OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 14 May 1987 *

Mr President,
Members of the Court,

I — 1. The question which has been referred to the Court is not entirely new. It involves an assessment of the scope of the 'residual' powers of the Member States concerning agricultural prices when a regulation instituting a common organization of the market based on a common price system already exists. The Court's extensive case-law suggests a solution to this problem, the basic principles of which were set out in the *Galli*[1] judgment and which since that time have been consistently reaffirmed. Thus, in the *Kefer and Delmelle* judgment, which concerned the price system resulting precisely from the two regulations in question in the present case,[2] the Court reiterated that

'in sectors covered by a common organization of the market and *a fortiori* when this organization is based on a *common* price system, Member States can no longer take action, through national provisions adopted *unilaterally*, affecting the machinery of price formation as established under the common organization',

while also specifying that

'provisions of a Community agricultural regulation which comprise a price system applicable at the *production and wholesale stages leave Member States free* ... to take appropriate measures relating to price formation at the *retail and consumption stages*, on condition that they do not jeopardize the *aims or functioning* of the common organization of the market in question, in particular its price system'.[3]

2. The Italian Corte suprema di cassazione (Court of Cassation), which has requested the preliminary ruling, referred expressly to the abovementioned judgments. The national court considered however that the *Tasca*[4] and *Sadam*[5] decisions left some doubts as to what criteria were applicable. It questions in a general way whether the existence of a Community system of agricultural prices at the wholesale or the production stage is of itself sufficient to preclude any power on the part of Member States concerning prices at the same stages or whether the compatibility of a national price system with Community rules merely depends on whether or not it is likely to jeopardize the objectives or the functioning of the system instituted by the common organization irrespective of the marketing stage concerned. Moreover, the national court asks particularly whether the fact that the Italian system of freezing prices in question, quite apart from being of a temporary nature, included a specific clause enabling revision of these prices by reference to Community prices, is of any

* Translated from the French.

1 — Case 31/74 [1975] ECR 47.

2 — Regulation No 121/67/EEC of the Council of 13 June 1967 (Official Journal, English Special Edition 1967, p. 46) and Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187).

3 — Joined Cases 95 and 96/79 [1980] ECR 103, paragraph 8, emphasis added.

4 — Case 65/75 [1976] ECR 291.

5 — Joined Cases 88 to 90/75 [1976] ECR 323.

relevance in the assessment of such compatibility.

II — 3. The Court's case-law draws a basic distinction according to whether the rules of national law govern the *same marketing stage* as that governed by the common organization, in other words, under the regulations in question, the production stage and the wholesale stage, or whether they have their effect at a *different stage*, that is to say the retail stage. The degree of Community intervention concerning prices delineates precisely the powers retained by the Member States.

4. Even if Member States retain similar powers to institute a policy of controlled or frozen retail prices, they are subject to the national system being compatible with the objectives and functioning of the Community system of prices at the earlier marketing stages.[6] However, the existence of such a Community system necessarily reverses the presumption that a national system having its effect on the *same* marketing stage is compatible. In other words, while the existence of a Community price system at the wholesale stage does not affect the power of Member States as regards the stage of sale to consumers, provided certain conditions are respected, none the less it prohibits Member States from *unilaterally* adopting, at the same stage and for the same products, a price system which differs from the Community system. The *Tasca* and *SADAM* judgments do not seem to be at variance with this solution in principle.

III — 5. Those two decisions are in fact based on the same considerations and what is original is that they are applying them to a *particular* situation. The doubts of the national court stem from the Court's ruling that:

'The unilateral fixing by a Member State of maximum prices for the sale of sugar, *whatever the marketing stage in question*, is incompatible with Regulation No 1009/67 [on the common organization of the market in the sugar sector] once it jeopardizes the objectives and the functioning of this organization and in particular its system of prices'.[7]

6. Does it follow that the principle whereby the degree of State intervention allowed varies according to the marketing stage involved is called into question? Nothing suggests that this is the case. In the first place, it is hard to see why, in the same judgments, the Court should expressly recall the principle, as it was enunciated in the *Galli* judgment,[8] and then later abandon it in favour of the sole criterion of compatibility with the objective and functioning of the Community price system. In reality, the problem with that reference to the distinction was that in the case in point the questions asked by the national court made 'no distinction between the different marketing stages', as the Court observed. The Court was therefore obliged, as the Commission precisely pointed out, to deal in general terms with the problem of the conformity with Community law of a national system for controlling, in other words without drawing any distinction according to the marketing stage concerned.[9]

7. In that context, the Court took into account the possible repercussions of the unilateral fixing by Member States of

6 — See in particular the judgment of 5 June 1985 in Case 116/84 *Roelstraete* [1985] ECR 1705.

7 — Case 65/75 and Joined Cases 88 to 90/75, *supra*, paragraph 1 of the operative part (emphasis added).

8 — Case 65/75, *supra*, paragraphs 9 and 11 and Joined Cases 88 to 90/75, *supra*, paragraphs 9 and 11.

9 — Case 65/75, *supra*, paragraph 6, and Joined Cases 88 to 90/75, *supra*, paragraphs 5 and 6.

consumer sale prices on prices charged in earlier marketing stages which were governed by the common organization and pointed out that:

'in fact, in the matter of agricultural prices national rules for the same marketing stages as the system of Community prices will normally run a greater risk of conflicting with the said system than rules applying exclusively to other stages'. [10]

8. In view of the interaction between retail and wholesale prices and also the risk of conflict which may result from the co-existence of national and Community agricultural price systems, the Court ruled that any national price system which undermined the objectives and the functioning of the common organization was incompatible with the regulation instituting the common organization. In order to prevent the risks of incompatibility at every marketing stage and in particular the effect which a maximum retail price system would have on prices further up the distribution chain, the Court therefore applied the very criterion which is the basis of the abovementioned distinction. In fact, whether a national price system applies at the same marketing stage as the common organization, or at a different stage, the risk exists in either case that the objective and the functioning of the common organization may be jeopardized.

