JUDGMENT OF THE COURT
OF 6 NOVEMBER 1979 [1]

Gaetano Toffoli and Others v Regione Veneto (preliminary ruling requested by the Tribunale Amministrativo Regionale per il Veneto)

"Producer price for milk"

Case 10/79

Agriculture — Common organization of the markets — Milk and milk products — Producer price for milk — Unilateral fixing by a Member State — Incompatibility with Community rules — Absence of sanctions for failure to comply with the price — No justification

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 established by Regulation No 804/68, in particular Article 3 thereof, 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. The absence of sanctions for failure to comply with the price laid down in accordance with such legislation does not affect the incompatibility of the legislation with the common organization of the market.

In Case 10/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunale Amministrativo Regionale per il Veneto [Regional Administrative Court for Veneto] for a preliminary ruling in the action pending before that court between

GAETANO TOFFOLI AND OTHERS

1 — Language of the Case: Italian.

and

REGIONE VENETO

on the interpretation of certain provisions of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176)

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, G. Bosco and T. Koopmans, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

I — Facts and procedure

Italian Law No 306 of 8 July 1975 (Gazzetta Ufficiale [Official Journal of the Italian Republic] No 194 of 23 July 1975) comprises, first, measures in favour of producers' associations in the cattle-rearing sector and, secondly, rules relating to the fixing of the producer price for milk.

Article 2 of this Law provides that the production and sale of milk by members of the association are subject to the rules and procedure laid down by it. In addition, the members of the association are bound to sell the milk through it.

For each agricultural year and for each region the producer price for milk is fixed by agreement between the groups of traders involved (producers, processors and dairy centres) and on the basis of the criteria established by Articles 8 and 9 of the Law. The price

agreed on is then published in the Bolletino Ufficiale della Regione (B.U.R.) [Regional Official Gazette] which makes it "binding on the parties to the agreement" (Article 10).

If no such agreement is reached the price is fixed by an *ad hoc* commission appointed by the Chairman of the *Giunta Regionale* [Regional Council] and comprising representatives of all the groups of traders involved. The price is published in the B.U.R. and comes into effect immediately (Article 11).

By a decision of 11 April 1978 published in the B.U.R. of 17 April 1978 the commission appointed by the Chairman of the Giunta Regionale of Veneto under Decree No 352 of 7 March 1978 fixed the regional producer price for cow's milk up to 31 December 1978 at Lit 260 per litre inclusive of VAT.

Mr Gaetano Toffoli and other businessmen in the milk and milk products sector made an application to the Tribunale Amministrativo Regionale per il Veneto, the main object of which was to obtain the annulment of the above-mentioned decision determining the producer price for milk. As grounds for the application the applicants in the main action alleged that Law No 306/75 was incompatible with Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176).

According to the file on the case the Regione Veneto, the defendant in the main action, maintained in the national court that the entry into force of Regulation No 804/68 did not have the effect of depriving the national legislature of the power to regulate milk prices and that in any case such an effect could never be produced as long as that price had not actually been fixed by the competent Community authorities.

In the grounds for the order making the reference to the Court of Justice set out below the national court observes on the subject that the last provision in the regulation, according to which the latter "shall be binding in its entirety and directly applicable in all Member States" is not decisive until the concept of the "applicability" of Community regulations has been clarified. The question of how great a margin of discretion is left to the national legislature until the Community has fixed the target price for milk pursuant to Article 3 of Regulation No 804/68 is therefore a question of interpretation of that regulation and of the second paragraph of Article 189 of the Treaty, which is repeated in the above-mentioned provision.

By an order dated 28 November 1978 the national court decided to stay the proceedings and referred the following question to the Court for a preliminary ruling under Article 177 of the Treaty:

"Do Community rules, in particular Regulation No 804/68 on the common organization of the market in milk and milk products read together with the second paragraph of Article 189 of the EEC Treaty, prevent the Italian State from conferring by law upon its administrative authorities power to fix the producer price for milk even if the Community has not fixed the target price for milk pursuant to Article 3 of Regulation No 804/68?"

