been made either deliberately or through serious negligence'. In that case the producer is not deprived of all entitlement to the premium or required, as appropriate, to repay the amount improperly paid, as is normally the case where it is established that he is not complying with the conditions laid down, but the amount he is granted is reduced pro rata. [31]

Thus he cannot, in any case, plead good faith in order to claim entitlement to the premium in respect of animals which are ultimately discovered not to be eligible, even if he has ensured that all the prescribed conditions are met.

It would seem that this textual rigour, which does however permit certain mitigating circumstances, should guide the Court's interpretation of the rules at issue. I find a lack of consistency in allowing the contested premium to be granted to the transferee of a holding which has been transferred during the minimum period for which the original producer had in fact undertaken to keep on his holding the stock in respect of which he applied for the premium, when that transferee has given no undertaking himself, whilst the producer, who believed in good faith that he complied with each of the undertakings which he had given, will not receive any premium

30 — Case C-263/97 *First City Trading and Others* [1998] ECR I-5537, paragraph 38, which refers in particular to Case 145/85 *Denkavit* [1987] ECR 565, paragraph 11.

31 — According to Article 9(4), 'the premium less 20% shall be paid for the number of eligible animals'.

under the above-mentioned Article 9(4) in respect of animals which are ultimately declared ineligible and, moreover, will find that the premium granted in respect of the rest of the herd is reduced as a result.

39. Both the detail and the rigour of that article support my conviction that the mitigating circumstances provided for in paragraphs 2 to 4 constitute an exhaustive list. In other words, a producer's entitlement to the premium is retained in full or in part, despite failure to comply with his obligations, solely in one of the three cases covered by that provision.

If the legislature has not expressly provided for the case of total transfer of a holding *inter vivos* it is because, even if the transferee of the property assumes the undertakings entered into by the applicant for the premium, he has lost all entitlement to the special premium.

Conclusion

40. I therefore propose that the Court should rule that:

The regulations governing the grant of a special premium to beef and veal producers in accordance with Article 4a of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal, as amended by Council Regulation (EEC) No 571/89 of 2 March 1989 in conjunction with the implementing provisions of Council Regulation (EEC) No 572/89 of 2 March 1989 and Commission Regulation (EEC) No 714/89 of 20 March 1989, must be interpreted as meaning that entitlement to a beef and veal producers' premium for the year 1991 cannot be transferred to a producer to whom, during the compulsory stock holding period, the applicant transferred his agricultural holding by way of a gift *inter vivos* and who carried out the prescribed keeping and fattening of the bovine animals in question.