OPINION OF ADVOCATE GENERAL
LÉGER
delivered on 13 July 2006 [1]

1. This reference for a preliminary ruling invites the Court of Justice to decide to what extent and on what basis a Member State may reduce and/or exclude a right to a slaughter premium for bovine animals where it has been established that there has been a delay in notifying data relating to the movements of animals from or to a holding to the computerised database of the scheme for the identification and registration of bovine animals.

I — Legal framework

A — *Community law*

2. Under the first subparagraph of Article 11(1) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal, [2] a producer keeping bovine animals on his holding may qualify, on application, for a slaughter premium. It is granted on slaughter of eligible animals or their export to a third country.

3. The second subparagraph of Article 11(1) of the regulation provides:

'The following shall be eligible for the slaughter premium:

(a) bulls, steers, cows and heifers from the age of eight months,

(b) calves of more than one and less than seven months old and of carcase weight of less than 160 kilograms,

1 — Original language: French.
2 — OJ 1999 L 160, p. 21.

provided they have been held by the producer for a period to be determined.' [3]

4. Also, the 18th recital in the preamble to Regulation No 1254/1999 states that 'direct payments should be subject to compliance by the keepers of the animals concerned with the relevant Community rules on identification and registration of bovine animals'. Article 21 of the regulation therefore provides that '[t]o qualify for direct payments [under Chapter 1 of the regulation], an animal shall be identified and registered in accordance with Regulation (EC) No 820/97[[4]]'. [5]

3 — This retention period, which is a prerequisite for the grant of the slaughter premium, was defined and quantified by Commission Regulation (EC) No 2342/1999 of 28 October 1999 laying down detailed rules for the application of Council Regulation No 1254/1999 as regards premium schemes (OJ 1999 L 281, p. 30). Article 37(1) of Regulation No 2342/1999 thus provides that '[t]he premium shall be paid to the producer who has held the animal for a minimum retention period of two months ending less than one month before slaughter or export'. Furthermore, Article 37(2) of the regulation states that '[i]n the case of calves slaughtered before the age of three months, the retention period shall be one month'.

4 — Council Regulation of 21 April 1997 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products (OJ 1997 L 117, p. 1).

5 — This provision of Regulation No 1254/1999 was deleted pursuant to Article 152(b) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy 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, No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1). However, Article 138 of Regulation No 1782/2003 contains a similar provision.

5. This latter regulation was repealed by Regulation (EC) No 1760/2000 of the European Parliament and of the Council. [6]

1. The system for the identification and registration of bovine animals

6. Following the instability in the market in beef and beef products caused by the bovine spongiform encephalopathy crisis, the establishment of an efficient system for the identification and registration of bovine animals at the production stage and the creation of a specific Community labelling system in the beef sector are designed to improve consumer confidence in the quality of beef and beef products, to preserve a high level of protection of public health and to reinforce the lasting stability of the beef market. [7]

6 — Regulation 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 Regulation No 820/97 (OJ 2000 L 204, p. 1). Under Article 24(2) of Regulation No 1760/2000, '[r]eferences to Regulation ... No 820/97 shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in the Annex'.

7 — See the fourth to seventh recitals in the preamble to Regulation No 1760/2000.

7. Under the first paragraph of Article 3 of Regulation No 1760/2000, the system for the identification and registration of bovine animals comprises the following elements: eartags to identify animals individually, animal passports, individual registers kept on each holding and computerised databases.

8. According to the Community legislature, '[f]or the purpose of rapid and accurate tracing of animals for reasons relating to the control of Community aid schemes, each Member State should create a national computerised database which will record the identity of the animal, all holdings on its territory and the movements of the animals, in accordance with the provisions of Council Directive 97/12/EC of 17 March 1997 amending and updating Directive 64/432/EEC on health problems affecting intra-Community trade in bovine animals and swine,[8] which clarifies the health requirements concerning this database'.[9] Article 5 of Regulation No 1760/2000 therefore provides that the competent authorities of the Member States shall set up a computerised database containing, by 31 December 1999, all data required pursuant to Directive 64/432.[10]

9. Article 7(1) of that regulation provides:

'With the exception of transporters, each keeper of animals shall:

— keep an up-to-date register,

— once the computerised database is fully operational, report to the competent authority all movements to and from the holding and all births and deaths of animals on the holding, along with the dates of these events. ...'

10. Moreover, Article 22(1) of the regulation is worded as follows:

'Member States shall take all the necessary measures to ensure compliance with the provisions of this Regulation. ....

8 — OJ 1997 L 109, p. 1.

9 — Fourteenth recital in the preamble to Regulation No 1760/2000.

10 — OJ 1964 121, p. 1977.

Any sanctions imposed by the Member State on a holder shall be proportionate to the gravity of the breach. The sanctions may involve, where justified, a restriction on movement of animals to or from the holding of the keeper concerned.'