The order making the reference to the Court was lodged at the Court Registry on 19 January 1979.

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were lodged by the applicants in the main action, represented by Feliciano Benvenuti, of Venice, by the defendants in the main action, represented by Luigi Righetti, Matteo Pagnes and Giangiocomo Pancino, of Venice, by the Italian Government, represented by its Ambassador, Adolfo Maresca, acting as Agent, assisted by the Avvocato dello Stato [State Advocate], Ivo Maria

Braguglia, and by the Commission of the European Communities, represented by its Legal Adviser, Richard Wainwright, assisted by Guido Berardis, a member of its Legal Department.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to put a written question to the Commission and to open the oral procedure without any preparatory inquiry.

II — Written observations

The *applicants in the main action* make the preliminary observation that the question which has been asked can be answered simply on the basis of the facts. The target price for milk has in fact been fixed by the Community in pursuance of Article 3 of Regulation No 804/68. To be more precise, there has always been a considerable difference between the average price for milk, which is fixed in Italy in accordance with the procedure laid down by Law No 306/1975, and the target producer price fixed by the Community, a difference which shows clearly that the Italian legislation is incompatible with the Community regulations. It need only be remembered that during the first quarter of 1977 the difference between the price of milk in Italy and the Community target price was in the region of 48%.

This information may make it unnecessary to examine further the question which has been asked, the terms of which would seem to show that the difficulties concerning interpretation mentioned by the national court are due solely to the failure on the part of the Community to exercise its power to fix the price. Similarly, that court considers that the point at which the regulation becomes definitively applicable in each of the Member States and obligatory for all would appear to be when the Community exercises the power referred to in Article 3 of Regulation No 804/68. If that is true any further interpretative analysis of the Community regulation would be superfluous.

However, the applicants in the main action have submitted supplementary observations in case the Court intends to examine the question in more detail as regards the compatibility of the Italian legislation with the Community regulations and the concept of the applicability of Community regulations, which the national court appears to plce in doubt, and those observations may be summarized as follows:

The object of the two procedures introduced by Law No 306/75 is to nullify the effect of the rules of a free market in the formation of the producer price for milk, contrary to Community rules. The agreements referred to in Article 10 of the Law are to be made, in fact, not between the various parties having an interest therein, as the rules of the market require, but between the groups of producers and users for each region. That article requires the agreed price to be published in the Regional Official Gazette so as to become binding on the parties, thus eliminating the possibility of competition within any one group. The illegality of the Italian rules is brought out even more, however, by the fact that if no agreement can be reached under Article 10 the procedure laid down in Article 11 applies and the commission (appointed by the regional administrative authorities) in which traders are in the minority compared to producers, proceeds to determine the producer price, its decision being valid

for, and binding on, all the groups of producers or users.

This means that the objective pursued is not merely to impose a fixed price an all the parties concerned but also to protect unnecessarily the producer group solely at the expense of the users, who are bound by the prices fixed for retail sales.

These provisions, say the applicants, are in total contradiction to the main objective of Regulation No 804/68, which is the attainment of a unified market, in relation to which the target price should be considered merely as an instrument.

Regulation No 804/68 is directly and immediately applicable in the Italian legal order and totally prohibits the imposition of any binding price for milk and milk products by withdrawing any power in that respect from Member States and even from the groups involved.

In view of these observations the applicants propose that the Court should reply to the question which has been put to the effect that Regulation No 804/68 is directly and immediately applicable in the Italian legal order and, consequently, the Italian Law No 306 of 8 July 1975 is unlawful to the extent to which it lays down a procedure for fixing the producer prices for milk.

The *defendant in the main action* contests the admissibility of the question which has been referred to the Court, a question which would lead the Court to assess the lawfulness or validity of Law No 306/75. Alternatively it claims that this Law is not incompatible in any way with Regulation No 804/68. In fact the Italian provisions, which were adopted in the exercise of a legislative competence which is reserved for the Italian State, do no more than supplement the Community provisions.

