OPINION OF ADVOCATE GENERAL LÉGER

delivered on 29 May 1997 *

1. The Italian Consiglio di Stato (Council of State) seeks an interpretation of Council Directive 72/159/EEC of 17 April 1972 on the modernization of farms [1] and of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures. [2]

The Court is essentially requested to rule [3] once again on whether those measures permit Member States to apply different treatment to 'farmer[s] practising farming as [their] main occupation' by reason of the legal form they have assumed.

Facts and procedure

2. By a decision dated 3 June 1991, the Vercelli Provincial Commission responsible for the register of farmers practising farming as their main occupation rejected an application for registration made by Saiagricola SpA (hereinafter 'Saiagricola') on the ground that Piedmont Regional Law No 18 of 23 August 1982 [4] provides that *only natural persons may be registered.* [5]

3. That decision was annulled by the Tribunale Amministrativo Regionale per il Piemonte (Piedmont Regional Administrative Court) by decisions of 6 May and 3 June 1993 on the ground that Law No 18/82 was contrary to the provisions of Directive 72/159/EEC (hereinafter 'Directive 72/159' or 'the directive') which makes it unlawful for Member States to grant the status of 'farmer practising farming as his main occupation' only to natural persons.

4. The Piedmont Region appealed to the Consiglio di Stato, which stayed proceedings and referred the following question to the Court for a preliminary ruling under Article 177 of the EC Treaty:

'... whether, under Council Directive 72/159/EEC of 17 April 1972 and the subsequent Council Regulation (EEC) No 797/85

* Original language: French.

1 — OJ, English Special Edition 1972 (II), p. 324.

2 — OJ 1985 L 93, p. 1.

3 — Case 312/85 *Villa Banfi* [1986] ECR 4039 and Case C-162/91 *Tenuta il Bosco* [1992] ECR I-5279.

4 — 'Amendments and additions to Regional Laws No 27 of 12 May 1975 and No 44 of 16 May 1980 concerning the establishment of an occupational register of farmers' (*Official Journal of the Piedmont Region* No 35 of 1 September 1982, hereinafter 'Law No 18/82' or 'the Law at issue').

5 — I will return to this point in more detail when considering the relevant national legislation, at points 14 et seq. of this Opinion.

of 12 March 1985 and having regard to the aim of developing a common agricultural policy within a system free of discrimination between farmers, there is room for the national or regional legislature to provide for different treatment of individual farmers, even if only in relation to the introduction of a special system of identification based on a specific register set up solely for that purpose'. [6]

Relevant provisions

Relevant Community legislation

5. *Directive 72/159* aims to '[bring] about structural conditions conducive to a significant improvement in agricultural incomes and working and production conditions' [7] and, to this end, provides for a system of incentives to 'farms suitable for development'.

6. Article 2 of the directive defines 'farms suitable for development' as those where the farmer practises farming as his main occupation, possesses adequate occupational skill and competence, undertakes to keep accounts and draws up a plan for the development of the farm business which satisfies the conditions laid down in the directive. Furthermore, this article provides that the level of earned income of the farm must not exceed that received for non-agricultural work in the region in question. However, it does not specify the legal form such farms should have.

7. Article 3 requires Member States to define what is meant by the expression 'farmer practising farming as his main occupation', bearing in mind certain minimum criteria in the case of natural persons. These criteria must ensure that the farmer derives at least 50% of his income from farming and that he devotes more than half of his total working time to farming, although Member States have discretion to impose stricter requirements in both respects. In defining the expression in relation to legal persons, Member States must have regard in particular to those two criteria. [8]

8. *Regulation No 797/85* (hereinafter 'the regulation') sets out the basic Community rules relating to agricultural structures. The regulation, which aims to improve the efficiency of agricultural structures within the Community, establishes common measures and provides for the involvement of the European Agricultural Guidance and Guarantee Fund in measures concerning

6 — Page 5 of the English translation of the order for reference.

7 — Article 1(1).

8 — Paragraph 1.

investments in agricultural holdings; it does not, however, specify the legal form these holdings should take. [9]

9. Article 2 of the regulation sets out an exhaustive list of criteria which farmers must fulfil in order to be eligible for the investment aids provided for by Title I of the regulation, and requires Member States to define what is meant by the expression 'farmer practising farming as his main occupation', having regard to certain minimum criteria.

10. Article 2(5), which is drafted in almost exactly the same terms as Article 3(1) of Directive 72/159, provides as follows:

'Member States shall, for the purposes of this regulation, define what is meant by the expression "farmer practising farming as his main occupation".

This definition shall, in the case of a natural person, include at least the condition that the proportion of income derived from the agricultural holding must be 50% or more of the farmer's total income and that the working time devoted to work unconnected with the holding must be less than half of the farmer's total working time.

On the basis of the criteria referred to in the foregoing subparagraph, the Member States shall define what is meant by this same expression in the case of persons other than natural persons.'

