Reports of Cases

OPINION OF ADVOCATE GENERAL
WATHELET
delivered on 31 January 2013 [1]

Case C-677/11

Doux Élevage SNC,
Coopérative agricole UKL-ARREE
v
Ministère de l'Agriculture, de l'Alimentation, de la Pêche, de la Ruralité et de l'Aménagement du territoire,
Comité interprofessionnel de la dinde française (CIDEF)

(Request for a preliminary ruling from the Conseil d'État (France))

(State aid — Extension of an agreement introducing a compulsory contribution to all traders in an industry — State resources — Imputability)

1. This case affords the Court a further opportunity to deliberate on the meaning of 'State resources' and 'imputability to the State' in the field of State aid.

2. The French Conseil d'État (Council of State) has asked the Court to clarify the import of *Pearle and Others*, [2] in order to determine whether a decision by which a national authority extends to all members of a State-recognised inter-trade organisation an agreement introducing a compulsory contribution aimed at financing, inter alia, promotional activities and activities in defence of the sector's interests, is 'related' to State aid.

I – **Legislative background**

A – *EU law*

3. The FEU Treaty imposes a general prohibition on aid granted by Member States to undertakings. Article 107(1) TFEU provides:

'Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.'

1 — Original language: French.
2 — Case C-345/02 [2004] ECR I-7139.

4. In order to implement those provisions, Article 108 TFEU establishes a procedure for reviewing and giving prior approval to State aid. In particular, pursuant to Article 108(3) TFEU, Member States are required to notify the European Commission of their plans to grant or alter aid and may not put such plans into effect until the Commission has reached a decision thereon.

B – *French law*

5. Under French law, inter-trade organisations are established by the trade organisations which are most representative of agricultural production, processing, marketing and distribution of such production.

6. The general principles applicable to agricultural inter-trade organisations are set forth in Law No 75-600 of 10 July 1975 on inter-trade organisations, which was subsequently codified in Book VI of the legislative section of the code rural et de la pêche maritime (Rural and Sea Fishing Code or the 'Rural Code').

7. I note that some of the relevant provisions in this case were amended by Law No 2010-874 of 27 July 2010 on modernising agriculture and fisheries. However, since that law postdates the raising of the action that gave rise to the reference for a preliminary ruling in this case, I consider it appropriate to refer to the provisions of the Rural Code which were previously in force.

8. As set out in Article L. 611-1 of the Rural Code:

'The Conseil supérieur d'orientation et de coordination de l'économie agricole et alimentaire [Higher Council for Orientation and Coordination of the Agricultural and Food Economy], comprising representatives from interested ministries, from agricultural production, from the processing and marketing of agricultural products, from artisanal and independent food traders, from consumers, from official associations for the protection of the environment and agricultural property, and from trade unions representing employees in the agricultural and food industries, shall participate in the development, coordination, implementation and evaluation of policies on production programming and market organisation.

…'

9. Article L. 632-1 of the Rural Code provides:

'(I) Consortia established on the initiative of the trade organisations which are most representative of agricultural production and, depending on the circumstances, of processing, marketing and distribution may be recognised as inter-trade organisations by the competent administrative authority following an opinion from the Conseil supérieur d'orientation et de coordination de l'économie agricole et alimentaire, either at national level or at the level of a production area defined by reference to a specific product or a specific group of products, if they pursue, particularly through the conclusion of inter-trade agreements, all of the following objectives:

— to develop and promote contractual initiatives between their members;

— to contribute to market management through the proactive monitoring of markets, improved adaptation of products in quantitative and qualitative terms and the promotion of such products;

— to strengthen food security, particularly though the traceability of products, in the interests of users and consumers.

Inter-trade organisations may also pursue other objectives, in particular:

— to encourage the maintenance and development of the economic potential of the sector;

— to encourage the development of non-food utilisation of products;

— to participate in international development initiatives;

— …

(II) Only one inter-trade organisation can be recognised by reference to a specific product or a specific group of products. …

…'

10. Article L. 632-2-I of the Rural Code provides:

'…

Recognised inter-trade organisations may be consulted on the guidelines and measures in respect of industry policies concerning them.

Such organisations shall contribute to the implementation of national and Community economic policies and may enjoy priority in the allocation of public aid.