According to the *Italian Government*, even if a target price has been fixed for milk, Member States reserve their general power to control the national price of the product at each stage in its marketing. In support of this argument the Italian Government recalls the general principle enunciated by the Court (Case 65/75 *Tasca* [1976] ECR 291; Joined Cases 88 and 90/75, *SADAM and Others* [1976] ECR 323) according to which "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 sugar] once it jeopardizes the objectives and the functioning of this organization and in particular its system of prices". The corollary to this principle is that once it is acknowledged that Member States retain their general power it is for the national courts, on the basis, in particular, of elements of Community law supplied by the Court, to ascertain whether, in the actual case before them, the unilateral fixing of prices is capable of jeopardizing the objectives and functioning of the common organization in question.

Once it is established that Member States have competence to the extent just described, the question which has been referred to the Court by the Tribunale Amministrativo may be examined without taking any account of the particular supposition set out therein ("... even if the Community has not fixed the target price for milk pursuant to Article 3 of Regulation No 804/68"). In the first place, that supposition is in fact irrelevant in view of the fact that whether or not the Community fixes a target price for milk has no effect on the question of powers. In the second place, it is by no means certain that the Community will not in fact fix a target

price for milk pursuant to Article 3 of Regulation No 804/68. It may happen that this price is not fixed within the time allowed by that Article 3 (before 1 August) but in practice the price will always be fixed.

As regards Law No 306/75 the first comment made by the Italian Government is that this *does not impose any authoritative price control with regard to milk.* As may be seen in Articles 1 to 7 the obvious objective of this law is to promote co-operation in the agricultural sphere, especially in the milk sector, which is traditionally one of the weakest in Italian agriculture.

In keeping with that objective Article 8 (2) of Law No 306/75 provides that the selling price for milk is fixed, in principle, "for each different production zone and each marketing year by means of collective negotiation in which all those affected shall take part, having regard in particular to the forces which contribute to the costs of milk production". The collective negotiations may be carried out autonomously, on the initiative of those affected, or on the initiative of the region concerned (Article 10). *If agreement is reached* it shall be published in the Regional Official Gazette; it shall be "binding on all the parties to the agreement" (Article 10, third paragraph). *If no agreement is reached* the producer price for milk shall be fixed, again for each region, by a commission which includes representatives of all those operating in the sector. The decision of the commission is published in the next Official Gazette ". . . and shall be binding on the parties . . .".

Law No 306/75 *contains no sanctions* for those who, whether participating or not, fail to observe the price reached by the agreement referred to in Article 10 or fixed by decision of the commission referred to in Article 11.

One must therefore banish entirely the notion that the national law introduces a system resulting in the authoritative fixing of a producer price for milk. Nor is the situation different if those concerned cannot reach an agreement (Article 10); the decision of the commission referred to in Article 11 amounts to no more, in fact, than a method of resolving any conflict there may be among the groups involved, and not an authoritative measure imposed on them. It is important to note in this respect that the decision comes from those involved and that *it is only binding as between the parties,* that is to say, that it binds only members of those groups.

To conclude, the national law is designed to promote and encourage agreements within the trade regarding the acceptance of a uniform producer price for milk (at the regional level); by no means, however, does it impose the price or the conditions reached by trade agreements, even less does it impose the terms of such agreements, on parties (private persons or associations) who are not connected with the associations which participated in the collective negotiation.

Now that the content of the national law has been clarified it is difficult to conceive of any reason why this law should come into conflict (directly or indirectly) with the common organization of the market in milk and milk products. At first sight it seems hard to take seriously the question (relating to different circumstances) of how the legal provisions have any impact on the Community price system, particularly the

intervention price, or on the free circulation of the product within the Community (cf. the judgments already referred to in Cases 65/75 and 88 to 90/75). The only way in which such an impact could be produced, bringing with it the possibility of a direct or indirect conflict, would be through a national price system imposed by authority and binding *erga omnes.*

On the contrary, there could be no such impact once the national rules were limited to encouraging the agreement of all the groups involved in the matter of the producer price.

