OPINION OF MR ADVOCATE GENERAL JACOBS
delivered on 20 April 1989 *

My Lords,

1. This reference for a preliminary ruling from the Verwaltungsgericht (Administrative Court) Frankfurt arises from a dispute over the question whether the plaintiff is entitled under Community legislation to a production aid for cherries preserved in syrup for the year 1983-84.

2. The facts of the case are not set out in the order for reference, but it appears that the plaintiff, Stute Nahrungsmittelwerke GmbH & Co. KG ('Stute'), bought the cherries in July 1983 from the company Rudolf Bargstedt, Hamburg, Obsterzeuger-organisation GmbH ('Bargstedt') for processing into cherries preserved in syrup.

3. The relevant basic Regulation in this case is Council Regulation (EEC) No 516/77 of 14 March 1977 on the common organization of the market in products processed from fruit and vegetables (Official Journal 1977, L 73, p. 1). That Regulation was amended by Council Regulation (EEC) No 1152/78 of 30 May 1978 (Official Journal 1978, L 144, p. 1) which introduced a system of production aid for certain products processed from fruit and vegetables. The reasons for the introduction of that system are explained in the preamble to the Regulation as follows:

'Whereas the producer prices of certain products processed from fruit and vegetables which are of particular importance in the Mediterranean regions of the Community are considerably higher than in non-member countries; whereas this difference in prices may well continue for the next few marketing years; whereas Community products should therefore be made more competitive by adopting the necessary measures to enable them to be sold at prices which compete with those charged by the major non-member producing countries . . . ;

Whereas, to this end, a system of production aid should be introduced enabling the products in question to be manufactured at a price lower than that which would result from the payment of a remunerative price to producers of the fresh products; whereas this system should be linked to a system of contracts providing both for regular supplies to the processing industries and a minimum price to be paid by processors to producers'.

4. The substantive provisions governing the system of production aid were contained in Article 2 of Regulation No 1152/78, which added new Articles 3a, 3b and 3c to the

* Original language: English

basic Regulation. Article 3a(1) provided that for the period starting from the beginning of the 1978/79 marketing year, a system of production aid should be introduced for products as specified in Annex Ia obtained from fruit and vegetables harvested in the Community. Article 3a(2) provided as follows:

'The system referred to in paragraph 1 shall be based on contracts binding, within the Community, producers or recognized groups or associations thereof and processors or legally constituted groups or associations thereof. These contracts, concluded for a minimum period to be determined, must specify the quantities of raw material to which they relate, the schedule for deliveries to processors and the price to be paid to producers. On their conclusion, the contracts shall be forwarded to the bodies designated by the Member States concerned, which shall be responsible for supervising the execution of the contracts.'

Article 3a(3) prescribed the method for calculating the minimum price for deliveries made under such contracts.

5. Article 3b prescribed the method by which the amount of the aid was to be calculated. Article 3c laid down the procedure for the adoption of detailed rules for the application of Articles 3a and 3b, including the fixing of the amount of the aid and the minimum price.

6. Regulation No 1152/78 did not apply to cherries preserved in syrup. Cherries preserved in syrup were not among the products listed in Annex Ia, which was inserted in the basic Regulation by Article 3 of Regulation No 1152/78. The system of production aid was extended to that product by Council Regulation (EEC) No 1639/79 of 24 July 1979 (Official Journal 1979, L 192, p. 3) which further amended the basic Regulation and amended Annex Ia to include cherries preserved in syrup.

7. It appears that the defendant in the main proceedings, in the form of the Bundesamt für Ernährung und Forstwirtschaft (Federal Office for Food and Forestry), refused Stute's application for production aid in respect of the transaction with Bargstedt on the ground that, while the other conditions laid down by Regulation No 516/77 as amended were satisfied, Bargstedt could not be regarded as a recognized group of producers for the purpose of those conditions. In the view of the Bundesamt, Bargstedt was controlled by Mr Rudolf Bargstedt, the main shareholder, who was a wholesaler and not a producer of fruit and vegetables. At the material time, Mr Bargstedt held 68 votes out of a total of 103 under the company's statutes.

8. Stute contended, on the other hand, that Bargstedt had been recognized by the Free Hanseatic City of Hamburg, which was a competent authority for that purpose, as a producers' organization for intervention purposes under Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables (Official Journal, English Special Edition 1972 (II), p. 437). Stute also

contended that the position of the principal shareholder in Bargstedt did not affect its status as a producers' organization; the producers had sufficient rights of control to enable it to qualify as a producers' organization. The principal shareholder could not take decisions alone; management was in the hands of an advisory board (Beirat) composed exclusively of producers, which had a right of veto.

9. In the light of those contentions the Frankfurt Administrative Court referred the following questions to this Court for a preliminary ruling:

'(1) What minimum requirements must be satisfied by a recognized producers' group within the meaning of Article 3a(2) of Council Regulation (EEC) No 516/77 of 14 March 1977, Article 3a(1) of [that Regulation as amended by] Council Regulation (EEC) No 988/84 of 31 March 1984, and Article 3(1) of Council Regulation (EEC) No 426/86 of 24 February 1986?