11. For reasons of clarity and rationality, Regulation No 797/85 was consolidated by the Community legislature by means of Regulation (EEC) No 2328/91. [10] Article 5(5) of Regulation No 2328/91 is drafted in virtually the same terms as Article 2(5) of Regulation No 797/85; it entered into force on 9 August 1991 [11] and repeals and replaces Regulation No 797/85. [12]

Relevant national provisions

12. Under Italian law, the expression 'farmer practising farming as his main occupation' was first defined by the Law of 9 May 1975. [13] Articles 12 and 13 of Law No 153 provide that only natural persons, agricultural cooperatives established in accordance with the provisions relating to cooperation and associations of farmers may benefit from the measures provided for by Directive 72/159. Only after Regulation No 797/85

9 — Article 1.

10 — Council Regulation of 15 July 1991 on improving the efficiency of agricultural structures (OJ 1991 L 218, p. 1) (first recital).

11 — After the events material to this case.

12 — Article 40(1) of Regulation No 2328/91.

13 — Law No 153 concerning the transposition of the directives of the Council of the European Communities on the reform of agriculture (GURI No 137 of 26 May 1975, p. 3298, hereinafter 'Law No 153' or 'the 1975 Law'.

entered into force was the Law of 1975 supplemented — and, in part, amended — by a decree of the Minister of Agriculture and Forests dated 12 September 1985. [14] That decision includes companies among the potential beneficiaries of the measures provided for by Regulation No 797/85. [15]

13. The Italian regions, which enjoy concurrent legislative power in agricultural matters, adopted detailed rules for the application of the Community legislation, within the framework of the principles laid down by national law.

14. Article 1 of Law No 18/82 provides that:

'A register of farmers practising farming as their main occupation shall be established in each decentralized regional department for agriculture of each province of the region. Farmers practising farming as their main occupation who are covered by Laws No 153 of 9 May 1975, No 352 of 10 May 1976 and Regional Implementing Law No 15 of 22 February 1977, as subsequently amended and supplemented, may register ...'

15. The subsequent articles of Law No 18/82 set out the criteria which farmers must fulfil in order to be considered as 'practising farming as their main occupation'.

16. By Decision No 443-6462 of 28 July 1983 [16] the Piedmont Regional Council implemented the requirements of Law No 18/82 concerning the creation of a register of farmers practising farming as their main occupation (hereinafter 'the register'). Only natural persons, agricultural cooperatives set up in accordance with the provisions relating to cooperation and associations of farmers may apply for registration. [17]

17. For those who are eligible, registration has certain advantages as it means the registered farmer is automatically considered by the relevant regional administration to be a 'farmer practising farming as his main

14 — Provisions relating to the general criteria and conditions for the application of Regulation No 797/85 (GURI No 223 of 21 September 1985), as amended on 26 September 1985 (GURI No 231 of 1 October 1985) and on 26 March 1986 (GURI No 80 of 7 April 1986).

15 — Article 2 of the decree. This amendment was made by the Italian legislature before the judgment in *Villa Banfi*.

16 — *Official Journal of the Piedmont Region* No 35 of 31 August 1983.

17 — Articles 2 and 3 of Decision No 443-6462, cited above.

occupation', which confers entitlement to the agricultural aids provided for by Directive 72/159. [18] In contrast, farmers who are not registered must lodge a specific application and may only be considered to be 'farmers practising farming as their main occupation' once a case by case investigation has been carried out in order to 'obtain the same basic facts and details as those required by the rules concerning registration ...'. [19]

18. The proceedings between Saiagricola and the Provincial Commission are based on this difference in the treatment accorded to the two categories of farmers concerned.

The questions submitted by the national court

19. The Court has already had occasion to rule on whether Community legislation permits Member States, which are required to define the expression 'farmer practising farming as a main occupation', to limit its scope to natural persons alone.

20. In the *Villa Banfi* case, [20] the Court held that:

'... Directive [72/159] not only does not exclude legal persons but expressly includes them within its scope provided that they fulfil the conditions of Article 2 and meet the definition of "a farmer practising farming as his main occupation" laid down in implementation of Article 3(1). Since those conditions are unrelated to the form in which a legal person is constituted, the inference to be drawn is that Member States are not permitted to withhold from legal persons the benefit of provisions of the directive solely because they have assumed a specific legal form. Differential treatment such as that would, in any event, conflict with the principle of non-discrimination enshrined in Article 40(3) of the EEC Treaty which Member States must observe when giving effect to the common agricultural policy.'

21. Similarly, in the *Tenuta il Bosco* case, the Court confirmed that:

'Like the abovementioned Directive 72/159, not only does ... Regulation [No 797/85] not exclude legal persons, *it expressly includes them within its scope* provided that they fulfil the conditions laid down in Article 2. Since those conditions are unrelated to the legal form in which a legal person is constituted, Member States are not permitted to

18 — Decision No 445-6597 of the Piedmont Regional Council of 3 August 1983 (*Official Journal of the Piedmont Region* No 35 of 31 August 1983).