The possibility of a direct conflict, as regards the *level* of the national price, with the objectives or functioning of the common organization is equally precluded in the actual circumstances if it is borne in mind that the average producer price for milk in Italy is, as a general rule, slightly above the target price. This factor, due simply to underproduction (as already pointed out) in the sector, certainly does not constitute an obstacle to the free circulation of the product in Italy. Quite the contrary; it tends to favour Community imports which in fact have continued to increase even after the entry into force of Law No 306/75.

It is equally impossible to argue seriously that the mechanism introduced by the national law has the effect of offering to Italian milk producers a supplementary guarantee in addition to that provided for by the common organization of the market.

The truth is that the national rules make no provisions for any method of imposing *erga omnes* the producer price for milk. The same applies when the price is fixed by the commission mentioned in Article 11 in the absence of an agreement between the parties. Producers who are not members of the associations concerned are therefore free to sell milk at the price they choose. Other operators who are not members are free to buy milk at a price other than that which has been agreed or fixed. The same freedom exists for operators who are members, in view of the fact that the law contains no sanction even against those members who fail to comply with the price which has been agreed or fixed. The method introduced by the Law certainly encourages negotiation but by no means imposes it.

It must equally be accepted that the national Law does not impose any obligation to take supplies of Italian milk, whether at the agreed price or at any other price.

Thus the national rules do not provide any guarantee mechanism for producers; the only guarantee enjoyed by Italian producers, just as any other producers in the Community, lies in the intervention mentioned in Title II of Regulation No 804/68. Thus it can also be confirmed that as they do not create any guarantees additional to that of intervention by the Community, the national rules have no effect on the functioning of the intervention mechanism at Community level.

Before going on to examine the problem which has been raised by the national court the *Commission* sets out certain preliminary observations in order to clarify two aspects of the question.

In the first place the Commission is of the opinion that the point is not so much to determine whether, in this particular case, the common organization of the market in milk and milk products "prevents the Italian State from conferring by law upon its administrative authorities power to fix the producer price for milk" but to determine whether, within the Community system

in question, it is primarily on the Member State that such legislative power is conferred. On the basis of an analysis of the two mechanisms for fixing prices introduced by Italian Law No 306/75 the Commission claims that ultimately the scheme of that Law confers the responsibility for determining the producer price for milk on the State. In fact, if the negotiation procedure provided for by Article 10 fails, it automatically brings into play the procedure provided for by Article 11 which is authoritative in nature (price fixed by the regional commission which is binding on all).

The second point to be elucidated concerns the last sentence in the question which has been referred to the Court: "even if the Community has not fixed the target price for milk pursuant to Article 3 of Regulation No 804/68". If this sentence is put back into its original context it might be thought that the Italian court itself would reply in the affirmative to the question which it has referred to the Court "if the Community has fixed the target price for milk", whereas the existence of a vacuum as a result of the inertia of the Community authorities as regards fixing the target price would be a source of doubt for it.

According to the Commission this is an unrealistic hypothesis.

In fact the target price for milk is fixed anew more or less regularly for each new agricultural marketing year. Where there is a delay, the target price applicable to the preceding year continues to be applicable until the new price is fixed, so that it is impossible for a legal vacuum to arise which, in the opinion of the national court, the State might see fit to fill.

The Commission concludes that the real problem is the extent of the powers which the Member States have regarding the prices of agricultural products which are subject to a common organization of the market. It proposes therefore to act on the following wording for the question which has been asked:

"Do Community rules, in particular Regulation No 804/68 of the Council on the common organization of the market in milk and milk products prevent the Italian State from determining the producer price for milk?"

Proceeding then to examine the case-law of the Court concerning the powers which Member States have to determine the price of agricultural products which are subject to a common organization of the market the Commission elicits the following principles:

(a) Unilateral measures adopted by a Member State are compatible with a common organization of the market in a particular sector in so far as they do not hinder, directly or indirectly, the achievement of the objectives and the normal functioning thereof;

(b) Unilateral measures adopted by a Member State, even if they are compatible with the specifically "agricultural" rules of the common organization of the market must not have the effect of hindering directly or indirectly, trade within the Community.