…'

11. Under Article L. 632-2-II of the Rural Code:

'…

[Product-specific agreements concluded within a recognised inter-trade organisation] shall be adopted unanimously by the trades forming part of the inter-trade organisation in accordance with the first paragraph of Article L. 632-4 …

Upon conclusion and prior to implementation, those agreements shall be notified to the ministre de l'Agriculture (Minister for Agriculture), the Minister responsible for the economy and the competition authorities.

…'

12. As set out in Article L. 632-3 of the Rural Code:

'Agreements made within a recognised inter-trade organisation may be extended, for a fixed period, in whole or in part, by the competent administrative authority where they pursue, by the use of standard contracts, agricultural agreements and common initiatives, or initiatives taken in furtherance of a common interest, which are consistent with the public interest and compatible with the rules of the Common Agricultural Policy, promoting in particular:

(1) the monitoring of supply and demand;

(2) the adjustment and regularisation of supply;

(3) the implementation, subject to State control, of marketing rules, prices and conditions of payment. …;

(4) product quality …;

(5) inter-trade relations in the sector concerned …;

(6) information concerning industries and products and their sale on the domestic and external markets;

(7) collective steps to combat the risks and hazards connected with production, processing, marketing and distribution of agricultural and food products;

(8) control of harmful organisms within the meaning of Article L. 251-3;

(9) development of non-food utilisation of products;

(10) participation in international development initiatives;

(11) development of contractual relations between the members of the trades represented within the inter-trade organisation …'.

13. Article L. 632-4 of the Rural Code provides:

'Any extension of such agreements shall be conditional upon their provisions being unanimously adopted by the trades represented within the inter-trade organisation. …

Where that extension is decided on, the measures thus provided for shall be binding, within the production area concerned, on all members of those trades participating in that inter-trade organisation.

The competent authority shall have a period of two months from the date of receipt of the application submitted by the inter-trade organisation to rule on the extension sought. If, at the end of that period, the authority has not notified the inter-trade organisation of its decision, the application shall be deemed to have been accepted.

A decision refusing an extension shall state the reasons on which it is based.'

14. Article L. 632-6 of the Rural Code states:

'Recognised inter-trade organisations to which reference is made in Articles L. 632-1 and 632-2 may levy, on all members of participating trades, contributions under agreements which have been extended in accordance with the procedure laid down in Articles L. 632-3 and L. 632-4 and which, notwithstanding their binding nature, remain debts subject to private law.

…

Contributions may also be levied on imported products under the conditions established by decree. At the request of the beneficiary inter-trade organisations, such contributions shall be recovered by the customs authorities, at the expense of the former. Such contributions are not exclusive of parafiscal charges.'

15. Article L. 632-8-I of the Rural Code provides:

'Every year, recognised inter-trade organisations shall report to the competent administrative authorities on their activities and shall provide:

— their financial accounts;

— an activity report and the minutes of their general meetings;

— an evaluation of each extended agreement.

They shall furnish the competent administrative authorities with all documents required by the latter for the exercise of its powers of control.'

II – **Factual background**

A – *Inter-trade organisations*

16. To date, there are a little under 60 agricultural inter-trade organisations in France which have been recognised by the competent administrative authority. They are private-law corporations, generally associations governed by the Law on association agreements of 1 July 1901.

17. The Comité interprofessionnel de la dinde française (French turkey inter-trade committee or 'CIDEF') is one of those organisations. CIDEF (a non-profit organisation) was established in 1974 by trade organisations representing various sectors across the turkey industry. It brings together four trades: 'production', 'hatching and imports of hatching eggs and stumps', 'slaughter and processing' and 'feed'.

18. Pursuant to an Inter-ministerial Order dated 24 June 1976, the administrative authorities recognised CIDEF as an agricultural inter-trade organisation in accordance with Law No 75-600.

19. Article 2 of CIDEF's Constitution lays down its objectives: to group together all trade initiatives with a view to organising and regularising the turkey market; for that purpose, to establish a statistical information system to provide traders with a continuous flow of data on the introduction of livestock, slaughters, stocks, external trade, and household and community consumption; to regularise production and the turkey market through action on supply and demand volumes; to acquire the necessary financial resources; to make written contracts compulsory for the provision of goods and services between traders; to act as interlocutor before national and Community bodies in respect of all turkey-related problems shared by traders; in the context of the European Economic Community, to establish the closest possible ties with turkey traders in partner countries; to take all appropriate initiatives to resolve technical problems and ensure that trades from the poultry meat production industry have access to services in areas of mutual interest.