9. None the less, if the national system in question particularly concerns production prices and wholesale prices of products falling within a Community system of prices fixed at the same marketing stage, its unilateral character cannot but interfere with and adversely affect the common character of the system resulting from the common organization. In other words, there must be a presumption of a risk that such a national price system will jeopardize the objectives and functioning of the Community price machinery — there is, to borrow the expression of Mr Advocate General Mayras, a 'direct conflict' or a 'patent conflict' [11] — since the Member State is no longer entitled in principle unilaterally to take measures affecting the common price machinery. On the other hand, when a Member State exercises powers concerning prices which have not been assumed by the Community itself, for example at the retail stage, it is for the national court to determine whether such a risk exists.

10. This analysis is confirmed by the later case-law of the Court. Thus, in the *Danis* judgment the Court has held that rules instituting price controls are contrary to the regulation instituting the common organizaton in question, not only

'*in so far* as they apply to the prices of products covered by that regulation at the *production and wholesale stages*',

but also

'*if in the opinion of the national court* by applying at subsequent stages of the distribution process, they *jeopardize the objectives and functioning* of that common organization'. [12]

The *Toffoli* decision given on the same day is even clearer. On the basis of the principle whereby Member States, within the framework of a price system instituted by a common organizaton,

10 — Case 65/75, *supra*, paragraphes 12 and 14, and Joined Cases 88 to 90/75, *supra*, paragraphes 12 and 14.

11 — Case 114/77 *Dechmann* [1978] ECR 1573, Opinion of Mr Advocate General Mayras at p. 1591.

12 — Cases 16 to 20/79 *Danis* [1979] ECR 3327, paragraph 10, emphasis added.

'can no longer take action, through national provisions taken unilaterally, affecting the machinery of price formation at the production and marketing stages established under the common organization', the Court held that 'national legislation designed to promote and encourage, by any method, the establishment of a uniform producer price for milk, by agreement or by authority, at the national or regional level is, *by its nature*, outside the bounds of the powers given to Member States and runs contrary to the principle ... of attaining a target producer price for the milk sold by Community producers during the milk year on the Community market and on external markets'. [13]

11. These decisions underline that the extent to which Member States may intervene depends in such cases on the original distribution of powers in Article 39 *et seq.* of the EEC Treaty, as defined in a particular case by the adoption of the regulation instituting a common organization of the market. Under that distribution of powers, Member States are normally precluded from adopting a price freeze at the production and wholesale stages where Community rules fix the prices applicable for the same products at those same stages.

12. This is precisely the objective pursued by Regulations Nos 121/67 and 805/68. As the Court expressly pointed out in the *Kefer and Delmelle* judgment, [14] those regulations are intended to create a single market for the products to which they are applicable and are based on the establishment of a common price system consisting of, on the one hand, a basic price or guidance price and, on the other, an intervention price if the need should arise, [15] and applying at the production and wholesale stages.

13. It should therefore be stated that, even if they are of limited duration, national rules freezing production and distribution prices of pigmeat and beef and veal, which are covered by Council Regulations Nos 121/67 and 805/68 respectively, must be presumed to be incompatible with the price system resulting from those two regulations, in so far as those national rules interfere with the price formation resulting from the common organization of the market and thereby jeopardize not only the objectives which the organization is pursuing for the whole of the Community with a view to instituting a single market under the terms of Articles 39 and 40 of the EEC Treaty, but also its functioning.

IV — 14. This conclusion is not altered by the existence of a clause providing for the revision of domestic prices by reference to the Community prices determined within the framework of the common organization. In no circumstances may such a clause justify unilateral action by a Member State within a sector where the Community has exclusive legislative power. The Italian Government has clearly indicated in its observations that the application of the clause was subject to prior administrative authorization. Such a system therefore makes the applicability of Community regulations, which should be immediate and uniform, dependent on the decision of a national authority, in this particular case

13 — Case 10/79 [1979] ECR 3301, paragraph 12, emphasis added.

14 — Joined Cases 95 and 96/79, *supra*, paragraph 7.

15 — The third and fourth recitals of both regulations and Articles 3, 4 and 5 of Regulation No 121/67 and Articles 3, 5 and 6 of Regulation No 805/68.

provincial price committees, adopted pursuant to the directives of the interministerial price committee. It is hardly necessary to recall that:

'By virtue of the obligations arising from the Treaty the Member States are under a duty not to obstruct the direct effect inherent in regulations .... Strict compliance with this obligation is an indispensable condition of simultaneous and uniform application of Community regulations throughout the Community'. [16]

The Court therefore held that:

'the Member States may neither adopt nor allow national organizations having legislative power to adopt any measure which would conceal the Community nature and effects of any legal provision from the persons to whom it applies'. [17]

15. Consequently, quite apart from the fact that the price revision clause contained in the relevant national legislation cannot justify the adoption of a price system applying at a stage governed by common organizations of the market, it alters the scope of the rules which establish the common organizations.

V — 16. For all of the above reasons the following answer should be given to the national court:

The price system established by Council Regulation No 121/67/EEC of the Council of 13 June 1967 on the common organization of the market in pigmeat and Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal prohibits Member States from adopting a national system to freeze prices in so far as such a system is applicable at the wholesale stage of the products covered by the abovementioned organizations even if the national system is of only limited duration and even if it incorporates a clause providing for revision of the frozen prices.

16 — Case 50/76 *Amsterdam Bulb* [1977] ECR 137, paragraphs 5 and 6.

17 — Case 50/76, *supra*, paragraph 7.