hold a number of adult bovine units not less than the number of dairy cows held at the date of making the application for the grant of the premium is solely related to that number and is not linked to specific animals. In the event of the disposal of the dairy cows which were held on the farm at the time when the application was made and which gave entitlement to the premium, the burden of the undertaking given by the recipient to withhold milk and milk products from the market does not pass to the buyer of those cows by virtue of that disposal.

In Case 77/79

REFERENCE to the Court pursuant to Article 177 of the EEC Treaty by the French Conseil d'État [Council of State] for a preliminary ruling in the proceedings pending before that court between

MARIE-LOUISE DAMAS

and

FONDS D'ORIENTATION ET DE RÉGULARISATION DES MARCHÉS AGRICOLES [Fund for the Guidance and Stabilization of Agricultural Markets]

on the interpretation of certain provisions of Regulation (EEC) No 1975/69 of the Council of 6 October 1969 introducing a system of premiums for slaughtering cows and for withholding milk and milk products from the market (Official Journal, English Special Edition, Second Series, III, p. 38) and of Regulation (EEC) No 2195/69 of the Commission of 4 November 1969 laying down detailed rules for the application of the system of premiums for slaughtering cows and for withholding milk and milk products from the market (Journal Officiel 1969, L 278, p. 6).

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

1. On 6 October 1969 in order to reduce surplus milk production the Council adopted Regulation No 1975/69 introducing a system of premiums for slaughtering cows and for withholding milk and milk products from the market, detailed rules for the application of which were laid down by Regulation No 2195/69 of the Commission of 4 November 1969. The scheme was ended in 1971 by Regulation No 1290/71 of the Council. It was re-introduced in 1973 and remained in force until 31 December 1974. In 1977, by Regulation No 1078/77 of 17 May 1977 (Official Journal 1977, L 131, p. 1), the Council introduced a new system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds. That scheme is still in force.

2. Under the basic Regulation No 1975/69 and the implementing Regulation No 2195/69 the grant of the premium to farmers for withholding milk and milk products from the markets is subject in particular to:

— An undertaking from the farmer to discontinue fully and finally the sale of milk and milk products, including disposal thereof free of charge, within six months from the date of the undertaking at the latest (Article 6 of Regulation No 1975/69 and Article 14 (2) (b) of Regulation No 2195/69);

— The condition that the quantity of milk or milk products which has been disposed of during the 12 months preceding the appointed date corresponds to certain minimum levels (Article 7 (2) of Regulation No 1975/69).

The "appointed date" is to be determined by each Member State within a period which, at the time when the implementing Regulation No 2195/69 was in force, ran from 1 September 1968 to 31 August 1969, or to 30 November 1969 for Italy (Article 14 (2) (a)).

Under Article 8 of the basic Regulation No 1975/69 the amount of the premium, fixed at 200 units of accounts per dairy cow, is to be paid in five instalments, the first instalment of 100 units of account to be paid in the three months following submission of the written undertaking referred to above. The second subparagraph of Article 8 (2) provides that the balance is to be paid annually in four equal instalments

"if the recipient has satisfied the competent authority that the number of adult bovine units he holds is not less than the number of dairy cows held at the date of making the application and that the undertaking mentioned in Article 6 has been fulfilled".

Article 11 of Regulation No 1975/69 provides:

"If the undertaking specified in Articles 2 (a) and 6 is not fulfilled within a period of five years from the date of making the application for the premium, Member States shall without prejudice to possible judicial proceedings take steps to recover the premium".

Furthermore, under Article 16 of the implementing Regulation No 2195/69 if the recipient has not shown to the satisfaction of the competent authority that he keeps a number of adult bovine units at least equal to the number of dairy cows kept at the date of submission of the application the Member States shall take steps to *recover* the final instalment of the premium (100 units of account).

3. On 2 April 1970 Marie-Louise Damas, the owner of a farm at Garderon, Bretagne d'Armagnac (Gers), and her tenant farmer, Angelo Arbusti, jointly applied for premiums for withholding milk and milk products from the market. In so doing they stated *inter alia* that the number of full-grown cattle kept on the farm on 31 August 1969, as on the date of submission of the application, was 23 animals of which 21 were dairy cows.

