OPINION OF ADVOCATE GENERAL LÉGER

delivered on 27 September 2001 [1]

1. For the purposes of the common agricultural policy, Council Regulation (EEC) No 3508/92 [2] and Commission Regulation (EEC) No 3887/92 [3] established a system of checks on the conditions for granting aids and premiums. The Commission Regulation requires aid applications to include various particulars needed for the competent authorities to process applications. The check on the correctness of the particulars supplied may, where the declarant farmer is at fault, be followed by the imposition of penalties intended to prevent and penalise irregularities and fraud. [4]

2. The question referred by the Bundesverwaltungsgericht (Federal Administrative Court) for a preliminary ruling in the present case arises out of the need to determine the penalties which may be imposed upon livestock farmers whose aid applications contain irregularities. In the present case, the scope of the penalties laid down in the second sentence of Article 10(2) of Regulation No 3887/92 depends upon the interpretation to be given to the first sentence of that provision.

I — Facts and main proceedings

3. This case arises out of two main proceedings.

4. The first set of proceedings was brought by Bezirksregierung Lüneburg against Mr Nehring, a farmer. On 7 May 1993, he applied for the special premium for male bovine animals in respect of four animals. The application was rejected on two counts: firstly, that three of the animals had been slaughtered less than two weeks after lodging the participation declaration required by the national rules on premiums for cattle and goats and, secondly, that the fourth animal was below the 'minimum carcase weight'.

1 — Original language: French.

2 — Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1).

3 — Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36.)

4 — Ibidem, ninth recital.

The farmer lodged a complaint, unsuccessfully, and then appealed to the Verwaltungsgericht (Administrative Court) Stade (Germany), which, in its judgment of 14 December 1995, upheld the grounds for refusal only as regards the fourth bull, because (the court found) the farmer had not proved that the minimum weight upon slaughter had been reached. It also determined that the refusal could not lead to a reduction under Article 10(2)(a) of Regulation No 3887/92 of the premium sought for the other three animals.

The Bezirksregierung Lüneburg appealed against the judgment to the Niedersächsische Oberverwaltungsgericht (Higher Administrative Court) (Germany). Its appeal was dismissed by judgment of 11 February 1999 and it appealed on a point of law to the Bundesverwaltungsgericht (Germany).

5. The second set of proceedings was brought by Land Baden-Württemberg, Germany, against another farmer, Mr Schilling. On 14 May 1993, he applied for the grant of a special premium for male bovine animals in respect of 23 animals which had already been slaughtered in January of that year, and for four bulls sold on 14 April 1993 to a buyer in Italy. The competent authority rejected the application made for the exported animals on the ground that the premium application had not been lodged three days before the animals were shipped. For the same reason, it reduced the total premium granted in respect of the other animals by 40%, relying on Article 10(2)(a) of Regulation No 3887/92.

The farmer brought an action in the Verwaltungsgericht (Germany), which ruled that the premium had been properly refused for the animals exported but that that fact did not justify the further reduction in the premium on the other animals. The Verwaltungsgerichtshof Baden-Württemberg confirmed that judgment and Land Baden-Württemberg appealed on a point of law to the Bundesverwaltungsgericht.

II — The relevant provisions

6. Regulation No 3508/92 established an integrated system of administration and control for certain schemes of Community aid granted under the common agricultural policy.

7. Regulation No 3887/92 lays down detailed rules for this system, in particular as regards the aid applications to be compiled by farmers, the checks to establish

compliance with the conditions for grant of the aid and the penalties for non-compliance with those conditions.

8. These Regulations apply *inter alia* to the aid granted to beef and veal producers as laid down in Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal, [5] which has been amended several times, and also to the special premium for male bovine animals provided for in Article 4b of the Regulation.

9. Article 10(2) of Regulation No 3887/92 sets out the penalties applicable to a farmer whose aid application is made for a number of animals greater than the number of animals found during checks. It is worded as follows:

'If the number of animals declared in an aid application exceeds that found during checks the aid shall be calculated on the number of animals found. However, except in cases of *force majeure* and after paragraph 5 has been applied, the unit amount of the aid shall be reduced:

(a) in cases where an application concerns a maximum of 20 animals:

— by the percentage corresponding to the difference found if this is not more than two animals,

— by twice the percentage corresponding to the difference found if this is more than two but not more than four animals.

