OPINION OF ADVOCATE GENERAL MAZÁK
delivered on 24 March 2011 [1]

1. In the present case, the Fővárosi Bíróság (Budapest Municipal Court) (Hungary) has referred a number of questions to the Court concerning the interpretation of Article 22 of Council Regulation (EC) No 1257/1999 (the 'Rural Development Regulation') [2] and of Article 68 of Commission Regulation (EC) No 817/2004. [3] The case concerns an agricultural producer who brought proceedings against Mezőgazdasági és Vidékfejlesztési Hivatal (Office of Agriculture and Rural Development; 'the Hivatal') in relation to its refusal to grant him five-year agri-environmental aid, after checks had revealed that the information which he had provided in the aid application was erroneous.

2. The referring court wishes to know whether Article 22 of Regulation No 1257/1999 and Article 68 of Regulation No 817/2004 should be interpreted as meaning that, for the purposes of the checks to be made under the latter provision, the Hungarian integrated identification and registration system for bovine animals (Egységes Nyilvántartási és Azonosítási Rendszer; 'the ENAR') is also applicable in relation to agri-environmental aid under Article 22, the grant of which is conditional on a certain density of livestock even where the aid is not intended for animals, and whether the ENAR may constitute the only means of testing whether the conditions of eligibility for such aid are met. Moreover, the referring court asks which obligations are incumbent on the national authority in relation to providing information to farmers on the pre-conditions for aid.

I — The Community legal framework (now the European Union 'EU' legal framework)

3. Paragraphs 1 and 4 of Article 66 of Regulation No 817/2004 provide, respectively, that applications for rural development support, for areas or animals, which are lodged separately from aid applications under Article 6 of Regulation (EC) No 2419/2001 are to

1 — Original language: English.

2 — Regulation of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80), as amended by Council Regulation (EC) No 1783/2003 of 29 September 2003 (OJ 2003 L 270, p. 70).

3 — Regulation of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2004 L 153, p. 30).

indicate all the areas and animals on the holding which are relevant for checking the applications under the measure in question, including those for which no support is requested, and that animals and plots of land are to be identified in accordance with Articles 18 and 20 of Council Regulation (EC) No 1782/2003. [4]

Wherever appropriate, Member States shall make use of the integrated administration and control system ["IACS"] introduced by Regulation (EC) No 1782/2003.

…'

4. Article 67 of Regulation No 817/2004 states:

'1. Initial applications to join a scheme and subsequent applications for payment shall be checked in a manner which ensures effective verification of compliance with the conditions for granting support.

The Member States shall define suitable methods and means for verifying each support measure as well as the persons who shall be subject to checks.

5. Under Article 17 of Regulation No 1782/2003, each Member State is to set up an IACS.

6. Article 18(1) of Regulation No 1782/2003 provides that the IACS is to comprise the following elements: '(a) a computerised data base; (b) an identification system for agricultural parcels; (c) a system for the identification and registration of payment entitlements as referred to in Article 21 of that regulation; (d) aid applications; (e) an integrated control system; and (f) a single system to record the identity of each farmer who submits an aid application'.

7. Article 18(2) of that regulation provides that in the event of the application of Articles 67, 68, 69, 70 and 71, 'the integrated system shall comprise a system of identification and registration of animals set up in accordance with Directive 92/102/EEC … and Regulation (EC) No 1760/2000'.

8. Under Article 19(1) of Regulation No 1782/2003, the computerised database is to record, for each agricultural holding,

4 — Respectively Commission Regulation of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 2001 L 327, p. 11), and Regulation of 29 September 2003 establishing common rules for direct support schemes under the [CAP] and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) [No] 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1, as corrected in OJ 2004 L 94, p. 70).

the data obtained from aid applications and, in particular, to allow direct and immediate consultation, through the competent authority of the Member State, of the data relating to the calendar and/or marketing years starting from the year 2000. Article 19(2) of that regulation provides that '[t]he Member States may set up decentralised databases on condition that these, and the administrative procedures for recording and accessing data, are designed homogeneously throughout the territory of the Member State and are compatible with one another in order to allow cross-checks'.