On 8 April 1970, acting in the name and on behalf of Mrs Damas and Mr Arbusti, the latter's son, Joseph Arbusti, entered into the undertaking referred to in Article 6 of Regulation No 1975/69 to discontinue fully and finally the sale of milk and milk products, including the disposal thereof free of charge, within six months at the latest from the date of entering into the said undertaking, namely 8 October 1970.

Mrs Damas then received from the Fonds d'Orientation et de Régularisation des Marchés Agricoles (hereinafter referred to as "the FORMA") the first instalment of the premium of 100 units of account per dairy cow, FF 11 663.84 in all.

Following inspections carried out by the Direction Départementale de l'Agriculture [Departmental Directorate of Agriculture] of the Department of Gers the FORMA found that Mrs Damas and Mr Arbusti had continued to market milk after 8 October 1970 and by an enforceable decision communicated to Mrs Damas on 10 March 1972 it sought to recover the said amount.

Mrs Damas lodged an administrative appeal and subsequently commenced proceedings before the Tribunal Administratif [Administrative Court], Paris. That action was rejected by a judgment of 15 February 1977 and Mrs Damas lodged an appeal to the Conseil d'État.

In support of her appeal Mrs Damas maintains that on the expiry of the above-mentioned period of six months, on 8 October 1970, she herself and her tenant farmer, Mr Arbusti, discontinued marketing milk and milk products altogether. In support of that contention she states that:

— Following the retirement for health reasons of her tenant farmer, Angelo Arbusti, and the installation of his son Joseph Arbusti in his place, and after having in fact converted the dairy herd to full-grown cattle she had to discontinue all direct involvement in the farm, sell the cattle and let the property on a farming lease dated 2 August 1971, taking effect retroactively from 1 November 1970;

— Some of the livestock was sold, in particular to Joseph Arbusti, who farmed another property on his own

account, whilst the remainder (10 animals) was retained and kept by the retiring tenant farmer for an interim period and was sufficient to feed six calves which had been purchased.

For its part the FORMA argues that:

— At first, after 8 October 1970 and before letting her farm on a farming lease, Mrs Damas rented to Joseph Arbusti, the son of her former tenant farmer, approximately 15 hectares of her farm, on which the production and marketing of milk continued beyond the said date.

— Of the 21 dairy cows present on the farm in question on 8 April 1970 a number were transferred to the farm of Joseph Arbusti.

4. By decision of 16 March 1979 the Conseil d'État stayed proceedings and pursuant to Article 177 of the EEC Treaty referred the following questions to the Court of Justice:

1. Is the undertaking referred to in Article 6 of Regulation No 1975/69 of the Council and Article 14 of Regulation No 2195/69 of the Commission given by the farmer to discontinue fully and finally the sale of milk and milk products of a personal nature or does it attach to the property concerned and what are the consequences, as regards the entitlement to the premium, of a disposal of the property or of the right to farm the land?

2. Does the undertaking attach to the livestock and, if the dairy cows for which the premium was granted are disposed of, is the seller's obligation transferred to the buyer?

5. A copy of the decision of the national court was received at the Court on 16 May 1979.

Written observations pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC were submitted by Mrs Damas, represented by F. Kappelhoff-Lançon of the Bordeaux Bar and Professor D. Linotte of the University of Poitiers, by the FORMA, represented by P. Villey, of the Paris Bar, and by the Commission of the European Communities, represented by B. Hoff-Nielsen, acting as Agent, assisted by J. Delmoly, members of the Commission's Legal Department.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, pursuant to Article 95 of the Rules of Procedure the Court assigned the case to the First Chamber.

II — Written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

Mrs Damas contends that it is unambiguously clear from the relevant Community provisions that the undertakings which she entered into are of a personal nature.

The wording of Articles 5 and 6 of Regulation No 1975/69 and Articles 12 (d) and 14 (2) (b) of Regulation No 2195/69, in which only the terms "farmers" and "recipients of the premium" are used, leaves no doubt in this respect. With regard to the system of premiums for withholding milk from the market (in contrast to the system of

premiums for slaughtering cows) there is never any question of obligations relating to the farm, the livestock or any assignees thereof. The very expression "undertaking from the recipient", which occurs a number of times in those provisions, clearly shows that the undertaking is of a personal nature. In fact it is based on the receipt of the premium and it is difficult to see how it can be extended to the farm, the livestock or assignees thereof.