If the difference is greater than four animals, no aid shall be granted;

(b) in other cases:

— by the percentage corresponding to the difference found if this is not more than 5%,

5 — OJ, English Special Edition 1968 (I), p. 187.

— by 20% if the difference found is more than 5% but not more than 10%,

— by 40% if the difference found is more than 10% but not more than 20%.

If the difference found is more than 20% no aid shall be granted.

The percentages mentioned under (a) are calculated on the basis of the number declared, and those mentioned under (b) on the basis of the number found.

However, where it is found that a false declaration was made intentionally or as a result of serious negligence:

— the farmer in question shall be excluded from the aid scheme concerned for the calendar year in question,

and

— in the case of a false declaration made intentionally, from the same aid scheme for the following calendar year.

If a farmer has been unable to comply with his retention undertaking as a result of *force majeure* he shall retain his right to a premium in respect of the number of animals actually eligible at the time when the case of *force majeure* occurred.

In no case may premiums be granted on a greater number of animals than that shown in the aid application.

For the purposes of this paragraph animals eligible for different premiums shall be treated separately.'

That provision was amended by Regulation (EC) No 1648/95. [6] In Article 10(2)(b), the

6 — Commission Regulation of 6 July 1995 (OJ 1995 L 156, p. 27).

second and third indents were replaced by the following:

'— by twice the percentage, if the difference is more than 5% but not more than 20%.'

In addition, the following subparagraph was inserted before the final subparagraph of Article 10(2):

'If the compensatory allowance provided for in Regulation (EEC) No 2328/91 [7] is calculated on the basis of livestock units the determining of the number present and the sanctions provided for above shall apply on the basis of the number of livestock units corresponding to the number of animals declared and found.'

III — The question referred for preliminary ruling

10. In the two actions pending before it, the Bundesverwaltungsgericht considered the question of the competent authorities' right to reduce the amount of aid sought on the ground that certain animals declared do not meet the conditions for granting aid. It took the view that the outcome of the main proceedings depended on the interpretation of Regulation No 3887/92, as amended by Regulation No 1648/95, and referred the following question for a preliminary ruling:

'Must there be a reduction in the unit amount of aid under the second sentence of Article 10(2) even where the discrepancy presupposed in the first sentence between the number of animals declared and the number found during checks is not attributable to incorrect information given by the applicant but to the fact that the authority does not accept that the conditions for the grant of premiums are satisfied in regard to certain animals?'

IV — Article 10(2) of Regulation No 3887/92

11. By this question, the Bundesverwaltungsgericht is asking essentially whether the first sentence of Article 10(2) of Regulation No 3887/92 must be construed as meaning that the words 'animals found during checks' refer to animals meeting the conditions for granting aid, with the result

7 — Council Regulation No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures (OJ 1991 L 218, p. 1).

that the reduction in the unit amount of aid prescribed in the second sentence must be imposed where some of the animals declared by the farmer do not meet those conditions.

12. The court making the reference is asking whether aid may be reduced if, in his aid application, the farmer has included non-eligible animals but has not strictly compiled a false declaration, for example by giving a figure higher than the true number of animals.

13. It should be remembered that the second sentence of Article 10(2) of Regulation No 3887/92 provides that the aid granted may be reduced, in certain circumstances, and lays down the detailed rules for such reduction.

14. The first sentence of the provision states the ground on which aid may be reduced: the reduction is to be made if 'the number of animals declared in an aid application exceeds that found during checks'. The second sentence and the subparagraphs which follow describe the various methods of calculating the reductions applicable, depending on the number of animals covered by the application and on the extent of the irregularity observed.

15. In this case, the interpretation of the second sentence (and the subparagraphs following) of Article 10(2) of Regulation No 3887/92 is not at issue, as the question referred does not concern assessment of the level of reduction.

16. What in fact concerns the court making the reference is the underlying reason for the reduction of aid. Although no particular problem is presented by the concept of 'animals declared', we do have to consider what is meant by 'animals found'.

17. The method of interpretation traditionally used by the Court of Justice generally combines the textual and the teleological methods. Mostly, a text is interpreted according to both its wording and the purpose which the Community legislature has assigned to it.

18. In this case, there are real difficulties in interpreting the first sentence of Article 10(2) of Regulation No 3887/92 and, I believe, these can be attributed to the discrepancy between the purpose and the wording of the Regulation.

19. If we follow the *wording*, which is identical in all language versions, aid must

be reduced if the competent authority finds that the number of animals declared exceeds the number of animals found.

