

OPINION OF ADVOCATE GENERAL
LÉGER

delivered on 22 June 2006¹

1. In the context of the reform of the common agricultural policy in 1992, the Community legislature introduced a new support system for producers of beef and veal. This consists in making direct payments to the farmer in the form of special premiums, the grant of which is subject to compliance with a stocking density, determined on the basis of the number of bovine animals held on the farm and its 'available' forage area.

(Administrative Court for Trade and Industry, Netherlands), arises in a dispute between the company of farmers Maatschap J. en G.P. en A.C. Schouten ('Schouten') and the Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality, hereinafter the 'Minister') about the grant of special premiums payable for holding and fattening male bovine animals.

2. In the present dispute the question is whether a parcel of land that is temporarily under water can be regarded as an 'available' forage area.

4. In particular, in the present case the Court is asked to clarify the concept of 'available' forage area mentioned in Article 12(2)(b) of Regulation (EC) No 1254/1999² and Article 2(1)(c) of Regulation (EEC) No 3887/92.³

3. This question, which is raised by the *College van Beroep voor het bedrijfsleven*

2 — Council Regulation of 17 May 1999 on the common organisation of the market in beef and veal (OJ 1999 L 160, p. 21).

3 — Commission Regulation of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36).

1 — Original language: French.

I — Community law

A — Regulation No 1254/1999

5. Before the 1992 reform, the trend in the beef and veal sector was towards more intensive farming. The Community policy of supporting farm incomes by means of high prices encouraged farmers to intensify production. Forage areas were no longer sufficient to feed the animals because the number of head of cattle rose without there being an increase in area.

6. One of the objectives of Regulation No 1254/1999 was to halt this trend, primarily by making the grant of premiums for stockfarming subject to a stocking density based on the forage capacity of each holding in relation to the number of animals held.⁴ These area-linked Community aids are commonly known as “area” aids’.

7. Paragraphs 1 and 3(a) of Article 4 of that regulation provide that any producer who applies for it will be paid, for a period to be determined, a special premium for holding male bovine animals for fattening.

8. Under Article 12(1) of the regulation the number of animals qualifying for the special premium is limited by the application of a stocking density of two livestock units (LU) per hectare and calendar year. In order to determine the stocking density, Article 12(2)(a) and (b) of Regulation No 1254/1999 requires account to be taken of the number of bovine animals concerned and of the ‘forage area ... available throughout the calendar year for rearing bovine animals’.

9. Article 12(2)(b) of that regulation excludes certain areas from the forage area. The list of exclusions is worded as follows:

‘... The forage area shall not include:

— buildings, woods, ponds, paths,

4 — See the 13th recital of Regulation No 1254/1999.

- areas used for other crops eligible for Community aid or for permanent crops or horticultural crops, except permanent pasture for which area payments are granted pursuant to Article 17 of this Regulation and Article 19 of Regulation (EC) No 1255/1999, [5]
- administration and control system for certain Community aid schemes introduced by Regulation (EEC) No 3508/92.⁶ That system applies, in particular, to the special premium referred to in Article 4 of Regulation No 1254/1999.⁷

- areas qualifying for the support system laid down for the producers of certain arable crops, used for the aid scheme for dried fodder or subject to a national or Community set-aside scheme’.

11. Article 2(1)(c) of Regulation No 3887/92 is worded as follows:

‘[E]ach forage area must be available for rearing animals for a minimum period of seven months, starting on a date to be determined by the Member State, which must be between 1 January and 31 March’.

B — *Regulation No 3887/92*

10. Regulation No 3887/92 lays down detailed rules for applying the integrated

12. Article 9(2) of that regulation deals with discrepancies between the area of land declared in the ‘area’ aid application and the area for which all of the conditions laid

5 — Council Regulation of 17 May 1999 on the common organisation of the market in milk and milk products (OJ 1999 L 160, p. 48).

6 — Council Regulation of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1).

7 — See Article 1(1)(b)(i) of Regulation No 3508/92, as amended by Council Regulation (EC) No 1593/2000 of 17 July 2000 (OJ 2000 L 182, p. 4).

down in the rules have been met (the 'determined area'). That position states that, if the area declared is found to be more than 20% greater than the determined area, no 'area' aid shall be granted.

quantity of rain water or melt water from upstream areas.