That literal interpretation is, moreover, confirmed by *a contrario* and analogous interpretations.

Comparison of the system of premiums for slaughtering cows with that of premiums for withholding milk from the market makes it quite clear that in the former the obligation relates directly to the livestock and that, to be effective, the system must transfer the obligation to any purchaser thereof. In order to ensure that the system is effective a certain number of formalities are laid down: the cows are all marked and accompanied by an identity card at all stages up to slaughtering; a purchaser must be informed, prior to sale, of the use to which the cattle purchased by him are to be put.

The fact that none of those formalities is laid down in the system of premiums for withholding milk from the market and also that the formalities laid down by that system relate solely to the personal activities of the farmer proves on the contrary that the undertaking to withhold produce from the market is a purely personal undertaking.

With regard also to the question whether the undertaking may attach to the property concerned reference should be made to Article 19 (1) (b) of Regulation No 2195/69 which provides that "the Member States are authorized to impose additional conditions (for the award of the premium) ... concerning the temporary or final disposal of the recipient's farm". As the Community regulations have therefore authorized the Member States to lay down additional conditions concerning the subsequent use of the farm it is manifest that the regulations themselves have not laid down, even by implication, any such condition. The French State for its part did not make use of that power.

The purely personal nature of the undertaking entered into by Mrs Damas in the context of the contractual relations between her and the FORMA is evidenced further by the doctrine of privity of contract. As a general principle of law recognized by the Member States that doctrine is an integral part of Community law. Any transfer of the obligation entered into by Mrs Damas to a third party is inconceivable, particularly as it could take the form of an assignment of debts, which is generally prohibited.

Finally, the interpretation set out above was shared by the French administration at the time of the facts giving rise to the case. In a letter of 6 April 1970 to Mrs Damas the Directeur Départemental de l'Agriculture [Regional Director of Agriculture] in fact informed her that the undertaking which she was about to sign was "of an individual nature".

The *FORMA* observes first that the objective of Regulation No 1975/69 of the Council and Regulation No 2195/69 of the Commission is to bring about a reduction in the production of milk and

milk products by, *inter alia*, encouraging farmers to convert their dairy farming activities to beef production. That aim is pursued by means of a premium for withholding milk from the market. The recipient of the premium undertakes:

— to discontinue fully and finally the sale of milk and milk products;

— to keep, on his farm, a number of full-grown cattle equal to or greater than the number of dairy cows held on the day when the application is submitted.

If the recipient fails to comply with his obligations sanctions are laid down including the termination of payments and the recovery of sums already paid if the recipient of the premium continues to sell milk, or the recovery of the first half of the premium if he fails to satisfy the obligation to keep on his farm a minimum number of full-grown cattle.

The aim of the above-mentioned regulations presupposes that the undertakings entered into by the recipients of the premiums attach to the property and not to the person of the recipient.

The provisions of Article 16 of Regulation No 2195/69, as last amended by Regulation (EEC) No 2240/70 of the Commission of 4 November 1970 (Journal Officiel 1970, L 242, p. 12), which appear to be interpretative in nature, are evidence of this as they imply that a successor in title to the farm must undertake *vis-à-vis* the competent authority to continue to carry out the obligations entered into by his predecessor. That interpretation seems to be confirmed by the fact that paragraph (2) of Article 16 provides that the undertakings entered into by the recipient of a premium are to be of a personal nature only in certain specified cases.

It is also in accordance with the objective of the said regulations that, apart from the exceptions referred to in Article 16 (2), the dairy cows kept at the time of submission of the application for the premium cannot, by means of assignment to a third party, continue to be used for the production of milk and milk products for marketing, and that consequently the obligation on the recipient of the premium not to market the milk must necessarily be transferred to the purchaser of the dairy cows. To decide otherwise would run counter to the aim of the regulations in question, which is to reduce the numbers of dairy cows producing milk for marketing.

The *Commission of the European Communities* takes the view as regards the *first question* that the recipient's undertaking by no means attaches to a given farm.

That is clear from the sixth recital of the preamble to Regulation No 1975/69, which merely refers to the farmer's personal undertaking, and Articles 6 and 8 (2) of that regulation which refer only to recipients of the premium and nowhere state that the undertaking also attaches to the farm.