With regard to those minimum requirements, does a producers' group as referred to in Article 3a of Regulation No 516/77 fall within the definition of Article 13 of Regulation No 1035/72 or that of Article 4 of Regulation No 1360/78?

(2) Do those minimum requirements entail that the producers must be able to exert their influence on decisions in the recognized producers' group by holding a majority of votes and does it matter if a member of such a producers' association is not a producer himself but holds the majority of votes, or is it sufficient if the producers, as minority shareholders, have powers of control and rights of veto?

(3) Is compliance with those minimum requirements a condition of entitlement to aid if all other conditions in respect of such aid are satisfied, in particular if the competent authority has recognized the producers' association? To that extent does a question of legitimate expectation arise between the producers' association and its customers?'

10. Argument has been advanced by Stute, by the Government of the Federal Republic of Germany, by the Greek Government and by the Commission, not only on the interpretation of Articles 3a, 3b and 3c of the basic Regulation as amended but also on a substantial number of other Regulations dealing with the definition of producers' organizations and related notions in a variety of different contexts. Particular attention has been paid to Regulation No 1035/72, Title II of which is concerned with producers' organizations. Article 13 of the Regulation defines the term as follows:

'For the purposes of this Regulation, "producers' organization" means any organization of fruit and vegetable

producers which is established on the producers' own initiative for the purpose, in particular:

(i) of promoting the concentration of supply and the regularization of prices at the producer stage in respect of one or more of the products referred to in Article 1;

(ii) of making suitable technical means available to producer members for presenting and marketing the relevant products;

and which requires the producer members: [1]

(i) to sell their total output of the product or products by reason of which they have become members through the organization; the organization may, however, waive this requirement in respect of certain quantities;

(ii) to apply, with regard to production and marketing, rules which have been adopted by the producers' organization with a view to improving product quality and adapting the volume of supply to market requirements.'

1 — The English Special Edition text is slightly defective at this point, and I have corrected it to follow the French and German texts.

However, it should be noted that that definition is expressed to be for the purposes of that Regulation. It is by no means clear that the same definition is appropriate in other contexts. Article 14 of the Regulation enables Member States to grant aid to producers' organizations to encourage their formation and to facilitate their operation and those organizations have, as Article 13 itself makes clear, important functions in the management of the market in fruit and vegetables. One would therefore expect to find detailed prescriptions as to the nature and functions of such organizations.

11. Article 3a(2) of Regulation No 516/77 is not concerned with producers' organizations in that sense at all. It does not refer to producers' organizations, but to 'producers or recognized groups or associations thereof'. The purpose of introducing a system of production aid into the basic Regulation on products processed from fruit and vegetables was solely to enable producers of those products to buy the fruit and vegetables in question from Community producers whose prices would, in the absence of production aid, be undercut by imports from third countries. That remained the case when the basic Regulation was further amended by Council Regulation (EEC) No 988/84 (Official Journal 1984, L 103, p. 11), also cited in the questions referred, Article 3a repeating in substance the same term 'producers or recognized producers' groups or associations thereof'. Council Regulation (EEC) No 426/86 (Official Journal 1986, L 49, p. 1) repealed and replaced Regulation No 516/77 as the basic Regulation on the common organization of the market in products processed from fruit and vegetables. Title I governs production aid and Article 3(1) again uses the same words. The essential requirement

under those provisions is that the products should have been processed from fruit and vegetables which were harvested in the Community, and which were bought under contracts between the producers and the processors. There is accordingly, in my view, no particular requirement which has to be satisfied by a producer or recognized group or association of producers in order for the conditions laid down by those provisions to be satisfied. Consequently, I take the view that the provisions of other regulations concerned with producers' organizations and the like are of no assistance in this case. The only material requirement is that the vendor is a producer or a group or association of producers, terms which in my view are to be understood in their ordinary meaning.

12. It is true that a link between the notions of producers' organization and group or association of producers does appear in later legislation. In the case of aid for processed tomato products, Article 1 of Commission Regulation (EEC) No 722/88 of 18 March 1988 (Official Journal 1988, L 74, p. 49) defines the term 'producers' group' as follows:

'For the purpose of applying Article 3(1a) of Regulation (EEC) No 426/86, "producers' group" means:

(i) producers' organizations established and recognized in accordance with Article 13 of Regulation (EEC) No 1035/72;

(ii) groups established for the conclusion of contracts as referred to in the abovementioned Article 3; such groups shall be recognized by the Member State concerned provided that their members are not part of producers' organizations recognized pursuant to Article 13 of Regulation (EEC) No 1035/72 and undertake not to have any of their production taken over by other groups.'

But there was no similar definition of the term 'producers or recognized groups or associations thereof' in the earlier legislation, and the existence of a particular definition for a different product at a later date, no doubt taking account of the particular circumstances of the market in that product at that time, serves in my view only to confirm that the terms as used in the earlier legislation should be understood in their ordinary meaning.

