OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 7 October 1986 *

Mr President,
Members of the Court,

1. The tribunal de grande instance, Saint-Brieuc (France), has referred to the Court a question on the compatibility with Community law on agriculture and the competition rules laid down in the Treaty of Rome of certain provisions of national law concerning the organization of agricultural markets.

In France, Law No 62-933 of 8 August 1962, a supplementary law on agricultural policy (Official Journal of the French Republic, 10 August 1962, p. 7962), provides for the establishment of producers' organizations which may 'within the limits of their legal powers, ... lay down rules concerning the organization and regulation of production and marketing, the stabilization of prices, and the orientation of its members' activities towards the requirements of the market' (Article 14). Several of these organizations may join together to form marketing committees for the purpose of harmonizing the rules covering a specific sector in a given agricultural region; committees deemed to have adequate experience may obtain an interministerial order making certain common rules compulsory *erga omnes*, that is to say, also for producers in the same region who are not members of a producers' organization. The order may also authorize the committee to 'charge registration fees and contributions calculated on the basis of the value of products, or by reference to the area under cultivation, or both' (Article 17).

Pursuant to that law, a number of rules issued by the marketing committee for Brittany (hereinafter referred to as 'Cerafel') were made applicable, by an order of 27 July 1966, to all the producers of cauliflower and artichokes in the region; by a second order of the same date, those rules were made applicable to producers of new potatoes. The rules required the following: (a) an annual declaration, for each of the products in question, of the area under cultivation; (b) observance of the rules (referred to as quality standards) on grading, size, weight and presentation; (c) the sale of a producer's entire crop at auctions approved by Cerafel; (d) compliance with the 'withdrawal price', coupled with the obligation to make the corresponding contributions to Cerafel's fund for the support of that system; (e) contribution to a special advertising and marketing fund.

In a review of compliance with those obligations, Cerafel found that Mr Le Campion, a cauliflower producer who was not a Cerafel member, had failed to declare the area cultivated by him and to pay contributions for the crop years 1979 to 1982.

* Translated from the Italian.

Cerafel brought legal proceedings against Mr Le Campion, who argued that the application of the rules laid down by Cerafel to all the producers in the region was contrary to the principles laid down in Article 39 of the EEC Treaty and to the rules on the common organization of the market. Furthermore, in the absence of any express authorization on the part of the Commission of the European Communities, the provisions of Law No 62-933 must be regarded as contrary to the principle of the 'open market' established by Article 85 *et seq.* of the Treaty.

The tribunal de grande instance, Saint-Brieuc, stayed the proceedings and by an order of 2 July 1985 referred to the Court a question which I may summarize in the following terms: May an agricultural marketing committee, by way of exception to the principle of free competition laid down in Article 85 (1) of the Treaty, extend to all producers in the country or region in question the rules adopted by its members?

2. In the course of the proceedings observations were submitted by the parties to the main action, the French Government and the Commission. The submissions of the Commission and of Cerafel are particularly helpful; they make it possible to identify more precisely the issue to be resolved by the Court.

The dispute, it is said, essentially concerns the payment of contributions owed by Mr Le Campion to the marketing committee by virtue of an inter-ministerial order on cauliflower and artichokes. Unlike new potatoes, those vegetables are covered by a common organization of the market, the market in fruit and vegetables, which is now governed by Regulation No 1035/72 of 18 May 1972 (Official Journal, English Special Edition 1972 (II), p. 437); it is therefore on the basis of that regulation that we must first ascertain whether a national provision such as that relied on by Cerafel is lawful. It may be objected that in the fruit and vegetables sector a *Community* system for the extension of rules issued by producers' organizations, quite similar to that applying in France, has existed since 1983 (Regulations Nos 3284/83 and 3285/83 of 14 November 1983, Official Journal 1983, L 325, pp. 1 and 8). That is quite true. However, in so far as cauliflowers and artichokes are concerned that system came into force on 1 October 1985; it cannot, therefore, affect the issue before the Court, which must be resolved in the light of the Community principles applicable when the facts which gave rise to the main proceedings took place.

