plementing provisions other than those which might be required by the regulation itself.

2. **Once all the conditions laid down in Regulations Nos 1975/69 and 2195/69 were fulfilled, those regulations conferred on farmers a right, which national courts must protect, to payment of the slaughtering subsidy by the Member State to which they belonged; such rights could be exercised in each case at the end of the period of two months following the establishment of the proof of slaughter as provided in Article 10 of Regulation No 2195/69.**

   As from that time, the abovementioned regulations give the farmer the right to require payment of the subsidy without that Member State's being able to rely on arguments based on any legislative provisions or administrative practices to withhold such payment.

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 17 May 1972.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 26 APRIL 1972[1]

Mr President,
Members of the Court,

In view of the fact that the 'situation on the market in milk and milk products in the Community [was] marked by large and increasing surpluses', the Council of Ministers decided to establish a system of subsidies whereby farmers were to be encouraged to reduce the number of milk cows by slaughtering. This was done by Regulation No 1975 of 6 October 1969 (JO L 252, p. 1). Article 2 of that regulation provided for the grant of a subsidy (of which half was to be paid from Community funds) to cattle owners who undertook in writing 'to give up the production of milk entirely' and to have all milk cows on their farms slaughtered 'at the latest by 30 April 1970'. Detailed provisions for the computation of the subsidies were contained in Article 3 of the regulation. Article 4 provided (in so far as is relevant here) that 'For farmers having two to five milk cows, the subsidy shall be paid when the applicant submits proof that he has fulfilled the undertaking referred to in Article 2(b)' (that is, the undertaking to have all his milk cows slaughtered by 30 April 1970 at the latest).
Implementing provisions relating to this regulation were contained in Regulation No 2195/69 of the Commission of 4 November 1969 (JO L 278. p. 6). Article 3

1 — Translated from the German.

of that regulation provided that applications for payment of the slaughtering subsidy containing certain information could be submitted to the competent authority designated by each Member State until 20 December 1969. Under Article 4 the information submitted was to be examined by the competent national authorities. Article 11 provided that the Member States were to inform the Commission by 10 January 1970 of the number of applications submitted. The procedure under Article 27 of Regulation No 805/68 (OJ English Special Edition, 1968(I) p. 187) (the so-called 'Management Committee procedure') was to determine whether the applications submitted could be allowed to proceed. In the present case this was done by Regulation No 140/70 of the Commission of 26 January 1970 (JO L 20, p. 6). It determined that applications which had been submitted before 31 December 1969 could be granted. Regulation No 2195 also provided that further operations must be carried out by the competent national authority. Under Article 5 all milk cows kept on the farms concerned were to be marked; the number of milk cows giving entitlement to the subsidy was to be determined taking into account cows kept on an appointed day to be determined by each Member State, and the written undertaking 'to cease entirely the production of milk during a period of five years starting from the slaughtering of the last milk cow' and 'to have all milk cows slaughtered' made by each farmer making an application was to be registered. For this purpose the competent national authority was to issue an identification card to 'accompany each milk cow at all stages until it is slaughtered'. Pursuant to Article 7 of Regulation No 2195, slaughtering was to take place between 9 February and 30 April 1970. Proof of this was to be submitted to the competent national authority by means of the abovementioned identification card which would be given to the farmer by the manager of the slaughterhouse and also by means of a certificate from the manager of the slaughterhouse stating the time of slaughter. Finally, Article 10 further provides, and this is of particular importance in the present case, that 'Payment of the subsidy referred to in (Article 4 (1) and the first sentence of Article 4(2) of Regulation (EEC) No 1975/69 shall take place within two months of the establishment of proof of the slaughtering in accordance with Article 9 of this regulation.'

This scheme was also applied in Italy. On 23 March 1970 a circular was issued by the Ministry for Agriculture and Forestry. It provided *inter alia* that the 'ispettorati provinciali dell'agricoltura' were competent to examine the applications submitted and it named the relevant slaughterhouses. Finally, it was expressly stated that implementation of the measures was dependent upon the entry into force of a national law allocating the necessary funds; for that reason only provisional authorizations could be issued and the duty to make the payment could only be finally determined after the adoption of that law. The necessary Law (No 935) was adopted on 26 October 1971 and published in the Gazzetta Ufficiale of 12 November 1971. It provided for the allocation of Lit. 1000 million to the budget of the Ministry for Agriculture and Forestry for 1970.