9. The second subparagraph of Article 16(3) of Commission Regulation (EC) No 796/2004 [5] provides that 'Member States may in particular introduce procedures by which data contained in the computerised database for bovine animals may be used for the purposes of the aid application, provided that the computerised database for bovine animals offers the level of assurance and implementation necessary for the proper management of the aid schemes involved. Such procedures may consist of a system according to which a farmer may apply for aid in respect of all animals which, at a date to be determined by the Member State, qualify for aid on the basis of the data contained in the computerised database for bovine animals. In that case, Member States shall take the necessary measures to guarantee that:

(a) in accordance with the provisions applicable to the aid scheme in question, the starting and end dates of the relevant retention periods are clearly identified and known to the farmer;

(b) the farmer is aware that any animals found not to be correctly identified or registered in the system for the identification and registration for bovine animals shall count as animals found with irregularities as referred to in Article 59…'

10. Under Article 3 of Regulation (EC) No 1760/2000, [6] the system for the identification and registration of bovine animals is to comprise inter alia the following elements: (a) ear tags to identify animals individually and (b) computerised databases. Under Article 5 of that regulation, 'the competent authority of the Member States

5 — Regulation of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 (OJ 2004 L 141, p. 18). Under Article 80 of that regulation, references to Regulation No 2419/2001 shall be construed as references to Regulation No 796/2004 and Regulation No 2419/2001 is repealed.

6 — Regulation of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ 2000 L 204, p. 1).

shall set up a computerised database in accordance with Articles 14 and 18 of Council Directive 64/432/EEC'.[7]

II — Facts and the questions referred

11. On 26 November 2004, Mr Károly Nagy submitted an application for agri-environmental aid over a five-year period. Under Article 32(2) of Decree 150/2004 (X.12.) ('Decree 150/2004') of the Hungarian Ministry of Agriculture and Rural Development ('the Ministry'), it is a condition for aid that for the use of grassland there must be a minimum of 0.2 animals per hectare.

12. In his application, Mr Nagy declared that he had 12 cattle and on 10 August 2005 and 6 October 2006, respectively, he received payment of the aid in relation to the 2004/05 period and the 2005/06 period. However, it emerged from the on-the-spot check carried out on 18 October 2006 and from the cross-checks made in the ENAR register that, at the time of making his application for aid, Mr Nagy did not have the 12 cattle declared in the application.

13. On 15 December 2006, the Hivatal ruled by Decision No 2030946187 that Mr Nagy did not meet the conditions for eligibility of the aid under Article 32(2) of Decree 150/2004, in so far as the checks made did not confirm that the number of animals declared in the application was correct. As a result, Mr Nagy was excluded from the five-year agri-environmental aid and was ordered to reimburse the amount which had already been paid (EUR 5 230).

14. Mr Nagy lodged an administrative appeal against that decision with the Ministry, which, as a second-instance authority, confirmed the Hivatal's decision on 10 August 2007, on the basis of Article 32(2) of Decree 150/2004. Mr Nagy contested the Ministry's decision before the referring court, arguing that he did indeed, at the time of making the application, have at his disposal the number of animals required under that provision, but that he had no knowledge of the ENAR and was unaware that registration in that system was necessary in order to receive aid. He had been given no information in that regard.

15. Against that background, the referring court has decided to stay the proceedings and to refer the following questions to the Court:

'(1) May Articles 22 of Regulation No 1257/1999 and 68 of Regulation

7 — Directive of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine (OJ, English Special Edition 1963-1964(I), p. 164).

No 817/2004 be interpreted as meaning that, in the case of specific programmes for grassland by way of agri-environmental aid under the first article mentioned, the checks on the data contained in the ENAR [Integrated Identification and Registration System], pursuant to Article 68 of Regulation No 817/2004, must also be extended to area aid specifying a certain density of livestock?