2. The integrated administration and control system for certain Community aid schemes

11. This integrated system was introduced by Council Regulation (EEC) No 3508/92. [11] It reflects the express wish of the legislature to define administration and control mechanisms covering the aid schemes for arable crops, beef and veal, sheepmeat and goatmeat, so as to implement the direct payment schemes introduced in response to the common agricultural policy reform decided in 1992. The fifth recital in the preamble to that regulation states that 'the integrated system should comprise, in each Member State, a computerised database, an alphanumeric identification system for agricultural parcels, aid applications from farmers, a harmonised control system and, in the livestock sector, a system for the identification and recording of animals'.

12. Commission (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes [12] is designed to monitor effectively compliance with the provisions on Community aid and also to adopt provisions to prevent and penalise irregularities and fraud effectively.

13. For that purpose, the ninth recital in the preamble to that regulation states that 'there should be sanctions graded according to the gravity of the irregularity committed, going as far as total exclusion from a scheme for the year in question and the year thereafter'. Accordingly, Article 10b of the regulation provides for sanctions varying from reduction to withdrawal of the aid, where administrative or on-the-spot checks reveal a difference between the number of animals declared in an aid application and the number of eligible animals found.

11 — Regulation 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.

12 — Regulation No 3887/92 (OJ 1992 L 391, p. 36), as last amended by Commission Regulation (EC) No 2721/2000 of 13 December 2000 (OJ 2000 L 314, p. 8; 'Regulation No 3887/92').

14. Furthermore, under Article 11(1) of Regulation No 3887/92, 'the penalties laid down in this Regulation shall be without prejudice to additional penalties laid down at national level'.

15. Finally, the first paragraph of Article 15 of Regulation No 3887/92 provides:

'Member States shall take all further measures required for application of this Regulation ... In this respect [they] may also provide appropriate national sanctions against producers or other marketing participants such as slaughterhouses or associations involved in the procedure for granting aid in order to ensure the compliance with control requirements such as the current herd register of the holding or the respect of notification obligations.'

16. Regulation No 3887/92 was repealed by Commission Regulation (EC) No 2419/2001. [13] However, Article 53(1) of the latter regulation provides that Regulation No 3887/92 'shall continue to apply in respect of aid applications relating to marketing years or premium periods which expire before 1 January 2002'. [14]

17. Article 44 of Regulation No 2419/2001, entitled 'Exceptions from the application of reductions and exclusions', is worded as follows:

'1. The reductions and exclusions provided for in this Title shall not apply where the farmer submitted factually correct information or where he can show otherwise that he is not at fault.

2. The reductions and exclusions provided for in this Title shall not apply with regard to those parts of the aid application as to which the farmer informs the competent authority in writing that the aid application is incorrect or has become incorrect since it was lodged, provided that the farmer has not been informed of the competent authority's intention to carry out an on-the-spot check and that the authority has not already informed

13 — 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 No 3508/92 (OJ 2001 L 327, p. 11). Regulation No 2419/2001 was itself repealed by 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 No 1782/2003 (OJ 2004 L 141, p. 18).

14 — See the corrigendum to Regulation No 2419/2001 (OJ 2002 L 7, p. 48).

the farmer of any irregularity in the application.

The information given by the farmer as referred to in the first subparagraph shall have the effect that the aid application is adjusted to the actual situation.'

18. Furthermore, Article 45 of that regulation, entitled 'Amendments and adjustments of entries in the computerised database', provides, at paragraph 1, that '[i]n respect of claimed bovine animals, Article 44 shall apply from the time the aid application is submitted to errors and omissions in relation to entries in the computerised database'.

19. Finally, Article 47 of the regulation, entitled 'Accumulation of sanctions', provides, at paragraph 2, that '[s]ubject to Article 6 of Council Regulation (EC, Euratom) No 2988/95, [15] the reductions and exclusions under this Regulation shall be without prejudice to additional sanctions pursuant to any other provisions under Community or national law'.

15 — Regulation of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1).

B — *National legislation*

20. The Bovine Animals Identification and Registration Regulations 1998 (Verordening identificatie en registratie runderen 1998) issued by the Livestock and Meat Board (Productschap Vee en Vlees) ('the PVV regulations') provide:

'...

Article 12

1. A keeper, with the exception of a transporter, shall be obliged to record the information referred to in Article 4(3) and the second indent of Article 7(1) of Regulation No 820/97 in the register accurately and completely.

...

Article 13

1. A keeper, with the exception of a transporter, shall be obliged to notify the information referred to in Article 12(1) of these Regulations ... to the service within a period of three working days.'

21. Furthermore, Article 2.3(2) of the Netherlands EC Animal Premiums Order (Regeling dierlijke EG-premies; 'the Order') provides:

'On application, a premium shall be granted to producers in accordance with the provisions of this Order and Regulations Nos 1254/1999 and 2342/9099 in respect of the slaughter or export to a third country of a bovine animal which, on the date of the slaughter or export to a third country, is at least eight months old according to entries in the identification and registration register.'

22. Article 2.4b(2) of the Order states that '[a]pplications for premiums in respect of the slaughter of bovine animals in an abattoir situated in the Netherlands shall be submitted through notification of the slaughter to the identification and registration register by the abattoir in question in accordance with the provisions of the PVV regulations'.