These principles must be used as a guide in considering the case pending before the court seised of the matter.

Being of the opinion that for this purpose it is vital to have an adequately detailed picture of the common organization of the market in milk and milk products, the Commission observes that this organization is broadly similar to that of other agricultural sectors. It

comprises a price system, an intervention system and rules for trade with non-member countries. Proceeding to analyse these rules the Commission focuses its attention on certain characteristics in that organization which are peculiar to it.

In particular, it points out that the organization does not provide for any *direct* intervention in the case of milk. It seeks to support milk prices solely by means of an intervention price *for derived products* such as butter, skimmed-milk powder and Grana Padano and Parmigiano Reggiano cheeses, an intervention price with the aid of which it is sought to achieve the *target price* for milk sold by Community producers in the course of the milk year "on the Community market and on external markets" (cf. Article 3 of Regulation No 804/68). As a means of providing an indirect guarantee for milk producers there is in addition a system of *levies* designed to compensate for the difference between the threshold price and the free-at-frontier price for a particular product in the sector in question. Like the former, this is fixed in the case of each "pilot product" mentioned in Annex I to Regulation No 823/68 of the Council of 28 June 1968 determining the groups of products and the special provisions for calculating levies on milk and milk products (Official Journal, English Special Edition 1968 (I), p. 199). The object of this system is to stabilize the Community market mainly by ensuring that price fluctuations on the world market are not reflected in prices in force within the Community. Lastly, in order to encourage exportation if the Community price should be higher than the price on the world market, *refunds* are granted which are uniform for the whole of the Community, but vary according to destination in the case of non-member countries.

Thus the sole object of the systems of intervention for derived products and of protection at Community frontiers is to encourage milk prices to rise to the target price, the price actually attained for this product being determined essentially by the market forces. The point is not to guarantee but to encourage the attainment of this price.

Moving on to examine the direct or indirect effects which the national provisions in question may have on the common organization of the market in milk and milk products, the Commission claims that the preceding commentary shows that any element foreign to that organization and capable of slowing down the increase in price to the target price on the market prejudices the attainment of the objective of the systems of intervention and protection at the frontier. That would be so, if in the case of milk, the producer price was authoritatively fixed below the target price.

If the producer price for milk was fixed at a level above that of the target price the conflict with the Community price system would be just as obvious and would have adverse effects in various ways.

In the first place, there would be a real supplementary guarantee which would ensure a fixed income for the producers solely by virtue of selling the milk and would be concurrent with the guarantee mechanism provided for by the common organization of the market.

Of course, it is possible for the market price to be above the target price solely, for instance, because of the free play of supply and demand. There may be *inter alia* structural reasons for this. According to the Commission, that is in effect what

happens in Italy, where the production of milk is insufficient and the excess of demand over supply results in a high price level which is, as a general rule, approximately 20% above the target price. (The Commission refers to the figures mentioned in the table in Annex I to its observations).

Where a fixed price is imposed which is not only above the target price but also greatly exceeds the price levels determined in the ordinary way by the free play of supply and demand, the producers would benefit from a guarantee *in addition to, and parallel with,* those provided by the common organization, which must be considered to be incompatible therewith. In fact, in the present case, producer prices for milk were to be found in Italy, after the entry into force of Law No 306/75, which were 40 to 50 % above the target price.

This additional insurance amounts to not only an element which is foreign and undesirable in relation to the common organization of the market, but which renders or may render ineffective the very instruments which the Community rules have created in order to encourage the attainment of the target price for milk. In fact it has or may have an adverse effect both on the actual intervention measures properly so-called and on the measures taken at the Community frontier and its material consequences might even in the extreme be considered as *actually replacing* the latter.