(2) May the above provisions be interpreted as meaning that cross-checks under the [IACS] must be carried out also in cases where the pre-condition for aid is the density of livestock, although the aid is not for animals?

(3) May those provisions be interpreted as meaning that, in assessing area aid, the competent authority may or must check whether the conditions for aid are met, independently of the ENAR?

(4) On the basis of the interpretation of the above provisions, what monitoring obligation arises for the competent authority from the requirement in the above Community provisions for checks and cross-checks? May the monitoring be limited exclusively to review of the data contained in the ENAR?

(5) Do those provisions impose an obligation on the national authority to provide information concerning the pre-conditions for aid (for example, registration in the ENAR)? If so, in what way and to what extent?'

16. Written observations were lodged by Mr Nagy, the Hungarian Government and the Commission.

III — Appraisal

A — *Questions 1 and 2*

17. By Questions 1 and 2, which must be examined together, the referring court asks essentially whether Article 22 of Regulation

No 1257/1999, read in conjunction with Article 68 of Regulation No 817/2004, is to be construed as permitting the competent authorities, for the purposes of the grant of aid under the former provision, and subject to the condition regarding a certain density of livestock, to make cross-checks under the IACS and, in particular, to rely on data registered under a national Integrated Identification and Registration System, such as the ENAR.

18. Mr Nagy submits that the ENAR register is not relevant to area payments subject to the condition regarding a certain density of livestock, because that aid is not for animals and, moreover, because the objective underlying the grant of area payments is different from the objective underlying animal payments.

19. The Hungarian Government and the Commission contend, in essence, that the cross-checks made using the IACS and, in particular, those made using the data in the ENAR register should also be undertaken when aid is subject to the condition regarding a certain density of livestock – even where the aid is not for animals.

20. The Hungarian Government argues that Article 18(2) of Regulation No 1782/2003 does not make the application of animal identification and registration systems compulsory – it does so only in the case of certain types of aid and the aid at issue here is not among those types. Regulation No 817/2004, on the other hand, supports the inference that the ENAR should be applied, even in such cases. It follows, according to the Hungarian Government, that it is necessary to apply the IACS – or rather, some of its elements, including a national Integrated Identification and Registration System for bovine animals, such as the ENAR – whenever possible.

21. The Commission contends that, to the extent that Article 68 of Regulation No 817/2004 provides that the administrative controls are to be exhaustive, that provision applies also to the density of livestock. As a result, it is appropriate to apply the provisions relating to the IACS and, in particular, those relating to national integrated identification and registration systems for bovine animals, such as the ENAR, to aid granted under Article 22 of Regulation No 1257/1999, which is not for animals.

22. First of all, it should be recalled that the European Union adopted an IACS in 1992 [8] in order to improve the efficiency with which direct payments were made to farmers under

8 — See 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). That regulation was repealed by Regulation No 1782/2003, which specified that the former regulation shall continue to apply to applications for direct payments in respect of the calendar years preceding 2005.

the CAP.[9] In particular, Member States had to establish electronic registers recording, in respect of each relevant parcel of agricultural land covered by a claim, all the information required for cross-checking claims, including the identity of the holder, the date of establishment, the date of last activation, the origin and the kind of entitlement, as well as the location of the land and accurate measurements. However, the IACS does not record information concerning the tenure or ownership of the land, because it is a management device designed to facilitate the payment of aid to farmers. According to the Court of Auditors, the 'IACS, where properly applied, is an effective control system for limiting the risk of error or irregular expenditure'.[10]

23. In particular, as regards the case before the referring court, it follows from the documents before the Court that what the Hungarian Government did, in fact, was to follow the recommendation of the Commission – set out in a letter of 7 February 2006 and relating to the results of a check undertaken on 17 to 21 October 2005 in connection with the clearance of rural-development expenditure financed or co-financed by the EAGGF and SAPARD.[11] In that recommendation, the Commission urged the Hungarian authorities to 'include in the databases relating to animals cross-checks concerning the animals declared, in the interest of respecting the relevant provisions, for every measure which is subject to the condition for eligibility of a certain density of livestock'. Accordingly, the Hungarian authorities undertook retroactive cross-checks relating to the first period for agri-environmental programmes (2004/05) – including a cross-check of Mr Nagy's case – and decided to carry out cross-checks with the ENAR in all future cases, starting with those relating to the second period.