By 'number of animals found', I believe, we have to understand 'animals counted'. Thus, the text must be interpreted as requiring the aid to be reduced if the check shows that the number of animals declared by the farmer *exceeds the number of animals counted* by the competent authorities at the farm. To interpret the text thus in a strictly 'arithmetical' way confines the instances where aid is reduced to those where farmers have made an application for aid on animals that they do not or no longer have.

20. One of the principal *purposes* of Regulation No 3887/92 is effective monitoring of compliance with the provisions on Community aid. [8] To that end, the Community legislature considered that provisions should be adopted to prevent and penalise irregularities and fraud effectively. [9]

21. However, the literal construction is not one that in any way favours the interests of the Community. On such a reading, the only conduct capable of requiring a reduction in aid is a miscount: it may not be used to reduce the aid where, although the number of 'animals found' is the same as the number of 'animals declared', they do not meet the conditions for granting aid. The wording of the first sentence of Article 10(2) of Regulation No 3887/92 therefore catches only a small proportion of the irregularities and fraud which the Regulation is seeking to eliminate.

22. In the present case, the traditional method of interpretation is not much help in determining what, from the wording of the provision or the purpose of Regulation No 3887/92, is to guide the interpretation of the first sentence of Article 10(2) of the Regulation.

It does appear that, since this is an article which is in itself completely unambiguous but which contradicts the purpose of the Regulation of which it is a part — that purpose being equally clearly stated — it is pointless to interpret it in the light of its purpose.

23. A careful examination of the case-law of this Court shows that 'teleological' interpretation is not used by the Court on every occasion.

8 — Seventh recital.

9 — Ninth recital.

24. Provisions of Community law that are free from ambiguity are sufficient in themselves. Any interpretation by this Court owes at least as much to their wording as to the purpose pursued by the legislation of which they are a part. Why interpret a text which is both clear and precise by giving it a meaning which it clearly cannot have?

25. Thus, for example, the Court has observed, as regards one agricultural regulation, that the wording of the provision at issue was 'clear and unambiguous', and it did not feel the need to refer to the purpose in mind. [10]

26. Reference is often made to the purpose of Community legislation in order to confirm the wording of the provision concerned. This is intended to support the meaning of a provision which, although not always totally clear and unambiguous, generally leaves a little room for doubt. Recourse to the wording and recourse to the purpose of Community rules are thus complementary within the process of interpretation. [11]

27. Conversely, where it is difficult to interpret legislation from its wording alone, an interpretation based on purpose becomes fundamental. That is the case where the provision in dispute is ambiguous. [12] It is also the case where the provision constitutes a 'legal standard', indicative of the legislature's intention to leave it to the court to define the subject-matter case by case and to apply this appropriately to the matters before it. [13]

28. I have stated that here the provision is clear and precise. Thus, strictly as regards interpretation, it needs no confirmation or elucidation requiring us to consider the purpose of the legislation of which it is a part.

10 — Judgment in Case C-74/98 *DAT-SCHAUB* [1999] ECR I-8759, paragraph 31. In paragraph 32 of the same judgment, the Court gives an exegetical interpretation of another paragraph of the same provision. For a further example, this time regarding social security, see the judgment in Case C-335/95 *Picard* [1996] ECR I-5625, at paragraphs 18 to 20 where, after citing one provision from a Community regulation, the Court concludes that that regulation 'unambiguously lays down' the principle of Community law relevant to its considerations. Lastly, in the judgment in Case C-172/89 *Vandemoortele* v *Commission* [1990] ECR I-4677, paragraph 13, it held that the rules in question did not lend themselves to interpretation and that the conditions for imposition of the penalty which the disputed rules prescribed were clear enough not to leave room for any other reading.

11 — For example, see the judgments in Case C-390/96 *Lease Plan* [1998] ECR I-2553, paragraph 28, in Case C-355/96 *Silhouette International Schmied* [1998] ECR I-4799, paragraph 22 and in Case C-286/95 P *Commission* v *ICI* [2000] ECR I-2341, paragraph 60.

12 — In Case 803/79 *Roudolff* [1980] ECR 2015, the Court ruled that 'Where the text of a provision is ambiguous it should be interpreted in the light of the intention and purpose of the regulations of which it forms part'. For an instance of a provision where the ambiguity of the wording requires the use of criteria other than purpose (on that occasion, the principle of strict interpretation of restrictions), see the judgment in Case C-6/98 *ARD* [1999] ECR I-7599, at paragraphs 29 to 31.