As for the measures adopted at the frontiers the levies are directly or indirectly based on the target price for milk. When the producer price for milk is artificially fixed at a much higher level, processors in Italy are no longer able to benefit from them, at least in so far as the Community system is designed to enable them by means of levies to compete with imported products and to enable them by means of refunds to be competitive themselves on markets in non-member countries. Moreover, the measures applicable at the frontier cannot perform their function, which is to protect indirectly the target price for milk. On the contrary, that function is taken over by the national measure designed to guarantee a high fixed price for the producer, which distorts the Community system.

The national measure in question is also capable of influencing the Community intervention system, thus threatening to make it ineffective. In theory, in fact, since the processing industry is bound to obtain its supplies of milk at fixed prices which are very high its costs will obviously be higher. That means that if the processed products are subject to intervention measures the benefit which should result therefrom will be lower, even significantly lower, than that which might be expected if production costs were determined by natural forces. In Italy, however, the only intervention measure which remains in force is that concerning Grana Padano and Parmigiano Reggiano cheeses which absorb practically one-third of the total milk production. However, market prices for these cheeses are always very high and considerably above the intervention price. Moreover, production is concentrated almost entirely in co-operatives, within the framework of which there is no room for the fixing of the producer price for milk by authority.

As regards Community trade a national measure of the type in question is capable of hindering the normal flow of

trade, or at least distorting it. In fact, as experience in this case shows, an abnormally high price for milk in a Member State excessively encourages exports from the other Member States to that State. Since the entry into force of Law No 306/75 imports into Italy of fresh milk have continued to rise despite the transport costs (cf. Annex II to the Commission's observations).

Moreover, if the producer price for milk is fixed artificially in a Member State at too high a level it influences or may adversely affect exports to other Member States, especially as regards processed products, and this leads to an obvious distortion in competition.

From the above considerations the Commission considers that it may be concluded:

"(a) that a national measure of the kind which has been examined here provides milk producers with an additional guarantee not provided for by the system of the common organization of the market in the sector, which must be applied in a uniform manner in all the Member States;

(b) that such guarantee is concurrent with and therefore conflicts with the instruments expressly provided for by the common organization for the purpose of achieving the target price for milk, that is to say with intervention in favour of processed products and with the measures which are applied at Community frontiers, that it therefore nullifies their effects and that, in the extreme, it replaces them;

(c) that the objectives of the economic policy designed to be attained by the mechanisms of the common organization are in large measure prejudiced and that the normal functioning of the latter becomes distorted".

The Commission already reached the same conclusions when, in 1977, it decided to institute proceedings against the Italian Republic for failure to fulfil an obligation, under Article 169 of the Treaty.

Consequently the Commission proposes the following reply to the question which has been referred to the Court by the national court:

The direct or indirect fixing by a Member State of the producer price for milk is incompatible with the common organization of the market in milk and milk products.

III — Oral procedure

At the hearing on 4 July 1979 the applicants in the main action, represented by Mr Orsoni, Advocate at the Venice Bar, the defendant in the main action, represented by Mr Grimani, Advocate at the Venice Bar, the Italian Government, represented by the Avvocato dello Stato [State Advocate] I. M. Braguglia, acting as Agent, and the Commission of the European Communities, represented by Mr Campogrande, acting as Agent, assisted by R. Wainwright, Legal Adviser, submitted oral observations.

The Advocate General delivered his opinion at the sitting on 20 September 1979.

Decision

1 By an order of 28 November 1978, received at the Court on 19 January 1979, the Tribunale Amministrativo Regionale per il Veneto referred a question to the Court under Article 177 of the EEC Treaty for a preliminary ruling on the interpretation of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk products (Official Journal, English Special Edition 1968 (I), p. 176).

2 The question was raised in the course of an application lodged by certain Italian undertakings in the milk and milk products sector seeking to obtain in particular the annulment of a decision taken on 11 April 1978 under Article II of Italian Law No 306 of 8 July 1975 (Gazzetta Ufficiale No 194 of 23 July 1975) by a commission appointed by the Chairman of the Giunta Regionale of Veneto, fixing the regional producer price for cow's milk until 31 December 1978 at Lit 260 per litre inclusive of VAT.