24. Turning to the relevant legislation, I would point out that, under point (c) of the second paragraph of Article 22 of Regulation No 1257/1999, agri-environmental support is

9 — For illustration, in 2005, apparently as many as 5 280 068 claims were lodged by farmers (for aids based on declared area). However, the elements to be controlled are simpler and can be checked effectively using databases, supplemented by a limited sample of controls on the spot. That is why the Council decided to create the IACS in 1992. It appears 100 % of the applications must be controlled via administrative checks and only 7 % of the applications were checked on-the-spot (the minimum being 5 %). See 'IACS: A successful risk management system', DG Agriculture, European Commission, 2007, http://ec.europa.eu/budget/library/documents/implement_control/conf_risk_1007/iacs_risk_en.pdf.

10 — Idem, p. 5.

11 — The 'Support for Pre-accession measures for Agriculture and Rural Development' ('SAPARD') helps countries applying for EU membership to prepare for the CAP and other measures related to agricultural structures and rural development.

to promote inter alia 'the conservation of high nature-value farmed environments which are under threat'.

25. Article 37(4) of Regulation No 1257/1999 states that Member States may lay down further or more restrictive conditions for granting EU support for rural development, provided that such conditions are consistent with the objectives and requirements laid down in that regulation.

26. In the present case, Hungary's rural development plan, which was authorised by the Commission, [12] laid down as a condition for a claim for aid that, for the use of grassland, there must be a minimum of 0.2 animals per hectare – so as to preserve grassland which is rich in flora and fauna.

27. It may therefore be stated that that condition is in turn consistent with the condition laid down in Article 37(4) of Regulation No 1257/1999, referred to above.

28. The Hungarian Government rightly noted that Article 68 of Regulation No 817/2004 unambiguously provides that administrative checks are to be exhaustive and to include cross-checks wherever appropriate, 'inter alia with data from the [IACS]' (in the German version, 'unter anderem in allen geeigneten Fällen' and, in the French version, 'entre autres, dans tous les cas appropriés').

29. In addition, that point is highlighted in recital 38 in the preamble to Regulation No 817/2004, which states that 'the administrative rules should permit better administration, monitoring and control of rural development support' and that 'in the interests of simplicity, the [IACS] foreseen in … Regulation (EC) No 1782/2003 … should be applied wherever possible'.

30. It follows from the above that Article 68 of Regulation No 817/2004 relates also to the condition regarding a certain density of livestock, in so far as that is a legal pre-condition laid down by Hungary. Thus, as regards that pre-condition, it is appropriate also to apply the provisions relating to aid for animals.

31. In that connection, Article 66(4) of Regulation No 817/2004 provides that the identification of animals and areas of land is to be

12 — On 26 August 2004, by Decision C(2004) 3235, the Commission authorised Hungary's rural development plan. Under Article 44(2) of Regulation No 1257/1999, the Commission is to appraise the proposed plans in order to determine whether they are consistent with that regulation.

carried out in accordance with Articles 18 and 20 of Regulation No 1782/2003.

32. Accordingly, since the national legislation requires, as a pre-condition for the aid in question, a certain density of livestock, it is possible and appropriate for the competent authority to cross-check the data provided in the aid application – and thus verify that the condition regarding a certain density of livestock has been met – on the basis of the IACS [13] and of the ENAR; which is the integrated identification and registration system for bovine animals established pursuant to Regulation No 1760/2000 and which is referred to in Article 18(2) of Regulation No 1782/2003. In other words, it is appropriate for the competent authority to check whether the ENAR register confirms the number of animals declared in the aid application.