13. The reference to 'recognized' groups or associations may have caused confusion because of the requirement of recognition in relation to producers' organizations. Article 2 of Council Regulation (EEC) No 3284/83 of 14 November 1983 (Official Journal 1983, L 325, p. 1) amended Article 13 of Regulation No 1035/72 by adding to the conditions mentioned above the requirement that the producers' organization must be 'recognized by the Member State concerned' and by providing that such recognition is to be granted if there is sufficient evidence as regards the duration and effectiveness of the organization's activities. According to the preamble to that Regulation, the purpose of the amendment was to ensure that producers' organizations comply with the conditions laid down and that the period in respect of which aid is

granted is more accurately and appropriately determined. That definition, again, was for the purposes of the grant of aid to producers' organizations themselves.

14. Similarly, I do not think that direct assistance can be derived from Council Regulation (EEC) No 1360/78 of 19 June 1978 on producer groups and associations thereof (Official Journal 1978, L 166, p. 1) which is cited in the questions referred but which applies only in certain areas of the Community not including the Federal Republic of Germany, namely Belgium, Italy and certain regions of France, and applies only to certain products, no products processed from fruit and vegetables being covered except in Italy. Article 5 of that Regulation provides that producers' groups are to consist of, in particular, individual producers. By Article 5(2): 'The Member States concerned may, when their national provisions so provide, recognize producer groups which also include persons other than those covered by paragraph 1. In such cases the groups' statutes must ensure that the members covered by paragraph 1 retain control over the groups and any decisions the latter may take.' Article 5(3) provides that associations shall consist of recognized producer groups and shall pursue the same objectives as those groups, but on a larger scale. The purposes of that Regulation were again wholly different, it being intended to remedy severe structural deficiencies in the supply of certain agricultural products in certain regions, the market being supplied by a very large number of small and insufficiently organized holdings.

15. In the different context of Article 3a of the basic Regulation, all that is imported by the notion of 'recognized' groups or associations in my view is that the group or association should be one of some degree of permanence and should not be one which has been simply formed *ad hoc* for the purpose of enabling the transactions in question to qualify for the production aid. In the same way, the legislation cited by the Commission, in other sectors and in relation to other products, is of no assistance in this case.

16. In my view, therefore, the true question at issue in this case is the straightforward question whether a company such as Bargstedt should be regarded as a producer or as a group or association of producers for the purposes of Article 3a of Regulation No 516/77, and reference to the provisions of other legislation is immaterial. In my view, the minimum requirements which a recognized group or association of producers must satisfy under Article 3a do not exclude the participation in such a group or association of a person who is not a producer, provided that it is composed principally of producers and that they control the activities of the group or association concerned. In the absence of proof that those requirements are satisfied, a body in which a wholesaler has the majority shareholding cannot be regarded as a producer or as a group or association of producers within the meaning of those provisions. For the reasons already given, the fact that the body has been recognized as a producers' organization for the purposes of other Community legislation is irrelevant.

17. On the further question whether a legitimate expectation arises by reason of the recognition of Bargstedt as a producers' organization for the purposes of other Community legislation, it seems to me that no act of recognition by the authorities of a Member State can transform into a producer or group or association of producers a body which does not have that quality. If it were otherwise, then a Member State by a unilateral act of recognition would be able to entitle its operators to production aid from Community funds by that mere act. In any event, the question referred here is on the basis that Bargstedt was recognized for the purpose of other legislation and the question is whether such recognition gives rise to any legitimate expectations. It seems to me that if a situation were to arise, which I do not suggest is the case here, where a processor was led by the conduct of the authorities of a Member State to believe that the conditions entitling him to production aid were satisfied, and where he acted in reliance on that conduct, then he might have a claim under national law against the national authorities for any losses which he incurred as a result. However, even in that event, any such claim would in my view be based on national law alone, and it could not be contended that Community law itself gave rise to any such claim.

18. Accordingly, in my opinion, the questions referred by the Frankfurt Administrative Court should be answered as follows:

(1) The minimum requirements which a recognized group or association of producers must satisfy under Article 3a of Regulation No 516/77 entail that it should be composed principally of producers and that they should control the activities of the group or association concerned; and the provisions of Article 13 of Regulation No 1035/72 and Article 4 of Regulation No 1360/78 are irrelevant.

(2) Those minimum requirements do not exclude the participation in such a group or association of a person who is not a producer, provided that it is composed principally of producers and that they control the activities of the group or association concerned. In the absence of proof that those requirements are satisfied, a body in which a wholesaler has the majority shareholding cannot be regarded as a producer or as a group or association of producers within the meaning of those provisions.

(3) Where a body does not satisfy the minimum requirements for constituting a group or association of producers for the purposes of Article 3a of Regulation No 516/77, the fact that the body has been recognized as a producers' organization for the purposes of other Community legislation does not render that body a group or association of producers for the purposes of Article 3a of Regulation No 516/77. In that respect no question of legitimate expectation arises under Community law.