20. Under Article 8 of the Constitution, the resources of CIDEF include payments from members, subsidies it may be awarded, as well as all other resources authorised under legislative and regulatory provisions.

B – *The main proceedings*

21. On 18 October 2007, the trade organisations with membership of CIDEF signed an inter-trade agreement for a period of three years relating to, in particular, the activities carried out by CIDEF and the introduction of an inter-trade contribution. By an addendum concluded on the same day, the amount of the contribution for 2008 was fixed at EUR 14 per 1 000 turkey poults. By two Orders of 13 March 2008, the ministre de l'Économie, des Finances et de l'Emploi (Minister for the Economy, Finance and Employment) and the ministre de l'Agriculture et de la Pêche (Minister for Agriculture and Fisheries) (the 'competent authority') extended the inter-trade agreement for a period of three years and the addendum for a period of one year. By a subsequent addendum to the abovementioned inter-trade agreement, concluded on 5 November 2008, CIDEF decided to maintain the inter-trade contribution for 2009 at the same amount. Under the fourth paragraph of Article L. 632-4 of the Rural Code, the competent authority tacitly accepted to extend the addendum on 29 August 2009 (the '2009 decision'). In accordance with the legislation in force, this tacit decision was notified by the ministère de l'Alimentation, de l'Agriculture et de la Pêche (Minister for Food, Agriculture and Fisheries) and published in the *Official Gazette of the French Republic* on 30 September 2009.

22. The applicants in the main proceedings, Doux Élevage SNC and the agricultural cooperative UKL-ARREE, are two undertakings operating in the turkey industry. In common with other traders from this industry, they were required to pay the inter-trade contribution established by the 2009 addendum. By means of an application dated 30 November 2009, they brought an *ultra vires* action before the Conseil d'État in order to obtain (i) annulment of the tacit decision to extend the addendum of 5 November 2008 and (ii) annulment of the Ministerial Notice published on 30 September 2009.

23. The applicants argued that the inter-trade contribution established by the addendum of 5 November 2008, which the disputed decision extended and made compulsory for all traders in the inter-trade organisation, constituted State aid and, accordingly, the decision ought to have been notified beforehand to the Commission under Article 108(3) TFEU.

24. Consequently, the Conseil d'État decided to stay the proceedings and refer the following question to the Court:

'Must Article 107 of the Treaty on the Functioning of the European Union, read in the light of Case C-345/02 *Pearle and Others*, be interpreted as meaning that a decision by which a national authority extends to all traders in an industry an agreement which, like the agreement made within the Comité interprofessionnel de la dinde française (CIDEF), introduces the levying of a contribution in an inter-trade organisation recognised by that national authority, thus rendering that contribution compulsory, in order to make it possible to implement publicity activities, promotional activities, external relations activities, quality assurance activities, research activities, activities in defence of the sector's interests, and the use of studies and consumer panels is, in view of the nature of the activities in question, the methods by which they are financed and the conditions of their implementation, related to State aid?'

C – *Context*

25. According to the documents in the case file, the French courts and, in particular, the Conseil d'État, have already had the opportunity to decide on whether contributions introduced by recognised inter-trade organisations, commonly known as 'cotisations volontaires obligatoires' (contributions which are initially voluntary and later made compulsory by an Inter-ministerial Order or 'CVOs'), as well as administrative measures rendering such contributions compulsory for all traders in the affected industry fell within the meaning of State aid.

26. In those cases, the Conseil d'État has consistently held that such contributions do not amount to State aid. Indeed, in view of the decision in *Pearle and Others*, the national court making the reference found that CVOs may not be regarded as State resources since they do not result in any additional expenditure or reduced revenue for the State.[3] However, prompted by observations from the Court of Auditors, in 2008 the French Government decided to notify the Commission of a framework programme of activities capable of being carried out by inter-trade organisations, appending 10 agreements concluded by the largest inter-trade organisations. The French Government, confident that the framework programme did not include any State aid elements, stated that it only issued that notification in the interests of legal certainty.

27. Conversely, in its decision of 10 December 2008, the Commission found that the measures at issue fell within the meaning of State aid. The Commission went on to hold that such measures were not liable to affect trading conditions to an extent contrary to the common interest and concluded that they qualified for the derogation provided for in Article 107(3)(c) TFEU.[4] The Commission reached the same conclusion in two subsequent decisions dated 29 June[5] and 13 July 2011.[6] All of these decisions were subject to actions for annulment lodged before the General Court by the French Republic as well as by a number of affected inter-trade organisations, which disputed the classification of such measures as State aid, among other arguments.[7]

III – **Analysis**

A – *Introduction*

28. In essence, the referring court has asked for clarification as to whether the decision of the competent administrative authority to extend the application of CVOs, established by an inter-trade organisation, to all operators in a given sector is related to State aid inasmuch as it constitutes the method by which those measures are financed.