23. Lastly, Article 4.9 of the Order provides:

'1. No premium shall be granted for bovine animals in respect of which the producer has not complied within 25 days with the provisions incumbent on him under the [PVV regulations] regarding notification to the identification and registration register of the date of birth, the date of delivery to or removal from his holding or the date of slaughter or export to a third country, where the notification obligation in question arose on or after 1 January 2000.

2. The premium shall be reduced by 25% for bovine animals in respect of which the producer has not complied punctually, but has done so within 25 days of the event concerned, with the provisions incumbent on him under the [PVV regulations] regarding notification to the identification and registration register of the date of birth, the date of delivery to or removal from his holding or the date of slaughter or export to a third country, where the notification obligation in question arose on or after 1 January 2000.'

II — Facts and procedure in the main action

24. Maatschap Schonewille-Prins ('Schonewille') runs an agricultural undertaking in the Netherlands specialising in the rearing of bovine animals. On 1 February 2001, the company applied to the Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality; 'the Minister') for a slaughter premium pursuant to the Order in respect of 365 bovine animals.

25. By decision of 24 June 2002, the Minister notified Schonewille that, of the bovine animals in respect of which it had applied for a slaughter premium for the 2001 slaughter premium year, 260 were wholly or partially eligible for premium, while 105 bovine animals were ineligible. That decision was subsequently amended by the Minister, who considered that 15 more bovine animals were fully eligible and another animal was ineligible.

26. Schonewille lodged an objection to the Minister's decision, disputing in particular the premium reductions and exclusions. The Minister rejected that objection by decision of 19 June 2003.

27. In that decision, the Minister confirmed the total exclusion of premium for one bovine animal on the ground that notification to the identification and registration register had not been made within the period laid down in Article 4.9(1) of the Order. He also confirmed the 25% reduction in the premium claimed in respect of a group of bovine animals, since notification to the register had not been made punctually but it had been done within the period of 25 days stipulated in Article 4.9(2) of the Order, plus five processing days.

28. By letter of 30 July 2003, Schonewille brought an appeal against that decision before the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) (Netherlands). It maintains that the Minister was wrong to hold that a late notification of delivery to the identification and registration register could justify a rejection of or reduction in the slaughter premium. According to Schonewille, its animals satisfy the condition laid down in Article 21 of Regulation No 1254/1999 because they are identified in accordance with Article 4(1) of Regulation No 1760/2000 (two official eartags) and are recorded in accordance with Article 7(1) of that regulation. Schonewille is also of the view that the Member States may not lay down additional conditions concerning the identification and registration of bovine animals, such as those contained in Article 4.9 of the Order, in order to determine whether bovine animals are eligible for a slaughter premium.

III — The reference for a preliminary ruling

29. In its order for reference, the College van Beroep voor het bedrijfsleven wonders whether, having regard to the irregularities established concerning notifications of delivery made by Schonewille to the keeper of the identification and registration register, the Minister is entitled to exclude wholly or partially the claim for a slaughter premium made under Regulation No 1254/1999.

30. This presents the national court with the question as to how to interpret Article 21 of that regulation, which, let us not forget, provides that, in order to qualify for direct payments, 'an animal shall be identified and registered in accordance with [Regulation No 1760/2000]'. The court maintains that it is possible to conceive an 'extensive interpretation' of the condition laid down in Article 21, which means, from this viewpoint, that, in order to qualify for the full slaughter premium, all the requirements of Regulation No 1760/2000 should be complied with, including the requirements regarding the punctual notification of information concerning delivery and removal of bovine animals, as laid down in the second indent of Article 7(1) of the regulation. Accepting that interpretation would have the consequence that any irregularity in recording information, however slight, would result in the complete exclusion of the premium. The question then arises whether that interpretation of Article 21 of Regulation No 1254/1999 infringes the principle of proportionality.

31. The national court also wonders whether Articles 44 and 45 of Regulation No 2419/2001 are applicable to the present case. If, having regard to the findings of the Court of Justice in its judgment in *Gerken*,[16] Article 45(1) of that regulation is to be applied retroactively, the court is faced with the question whether the correct application of that article, in conjunction with Article 44 of the same regulation, means that the exclusion of slaughter premium is not applicable to an omission relating to the notification of information to the keeper of the computerised database if the information provided, such as in this case the dates of delivery, is factually entirely accurate.

32. The national court has therefore decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 21 of Regulation No 1254/1999 to be interpreted as meaning that any irregularity in com-

16 — Case C-295/02 [2004] ECR I-6369.

plying with Regulation No 1760/2000 in respect of an animal results in the complete exclusion of slaughter premium for that animal?

(2) If Question 1 is to be answered in the affirmative, is Article 21 of Regulation No 1254/1999 then binding, in particular regarding the resulting consequences?

(3) Are Articles 44 and 45 of Regulation No 2419/2001 applicable to irregularities in complying with Regulation No 1760/2000?