13 — See, for example, the concepts of 'customer belonging to that area' in connection with a commercial-agency contract (in Case C-104/95 *Kontogeorgas* [1996] ECR I-6643, paragraphs 25 to 27), of 'exceptional cases' constituting derogations from the principle of separate evaluation of the asset and liability items in a company's balance sheet (in Case C-275/97 *DE + ES Bauunternehmung* [1999] ECR I-5331, paragraphs 31 and 32) and of 'taxation', as regards rules on indirect taxation of capital formation (in Case C-206/99 *SONAE* [2001] ECR I-4679, paragraphs 22 to 26).

29. For the same reasons, it does not seem possible to apply the concept of 'practical effect', which is often used in the case-law of the Court.

30. Because of the Court's concern to ensure that Community law is effective, it prefers, when a provision of Community law is open to different interpretations, to give priority to the interpretation which is best able to preserve that practical effect. [14] That case-law therefore cannot be applied to a provision which, as in this case, has the clarity and precision mentioned earlier.

31. This contradiction must be resolved using the principle stemming from the consistent case-law of the Court that, where it is necessary to interpret a provision of secondary Community law, it must as far as possible be interpreted in terms of its conformity with the provisions of the Treaty and the general principles of Community law. [15]

32. We should therefore prefer the interpretation that is most consistent with the principle of legal certainty, that is, the interpretation required by the actual wording of Article 10(2) of Regulation No 3887/92: the meaning which is clear from reading that provision should be upheld, even if it is not the most favourable to the interests of the Community.

33. The principle of legal certainty is a fundamental principle of Community law. [16] That principle, which is part of the Community legal order, requires that Community legislation be clear and its application foreseeable for all interested parties. [17] As the Court has also repeatedly held, the principle of legal certainty requires in particular that rules imposing charges on a taxpayer be clear and precise so that he may be able to ascertain unequivocally what his rights and obligations are and take steps accordingly. [18]

34. It is only outwardly that this case-law is restricted to tax and customs matters. The term 'taxpayer' may lead one to believe that the only charges which are of uncertain legality on the grounds that they are not clearly defined are tax or customs obligations — but that is not the case. The judgment in *National Farmers' Union and Others* shows that this case-law applies in situations where entitlements are lost as a result of inaccurate declarations in the agricultural sphere. The case-law therefore applies to reductions in agricultural premiums and to the consequences for the

14 — See, for example, Case C-129/94 *Ruiz Bernáldez* [1996] ECR I-1829, paragraph 19, Case C-434/97 *Commission* v *France* [2000] ECR I-1129, paragraph 21 and Case C-437/97 *EKW and Wein & Co.* [2000] ECR I-1157, paragraph 41.

15 — See, for example, Case C-98/91 *Herbrink* [1994] ECR I-223, paragraph 9.

16 — See, for example, Case C-177/96 *Banque Indosuez and Others* [1997] ECR I-5659, paragraph 27 and Case C-354/95 *National Farmers' Union and Others* [1997] ECR I-4559, paragraph 57.

17 — Case C-325/91 *France* v *Commission* [1993] ECR I-3283, paragraph 26.

18 — *Banque Indosuez and Others*, paragraph 27, and *National Farmers' Union and Others*, paragraph 57.

farmer of failure to comply with his obligations in making a declaration. Just as the taxpayer — in the strict sense of the term — must be informed of his obligations and charges so that he may be able to discharge them, so the farmer who is aware of the conditions for grant of a premium must know what he is liable to if he does not observe those conditions.

35. In the present case, a farmer who submits an aid application for animals which do not meet the legal conditions to qualify for aid must be informed that his action makes him liable to substantial reductions of aid. [19]

36. In this respect, the Court regards the principle of legality in relation to crime and punishment as an integral part of the principle of legal certainty. From these two closely-related principles stems the principle that a provision of criminal law may not be applied extensively to the detriment of the defendant. [20]

37. Clearly refusal to grant an agricultural premium — or to reduce the premium by an amount greater than the number of animals not meeting the conditions for grant — is not a penal sanction.

