2. Regulation No 2772/75, in the version in force until amended by Council Regulations Nos 1831/84 and 3341/84, must be interpreted as precluding national provisions authorizing and protecting the affixing of the indications 'scharrelei' or 'scharreleieren' to eggs or packs of eggs.

Such provisions, adopted contrary to Community law, cannot be regarded as having retroactive justification by virtue of subsequent changes in the Community legislation.

OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 24 April 1986 *

Mr President,
Members of the Court,

1. By judgment of 16 April 1985 the College van Beroep voor het Bedrijfsleven [Administrative court of last instance in matters of trade and industry] asked the Court to interpret certain provisions of Council Regulation (EEC) No 2772/75 of 29 October 1975 on marketing standards for eggs (Official Journal 1975, L 282, p. 56).

On 5 January 1985 the Tuchtgerecht [Disciplinary Board] of the Stichting Scharreleieren-Controle [Deep-Litter Eggs Supervisory Agency, hereinafter referred to as 'the Agency'] imposed a fine of HFL 7 500 on De Groothandel in, Im- en Export van Eieren en Eiprodukten Wulro BV (hereinafter referred to as 'Wulro'). Wulro was charged with marketing a substantial quantity of battery-produced eggs between 1 January 1983 and 31 March 1983 in packaging marked 'scharreleieren' ('deep-litter eggs'), contrary to Article 2 (1) and Article 3 (1) of the Landbouwkwaliteitsbesluit Scharreleieren [Quality of Agricultural Produce (Deep-Litter Eggs) Order hereinafter referred to as 'the Order'] of 19 October 1978. According to those provisions, the trade description 'scharreleieren' may be applied only to eggs produced in establishments in which hens are kept not in batteries but in conditions which, as regards space, feed, the surface on which they live and so on, are similar to those in which farmyard chickens are kept. That trade description is protected by an inspection mark affixed under the supervision of the Agency.

Wulro appealed against the fine imposed on it to the College van Beroep voor het Bedrijfsleven which found it necessary to submit to the Court of its own motion, pursuant to Article 177 of the EEC Treaty, the following question for a preliminary ruling: 'Must Council Regulation No

* Translated from the Italian.

2772/75 be interpreted as meaning that national provisions authorizing and protecting the use of the marking 'scharrelei' or 'scharreleieren' on eggs or their packaging (so that the use of those markings is prohibited unless certain requirements relating partly to the undertakings on which the eggs are produced and partly to the hens which lay them are satisfied) are incompatible with that regulation so long as no Community provisions concerning such marking have been adopted under the procedure provided for in Article 17 of Council Regulation No 2771/75 (Official Journal 1975, L 282, p. 49)?'.

2. In the proceedings before the Court, written observations were submitted by the Commission of the European Communities and the Netherlands Government. According to the latter, the contested Order was adopted under pressure from animal protectionists and consumer associations for the adoption of measures designed to combat industrial systems of rearing chickens in batteries. There is no doubt that the easiest solution would have been to *prohibit such systems outright.* Instead, the Netherlands legislature preferred to establish and introduce into commercial usage the expression 'scharreleieren', adopting a more indirect, though, in its view, equally effective, approach. That trade description, which may be used only by undertakings equipped with facilities capable of ensuring specific living conditions for poultry, was designed to guarantee the well-being of hens, to lay down a minimum number of restrictions on the production and marketing of eggs and to benefit consumers by providing them with specific information on the origin of the product.

Starting from that premise, the Netherlands Government maintains that the Order is undoubtedly compatible with Community law. Community provisions on rearing poultry and on the origin of the eggs (based largely on the Netherlands model) were adopted only a few months ago in the form of Regulation (EEC) No 1943/85 of 12 July 1985 (Official Journal 1985, L 181, p. 34), although no such provisions existed at the material time. It follows that the Member States were entitled, according to the Netherlands Government, to establish and maintain in force a system such as that at issue, provided of course they did not derogate from, or jeopardize the effectiveness of, the provisions on the common organization of the market. It contends that its view is supported by the consistent case-law of the Court (see the judgments of 1 April 1982 in Joined Cases 141 to 143/81 *Holdijk* [1982] ECR 1299 and of 7 February 1984 in Case 237/82 *Jongeneel Kaas* [1984] ECR 483).