(4) If Question 3 is to be answered in the affirmative, does the correct application of Article 45 of Regulation No 2419/2001 in conjunction with Article 44 mean that the exclusion of slaughter premium is not applicable to an omission relating to the notification of information to the keeper of the computerised database if the information provided, such as in this case the dates of delivery, is factually entirely accurate (and was also correct from the very beginning and therefore did not need to be amended)? If this does not apply to every omission, does it apply in the situation at issue in this dispute, where the omission has consisted of the late provision of information (by a few days or a few weeks), with slaughter taking place some considerable time later?

(5) Is Article 11 of Regulation No 3887/92 and/or Article 22 of Regulation No 1760/2000 and/or Article 47(2) of Regulation No 2419/2001 to be interpreted as meaning that a Member State is authorised to exclude the Community right to a slaughter premium or apply reductions to it by means of a national sanction to ensure compliance with the provisions of the regulation?

(6) If Question 5 is to be answered wholly or partially in the affirmative, do the exceptions from Community reductions and exclusions laid down at Community level, in particular Articles 44 and 45 of Regulation No 2419/2001, apply by analogy to national reductions and exclusions?

(7) If Question 6 is to be answered in the affirmative, does a correct application of Article 45 of Regulation No 2419/2001 in conjunction with Article 44 mean that omissions relating to the notification of information to the computerised database, in particular the late provision of information, cannot result in the exclusion of slaughter premium if the information in the register, such as in this case the date of delivery, is factually entirely accurate?'

IV — Analysis

A — *Question 1*

33. By this question, the national court wishes to know, in essence, whether Article 21 of Regulation No 1254/1999 is to be interpreted as meaning that any irregularity in complying with Regulation No 1760/2000, such as the late notification to the computerised database of the delivery of a bovine animal to or removal from a holding, results in the complete exclusion of slaughter premium for that animal.

34. The Commission of the European Communities suggests that this question should be answered in the affirmative. It points out that Article 21 of Regulation No 1254/1999 expressly provides that direct payments, such as the slaughter premium for bovine animals, are conditional on compliance with the rules governing the identification and registration of animals laid down in Regulation No 1760/2000. By making compliance with those rules, and more particularly the rule relating to the deadline for notification, a condition for granting the premium, the Community legislature sought to include an incentive for producers to comply with those rules in the common organisation of the beef and veal sector.

35. The Commission points out, in that regard, that compliance with the rules governing the identification and registration of bovine animals is essential to the achievement of the objectives pursued by Regulation No 1760/2000, namely to improve consumer confidence in the quality of beef and beef products, to preserve a higher level of protection of public health and to reinforce the lasting stability of the beef market. [17] The system of identification and registration of bovine animals must work properly and be completely reliable in order, in particular, to enable the competent authorities to pinpoint immediately the origin of an animal in the event of epizootic. These requirements of effectiveness and reliability mean that the information relating to the arrival, departure, birth or death of an animal must be notified within the period of three to seven days laid down in the second indent of Article 7(1) of Regulation No 1760/2000. Any exceeding of that deadline therefore results in the complete exclusion of slaughter premium for the animals concerned.

36. I do not agree with that analysis. Following the example of Schonewille and the Netherlands Government, I consider, in fact, that Article 21 of Regulation No 1254/1999 cannot be interpreted as meaning that any irregularity in complying with Regulation No 1760/2000, such as the late notification to the computerised data-

17 — The Commission is referring to the fourth to seventh recitals in the preamble to Regulation No 1760/2000.

base of the delivery of a bovine animal to or removal from a holding, automatically results in the complete exclusion of slaughter premium for that animal.

37. More specifically, and contrary to the premiss on which the Commission bases its arguments, I do not believe that it is correct to regard notification of the removal of a bovine animal within a period of between three and seven days as a *condition of eligibility* for the slaughter premium.

38. Before setting out the reasons which have led me to that conclusion, I should outline briefly the procedure which the competent national authorities must follow when dealing with claims for 'livestock' aid within the framework of the integrated administration and control system.

39. The first stage concerns the fixing of the basis for calculating the aid. [18] Thus, if the number of animals declared in an aid application exceeds the number of animals found during administrative or on-the-spot checks, the amount of aid payable to the farmer is calculated according to the number of animals found, that is to say, the number of animals whose compliance with the conditions of eligibility for aid has been checked and confirmed by the competent authorities. [19] It follows that aid is not granted in respect of animals which do not satisfy the conditions for eligibility.

40. The second stage consists in the possible application of sanctions to the total amount of aid which the farmer may claim at the end of the first stage. [20] The purpose of these is to impose a financial penalty on the farmer based on the difference between the number of animals declared in the aid application and the number of eligible animals found. Those sanctions consist either in a reduction in the amount of the aid or in the complete exclusion of aid.

41. The third stage may lead to an adjustment in the amount of aid calculated at the end of the second stage, since exceptions are provided to the imposition of the Community sanctions. [21] That applies in particular where the farmer, on finding that the

18 — See Article 10(3) of Regulation No 3887/92.

19 — See, to that effect, Case C-63/00 *Schilling and Nehring* [2002] ECR I-4483, paragraph 32.

20 — See Article 10b of Regulation No 3887/92.

21 — See, in particular, Article 11(1a) of Regulation No 3887/92.

application which he has lodged contains unintentional errors, informs the competent authority in time.