3 Before the Court examines the actual terms and purport of the question raised it is appropriate to recapitulate the essential features of, first, the Community regulations and, secondly, the national rules on the subject.

4 According to Article 3 (1) of Regulation No 804/68 a target price for milk is fixed for the Community before 1 August of each year in respect of the milk year beginning in the following calendar year. This target price is, according to Article 3 (2), the price for milk which it is aimed to obtain for the aggregate of producers' milk sales on the Community market and on external markets during the milk year. In accordance with the procedure laid down in Article 43 (2) of the Treaty it is applicable to milk containing 3.7% fat, delivered to dairy (Article 3, (3) and (4).

5 Since there are no direct intervention measures in relation to milk the principal means of supporting the price for this product is a system of

intervention prices, introduced by Article 5, for certain derived products, namely butter, skimmed-milk powder and Grana Padano and Parmigiano Reggiano cheeses. The aim of these intervention prices is to ensure that the target price for milk is attained under the conditions set out in Article 3, that is to say, essentially, as dictated by market forces within the Community. To that end the regulation includes also a system of protective measures at Community frontiers, comprising in the main levies intended to compensate for the difference between the threshold price and the free-at-frontier price for any particular milk product. These prices are fixed for each of the "pilot products" referred to in Article 14 of Regulation No 804/68 and listed in Annex I to Regulation No 823/68 of the Council of 28 June 1968 determining the groups of products and the special provisions for calculating levies on milk and milk products (Official Journal, English Special Edition 1968 (I), p. 199). It should also be mentioned that Regulation No 804/68 allows for the granting of export refunds which are uniform for the whole Community but vary according to destination in the case of non-member countries.

6 For the milk year which is concerned in the main action the target price for milk was fixed by Council Regulation No 998/78 of 12 May 1978 (Official Journal No L 130 of 18 May 1978, p. 5) as from 22 May 1978 at 17.70 units of account per 100 kg (Lit 204.26 per kg), and this was after the 1977/1978 milk year had been extended until 21 May 1978 by Council Regulation No 910/78 of 27 April 1978 (Official Journal No L 117 of 29 April 1978, p. 84) and thus also the target price for milk fixed for that year by Council Regulation No 872/77 of 26 April 1977 (Official Journal No L 106 of 29 April 1977, p. 17).

7 The file on the case shows that the Italian Law of 8 July 1975, which includes *inter alia* rules for determining the producer price for milk, provides in Article 2 that the production and sale of milk by producers associations shall be subject to the rules and procedures laid down by the association. In addition members of the association are obliged to sell the milk through it. The producer price for milk, for whatever use the milk is intended, is fixed according to Article 8 for each agricultural year and for each region by means of collective negotiation with the participation of the various parties

affected (producers, associations, processors and dairy centres) and in accordance with the criteria laid down by Articles 8 and 9. By virtue of Article 10 the agreement between the parties, reached if necessary by means of the intervention of the economic committee for the region referred to in Article 3, is published by that committee in the Regional Official Gazette and is binding on the parties. When the agreement referred to in Article 10 has not been reached between the parties within 30 days of the start of the agricultural year the producer price for milk is fixed, pursuant to Article 11, by a commission appointed by decree of the Chairman of the region. This commission comprises the regional "Assessore" [Inspector] for agriculture or his appointee acting as Chairman, five representatives of the milk producers, two representatives of the co-operatives for dairy products, four representatives of the processing industries, one representative of the dairy centres and two specialists in the field of milk products. The decision of the Commission is adopted by a majority vote and is binding on the parties immediately on publication in the Official Gazette.

8 As has already been shown it is a decision which was adopted under Article 11 of the Law of 8 July 1975 which is at the root of the main action.