Let us now examine those principles. The first may be inferred from the tenth recital in the preamble to Regulation No 1035/72: according to the Community legislature, 'the formation of producers' organizations whose members are obliged to comply with certain rules, in particular as regards marketing' does not interfere with the functioning of the common organization of the market for fruit and vegetables but may in fact contribute effectively to the attainment of its objectives. Under the common organization of the market, committees such as Cerafel are perfectly acceptable; the fact remains, however, that in defining their powers and the limits of their activities Articles 13 to 15 of Regulation No 1035/72

make no provision for decisions of national authorities extending the application of rules issued by such committees to producers who are not members. In other words we are faced with a lacuna — a lacuna which, however, has been filled by a decision of the Court. Confronted with a problem which was in many ways analogous — the compatibility with Community law of a national provision requiring certain producers to belong to a body established in order to promote the production and sale of apples and pears — the Court held that such a provision 'cannot be regarded as incompatible with the provisions [of Regulation No 1035/72] unless the activities of that body are themselves contrary to those provisions' (judgment of 13 December 1983 in Case 222/82 *Apple and Pear Development Council* v *Lewis* [1983] ECR 4083, 4122).

Applied to the case before the Court, those words enable us to arrive at a preliminary conclusion: in the absence of specific provisions of Community law, national regulations which extend to independent producers in the same region the obligations laid down by an agricultural organization must be considered lawful so long as those obligations and the consequences of their extension to independent producers do not conflict with the provisions of Regulation No 1035/72.

3. All that now remains, in order to resolve the doubts expressed by the national court, is to examine the rules referred to in the order of 27 July 1966 in the light of that criterion. With regard to the first rule, the obligation to provide a declaration of the area cultivated, Cerafel states that the collection of production data enables it to carry out research intended to improve the quality of vegetables and their sales, and that the results of those studies may also be used by producers who are not members. In other words, the application of that provision to all producers entails benefits for the entire fruit and vegetable sector in the region; it cannot therefore be considered contrary to the common organization of the market, which, as we know, pursues identical objectives (see paragraph 1 (a) of the operative part of the judgment in Case 222/82, cited above).

Let us go on to the provisions regarding the grading, weight and size of products. In this regard I should point out that once a common organization of the market has been established, 'Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it' (judgment of 29 November 1978 in Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347); in this case, the Community legislature has laid down specific quality standards for cauliflower and artichokes (Annex II to Regulation No 23 of 4 April 1962, Official Journal, English Special Edition 1959-62, p. 97, and Annex I to Regulation No 58 of 15 June 1962, Official Journal, English Special Edition 1959-62, p. 204), and by so doing has established a system which the Court has held to be exhaustive in nature (see paragraph 1 (c) of the operative part of the judgment in Case 222/82). It is possible that the rules issued by the committee will diverge from that system; the decision of the national authorities making those rules applicable *erga omnes* is therefore liable to create exceptions to that system and is thus contrary to the obligation referred to above.

Next comes the producer's obligation to sell his whole crop at public auctions approved by Cerafel and to contribute to the 'withdrawal-price' system. The first obli-

gation, we are told, is intended to protect member producers from disturbances of the market for fruit and vegetables in Brittany, which is almost wholly dominated by wholesalers and shippers. The second, on the other hand, is intended to prevent market prices from falling below a certain limit (that is to say, the withdrawal price), below which it is more advantageous from an economic point of view to withdraw the produce from sale and pay the producers an indemnity for the unsold goods. The extension to all producers of such obligations stabilizes the market to an even greater degree, and allows Cerafel to control effectively not only all production in the region but also its marketing.

Let me say right away that there can be no doubt as to the lawfulness of the objectives of those two provisions. Article 13 of the basic regulation provides that the establishment of a producers' organization implies for its members the obligation 'to apply, with regard to . . . marketing, rules which have been adopted [by it]' and 'to sell their total output . . . through the organization'. In order to stabilize prices, moreover, the Community legislature considered it desirable that such organizations should 'intervene on the market, in particular by applying a withdrawal price below which their members' produce is withdrawn from the market' (12th recital in the preamble to the basic regulation). The third subparagraph of Article 15 (1) of the regulation provides that 'to finance these withdrawal measures, producers' organizations shall establish an intervention fund, maintained by contributions assessed on quantitites offered for sale'.