B — *Questions 3 and 4*

33. By Questions 3 and 4, which it is appropriate to consider together, the referring court wishes to ascertain essentially whether, for the purposes of checking eligibility for agri-environmental aid under Article 22 of Regulation No 1257/1999, that provision, read in conjunction with Article 68 of Regulation No 817/2004, allows the competent authorities only to check the data in the national integrated identification and registration system for bovine animals (such as the ENAR) or, on the contrary, whether those provisions require the competent authorities to make other checks. If other checks must be made, the referring court wishes to ascertain the nature of those checks.

34. In that connection, Mr Nagy submits that, on the date of the application, he fulfilled all the relevant conditions and that the EU legislature could not have intended, in the case of the area payments, to make the ENAR register the only means of confirming the number of livestock present on his holding.

35. However, in common with the Hungarian Government and the Commission, I consider that the competent authorities may, where appropriate, rely exclusively on the data revealed as a result of cross-checks made with the ENAR register.

36. It follows from the documents before the Court that Mr Nagy is an 'animal keeper' under Article 2(q) of Regulation No 2419/2001. Under Article 7 of Regulation

13 — See Article 18 of Regulation No 1782/2003.

No 1760/2000, each keeper of animals is to inform the competent authority of the number of animals present on his holding. [14]

37. Moreover, reference is made in the third paragraph of Article 67(1) of Regulation No 817/2004 – and, by implication, in paragraphs 1 and 4 of Article 66 of that regulation – to the IACS, which is designed inter alia to identify the animals present on holdings. That system operates, in particular, by means of a computerised database and refers inter alia to the system for the identification and registration of bovine animals set up in accordance with Regulation No 1760/2000.

38. In that connection, the Court stressed in *Maatschap Schonewille-Prins* [15] that the award of a slaughter premium was also conditional upon compliance by the keepers of the animals concerned with the relevant EU rules on the identification and registration of bovine animals.

39. As regards that identification and registration system, the second paragraph of Article 16(3) of Regulation No 796/2004 provides – as the Commission rightly pointed out – that, subject to certain conditions, Member States may determine the aid applications in relation to which it is possible to use the data contained in the computerised database for bovine animals, as well as the conditions in accordance with which applications may be accepted in respect of animals which, according to the computerised database, were eligible for aid on a date set by the Member State. In addition, Article 57(4)(b) of that regulation provides that, where the irregularities found relate to incorrect entries in the register, a second check is to be undertaken in order to establish whether the presence of the animals concerned is to be deemed to be 'not determined'. In all other cases, the first finding is to be deemed to be valid, that is to say, including cases for which no data is available.

40. It may be added that, in relation to the identification and registration system for animals, it was noted in Special Report No 6/2004 of the Court of Auditors that the integrated identification and registration system for bovine animals was introduced in 1992 precisely in order to prevent unjustified payments; that that system has become an important element of the IACS; and that it plays an important role in the administrative control system for aid for rural development. Special Report No 6/2004 states that the practical functioning and ultimate reliability of the database depend on the keepers of animals, who need to contribute to the database in an exhaustive manner and to ensure that it

14 — In Case C-45/05 *Maatschap Schonewille-Prins* [2007] ECR I-3997, paragraph 36, the Court noted that 'that provision is drafted in mandatory terms which describe in detail the scope of the notification obligation imposed on keepers of animals and delimit precisely the period within which those keepers must perform that obligation'.

15 — Cited in footnote 14, paragraph 48.

is updated promptly. [16] According to that report, the computerised register of bovine animals – a central element of the identification and registration system – is used in a focused fashion in order to rule on the legitimacy of aid applications.

41. Those provisions of Regulation No 817/2004 whose interpretation is sought by the referring court corroborate the important role played by the ENAR register in the administrative control of rural development support. As was mentioned above, recital 38 of that regulation stresses that 'the administrative rules should permit better administration, monitoring and control of rural development support' and that 'the [IACS] … should be applied wherever possible'.