The plaintiff in the main action, a farmer from the province of Brescia, also sought to benefit from this scheme. Therefore she submitted the necessary application for five milk cows on 20 December 1969. The application was accepted, and on 27 April 1970 a provisional authorization to slaughter was issued and a subsidy of Lit. 625 000 was fixed. The cows were slaughtered and the prescribed proof was submitted. However, as payment was dependent on the adoption of a law allocating the necessary funds, payment of the subsidy was not made within two months of the submission of proof of the slaughtering as provided in Article 10 of Regulation No 2195. Mrs Leonesio regards this behaviour on the part of the Italian authorities as an infringement of the right she enjoys under Community regulations. Therefore in November 1970, pursuant to Article 633 of the Italian Code of Civil Procedure, she brought an action against the Italian Ministry for Agriculture and Forestry for an order for payment of Lit. 625 000 and

the interest which had become due since 6 May 1970. By an order of 3 November 1971, the Judge stayed proceedings while they were still in their preliminary phase because the claim was based in Community law and because he thought there existed a problem of interpretation, and referred the following questions to the Court for a preliminary ruling:

(a) Whether the provisions of Regulation No 1975/69 of the Council of 6 October 1969 and of Regulation No 2195/69 of the Commission of 4 November 1969 are directly applicable in the Italian legal system and, if this question is answered in the affirmative, whether they create individual rights which national courts must protect;

(b) If the above question is answered in the affirmative, whether, in view of the provisions of Article 10 of Regulation No 2195/69, the provisions of Article 1 to 4 of Regulation No 1975/69 of the Council and of Articles 3 to 11 of Regulation No 2195/69 of the Commission must be interpreted as meaning that they have created individual pecuniary rights immediately enforceable against the State such that national legislation can have no influence whatever as to the period for payment and whether consequently this pecuniary right cannot be made subject to certain conditions but must be afforded immediate protection by the national court where:

— in application of Article 5(1) of Regulation No 2195/69 it has been established that applications for the grant of the slaughtering subsidy may be allowed to proceed (this finding having been made in the prescribed manner on 26 January 1970 by Regulation (EEC) No 140/70 of the Commission published in the JO L 20, of 27.1.1970, p. 6);

— the conditions set out in Articles 5 (2) and 6 of Regulation No 2195/69 have been fulfilled;

— the proof of slaughter of milk cows mentioned in Article 9 of Regulation No 2195/69 has been produced.

After the plaintiff in the main action, the Government of the Italian Republic and the Commission of the European Communities have submitted written and oral observations it is now my task to examine these questions.

1. I must first make two preliminary observations.

(a) The first relates to the fact that the order making the reference arose in proceedings for an order for payment under Article 633 of the Italian Code of Civil Procedure before the defendant had been heard. This has been repeatedly regretted and, earlier, even expressly stated to be illegal by the Italian government in so far as it was concerned in these proceedings. However, it is quite certain that this fact does not affect the admissibility of the reference. It suffices for proceedings under Article 177 of the EEC Treaty that the order is made by a court and that it is regarded as necessary in order to reach a judicial decision. On the other hand, the stage of the national proceedings at which the order is made is without significance. The Court of Justice most recently emphasized this in Case 43/71. This must also hold true in the present case.

(b) The second preliminary observation is concerned with the fact that the Italian Law, which, in the view of the Italians, was necessary for the application of the provisions of Community law and to which the provisional authorization granted to the plaintiff refers, has in the meantime (on 26 October 1971) been adopted. The question might thus arise whether the problem raised in the reference for a preliminary ruling concerning the direct applicability of Community law is still of any immediate interest or whether it has lost its significance because judgment against the Italian State now seems possible under national law. With regard to this point, which was also raised by the Italian Government, it can be said on the one hand that apparently, in

the absence of further implementing decrees, the abovementioned law is not yet being applied and, on the other, that the question of direct applicability of Community law is also significant with regard to the time when the right to payment arose and thus also for the question of the payment of interest. In particular, it is also important that the Court of Justice in Case 43/71 expressly stated in answer to a similar objection that even when the relevant domestic law has been modified the Court is not able to examine in proceedings under Article 177 of the Treaty whether the question referred to it is also of continuing interest in the proceedings pending before the national court. This finding is of course still valid in the present proceedings. Thus there exist no fundamental objections to an examination of the questions put.

2. The first question concerns basically the problem of the direct applicability of the Community regulations referred to in my summary of the facts.