19 — Ibid.

20 — Paragraph 10.

deny legal persons the benefit of the system established under the regulation solely because they have assumed a particular legal form.

As the Court has held (paragraph 10 of the judgment in *Villa Banfi*, cited above), such differential treatment would in any event conflict with the principle of non-discrimination enshrined in Article 40(3) of the EEC Treaty which Member States must observe when giving effect to the common agricultural policy.' [21]

22. In accordance with the observations of the appellant in the main proceedings, the Commission and the Italian Government, I am of the opinion that the question submitted by the Council of State should be answered in the negative for two main reasons.

23. The fact that the law at issue prevents registration of certain legal persons is *incompatible* with both the wording and the purpose of the abovementioned Community measures and *contrary to* the principle of non-discrimination enshrined in Article 40(3) of the Treaty which the Member States must observe when giving effect to the common agricultural policy.

Incompatibility with Community law of the refusal to allow registration

24. Admittedly, the Piedmont regional legislation does not expressly exclude legal persons from the scope of Directive 72/159 and Regulation No 797/85, but it does prevent certain legal persons from obtaining registration.

25. Although this is not required by the Community measures, the register introduced by the law at issue is intended to determine eligibility under the system of aids established by Directive 72/159. In defining the expression 'farmer practising farming as his main occupation' in the 1975 Law — as Member States are required to do by Article 3(1) of Directive 72/159 in accordance with conditions laid down at Community level [22] — the national legislature limited the scope of the definition to certain legal persons; Law No 18/82 thus made it impossible for such persons to obtain registration.

21 — Paragraphs 15 and 16, emphasis added.

22 — See Case 85/77 *Azienda avicola Sant'Anna* [1978] ECR 527; Case 139/77 *Denkavit Futtermittel* [1978] ECR 1317 and Case 121/78 *Bardi* [1979] ECR 221.

26. Both the purpose and the wording [23] of the Community legislation [24] make it clear that the status of 'farmer practising farming as his main occupation' is not dependent on the legal form assumed by the farmer. On the other hand, the Community legislature does attach particular importance to the specific criteria it has laid down. Thus, Article 2(5) of Regulation No 797/85 and Article 3(1) of Directive 72/159 provide — let us remember — that the expression 'farmer practising farming as his main occupation', as defined by the Member States for the purposes of those measures, is to include 'at least the condition that the proportion of income derived from the agricultural holding must be 50% or more of the farmer's total income and that the working time devoted to work unconnected with the holding must be less than half of the farmer's total working time'. By specifying, in those articles, that Member States are to take account of those criteria in defining the expression 'farmer practising farming as his main occupation' in the case of legal persons, the Community legislature made it clear that such persons fall within the scope of the system of agricultural aids so established, provided they fulfil the necessary conditions. This was the approach followed in the *Villa Banfi* and *Tenuta il Bosco* cases, where the Court held that Member States have no discretion to deny certain categories of legal persons the advantages provided for by Directive 72/159 — and, subsequently, by Regulation No 797/85 — solely by reason of their legal form.

27. For the reasons mentioned above, it appears to me that refusal of an application for registration solely by reason of the legal form assumed by the applicant is incompatible with Community law.

Breach of the principle of equal treatment

28. The fact that certain legal persons may not be registered places them in a less favourable situation than that enjoyed by natural persons who are eligible for registration. As we have seen, [25] production of a certificate of registration is sufficient proof of the status of farmer practising farming as his main occupation which is required in order to qualify for aid jointly financed by the Community, while persons not so registered must undergo a more lengthy and complex procedure in order to be accorded this status. However, no justification has been given in support of this unequal treatment. [26]

29. I therefore consider that the principle of equal treatment enshrined in Article 40(3) of the Treaty [27] precludes national legislation which does not permit certain legal persons

23 — See for example the second, third, fourth and fifth recitals in the preamble to Directive 72/159 and the second, third, fourth, fifth and sixth recitals in the preamble to Regulation No 797/85.

24 — See Article 2 of Directive 72/159 and Article 2(1) to (4) of Regulation No 797/85.

25 — See points 16 and 17 of this Opinion.

26 — Page 4, paragraph 3, of the French translation of the observations of the Italian Government.

27 — *Villa Banfi*, cited above, paragraph 10, and *Tenuta il Bosco*, cited above, paragraph 16.

to be entered on a register of the type provided for by the regional legislation in question by reason of their legal form.

30. As a result the question submitted by the national court should be answered in the negative.

Conclusion

31. In the light of the foregoing, I propose that the question referred by the Council of State should be answered as follows:

Council Directive 72/159/EEC of 17 April 1972 concerning the modernization of farms and Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures must be interpreted as meaning that a Member State is not authorized to provide for different treatment of farmers practising farming as their main occupation by reason of the legal form they have assumed, even if only in relation to the introduction of a special system of identification based on a specific register set up solely for natural persons.