9 In support of their application in the national court the applicants in the main action claim that the above-mentioned Law is incompatible with Regulation No 804/68 of the Council. In reply the Regione Veneto, the defendant in the main action, maintains that there is no such conflict because in the first place so long as the Community bodies have not taken concrete measures to put the provisions of the regulation into effect there can be no question of a conflict between the national law and the Community regulation, and in the second place because if and when the target price is fixed by those bodies this is tantamount to a guideline which does not deprive the national legislature of the power to intervene in the actual fixing of the price.

10 By an order of 28 November 1978 the national court stayed the proceedings and referred the following question to the Court for a preliminary ruling:

"Do Community rules, in particular Regulation No 804/68 on the common organization of the market in milk and milk products read together with the second paragraph of Article 189 of the EEC Treaty, prevent the Italian State from conferring by law upon its administrative authorities power to fix the producer price for milk even if the Community has not fixed the target price for milk pursuant to Article 3 of Regulation No 804/68?"

11 As explained above one of the principal objectives of that organization is to ensure that milk producers can obtain a price for that product in the region of the target price. The mechanisms instituted by the regulation and designed to achieve that end, which have already been described, are subject to the exclusive jurisdiction of the Community.

12 In sectors covered by a common organization of the market, *a fortiori* when that organization is based on a common price system, Member States 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. It follows 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 established by Regulation No 804/68, in particular Article 3 thereof, 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. It should also be noted that the absence of sanctions for failure to comply with the price laid down in accordance with such legislation does not affect the incompatibility of the legislation with the common organization of the market.

13 It should, however, be noted that the premise on which the question which has been referred to the Court is based, namely that the Community did not fix the target price for milk for the period in question, does not reflect the situation which existed within the Community. In fact, even though

according to the terms of the regulations in force the previous milk year had come to an end on 31 March 1978, the target price was still applicable, in order to avoid a break in continuity pending the entry into force of Council Regulation No 910/78 of 27 April 1978 formally extending the preceding year until 21 May 1978, which was the date as from which the target price for milk was fixed by the provisions of Council Regulation No 998/78 of 12 May 1978.

14 The reply to the question which has been referred to the Court must therefore be that it is incompatible with the common organization of the market in milk and milk products for a Member State to fix directly or indirectly the producer price for milk.

Costs

15 The costs incurred by the Italian Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

16 As the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Tribunale Amministrativo Regionale per il Veneto by an order of 28 November 1978, hereby rules:

It is incompatible with the common organization of the market in milk and milk products established by Regulation No 804/68 of the Council

of 27 June 1968 for a Member State to fix directly or indirectly the producer price for milk.

Kutscher O'Keeffe Touffait

Pescatore Mackenzie Stuart Bosco Koopmans

Delivered in open court in Luxembourg on 6 November 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 20 SEPTEMBER 1979 [1]

Mr President,
Members of the Court,

The reference for a preliminary ruling on which I am giving my opinion today concerns the common organization of the market in milk and milk products as established by Regulation No 804/68 of the Council of 27 June 1968 (Official Journal, English Special Edition 1968 (I), p. 176).

Article 3 of that regulation provides that each year a target price for milk shall be fixed for the Community. This target price is "the price which it is aimed to obtain for the aggregate of producers' milk sales, on the Community market and on external markets, during the milk year". It is "fixed for milk containing 3.7% fat, delivered to dairy".

This price was fixed for the 1978/79 marketing year, which is the year involved in the main action, by Council Regulation No 998/78 of 12 May 1978 (Official Journal No L 130 of 18 May 1978, p. 5) after Council Regulation No 910/78 of 27 April 1978 extending the 1977/78 milk year (Official Journal No L 117 of 29 April 1978, p. 84) had extended the 1977/78 marketing year until 21 May 1979 and hence the target price laid down for that marketing year by Regulation No 872/77 fixing the target price for milk and the intervention prices for butter, skimmed-milk powder and Grana Padano and Parmigiano Reggiano cheese for the 1977/78 milk year (Official Journal No L 106 of 29 April 1977, p. 17). Accordingly the target price after 22 May 1978 amounted to

1 — Translated from the German.