As is clear from their wording, however, those provisions are *restricted* in their scope: that is to say, they apply only to organizations and to their members. The *general* scheme of regulation applied by the legislature to the fruit and vegetables sector, on the other hand, is based on the principle of an open market: a market 'to which every producer has free access and the functioning of which is regulated solely by the instruments provided for by [the common organization of the market]' (paragraph 57 of the judgment in Case 83/78, referred to above). It follows, I think, that Cerafel's rules are compatible with that organization in so far as they remain applicable only to the persons by whom they are issued, whereas their extension to all producers would in practice amount to the replacement of the common system by this special scheme which the basic regulation does not prohibit — indeed, it is even encouraged — but which it wishes to restrict to members of the organization in question.

In particular, the producer's obligation to sell his whole crop at auctions approved by Cerafel is unacceptable because it does not allow independent producers to buy and sell freely under conditions laid down by Community rules, and the application of the withdrawal price system to non-members is unlawful because it prevents them from

'taking advantage *directly* of intervention measures or any other measures for regulating the market laid down by the common organization' (paragraph 58 of the judgment in Case 83/78, my emphasis).

It should be recalled that alongside the system outlined above the basic regulation provides in Article 19 for a system of intervention applicable to all producers where the Commission finds that the market is in a state of 'serious crisis'. If they were extended to all producers in Brittany, the Cerafel rules would in the end disrupt the operation of that double mechanism: as the Commission correctly points out, the system provided for in Article 19 would lose its entire *raison d'être*, and the market would be stabilized at a level higher than that provided for in the common organization. It is clear that in the absence of any Community regulations on the extension of the rules of producers' organizations such consequences must be considered incompatible with the functioning of the common organization of the market.

Let me turn to the legality of the last obligation laid down by Cerafel: the payment of contributions for publicity campaigns initiated by Cerafel. It appears from the documents before the Court that a significant part of such sums is devoted to advertising and sales promotion, while the remainder covers Cerafel's administrative costs. It also appears that producers who are not members are obliged to pay one half of the contribution required of members.

At this juncture I must once again cite the judgment of the Court in Case 222/82. In that case the Court held that 'where a charge [in that case, a charge levied on growers by the Apple and Pear Development Council] which serves to finance a body some of whose activities are held to be contrary to Community law', the provisions of Regulation No 1035/72 may 'render unlawful the requirement for growers [to pay the charge]'; the Court went on to say that 'it is for the national court to decide whether, in the light of the importance of the activities in question, that fact renders the charge unlawful and must entail total or partial exemption' (paragraph 3 (c) of the operative part). The same solution, *mutatis mutandis*, must apply in the case now before us.

4. The conclusion to be drawn from the foregoing examination of the matter is that, except with regard to the declaration of the area cultivated, the obligations laid down in the inter-ministerial order on cauliflowers and artichokes, in so far as they are extended to all the producers in the region, interfere with the proper functioning of the common organization of the market and are therefore incompatible with Regulation No 1035/72.

Consequently, there is no need to ascertain whether the provisions in question are also incompatible with the rules on competition laid down in the Treaty of Rome. Such an inquiry would be justified with regard to the order concerning new potatoes, that is to say a product for which at present there is no common organization. As I have stated in part 2 of my Opinion, however, the dispute between Cerafel and Mr Le Campion concerns only his failure to comply with obligations regarding the production and marketing of cauliflower. This aspect of the problem raised by the national court is therefore extraneous to the main proceedings and may be disregarded.

5.On the basis of the foregoing considerations I propose that the Court reply in the following manner to the question referred to it by the tribunal de grande instance, Saint-Brieuc, by its order of 2 July 1985 in the action brought against Cerafel by Mr Le Campion:

In the absence of Community legislation expressly authorizing the extension of rules laid down by a regional producers' committee in a particular agricultural sector, it is contrary to Regulation No 1035/72 on the common organization of the market for fruit and vegetables for a Member State to adopt administrative provisions extending to producers who are not members of the said committee the obligation to sell their entire crop at public auctions approved by the committee, to apply its rules regarding grading, weight, size and presentation and to observe its withdrawal price system.

It is for the national court to decide whether, in the light of the importance of the activities of the committee that are incompatible with Community rules, that fact renders the charge imposed on non-member producers unlawful and entails total or partial exemption.