Reference may first be made to the general legal basis for those measures, Article 189 of the EEC Treaty. That article provides that regulations have general application, that they are binding in their entirety and are directly applicable *in* all Member States. It should also be remembered that the Court of Justice emphasized in proceedings with a similar subject-matter, Case 43/71, that, by reason of their nature and their function in the system of the sources of Community law, regulations have direct effect and are, as such, capable of creating individual rights which national courts must protect.

Nevertheless, the problem concerning us here can of course not be solved so easily. Already in our examination of the facts it became clear that the practical implementation of Community measures affecting the agricultural structure in the milk production sector relies—as is frequently the case in Community law—on the cooperation of national law, and that even when Community rules are drafted in great detail they still require national measures for their administrative application. Therefore an answer to the question of the legal effects depends on the questions whether an area of discretion was left to the national authorities in the matter of implementation and in what manner the national provisions were to supplement the measures adopted. Seen in this way the present case appears as follows. The Commission set out in full on page 8 of its observations the measures which Member States were to adopt so that farmers might submit applications for the grant of the slaughtering subsidy and carry out the slaughtering within the prescribed period. The competent authorities for the processing and examination of the applications submitted had to be named; a reference date had to be fixed on which the number of cows kept was to serve as a basis for entitlement to obtain slaughtering subsidies; the number of cows for which the slaughtering subsidy was payable had to be established; those cows had to be marked; the undertaking to cease milk production for a period of five years and to have the cows slaughtered before 30 April 1970 had to be entered in a particular register; the form of the identification cards mentioned in Article 6 of Regulation No 2195 had to be determined and the cards had to be completed; the slaughterhouses to be used had to be designated and finally the Commission had to be informed of the number of applications submitted and of cows slaughtered. It may certainly be stated that the abovementioned circular from the Ministry for Agriculture and Forestry laid down all the necessary details and that therefore the Community rules had been sufficiently supplemented on the national level as regards administrative procedure. In addition however, and this is particularly important, it is clearly possible to discount the existence of any national discretionary power under the Community regulations. As the Commission rightly emphasized, the sole discretionary power in this respect lay with the Commission itself, in that it had to decide whether the applications submitted could be granted. In view of the detailed and binding rules of application contained in Article 9 of Regulation No 1975/69 of the Commission, after this decision had been taken the authorities of the Member States had only *fixed* administrative powers. This may be said because evidently no use was made of

the opportunity provided in Article 10 of Regulation No 1975/69 'to impose additional conditions for the grant of the subsidies referred to in Articles 1 and 5' with the permission of the Commission and because it may be concluded from the lack of notification to the Commission to this effect that Italy did not make use of the opportunity provided in Article 19 of Regulation No 2195/69 to adopt additional conditions. Thus in view of the legislative nature of the measures adopted by the Community, their clarity and legal completeness, it could be held that the question as to direct applicability should be answered in the affirmative, if there did not exist another objection to this finding which is, in the opinion of the Italian Government, of considerable importance. The Italian Government argues that under Italian constitutional law, in cases such as the present, the adoption of national legislation to implement Community law is necessary for two reasons. On the one hand, with regard to the problem of 'regionalization', the authorities competent to implement the Community rule had to be determined. On the other hand, Article 81 of the constitution requires that a law providing for new items of expenditure must state in what manner the necessary funds are to be allocated. Until such legislation is adopted, it is not possible to admit of a direct obligation to make payments on the basis of Community law.

In considering what opinion to adopt with regard to this objection and whether it must indeed be regarded as valid, the following consideration must not be overlooked. For measures connected with the agricultural sector such as those concerning us here, which are evidently intended to enable those concerned to commence a new activity *quickly*, for the purpose of gaining the trust of those concerned, which is an important factor in the success of the scheme, it is absolutely necessary that the intended effect should be achieved *swiftly* and *at the same time* in all the Member States. Reference is made to this in the seventh recital of the preamble to Regulation No 2195, where it is stated that 'it should be ensured that subsidies are paid in all Member States within the same period ...'. If this requirement were ignored, essential aims of the common agricultural policy would be endangered both now and in the future. However, this necessarily implies that if analysis of the Community provisions does not reveal any reservation of powers to the national legislature then reference may not be made to the rules of national budgetary law over which Community law has precedence. It cannot therefore be argued that because the national legislature holds the power to allocate the budget resources and to determine the priorities for that allocation, an enforceable claim can only arise when the Member State issues an order for payment. Measures adopted by the Member States can therefore have no influence on individual rights flowing from Community law if the whole existence of the Community is not to be put in doubt; nor may they form an obstacle to the direct applicability of Community law. Such considerations and principles have already been stated in a series of decisions of the Court of Justice on related problems, in relation to which it was emphasized that the uniform and similar implementation of laws was essential to the Community and that the possibility of national provisions altering the *scope* of Community measures was therefore excluded. The judgment of the Court in Case 34/70 ([1970] ECR 1233), according to which national implementing provisions may not amend measures of Community law, must be borne in mind, as also must the finding in the judgment in Case 13/68 ([1968] ECR 453 at p. 462) that 'The complexity of certain situations in a State cannot alter the legal nature of a Community provision which is directly applicable, and this is particularly the case considering that the Community rule must have the same binding force in all Member States'. This in fact sets out the basic premise for solving problems such as that facing us in the present case. However, a necessary result must be that the objection raised by the Italian Government carries no conviction. Accordingly, the first question must be answered to the effect that in view of their legislative nature, their clarity and the comprehensive nature of the provisions adopted, and in the absence of any national