42. Finally, it is important to point out that, under the system thus described, the penalties laid down in Regulation No 3887/92 apply without prejudice to additional penalties laid down at national level, [22] and that, under Article 15 of that regulation, Member States are authorised to provide appropriate national sanctions against producers or other operators 'in order to ensure the compliance with control requirements such as the current herd register of the holding or the respect of notification obligations'.

43. Now that those points have been made, it is necessary to set out the circumstances in which an animal which has been slaughtered or exported to a third country is regarded as qualifying for a slaughter premium under Community law.

44. Those conditions are contained in Articles 11(1) and 21 of Regulation No 1254/1999 and Article 37 of Regulation No 2342/1999. They may be summarised as follows:

— a slaughter premium may be claimed in respect of bulls, steers, cows and heifers from the age of eight months, and calves of more than one and less than seven months old and of carcase weight of less than 160 kilograms;

— the producer must have held the animal for a minimum retention period of two months ending less than one month before slaughter or export; in the case of calves slaughtered before the age of three months, the retention period is one month; and finally

— the animals must be identified and registered in accordance with Regulation No 1760/2000.

45. It is this last condition for eligibility for the slaughter premium that the national court is asking the Court of Justice to define. In that respect, two interpretations may be considered. The first, which the Commission supports, requires that, to qualify for the premium, an animal has to comply with all the rules laid down in Regulation

22 — See Article 11(1) of that regulation.

No 1760/2000, including those relating to the deadline for notifying a movement to the computerised database. The second interpretation, to which I subscribe, gives priority to verification, at the time the competent authority has to decide whether there is justification for granting the slaughter premium, that an animal is actually correctly identified and registered in the various parts of the system for the identification and registration of bovine animals established by Regulation No 1760/2000.

46. In my view, several factors support this second interpretation.

47. First, it is not expressly stated in Article 21 of Regulation No 1254/1999 that the payment of the slaughter premium is conditional on compliance with all the rules laid down in Regulation No 1760/2000. I consider that the terms used in that article indicate rather that there is an obligation of result, namely that the animals in respect of which the premium is claimed must actually be correctly identified and registered in the various parts of the system for the identification and registration of bovine animals at the time the competent authority has to decide whether there is justification for granting the slaughter premium.

48. Consequently, an animal 'identified and registered in accordance with [Regulation No 1760/2000]', within the meaning of Article 21 of Regulation No 1254/1999, must, in my view, be understood to be an animal which:

— is individually identified by the eartags referred to in Article 4 of Regulation No 1760/2000;

— is individually identified by a passport in accordance with Article 6 of that regulation;

— has been recorded in the computerised database in accordance with Article 5 of the said regulation, and is entered in the farmer's register in accordance with Article 7 thereof.

49. That analysis is confirmed by the wording of Article 10d of Regulation No 3887/92, which lists the criteria for verifying that the bovine animal may be regarded as an 'animal established' within the meaning of Articles 10 and 10b of that regulation, that is to say, an animal in respect of which all of the conditions for granting aid are satisfied. I note, in that regard, that observance of the

deadline for notifying a movement of bovine animals to the computerised database is not expressly mentioned as being one of those criteria.

50. Secondly, the organisation and objectives of the Community legislation relating both to the system for the identification and registration of bovine animals and to the integrated administration and control system for certain aid schemes show that, in adopting Article 21 of Regulation No 1254/1999, the Community legislature intended to make the granting of direct payments such as the slaughter premium conditional not on compliance with all the procedural rules governing the administration of aid schemes but, more fundamentally, on the proper identification and registration of the bovine animals.

51. As well as the connection which, as we have seen, must be made between Article 21 of Regulation No 1254/1999 and Article 10d of Regulation No 3887/92, the provisions of the latter regulation which relate to controls confirm this analysis. Thus, it is apparent from Article 6(6)(d) of that regulation that on-the-spot checks of livestock include in particular a check that all bovine animals present on the holding, for which aid applications have been lodged or which may be the subject of future aid applications, are identified by eartags and passports, entered in the farmer's register and recorded in the computerised database.

52. Also, as regards more particularly the computerised database, I consider that it plays an important role in the system of verification of the aid applications. It enables 'cross-checks' to be made as part of the administrative checks [23] and serves as a reference during on-the-spot checks to ensure eligibility for the aid. [24] More generally, as is pointed out in the 14th recital in the preamble to Regulation No 1760/2000, the computerised database enables the 'rapid and accurate tracing of animals for reasons relating to the control of Community aid schemes'. It is therefore essential that the information relating to bovine animals which are the subject of an aid application are properly recorded in that database at the time the competent authority carries out its check. That information must include inter alia the movements to and from the holding and all births and deaths of animals on the holding, along with the dates of these events, as required under the second indent of Article 7(1) of that regulation. Proper registration of that information in the computerised database is therefore crucial in enabling the competent authority to check that the other conditions for eligibility for

23 — See Article 6(2) of Regulation No 3887/92. This idea is also present in Article 16(b) of Regulation No 2419/2001, which provides that the administrative checks shall include in particular 'cross-checks by means of the computerised database to verify eligibility for the aid'.