That view is also confirmed by Article 5 (2) of the regulation as amended by Regulation No 1386/70 (Official Journal, English Special Edition, Second Series, III, p. 48) under which "any successor to the farm may assume the undertakings of his predecessor". If

therefore the new owner or tenant farmer is not obliged to assume the undertaking on his own behalf it is clear that the obligation does not attach to the farm managed by the recipient of the premium at the time of the application.

The same conclusions may be drawn from Article 16 (1) of Regulation No 2195/69 of the Commission as amended by Regulation No 2240/70, which authorized the Member States to recover the amount referred to in the first subparagraph of Article 8 (2) of Regulation No 1975/69

"if the recipient or his successor in title to the farm who has undertaken *vis-à-vis* the competent authority to continue to carry out the obligations entered into by his predecessor, has not shown to the satisfaction of the competent authority that he keeps the number of adult bovine units referred to in the second subparagraph of Article 8 (2) of Regulation (EEC) No 1975/69".

The farm is mentioned here solely to cover the hypothesis that the successor has undertaken to continue to carry out the obligations relating to the premium for withholding milk from the market. However, if the successor to the farm has not assumed that undertaking the amounts cannot be recovered from the recipient of the premium who has sold the farm or who has assigned the right to work it in so far as he can show that he is continuing to carry out the obligations referred to in Article 6 and Article 8 (2) of Regulation No 1975/69.

The interpretation set out above is, furthermore, the only one compatible with the amendments made to the rules. In re-establishing the system of premium in 1973 the authors of Regulation No 1353/73 (Official Journal 1973, L 141, p. 18) held that it was necessary to reinforce the effectiveness of the system and to facilitate controls and therefore expressly linked the undertaking entered into by the recipient of the premium to the farm managed at the time of the application. As such an amendment to legislation cannot have retroactive effect the interpretation of the former provisions so as to make their effect identical to the new rules is incorrect.

In any event, the fact must not be forgotten that as the undertaking is personal the recipient remains under an obligation to fulfil it, even if he has disposed of his farm or has assigned the tenancy and his successor has not assumed the undertaking. He is therefore still bound to respect both the obligation not to sell milk and the obligation to keep a minimum number of full-grown cattle.

The *second question* of the national court asks precisely whether the obligation to keep a certain number of full-grown cattle attaches to the cattle and, if the dairy cattle for which the premium was granted are disposed of, whether the seller's obligation is transferred to the buyer.

Under the relevant provisions, namely Article 8 of Regulation No 1975/69, the recipient of the premium is not obliged to continue to keep dairy cows which were the subject of the application and in respect of which the first instalment of the premium has been paid. He is obliged only to hold for a period of five years (see Article 11 of the regulation) a number of full-grown cattle corresponding at least to the number of dairy cows held at the date of making the application.

That conclusion is also confirmed by Article 14 (2) of Regulation No 2195/69, which provides that the competent authorities are to determine the number of dairy cows in respect of which the premium may be granted but which does not require the authority to mark the cows or to provide an identity card.

The undertaking of the recipient of the premium does not therefore attach to specific dairy cows. The cows in respect of which an application for a premium has been submitted can be sold by the recipient without this necessarily or automatically leading to the transfer of the undertaking in question.

If the purchaser of dairy cows does not assume the undertaking laid down by the system of premiums, a recipient who wishes to retain the right to the premium must in any event keep the number of full-grown cattle in respect of which he has given an undertaking. The Court has already had occasion to accept that interpretation in Case 84/76 (*Collic* v *FORMA).*

In short, the premium for withholding milk from the market is subject to proof that the obligations not to sell milk and to keep a certain number of full-grown cattle have been complied with for the whole of the specified period of five years. Those obligations may be satisfied by the recipient of the premium or by an assignee who has voluntarily agreed to continue to carry out the obligations, but they do not attach to the farm of the recipient or the dairy cows held at the date of making the application. Disposal of the farm or of the dairy cows does not therefore entail the transfer of the obligations to the assignee or the automatic loss of the predecessor's right to the premium.