discretionary power, the regulations mentioned in that question are directly applicable. Therefore the provisions of Article 10 of Regulation No 2195/69 create individual rights which national courts must protect.

3. The second question seeks a further, more detailed interpretation. It requires the Court to define the individual rights arising under Community law in a certain manner. The Italian Government first raised objections of principle as to admissibility. They are based on the assumption that the national court making the reference is possibly attempting to induce the Court of Justice to rule that certain national provisions are *not compatible* with Community law. In addition, the Italian Government fears that the Court of Justice is being asked to rule on directly applicable Community law in relation to Article 633 of the Italian Code of Civil Procedure, that is, the answer is sought to the question whether proceedings for an order for payment are suited to the implementation of pecuniary rights under Community regulations. In the opinion of the Italian Government, neither is possible in proceedings under Article 177 of the EEC Treaty; in particular it takes the view that the definition of any individual right from the viewpoints mentioned by the court making the reference must be reserved to the national court since a corresponding concept does not exist in Community law.

However, these objections do not stand up to close examination. On a reasonable interpretation of the order making the reference, in the light of the arguments of the plaintiff, who apparently formulated the questions referred, it is clear that the question put by the Italian court does not have the obviously inadmissible scope imputed to it by the Italian Government but is merely concerned with the following: since it is of importance in the proceedings for an order for payment under the Italian Code of Civil Procedure and for judgment of the plaintiff's claim for interest, the Italian court seeks to know whether the right to slaughtering subsidies under Community law was sufficiently certain and immediately enforceable, or whether any time-limit or conditions had to be observed before it became enforceable. The solution to this problem may certainly be given from the point of view of Community law. In view of all that has been set out above, it involves no particular difficulties and does not require lengthy examination.

The clear text of Article 10 of Regulation No 2195/69 is decisive and I should like to quote it again. It provides that 'Payment of the subsidy referred to in Article 4(1) and the first sentence of Article 4(2) of Regulation (EEC) No 1975/69 shall take place within two months of the establishment of proof of the slaughtering in accordance with Article 9 of this regulation'. It follows that national law has no power reserved to it with regard to the time when payment falls due. Thus national law cannot affect the time when payment falls due, which has been determined under Community law, by additional conditions or by prolonging the period prescribed. In addition, the amounts due were rendered sufficiently precise, on the one hand by the Community provisions which determined the amount of the subsidy, and on the other by information made available by the competent national administration as to the numbers of cattle to be taken into consideration at a reference date and the number of cows slaughtered.

It may therefore further be stated that on the basis of the Community regulations, in conjunction with the national implementing provisions, there arose a precisely determined pecuniary right, payment on which became due on the date specified in Article 10 of Regulation No 2195/69 and to which, from that date onwards, national courts were bound to afford all necessary protection.

4. I therefore suggest that the questions referred by the Pretore di Lonato should be answered as follows:

(a) The provisions of Regulations Nos 1975/69 and 2195/69 are directly applicable

in the Member States. In conjunction with national measures for administrative implementation, they established individual rights which could not be affected by national provisions and which must be protected by the courts.

(b) Once the provisions of Regulations Nos 1975/69 and 2195/69 were complied with, Article 10 of Regulation No 2195/69 established a pecuniary right which may be calculated exactly on the basis of information gathered by the national administration. That right became enforceable at the end of the period specified in Article 10 of Regulation No 2195, that is to say, two months after the production of proof of the slaughtering. From that time onwards it could be enforced with the aid of the national courts.