15. On 1 August 2001 Schouten submitted a claim, under Regulation No 1254/1999, for special premium for its 26 male bovine animals held on the land in question.

II — Facts and procedure in the main proceedings

13. On 9 May 2001 Schouten applied to the relevant authorities for the registration of agricultural parcels as a forage area.

16. On 17 December 2001 the Minister informed Schouten that the forage area established by teledetection on 10 and 11 May 2001 was smaller than the declared area. As the latter was more than 20% greater than the determined area, the registered forage area was to be treated as zero under Article 9(2) of Regulation No 3887/92.

14. Some of these parcels form part of water meadows. These are land situated between the dyke which protects the hinterland and the riverbed. In the course of the year, water meadows are partly under water, depending on the height of the land but also the flow of river water, which varies according to the

17. By a decision of 27 May 2002 the Minister rejected Schouten's claim for special premium because the forage area was registered at zero and thus the area available to Schouten to hold its 26 male bovine animals did not comply with the stocking density.

18. On 3 July 2002 Schouten lodged an objection with the Minister.

read in conjunction with Article 2(1)(c) of Regulation No 3887/92, the declared forage area must be used to feed bovine animals for a consecutive period of seven months, a period that was interrupted by the flooding.

19. By a decision of 8 August 2003 the Minister rejected Schouten's objection on the grounds that when the satellite images were taken part of the water meadow was under water. The Minister therefore considered that this land could not count as forage area because it was not continuously available during the period of seven months required by Article 2(1)(c) of Regulation No 3887/92. In addition, he considered that as Schouten had weighed up the advantages and disadvantages in making use of the water meadows, it had accepted the risk that they might be flooded at the time of teledetection.

III — The questions submitted for a preliminary ruling

21. The court of reference considers that the restrictive interpretation of the term 'available' adopted by the Minister is not sufficiently clear to leave no room for doubt. Since the dispute in the main proceedings hinges on the interpretation of these terms, the College van Beroep voor het bedrijfsleven decided to stay proceedings and to submit the following questions to the Court for a preliminary ruling:

20. Schouten then brought the dispute before the College van Beroep voor het bedrijfsleven, maintaining that the circumstances were extraordinary at the time of teledetection and that, for that reason, the company should not bear the consequences thereof. The Minister maintained that, under Article 12(2)(b) of Regulation No 1254/1999

'(1) Must Article 12(2)(b) of Regulation No 1254/1999 and Article 2(1)(c) of Regulation No 3887/92 be interpreted as meaning that a parcel of land declared as a forage area may not be regarded as "available" if at any time in the relevant period that parcel of land has been under water?

- (2) If the answer to Question 1 is affirmative, are the provisions referred to above binding with specific regard to the consequences flowing from such reply?
- 12(2)(b) of Regulation No 1254/1999 and Article 2(1)(c) of Regulation No 3887/92 must be interpreted as meaning that a parcel of land declared as a forage area may be regarded as ‘available’ if it was temporarily under water at a given time during the relevant period.
- (3) If the answer to Question 1 is negative, what are the applicable criteria for determining whether a parcel of land declared as a forage area which was temporarily under water can be regarded as “available” for the purposes of Article 12(2)(b) of Regulation No 1254/1999 and Article 2(1)(c) of Regulation No 3887/92?

23. Contrary to the view of the Netherlands Government, I consider that a forage area that was temporarily under water during the relevant period may be regarded as ‘available’ for the purposes of Article 12(2)(b) of Regulation No 1254/1999 and Article 2(1)(c) of Regulation No 3887/92.

IV — Assessment

A — *The first question from the court of reference*

24. It should be remembered, at the outset, that the Court has consistently held that, in interpreting a provision of Community law, it is necessary to consider not only its wording but also the context in which it occurs and the objects of the rules of which it forms part.⁸

22. By its first question, the court of reference asks essentially whether Article

⁸ — See in particular Case 292/82 *Merck* [1983] ECR 3781, paragraph 12, and Case C-191/99 *Kvaerner* [2001] ECR I-4447, paragraph 30.