42. Article 67 of Regulation No 817/2004 provides that the initial application to join a scheme and subsequent applications for payment are to be checked in a manner which ensures effective verification of compliance with the conditions for granting support. Under Article 68, 'administrative checks shall be exhaustive and shall include cross-checks wherever appropriate, inter alia with data from the [IACS]. They shall relate to parcels and livestock covered by a support measure in order to avoid all unjustified payments of aid …'

43. As the Hungarian Government correctly observed, it follows from the above that the data in the ENAR register must not only be reliable, but also complete for the purposes of assessing whether the conditions governing eligibility for aid have been satisfied. Indeed, the Court stressed in *Maatschap Schonewille-Prins* that 'the system of identification and registration of bovine animals must be fully effective and reliable at all times so as, in particular, to enable the competent authorities, in the event of epizootic disease, to pinpoint as soon as possible the origin of an animal and immediately to take the necessary measures for the purpose of avoiding any risk to public health'. [17]

44. It is possible, therefore, to agree with the argument that the ENAR register, as an element within a complex system, attests whether the conditions for eligibility are met, be it in relation to the number of cattle or the density of livestock. As a result, it would appear that the Hivatal was indeed entitled – as

16 — Special Report No 6/2004 'The organisation of the system for the identification and registration of bovine animals in the European Union' together with the Commission's replies (pursuant to the second subparagraph of Article 248(4) of the EC Treaty) (OJ 2005 C 29, p. 1), paragraph 57.

17 — Cited in footnote 14, paragraph 41.

soon as it had determined, exclusively on the basis of the ENAR, that Mr Nagy did not have the number of cattle declared in the aid application – not to have recourse to any other means of proof.

45. It follows from the foregoing considerations that, under the second paragraph of Article 16(3) of Regulation No 796/2004, the competent authorities may, in order to refuse aid, rely exclusively on data which emerges as from cross-checks with the ENAR register, provided that those authorities have fulfilled their obligation to give information in that regard during the procedure.

C — *Question 5*

46. By Question 5, the referring court asks whether Article 22 of Regulation No 1257/1999, read in conjunction with Article 68 of Regulation No 817/2004, imposes on the national authorities an obligation to provide information concerning the preconditions for agri-environmental aid under Article 22. In the event that there is such an obligation, the referring court seeks to ascertain the nature and extent of that obligation.

47. Mr Nagy submits that, at the time of submitting his aid application, he was unaware of the fact that he was required to record in the ENAR the number of livestock present on his holding. Moreover, no one had indicated to him – whether orally or in writing, by way of notification, information, notice or instruction – that such a formality was required and that it was, in fact, a fundamental pre-condition for the aid applied for.

48. The Hungarian Government argues that neither Regulation No 1257/1999 nor Regulation No 817/2004 supports the inference that the national authorities are under an obligation to give specific information which goes beyond the duty to enable prospective applicants to acquaint themselves with the legal provisions relating to the aid in question by arranging for their publication. Furthermore, the Hungarian Government considers that, aside from the general information which is provided in communication notices, documents and guidebooks relating to aid applications, farmers can obtain the information by asking the relevant bodies.

49. The Commission submits essentially that, pursuant to the second paragraph of Article 16(3) of Regulation No 796/2004, it is for the referring court to assess whether the Member State concerned took the necessary measures.

50. In my view, in order to answer Question 5, it is first and foremost necessary to recall that, as regards fundamental rights, it is important – given the entry into force of the Lisbon Treaty – to take account of the Charter of Fundamental Rights of the European Union ('the Charter'), which, pursuant to the first subparagraph of Article 6(1) TEU, has 'the same legal value as the Treaties'.

51. The EU legal system undeniably seeks to ensure compliance with the principle of equal treatment as a general principle of law. That principle is also enshrined in Article 20 of the Charter. There can be no doubt, therefore, that the objective of complying with the principle of equal treatment is compatible with EU law.

52. In the present case the above Article 20 is applicable under Article 51(1) of the Charter because the Member State here is implementing EU law.