29. Accordingly, in contrast to most proceedings involving issues of State aid control, the question raised by the Conseil d'État in this case – if I may borrow Advocate General Jacobs' turn of phrase – 'focuses not on the spending side of the system [established by the State] but on the financing side'.[8] The specific nature of the question is a result of the special circumstances surrounding the main proceedings. The applicants in the main action do not object to the alleged aid in so far as they would be the competitors of the beneficiaries of the aid or, more generally, the undertakings harmed by the measures. On the contrary, they are deemed to fall within the category of beneficiaries of such aid. None the less, they appear to take the view that the contributions they are required to pay in order to finance the measures at issue outweigh any resulting benefits to them.[9]

3 — See, in particular, the judgment of 21 June 2006 in *Confédération paysanne* (Application No 271.450).

4 — Commission Decision C(2008) 7846 final of 10 December 2008, finding that the framework system of activities capable of being carried out by agricultural inter-trade organisations recognised in France, consisting of aid for technical assistance, high quality agricultural products, research and development, and advertising in favour of the members of the represented agricultural industries, financed by 'voluntary contributions that had become compulsory', constitutes aid compatible with the common market (State aid N 561/2008 – France).

5 — Commission Decision C(2011) 4376 final of 29 June 2011, finding that the activities carried out by the interprofession nationale porcine (French pig and port producers inter-trade organisation) (INAPORC), financed by 'voluntary contributions that had become compulsory', constitute aid compatible with the common market (State aid NN 10/2010 — France).

6 — Commission Decision C(2011) 4973 final of 13 July 2011, finding that the activities carried out by the Association interprofessionnelle du bétail et des viandes (French meat and livestock inter-trade organisation) (Interbev), financed by 'voluntary contributions that had become compulsory', constitute aid compatible with the common market (State aid No C 46/2003 (ex NN 39/2003) — France).

7 — These cases are pending before the General Court: Case T-79/09 *France* v *Commission*; Case T-293/09 *CNIEL* v *Commission*; Case T-302/09 *CNIPT* v *Commission*; Case T-303/09 *CIVR and Others* v *Commission*; Case T-305/09 *Unicid* v *Commission*; Case T-306/09 *Val'hor* v *Commission*; Case T-313/09 *Onidol* v *Commission*; Case T-314/09 *Intercéréales and Grossi* v *Commission*; Case T-478/11 *France* v *Commission*; Case T-575/11 *Inaporc* v *Commission*; Case T-511/11 *France* v *Commission*; and Case T-18/12 *Interbev* v *Commission*.

8 — Opinion in Joined Cases C-261/01 and C-262/01 *Van Calster and Others* [2003] ECR I-12249, point 27.

9 — In this connection, the applicants are in a similar position to the companies that challenged the measure before the Court in *Pearle and Others* (see the Opinion of Advocate General Ruiz-Jarabo Colomer in that case).

30. The applicants in the main proceedings therefore raised legal action against the competent administrative authorities in order to be released from the obligation to pay such contributions. They relied on arguments based on EU State aid rules to contest the validity of the 2009 decision.

31. The Court has consistently held that aid cannot be considered separately from the effects of its method of financing. The consideration of an aid measure must necessarily also take into account its method of financing, where that method forms an integral part of the measure. Consequently, the method by which an aid is financed may render the entire aid scheme incompatible with the internal market. Accordingly, in order to ensure the effectiveness of the notification obligation and the Commission's full and appropriate consideration of a State aid, the Member State is required, in order to comply with that obligation, to notify not only the planned aid in the narrow sense, but also the method of financing the aid inasmuch as that method is an integral part of the planned measure. [10]

32. This means that if the Court concludes that CVOs are intended to finance State aid measures, the 2009 decision should have been notified to the Commission in accordance with Article 108(3) TFEU.