Having regard to the foregoing the Commission takes the view that the following answers should be given to the questions referred to the Court:

"Regulation No 1975/69 of the Council, in particular Articles 6, 8 and 11, and Regulation No 2195/69 of the Commission, in particular Articles 14 (2) and the first paragraph of Article 16, are to be interpreted as follows:

— Entitlement to the premium for withholding products from the market is subject to compliance for a period of five years with the undertaking not to sell milk and to hold, for the same period, a number of full-grown cattle corresponding at least to the number of dairy cows in respect of which a premium has been granted;

— The undertaking entered into is personal and does not at the same time attach to the property, so that the disposal of the property or of the right to farm the land has no direct effect on entitlement to the premium;

— The undertaking entered into does not attach to specific animals, with the result that the obligation is not automatically transferred to the purchaser of dairy cows in respect of which, at the time the application was submitted, the premium for withholding products from the market was granted."

III — Oral procedure

The appellant in the main action, represented by F. Kappelhoff-Lançon, of the Bordeaux Bar, the FORMA, represented by P. Villey, of the Paris Bar, and the Commission of the European Communities, represented by J. Delmoly, a member of its Legal

Department, presented oral argument at the sitting on 6 December 1979.

The Advocate General delivered his opinion on 17 January 1980.

Decision

1 By a decision of 16 March 1979, which was received at the Court on 16 May 1979, the Conseil d'État [Council of State] of the French Republic referred to the Court for a preliminary ruling two questions on the interpretation of Regulation (EEC) No 1975/69 of the Council of 6 October 1969 introducing a system of premiums for slaughtering cows and for withholding milk and milk products from the market (Official Journal, English Special Edition, Second Series, III, p. 38) and also of Regulation (EEC) No 2195/69 of the Commission of 4 November 1969 laying down detailed rules for the implementation of that system of premiums (Journal Officiel 1969, L 278, p. 6).

2 Those questions have been raised during proceedings arising out of a decision of the Fonds d'Orientation et de Régularisation des Marchés Agricoles [Fund for the Guidance and Stabilization of Agricultural Markets] (hereinafter referred to as "the FORMA"), which is the body responsible in France for the granting and payment of the premiums referred to in Regulation No 1975/69 of the Council, to take steps to recover from the appellant in the main action that part of the premium for withholding milk and milk products from the market which she had been paid on account.

3 Article 5 of Regulation No 1975/69 provides that farmers having more than ten dairy cows may, on application, receive a premium for withholding milk and milk products from the market. Article 6 thereof provides that the granting of the premium shall be subject, in particular, to a written undertaking from the recipient "to discontinue fully and finally the sale of milk and milk products", including the disposal thereof free of charge, at the latest within six months of the date of the said undertaking. Article 7 of that regulation provides that the amount of the premium shall be 200 units of account per dairy cow kept on the farm at the date when the application is made and that the granting of the premium shall be restricted to the number of dairy cows on the farm managed by the recipient at an appointed date. Article 8 of the regulation, which deals with the procedure for paying the

premium, provides that one half of the premium per dairy cow shall be paid in the three months following submission of the above-mentioned undertaking and the second subparagraph of Article 8 (2) further provides that:

"The balance shall be paid annually in four equal instalments if the recipient has satisfied the competent authority that the number of adult bovine units he holds is not less than the number of dairy cows held at the date of making the application and that the undertaking mentioned in Article 6 has been fulfilled".

In the event of one or other of the two above-mentioned conditions not being fulfilled, Article 11 of the regulation provides that:

"If the undertaking specified in Article ... 6 is not fulfilled within a period of five years from the date of making the application for the premium, Member States shall without prejudice to possible judicial proceedings take steps to recover the premium".

Article 16 of implementing Regulation (EEC) No 2195/69 of the Commission provides that:

"If the recipient has not satisfied the competent authority that he holds the number of adult bovine units specified in the second subparagraph of Article 8 (2) of Regulation (EEC) No 1975/69 the Member States shall take steps to recover the amount specified in the first subparagraph of Article 8 (2) of that regulation".