53. Next, according to settled case-law, the principle of equal treatment or non-discrimination requires that comparable situations must not be treated differently, and that different situations must not be treated in the same way, unless such treatment is objectively justified. [18]

54. It is true that, in the present case, Regulations No 1257/1999 and No 817/2004 do not deal with the question whether there is a particular obligation on the part of the national authorities to provide information concerning the conditions of eligibility for agri-environmental aid and, accordingly, it would appear that Mr Nagy's defence is unsubstantiated.

55. However, under the system – or, rather, the sub-system – of applications for aid in the context of the CAP, it is in fact possible to identify such an obligation.

56. The second subparagraph of Article 16(3) of Regulation No 796/2004 provides that the national authorities may, in accordance with the applicable procedures, base themselves only on the computerised database for bovine animals, subject to certain conditions (see point 9 above).

57. Although that obligation to inform is not directly relevant to Mr Nagy's case, it clearly is of relevance to farmers applying for aid in

18 — See, inter alia, Case C-343/09 *Afton Chemical* [2010] ECR I-7027, paragraph 74 and the case-law cited.

the same way as Mr Nagy did. It follows that, in principle, under a system for granting aid, the competent authorities are under an obligation to keep applicants and prospective applicants informed.

58. Accordingly, Mr Nagy, too, should have been adequately informed.

59. If it were to be accepted that, in the case before the referring court, the fact that the obligation to inform was not fulfilled had no legal effects, it would mean that at least two categories of applicants have been created within one and the same system of aid for farmers: (i) those who have a right to be informed of the legal consequences if animals are found not to have been correctly identified or registered, because the applicable legislation expressly imposes an obligation on the competent authorities to keep them informed; and (ii) those who, in spite of the fact that they find themselves in essentially the same situation, do not have such a right – because the applicable legislation makes no such express provision.

60. In my view, such a differentiation would result in a breach of the fundamental principle of equality before the law, whose concrete manifestation in the present case is the right of Mr Nagy, as an applicant for aid, to be advised of the legal consequences of not properly registering the number of bovine animals in the ENAR register – just as such a right is recognised in the case of applicants for aid under Article 16 of Regulation No 796/2004. It should be added that there is manifestly no objective justification for such a difference in treatment. I am of the opinion that such a breach would be in contravention of Article 20 of the Charter.

61. It follows from all the foregoing considerations that Question 5 should be answered to the effect that, in a case such as that before the referring court, the national authority was under an obligation to provide the aid applicant (Mr Nagy) with such information as to enable him, not only to meet all the pre-conditions for obtaining aid, but also to avoid the negative consequences – refusal of the aid application or liability to reimburse aid already received – of failing to act in accordance with that information.

62. However, it is for the referring court alone to establish, on the facts, whether or not the information made available to Mr Nagy before he submitted his aid application was sufficient to ensure that he had a realistic possibility of avoiding refusal of the aid applied for and the obligation to reimburse the aid already received.

IV — Conclusion

63. I am therefore of the opinion that the questions referred by the Fővárosi Bíróság should be answered as follows:

— 'Questions 1 and 2: In the context of assessing an application for agri-environmental aid, where the grant of aid is subject to a condition regarding a certain density of livestock even though the aid is not for animals, it is appropriate to carry out cross-checks using the integrated administration and control system (the IACS) and the national integrated identification and registration system (such as the ENAR).

— Questions 3 and 4: On the basis of Article 16 of Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003, read in conjunction with Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, as amended, and Commission Regulation (EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF), the competent national authorities may, where appropriate, rely exclusively on data which emerges as a result of cross-checks with the ENAR register.

— Question 5: As regards the obligation to provide information on the conditions governing eligibility for aid, the Member State must take the necessary measures to ensure that:

(a) in accordance with the provisions applicable to the aid scheme in question, the starting dates and end dates of the relevant retention periods are clearly identified and made known to the farmer;

(b) the farmer is aware that any animals found not to have been correctly identified or registered in the system for the identification and registration for bovine animals will count as animals found with irregularities, a finding which will produce legal effects.

It is for the referring court alone to establish, on the facts, whether the above conditions were fulfilled in the case before it.