24 — See Article 6(6) of Regulation No 3887/92.

the slaughter premium are satisfied, by verifying compliance with the age criteria from the date of birth recorded in the database and also with the criterion of the retention period.

53. Consequently, where, at the end of an administrative or on-the-spot check, the competent authority concludes that the information relating to a bovine animal which is the subject of an aid application is not properly registered in the computerised database, it must hold that that animal does not qualify for aid and therefore the slaughter premium cannot be paid in respect of it.

54. On the other hand, if, at the time the competent authority has to take the decision whether or not to grant aid, that information is properly recorded in the database and it is therefore possible to check that the aid application is justified, the discovery that in the past there has been late notification of the movement of one or more bovine animals cannot, as such, affect the actual principle that the aid should be granted. In other words, that discovery has no bearing on an animal's eligibility for the aid claimed.

55. That idea is supported by the provisions of Regulation No 2419/2001, which succeeded Regulation No 3887/92. The 28th recital in the preamble to that regulation confirms that '[t]he proper identification and registration of bovine animals is an eligibility condition pursuant to Article 21 of Regulation ... No 1254/1999'. Moreover, it is interesting to note that Regulation No 796/2004, the purpose of which, let us not forget, is to lay down detailed rules for the implementation of cross-compliance, modulation and also the integrated administration and control system provided for in Regulation No 1782/2003, states, in the 68th recital, that incorrect data contained in the computerised database constitutes not only 'a non-respect of a cross-compliance obligation but also a breach of an eligibility criterion'. However, those provisions do not expressly mention observance of the deadline for notification to the computerised database as constituting a condition of eligibility for the slaughter premium.

56. Thirdly, it is important to point out that the interpretation according to which observance of the deadline for notifying movements of bovine animals to the computerised database constitutes a condition of eligibility for the slaughter premium is incompatible with the requirement that the conditions for granting that aid be the same in all the Member States of the European Union.

57. Indeed, since the second indent of Article 7(1) of Regulation No 1760/2000

provides that that deadline shall be fixed by the Member State within a margin of between three and seven days, it is very likely that the length of the period will vary according to the Member State. [25]

58. However, although we may find it conceivable that procedural rules relating to the administration of the aid schemes may, within certain limits, be left to the discretion of the Member States, it is, on the other hand, difficult to accept that the conditions of eligibility for the grant of Community aid should differ depending on the place in which the applicants have their farms. Besides, that solution would culminate in inequality of treatment between the farmers. In my view, these considerations show that the Community legislature did not intend that observance of the deadline for notifying the computerised database should be a condition of eligibility for the slaughter premium for bovine animals. [26]

59. I should add, lastly, that it is paradoxical that non-compliance (however slight) with that deadline should automatically lead to complete exclusion from aid, although it is apparent from the first subparagraph of Article 8(1) of Regulation No 3887/92 that late lodgement of an aid application leads to a 1% reduction per working day in the amounts affected by the application to which the farmer would have been entitled if the application had been lodged within the deadline, and that only if the delay amounts to more than 25 days is the application considered inadmissible and no aid granted.

60. In the light of all these considerations, I consider that Article 21 of Regulation No 1254/1999 should be interpreted as meaning that compliance with the deadline for notifying a movement of bovine animals to the computerised database, as required by the second indent of Article 7(1) of Regulation No 1760/2000, does not constitute a condition of eligibility for the slaughter premium. It cannot therefore be inferred from those provisions that late notification of a movement of bovine animals to the computerised database automatically results, on its own, in exclusion from the right to a slaughter premium for those animals.

61. I believe that the above analysis in no way contradicts the objectives stated by the Community legislature in Regulation No 1760/2000, namely, to improve consu-

25 — That time-limit for notification may also vary depending on certain circumstances. The final sentence of the second indent of Article 7(1) of Regulation No 1760/2000 provides that, 'at the request of a Member State, ... the Commission may determine the circumstances in which Member States may extend the maximum period ...'.

26 — That analysis also applies as regards another period laid down by Article 4(2) of Regulation No 1760/2000, namely the period within which the eartag must be applied to each of the animal's ears, for identification purposes.

mer confidence in the quality of beef and beef products, to preserve a higher level of protection of public health and to reinforce the lasting stability of the beef market. [27]

62. I agree with the Commission when it points out that the system of identification and registration of bovine animals must work properly and be completely reliable in order, in particular, to enable the competent authorities to pinpoint immediately the origin of an animal in the event of epizootic. These requirements of effectiveness and reliability definitely mean that the information relating to the arrival, departure, birth or death of an animal must be notified within the period of three to seven days laid down in the second indent of Article 7(1) of Regulation No 1760/2000.

63. However, contrary to the Commission's arguments, we have seen that, under the relevant Community legislation, the exceeding of that period does not seem to result automatically in complete exclusion of the slaughter premium for the animals concerned.

64. It therefore remains to be decided how and on what basis that exceeding must be penalised by the competent national authorities. That will be the subject-matter of my analysis when I examine Question 5.

65. Finally, in view of the fact that I propose that the Court of Justice reply to Question 1 in the negative, there is no need to reply to Question 2.