4 It emerges from the file on the case that, after the appellant in the main action had applied for a premium for withholding milk and milk products from the market, she gave on 8 April 1970 the undertaking provided for by Article 6 of Regulation No 1975/69 to discontinue fully and finally the disposal, even free of charge, of the above-mentioned products at the latest within six months of the date when she gave the undertaking, that is, by 8 October 1970. In this way she obtained the premium in question and, as provided for in the first subparagraph of Article 8 (2) of the said regulation, received from the FORMA the first half of the premium. Since the FORMA took the view, on the basis of checks and investigations carried out by the competent authorities, that the person concerned had continued to supply

milk after 8 October 1970, it took steps by means of an enforceable decision, served on 10 March 1972, to recover the said amount pursuant to Article 11 of Regulation No 1975/69 and Article 16 of Regulation No 2195/69. The person concerned contended that such recovery was not justified, her main submission being that she altogether ceased supplying milk as from 7 September 1970 and that, having in fact converted her dairy herd into adult bovine units, she was obliged to discontinue all direct involvement in the farm, sell her livestock and let the property on a farming lease dated 2 August 1971 which took effect retroactively from 1 November 1970.

5 In view of the argument put forward by the FORMA and challenged by the appellant, that the recipient of the premium continues to be bound by the undertaking which he gave if he disposes of the farm, the national court referred to the Court of Justice for a preliminary ruling the following questions:

1. Is the undertaking referred to in Article 6 of Regulation No 1975/69 of the Council and Article 14 of Regulation No 2195/69 of the Commission given by the farmer to discontinue fully and finally the sale of milk and milk products of a personal nature or does it attach to the property concerned and what are the consequences, as regards the entitlement to the premium, of a disposal of the property or of the right to farm the land?

2. Does the undertaking attach to the livestock and, if the dairy cows for which the premium was granted are disposed of, is the seller's obligation transferred to the buyer?

(a) The first question

6 In order to enable an answer to this question to be given to the national court the rules at issue must be examined, principally in the light of the main objectives which they seek to attain. The preamble to Regulation (EEC) No 1975/69 of the Council states that, since the situation in milk and milk products in the Community is one of surpluses, that regulation aims at encouraging the tendency of certain categories of farmers in the Community to abandon milk production or the marketing of milk and milk products and for those purposes introduces a premium for slaughtering dairy cows as well as a premium for withholding the said products from the market. Viewed in

the light of those objectives it is therefore apparent from Regulation No 1975/69 that the principal legal reason for the granting of the premium for withholding milk and milk products from the market and for the retention of that advantage is the actual discontinuation of all marketing of the said products for the period of five years specified in Article 11 of that regulation in respect of which the recipient has given an undertaking pursuant to Article 6. In this context the undertaking given by the recipient to desist from marketing the products in question is the principal means whereby Regulation No 1975/69 seeks to attain its objectives so that any failure to honour that undertaking, involving a disregard of those very objectives, makes the granting and retention of the benefit of the premium unjustified and destroys its legal foundation. In those circumstances the fact that during the above-mentioned period the recipient handed over the management of the farm to a third party is not sufficient to release him from the undertaking which he gave and to vest in him unconditionally the payment on account as well as the other instalments of the premium paid to him, if the basic objective which Regulation No 1975/69 seeks to attain, namely the actual withholding of the products at issue from the market during the whole of the period under consideration, has been disregarded.

7 Those basic features of the system in question were confirmed by Regulation (EEC) No 1386/70 of the Council of 13 July 1970 (Official Journal, English Special Edition, Second Series, III, p. 48) and also by implementing Regulation (EEC) No 2240/70 of the Commission of 4 November 1970 which entered into force on 8 November 1970 (Journal Officiel 1970, L 242, p. 12). The former regulation, by introducing fresh provisions to cover the case of a successor to the farm or of *force majeure*, makes it quite clear in the first recital of the preamble thereto that the only circumstances which may justify non-compliance with the obligations undertaken by the recipient of the premium, as far as concerns the withholding of milk and milk products from the market, are those which are beyond his control, where the conditions for a case of *force majeure* within the meaning of Article 2 thereof are present. On the other hand, in the event of a farm passing to a successor, Article 1 of the same regulation, which has become Article 5 (2) of Regulation No 1975/69 as amended, expressly states that the recipient is only entitled to keep the part of the premium paid in advance in so far as the successor in title undertakes to "assume the undertakings of his predecessor". Under Article 1 of Regulation (EEC) No 2240/70 the successor's undertaking does not discharge the predecessor in title unless the former has given his under-

taking "to the competent authority". Those provisions make it absolutely clear that, apart from exceptional circumstances, which are beyond the control of the recipient, such as cases of *force majeure*, the concern to ensure that the system in question achieves its full effect, namely the withholding of milk and milk products from the market during the whole of the period under consideration, is the underlying, fundamental criterion which determines the conditions governing the grant of the premium and the absolute entitlement of the recipient to retain the payment on account.