25. I find no indications in the wording of Article 12(2)(b) of Regulation No 1254/1999 and Article 2(1)(c) of Regulation No 3887/92 on the basis of which a parcel of land temporarily under water could not be regarded as 'available'.

26. It should be noted, first of all, that the concept of 'available' means 'at one's disposal'.⁹ This concept has been translated in identical terms in most of the language versions of Regulation No 1254/1999.¹⁰

27. Secondly, it is clear from the first, second and third indents of Article 12(2)(b) of Regulation No 1254/1999 that some areas are excluded from the forage area. Under that provision 'the forage area shall not include' areas that do not contribute to the forage capacity, such as ponds or even woods, but also areas used for other crops that are already eligible for Community aid.

28. Like the French Government and the Commission of the European Communities,¹¹ I consider that the Community legislature patently wished to provide an exhaustive list of the areas not exclusively intended for feeding animals that must be excluded from the definition of the forage area that can be regarded as 'available'.

29. It must be said that areas temporarily under water do not appear in this exhaustive list.

30. Thirdly, the wording of Article 2(1)(c) of Regulation No 3887/92, which also states that the forage area must be 'available', does not mention that this condition would not be met if the parcel in question were temporarily under water.

31. In the light of these factors, I therefore consider that neither the wording of Article 12(2)(b) of Regulation No 1254/1999 nor that of Article 2(1)(c) of Regulation

9 — In French 'disponible', meaning 'dont on peut disposer'. See *Le Petit Robert, Dictionnaire de la langue française*, Paris, Dictionnaires Le Robert, 2001.

10 — For example, the English version uses the term 'available' and the Italian version the term 'disponibile'.

11 — See paragraphs 24 to 28 of the observations of the French Government and paragraphs 15 and 16 of those of the Commission.

No 3887/92 prevent areas that are temporarily under water from being regarded as 'available' forage areas.

defines the concept of 'agricultural parcel' as 'a continuous area of land on which *a single crop* is raised by a single farmer'.¹²

32. This conclusion is corroborated, as we shall see shortly, by the economy of the system of which the provisions to be interpreted form part and by the objective of Regulation No 1254/1999.

36. Furthermore, Regulation No 3887/92, which, as I have indicated, lays down the detailed rules for applying Regulation No 3508/92, prescribes administrative cross-checks on parcels and animals declared in order to ensure that aid is not granted twice in respect of the same calendar year.¹³

33. It is clear that the purpose of the integrated administration and control system established by Regulation No 3508/92 is to ensure that an area is intended either for cultivation or for rearing animals.

37. Moreover, when a farmer claims 'area' aid the application must include information about the parcel, especially particulars concerning the use to which it is put, that is to say 'the type of crop or ground cover or the absence of a crop'.¹⁴

34. A farmer receiving a special premium for raising bovine animals may not use the parcel in question for other purposes, such as crops.

38. These considerations confirm that an area must be regarded as 'available', as it has

35. In support of this consideration, I would point out that Regulation No 3508/92

12 — See the third indent of Article 1(4) of Regulation No 3508/92; my italics.

13 — See Article 6(2) of Regulation No 3887/92.

14 — See the second paragraph of Article 4(1) of Regulation No 3887/92.

been set aside exclusively for feeding animals.

39. Consequently, I do not think that the occurrence of climatic events, such as flooding, frost or snow, that made the land temporarily inaccessible can, of itself, prevent the parcel from being regarded as 'available', provided that it has actually been reserved for feeding the bovine animals held on it.

40. Along with the French Government, I consider that it is precisely the risk of climatic events occurring that led the Community legislature not to require an uninterrupted period of occupation of the land.¹⁵

41. Lastly, this analysis is confirmed by the objectives of Regulation No 1254/1999.

42. As we have already seen, one of the main objectives of that regulation is to combat the intensification of beef and veal production by making the grant of special premiums subject to a stocking factor determined by the 'available' forage area and the number of bovine animals held on it.

43. It should also be recalled that pastures are for fattening bovine animals, and that the special premium is granted for those animals.¹⁶

44. It is therefore clear from these facts taken together that the condition that the forage area must be available for raising animals, as stated in Article 12(2)(b) of Regulation No 1254/1999 and Article 2(1)(c) of Regulation No 3887/92, must be understood as meaning that the special premium is granted only for forage areas given over exclusively to feeding bovine animals during the relevant period.