3. I cannot endorse that argument. To begin with, I would recall that, according to Article 2 (2) of Regulation No 2771/75 on the common organization of the market in eggs, the Council had undertaken to adopt 'marketing standards' for eggs, relating to 'grading by quality and weight, packaging, storage, transport, presentation and marking'. The Council's intention was that those standards should 'contribute to an improvement in the quality of the eggs and consequently facilitate their sale' in the interest of producers, traders and consumers.

The Community legislature honoured that undertaking by adopting Regulation No 2772/75 which divides eggs into three commercial categories in decreasing order of quality: Grade A, 'fresh eggs'; Grade B, 'second-quality or preserved eggs'; and Grade C, 'non-graded eggs intended for the food industry' (Article 6 and fourth and eighth recitals in the preamble to the regulation). Each grade is distinguished by a

mark stamped on the eggs or the packs, or both, with any further indications concerning the weight, date of packaging and the distinctive markings of the undertaking. Any other markings are prohibited (Articles 15 and 21) on the ground that they might 'affect trading conditions in the Community' (15th recital in the preamble) and, in my view, confuse consumers. Supervision to ensure compliance with such provisions and the adoption of measures aimed at penalizing infringements are entrusted to the authorities of the Member States (Articles 26 and 29). Finally, Article 30 provides that all national measures 'aimed at ensuring uniform application of this regulation shall be adopted in accordance with the procedure laid down in Article 17 of Regulation (EEC) No 2771/75', which entails close cooperation between the Member States and the Commission through a joint management committee set up for the purpose.

That being so it is clear that, pursuant to Article 2 (2) of Regulation No 2771/75 and after the adoption of Regulation No 2772/75, the Member States could no longer unilaterally enact provisions concerning the sale of eggs; otherwise they might jeopardize the results achieved by Regulation No 2772/75 and, more generally, impair progress under the Community rules towards bringing about a uniform improvement in the quality and marketing of eggs within the common market. The objection raised by the Netherlands Government that the purpose of the 1978 Order is to promote not the marketing of eggs but the conditions in which chickens are kept is tantamount to contradicting the expressed intentions of the legislature. In formulating the question referred to the Court of Justice, the national court emphasized that the new 'rules laid down regarding the production and marking of deep-litter eggs' were laid down precisely 'in order to promote sales' (see the preamble to the aforesaid Order).

Nor can it be said that the Council itself retroactively endorsed the contested body of rules by incorporating certain features thereof in the amendments made to Regulation No 2772/75. As the Commission points out, it was possible to make those amendments only after the terms indicating the type of farming and the origin of eggs had been harmonized under the Community procedure to which I have just referred. It was necessary to prevent the use of designations of that kind, which were hitherto little known and difficult to supervise, if they were 'likely to mislead the purchaser' and to be harmful to 'the fluidity of the Community market' (Article 21, as amended by Regulation (EEC) No 1831/84 of 19 June 1984, Official Journal 1984, L 172, p. 2). For the same reasons Regulation (EEC) No 1943/85 (Official Journal 1985, L 181, p. 34) now restricts the possibility of applying the description 'deep-litter eggs' to Grade A eggs alone, that is to say eggs designated by a term with which Community consumers are by now familiar.

Those findings confirm that the enactment by the Netherlands legislature of provisions concerning the quality and marketing of deep-litter eggs constituted an encroachment on the Community's exclusive powers in that area. The description used and the inspection mark were therefore incompatible with the provisions of Regulation No 2772/75.

4. In the light of all the foregoing considerations, I propose that the answer to the question submitted by judgment of 16 April 1985 of the College van Beroep voor het Bedrijfsleven in the action brought by Wulro challenging the fine imposed upon it by the Disciplinary Board of the Stichting Scharreleieren-Controle, should be as follows:

The version of Regulation No 2772/75 which was in force prior to its amendment by Regulation No 1831/84 must be interpreted as precluding national provisions permitting and protecting the use of the trade description 'scharreleieren'.