8 For those reasons the answer to the first question must be that the undertaking entered into by the recipient of a premium not to dispose of milk or milk products referred to in Article 6 of Regulation No 1975/69 of the Council of 6 October 1969 binds the recipient personally and does not attach to the property. In the event of a disposal of the property or of the right to farm the land, the recipient loses his entitlement to the premium and is bound to return to the competent authority the payment on account and any other instalment of the premium already received if the marketing of milk and milk products has not in fact ceased at the farm in question during the whole period under consideration.

(b) The second question

9 As the Court emphasized in its judgment of 1 March 1977 in Case 84/76 *Collic* [1977] ECR 361, the aim of Regulation No 1975/69 is not only to discourage the marketing of milk and milk products but also at the same time to encourage recipients of the premium to use their milk production for rearing cattle intended for the production of meat and to exploit effectively the capacity of their farms, especially as far as the production of beef and veal is concerned. It is for the very purpose of attaining that objective that the second subparagraph of Article 8 (2) imposes upon the recipient the obligation to hold, during the period of five years over which the payment of the premium is spread, a number of adult bovine units not less than the number of dairy cows which he held at the date of making the application and which gave entitlement to the premium, and makes the payment by instalments of the balance of the premium conditional on compliance with that obligation.

10 The pursuit of that objective does not make it necessary for the recipient to continue to hold during the period under consideration the dairy cows which were on the farm when the application was made and which gave entitlement to the premium. In fact Article 5 (2) (a) and Article 6 (1) of the implementing Regulation (EEC) No 2195/69 of the Commission provide, as far as concerns the "slaughtering premiums", that, if the competent authority grants the applications which have been made, it shall take steps to mark all the dairy cows held on the farm and shall prepare identity cards of a given type in order to identify them. On the other hand, Article 14 (2) (a) of the same regulation provides, as far as concerns "premiums for withholding milk and milk products from the market", that the competent authority only has to determine the "number" of dairy cows giving entitlement to the premium. Those different legal rules confirm that the obligation imposed by Article 8 (2) of Regulation No 1975/69 on the recipient of the premium to hold a specific number of adult bovine units relates solely to that "number" and is not linked to particular animals. Consequently the system introduced by Regulation No 1975/69 does not prevent the recipient from selling the dairy cows held on the farm when the application was made. The fact that the recipient may dispose of the cows in question implies that in the event of a disposal the undertaking which he has given to withhold milk and milk products from the market does not cover the livestock and that the burden of the undertaking does not automatically pass, as far as concerns the cows which have been sold, to the purchaser thereof.

11 The answer to the second question must therefore be that the obligation upon the recipient of the premium to hold a number of adult bovine units not less than the number of dairy cows held at the date of making the application is not linked to specific animals. In the event of the disposal of the dairy cows which were held on the farm at the time when the application was made and which gave entitlement to the premium, the burden of the undertaking given by the recipient to withhold milk and milk products from the market does not pass to the buyer of those cows by virtue of that disposal.

Costs

The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Conseil d'État of the French Republic by a decision of 16 March 1979,

hereby rules:

1. **The undertaking entered into by the recipient of a premium not to dispose of milk or milk products referred to in Article 6 of Regulation No 1975/69 of the Council of 6 October 1969 binds the recipient personally and does not attach to the property. In the event of a disposal of the property or of the right to farm the land, the recipient loses his entitlement to the premium and is bound to return to the competent authority the payment on account and any other instalment of the premium already received if the marketing of milk and milk products has not in fact ceased at the farm in question during the whole period under consideration.**

2. **The obligation upon the recipient of the premium to hold a number of adult bovine units not less than the number of dairy cows held at the date of making the application is not linked to specific animals. In the event of the disposal of the dairy cows which were held on the farm at the time when the application was made and which gave entitlement to the premium, the burden of the undertaking given by the recipient to withhold milk and milk products from the market does not pass to the buyer of those cows by virtue of that disposal.**

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 13 February 1980.

A. Van Houtte
Registrar

A. O'Keeffe
President of the First Chamber