B — *Question 3*

66. By this question, the national court wishes to know, in essence, whether Articles 44 and 45 of Regulation No 2419/2001 are applicable to an irregularity in complying with Regulation No 1760/2000, such as late notification of a movement of bovine animals to the computerised database.

67. It should be pointed out, first, that Regulation No 2419/2001 is not, in principle,

27 — See the fourth to seventh recitals in the preamble to Regulation No 1760/2000.

applicable to the facts of the main action, since these are covered *ratione temporis* by Regulation No 3887/92. However, the Court of Justice held, in its judgment in *Gerken*, that Article 2(2) of Regulation No 2988/95 [28] is to be interpreted as meaning that where, in an application for 'livestock' aid covered *ratione temporis* by Regulation No 3887/92, there is an irregularity giving rise to a penalty under Article 10(2)(a) of that regulation, [29] the competent authorities must apply retroactively the provisions of Article 44(1) of Regulation No 2419/2001, on the ground that those provisions are less severe as regards the conduct in question. [30]

68. However, that being said, it must be pointed out that an irregularity in complying with Regulation No 1760/2000, such as late notification of a movement of bovine animals to the computerised database, is not covered by Articles 44 and 45 of Regulation No 2419/2001.

69. In fact, the purpose of those two articles is inter alia to provide exceptions to the application, for bovine animals which are the subject of aid applications, of the reductions and exclusions provided for under Title IV of that regulation.

70. As I pointed out above, when describing the procedure which the competent national authorities must follow when dealing with claims for 'livestock' aid within the framework of the integrated administration and control system, the Community reductions and exclusions which are applied during the second stage of that procedure are designed to impose a financial penalty on the farmer *based on the difference between the number of animals declared in the aid application and the number of eligible animals found.* I would point out in that regard that the number of eligible animals found is the number of animals in respect of which compliance with the conditions of eligibility for the aid has been checked and confirmed by the competent authority.

71. However, since, as I have shown above, observance of the deadline for notifying a movement of bovine animals to the computerised database cannot be regarded as a condition of eligibility for the slaughter premium, the discovery that that deadline has been exceeded will not alter the number of eligible animals found following those checks. There will therefore be no difference between the number of animals declared in

28 — The article is worded as follows: 'No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively.'

29 — That article became the first and second subparagraphs of Article 10b(2) following the adoption of Commission Regulation (EC) No 2801/1999 of 21 December 1999 amending Regulation No 3887/92 (OJ 1999 L 340, p. 29).

30 — See paragraph 61 of the judgment.

the aid application and the number of eligible animals found, and, consequently, there are no grounds for applying the Community reductions and exclusions provided for in Article 10b of Regulation No 3887/92.

72. In such a case, therefore, there can be no application of the exceptions to the Community reductions and exclusions provided for in Articles 44 and 45 of Regulation No 2419/2001. [31]

73. I therefore suggest that the Court of Justice reply to the national court that Articles 44 and 45 of Regulation No 2419/2001 are not applicable to an irregularity in complying with Regulation No 1760/2000, such as the late notification of a movement of bovine animals to the computerised database.

74. Since I propose that the Court answer Question 3 in the negative, there is no need to reply to Question 4.

C — *Question 5*

75. By this question, the national court wishes to know whether Article 11 of Regulation No 3887/92 and/or Article 22 of Regulation No 1760/2000 and/or Article 47(2) of Regulation No 2419/2001 are to be interpreted as meaning that a Member State may reduce or exclude the right to a slaughter premium by means of a national sanction to ensure compliance with the provisions of the Community legislation.

76. First, it must be stressed how important it is for the competent national authority to impose sanctions if the farmer exceeds the deadline for notification laid down in the second indent of Article 7(1) of Regulation No 1760/2000. Such sanctions will encourage the farmer to observe the deadline laid down at national level. In that regard, the importance of observance of the deadline to ensure 'efficient tracing [of bovine animals] in real time' [32] must not be underestimated. Tracing is essential for reasons of public health, particularly following the bovine spongiform encephalopathy crisis. From that point of view, the imposition of sanctions at national level is necessary in order to

31 — See, to the same effect, the written observations submitted by the Netherlands Government, points 23 and 24. Also, Articles 68 and 69 of Regulation No 796/2004, by referring to the 'reductions and exclusions provided for in Chapter I', confirm that the exceptions from the application of those sanctions relate only to 'findings in relation to eligibility criteria' (heading of Chapter I of Title IV).

32 — See Special Report No 6/2004 of the Court of Auditors on the organisation of the system for the identification and registration of bovine animals in the European Union together with the Commission's replies (OJ 2005 C 29, p. 1, point 53). It is also interesting to note the percentages of movement reports subject to delay in 2001 (delays of more than seven days after the event, see Diagram 4); in Italy the figure was more than 90% for that year.

achieve the objectives set by Regulation No 1760/2000, namely to improve consumer confidence in the quality of beef and beef products, to preserve a high level of protection of public health and to reinforce the lasting stability of the beef market. [33]

77. I would also point out that the duty of the Member States to adopt those sanctions is expressly stated in the first subparagraph of Article 22(1) of that regulation, which states that 'Member States shall take all the necessary measures to ensure compliance with the provisions of [the] Regulation'. The second subparagraph of Article 22(1) limits that power by stipulating that '[a]ny sanctions imposed by the Member State on a holder shall be proportionate to the gravity of the breach'.