38. But even a non-penal sanction can only be imposed if it rests on a clear and unambiguous legal basis. [21]

39. We should be mindful of the scale of the consequences, for the farmers concerned, which follow from the interpretation of Article 10(2) of Regulation No 3887/92. This provision describes the circumstances in which a farmer may suffer reductions in the aid applied for. But it is apparent that, even with the smallest reduction in aid laid down by the provision, such reductions also affect the amount of the aid for the 'animals found', that is to say, those animals which give entitlement to payment of aid or which would at least have given entitlement to full payment had there been no irregularity. [22]

19 — We should note, however, that this lack of certainty does not affect the conditions for grant of the aid itself, and Regulation No 3887/92 ensures that the farmer is duly informed of them: Article 5(1), seventh indent, provides that the 'livestock' aid application shall contain *inter alia* 'a statement by the farmer that he is aware of the requirements pertaining to the aids in question'.

20 — Judgment in Joined Cases C-74/95 and C-129/95 *X* [1996] ECR I-6609, paragraph 25.

21 — See, for example, Case 137/85 *Maizena* [1987] ECR 4587, paragraph 15, and *Vandemoortele* v *Commission*, paragraph 9.

22 — The first indent of Article 10(2)(a) of Regulation No 3887/92 provides that the unit amount of the aid shall, in cases where an application concerns a maximum of 20 animals, be reduced 'by the percentage corresponding to the difference found if this is not more than two animals'. If I read this provision aright, the unit amount of aid payable for the 'animals found', meaning those not exceeding the 'animals declared', is to be reduced by the percentage of animals in excess of the others. In other words, the aid normally payable is also reduced, in proportion to the irregularities found in respect of the other animals.

40. Thus the legal rules established do not merely provide that irregularities will give rise to a refusal of aid; they provide that lawfully acquired rights will also be affected. Clearly, therefore, by treating unlawful applications in this way there is an intention to impose a penalty.

41. The Court's case-law on interpreting the rules of secondary Community law in accordance with the general principles of the Community law must therefore apply here.

42. The tenor of the principle of legal certainty is clear, particularly as regards the necessary features of the legal basis for any penalty. In *Vandemoortele* v *Commission* the Commission had withheld part of the amount due to a tenderer in payment of food aid on the grounds of delay in delivery. The relevant provision of Community law provided for the withholding of part of that amount only where the goods or packaging did not correspond to the requirements, and the Commission's decision was therefore annulled.

43. To comply with the principle of legal certainty as so applied, the first sentence of Article 10(2) of Regulation No 3887/92 must therefore be interpreted in accordance with its wording. The clear and unambiguous version of the text must prevail over any version that might favour an approach which is in accordance with the purpose of the Regulation but entirely unconnected with its wording.

44. The recent expressions of concern by the Community institutions regarding the quality of drafting confirm the need to ensure that a rule is clearly and precisely expressed. For the same reason, where the actual wording of the provisions in dispute is unambiguous, we should abide by that wording;[23] otherwise, if the discrepancy between the wording and the purpose of the regulation is considered to be too great and therefore likely to hinder its application, the provision in dispute should be rewritten. That indeed is what did happen when, in Regulation (EC) No 1678/98, the Commission modified Article 10(2) of Regulation No 3887/92, to bring it into line with the purpose of the Regulation.[24]

23 — On this, see the various institutional initiatives cited in Blanchet, T., 'Transparence et qualité de la législation', in *RTD eur.*, 33 (4), Oct-Dec 1997, p. 915 et seq.

24 — Commission Regulation (EC) No 1678/98 of 29 July 1998 (OJ 1998 L 212, p. 23). The first sentence of Article 10(2) reads thus: 'If the number of animals declared in an aid application exceeds that established during administrative or on-the-spot checks carried out in accordance with Article 6(6), the aid shall be calculated on the number of eligible animals established'. Article 6(6) of Regulation No 3887/92, as modified by Regulation No 1678/98, defines on-the-spot checks as comprising, in particular, a check that the total number of animals present on the holding, and eligible for the scheme concerned, corresponds to the number of such eligible animals entered in the register.

Conclusion

45. In the light of the above considerations, I propose that the Court should answer the question referred for preliminary ruling by the Bundesverwaltungsgericht as follows:

The first sentence of Article 10(2) of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes must be interpreted as meaning that the term 'animals found during checks' refers to animals counted during the checks and not the animals meeting the conditions for granting aid, so that the reduction in the unit amount of aid provided in the second sentence of that article can apply only where the number of animals declared by the farmer exceeds the number of animals recorded during the checks.