45. Hence, I do not think that a forage area that was under water at a given time during

¹⁵ — See paragraphs 32 and 33 of the observations of the French Government.

¹⁶ — See Article 4(1) and (3)(a) of Regulation No 1254/1999.

the relevant period cannot in any event be regarded as 'available'. In my view, the fact that the land may be under water does not, in principle, prevent the area being given over exclusively to feeding bovine animals.

criteria for regarding a forage area as 'available' if it was temporarily under water at a given time during the relevant period.

46. In the light of these factors, I am of the opinion that Article 12(2)(b) of Regulation No 1254/1999 and Article 2(1)(c) of Regulation No 3887/92 must be interpreted as meaning that a parcel of land declared as a forage area may be regarded as 'available' even if the parcel was temporarily under water during the relevant period.

49. The court of reference wishes to know, more specifically, whether the fact that the land was under water for 3 days, preventing the animals from grazing for a total of 10 days, vitiates the assessment that a forage area temporarily under water during the relevant period may be regarded as 'available'.

47. Since the reply to the first question was negative, there is no need to answer the second.

B — The third question from the court of reference

48. In its third question the court of reference asks the Court to establish the

50. In my view, two factors make it possible to consider whether a forage area temporarily under water may be regarded as 'available'. They are the following. First, the area in question must have been reserved solely for feeding animals throughout the calendar year, as required by Article 12(2)(b) of Regulation No 1254/1999. Secondly, the area must have actually been used for feeding bovine animals during a minimum period of

seven months, pursuant to Article 2(1)(c) of Regulation No 3887/92.¹⁷

animals from grazing for a total of 10 days, should not necessarily prevent compliance with the condition as to the period of time laid down in Regulation No 3887/92. It will be for the national court to ascertain whether, despite this short period in which the disputed parcels were not available, the parcels could be used for fattening animals during a minimum period of seven months, beginning on 31 March.¹⁹

51. Hence, in my view a temporary interruption is not such as to bring into question the allocation of a parcel of land for raising bovine animals if the interruption was sufficiently short for the farmer to be able to meet the condition of a minimum period of seven months in the course of the calendar year, as laid down in Article 2(1)(c) of Regulation No 3887/92.¹⁸

52. It follows that in the present case flooding for 3 days, which prevented the bovine

53. In the light of the foregoing, I propose to reply that, in order to be regarded as 'available' within the meaning of Article 12(2)(b) of Regulation No 1254/1999 and Article 2(1)(c) of Regulation No 3887/92, a parcel of land that is temporarily under water must have been reserved solely for feeding animals throughout the calendar year and it must have been possible actually to use the area in question for feeding bovine animals during a minimum period of seven months from the starting date laid down in national regulations.

¹⁷ — I observe in this respect that a minimum period of seven months is expressly mentioned in Article 5(1)(c) 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 Regulation No 3508/92 (OJ 2001 L 327, p. 11), repealing Regulation (EEC) No 3887/92, and in Article 8(2)(b) 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 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18), repealing Regulation No 2419/2001.

¹⁸ — Under Article 2(1)(c) of Regulation No 3887/92, it is for the Member States to determine the starting date of the relevant period, between 1 January and 31 March of the year in question.

¹⁹ — See the legal background to the request for a preliminary ruling, pp. 2 to 5.

V — Conclusion

54. In the light of these considerations, I propose that the Court reply as follows to the questions submitted for a preliminary ruling by the *College van Beroep voor het bedrijfsleven*:

- (1) Article 12(2)(b) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal and Article 2(1)(c) of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes must be interpreted as meaning that a parcel of land declared as a forage area may be regarded as ‘available’ even if the said parcel was temporarily under water during the relevant period.

- (2) In order to be regarded as ‘available’ within the meaning of Article 12(2)(b) of Regulation No 1254/1999 and Article 2(1)(c) of Regulation No 3887/92, a parcel of land that is temporarily under water must have been reserved solely for feeding animals throughout the calendar year and it must have been possible actually to use the area in question for feeding bovine animals during a minimum period of seven months from the starting date laid down in national regulations.