78. Since Article 22(1) leaves the Member States a wide discretion in deciding the kind of sanction to apply in the event of late notification, provided that it is proportionate to the gravity of the irregularity committed, I consider that they have the option to provide for sanctions consisting in a reduction or even, in particularly serious cases, in an exclusion of the right to the slaughter premium. In order to assess the proportionality of the sanctions which they apply, the competent national authorities may find it helpful to refer to criteria such as the repetition or duration of the irregularity. I consider that, if the deadline for notifying movements of bovine animals to the computerised database is exceeded, the length of the delay is the main criterion to be taken into consideration.

79. Finally, I note that the Community legislature envisages other kinds of sanction, by providing, in the final sentence of the second subparagraph of Article 22(1) of Regulation No 1760/2000, that the sanctions 'may involve, where justified, a restriction on movement of animals to or from the holding of the keeper concerned'. [34] However, the fact that other kinds of sanction may be imposed does not affect the power of the Member States, in fulfilling their obligation to adopt any measures necessary to ensure compliance with the provisions of Regulation No 1760/2000, to impose financial sanctions consisting in the reduction or even the exclusion of the right to a slaughter premium.

33 — See the fourth to seventh recitals in the preamble to Regulation No 1760/2000.

34 — As regards this last kind of sanction, see also Article 4 of Commission Regulation (EC) No 494/98 of 27 February 1998 laying down detailed rules for the implementation of Regulation No 820/97 as regards the application of minimum administrative sanctions in the framework of the system for the identification and registration of bovine animals (OJ 1998 L 60, p. 78). The fourth recital in the preamble to that regulation states that ' it is necessary to lay down sanctions regarding certain situations where the provisions of [Regulation No 1760/2000] are not complied with; ... such situations include non-compliance with all or some of the requirements regarding identification and registration, payment of charges and notification'.

80. It is apparent from the above analysis that, in my view, Article 22 of Regulation No 1760/2000 is to be interpreted as meaning that a Member State may reduce or exclude the right to a slaughter premium, by means of a national sanction, to ensure compliance with the provisions of that regulation, as set out in the second indent of Article 7(1) thereof, provided that the sanction imposed is proportionate to the gravity of the irregularity.

82. When I considered Question 3, I suggested that the Court reply to the national court that Articles 44 and 45 of Regulation No 2419/2001 are not applicable to an irregularity in complying with Regulation No 1760/2000, such as the late notification of a movement of bovine animals to the computerised database. Nor are those articles intended to apply in the case of national reductions or exclusions designed to penalise that kind of irregularity. Moreover, the wording of Article 44(1) of Regulation No 2419/2001 expressly refers to the reductions and exclusions laid down in the provisions of Title IV of that regulation.

D — *Question 6*

83. It follows that the exceptions from the Community reductions and exclusions provided for in Articles 44 and 45 of Regulation No 2419/2001 cannot be applied to the national reductions and exclusions designed to penalise the late notification of a movement of bovine animals to the computerised database.

81. By this question, the national court is essentially asking the Court of Justice to rule whether the exceptions from the Community reductions and exclusions provided for in Articles 44 and 45 of Regulation No 2419/2001 apply by analogy to the national reductions and exclusions designed to penalise the late notification of a movement of bovine animals to the computerised database.

84. In view of the reply I therefore suggest the Court give to this sixth question, there is no need to consider the seventh and final question.

V — Conclusion

85. In the light of the foregoing considerations, I propose that the Court of Justice give the following reply to the questions referred for a preliminary ruling by the College van Beroep voor het bedrijfsleven:

(1) Article 21 of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal is to be interpreted as meaning that compliance with the deadline for notifying a movement of bovine animals to the computerised database, which is laid down in the second indent of Article 7(1) of Regulation (EC) No 1760/2000 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, does not constitute a condition of eligibility for the slaughter premium. It cannot therefore be inferred from those provisions that late notification of a movement of bovine animals to the computerised database automatically results, on its own, in exclusion from the right to a slaughter premium for those animals.

(2) Articles 44 and 45 of Commission Regulation (EC) No 2419/2001 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 do not apply to an irregularity in complying with Regulation No 1760/2000, such as the late notification of a movement of bovine animals to the computerised database.

(3) Article 22 of Regulation No 1760/2000 is to be interpreted as meaning that a Member State may reduce or exclude the right to a slaughter premium, by

means of a national sanction, to ensure compliance with the provisions of that regulation, as set out in the second indent of Article 7(1) thereof, provided that the sanction imposed is proportionate to the gravity of the irregularity.

(4) The exceptions from the Community reductions and exclusions laid down in Articles 44 and 45 of Regulation No 2419/2001 cannot be applied to the national reductions and exclusions designed to penalise the late notification of a movement of bovine animals to the computerised database.