33. Consequently, since that decision was never notified to the Commission, the applicants in the main proceedings would probably be in a position successfully to challenge its validity before the national courts on the basis of the settled case-law according to which those courts must 'ensure that all appropriate conclusions will be drawn from an infringement of the last sentence of Article [108(3) TFEU], in accordance with their national law, as regards both the validity of measures giving effect to the aid and the recovery of financial support granted in disregard of that provision'. [11]

34. Before conducting a closer examination of the issues raised by the referring court, it is worth recalling that according to settled case-law, four cumulative conditions must be met in order to determine whether a measure constitutes State aid. First, there must be an intervention by the State or through State resources. Second, the intervention must be liable to affect trade between Member States. Third, it must confer an advantage on the recipient. Fourth, it must distort or threaten to distort competition. [12]

35. It is clear that, in the case under consideration, we must concentrate on the first of those four conditions.

36. The Court has consistently held that Article 107(1) TFEU covers all aid granted by a Member State or through State resources without it being necessary to draw any distinction according to whether the aid is granted directly by the State or by public or private bodies established or appointed by it to administer the aid. [13] The Court has also added that 'a measure adopted by a public authority and favouring certain undertakings or products does not lose the character of a gratuitous advantage on account of the fact that it is wholly or partially financed by contributions imposed by the public authority and levied on the undertakings concerned'. [14]

10 — See, in particular, *Van Calster and Others*, paragraphs 46 to 51. See, more recently, Case C-333/07 *Régie Networks* [2008] ECR I-10807, paragraphs 89 and 90, and Case C-194/09 P *Alcoa Trasformazioni* v *Commission* [2011] ECR I-6311, paragraph 48.

11 — See, to that effect, Case C-354/90 *Fédération nationale du commerce extérieur des produits alimentaires and Syndicat national des négociants et transformateurs de saumon* [1991] ECR I-5505, paragraph 12; Case C-39/94 *SFEI and Others* [1996] ECR I-3547, paragraph 40; and Case C-199/06 *CELF and ministre de la Culture et de la Communication* [2008] ECR I-469, paragraph 41.

12 — See, inter alia, Case C-482/99 *France* v *Commission*,[2002] ECR I-4397, '*Stardust Marine*', [see Style Manual, p. 15] paragraph 68; Case C-280/00 *Altmark Trans et Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 74; and Case C-206/06 *Essent Netwerk Noord and Others* [2008] ECR I-5497, paragraph 6.

13 — See, inter alia, Case 290/83 *Commission* v *France* [1985] ECR 439, paragraph 14 and Case 57/86 *Greece* v *Commission* [1988] ECR 2855, paragraph 12.

14 — Case 78/76 *Steinike & Weinlig* [1977] ECR 595, paragraph 22, and Case 259/85 *France* v *Commission* [1987] ECR 4393, paragraph 23.

37. The Court explained the meaning and significance of the term 'aid granted by a Member State or through State resources' in its judgments in *PreussenElektra*[15] and *Stardust Marine*,[16] where it endeavoured to systematise its previous decisions and clarify outstanding issues. In particular, in the first of these cases, the Court pointed out that financing through State resources was a constitutive element of the concept of State aid in terms of Article 107(1) TFEU. The State measure must therefore entail a burden on the public purse, either in the form of expenditure or reduced revenue.[17] In the second case, the Court held that for a measure to be capable of being classified as 'State aid', it must be imputable to the State and such imputability cannot be inferred from the mere fact that the measure was taken by a public body. It is also necessary to examine whether the public authorities must be regarded as having been involved, in one way or another, in the adoption of the measure.[18]

38. These two cases are well known and no further illustration of the Court's case-law is, in my view, necessary. By contrast, I think it appropriate to summarise the Court's judgment in *Pearle and Others*, which the Conseil d'État expressly mentions in the question referred for a preliminary ruling.

B – *Pearle and Others*

39. In this case, without altering its principles, the Court developed the case-law on the meaning of 'State resources' and 'imputability to the State'. I disagree with the Commission's assertion that the judgment in *Pearle and Others* is an exception (and the only one to date) to the principles established by the Court in its case-law. On the contrary, in my opinion *Pearle and Others* is a natural and logical application of previous decisions on State resources and imputability to the State.

40. The case involved the lawfulness of charges imposed by a public body, the Hoofdbedrijfschap Ambachten (Netherlands inter-trade association for skilled trades or 'HBA'), on its members, with a view to funding a collective advertising campaign for the benefit of undertakings in the optical services sector. The Netherlands legislature had conferred on associations such as HBA the powers necessary in order for them to carry out their tasks, including the adoption of by-laws imposing levies on the undertakings within the sector of activity concerned, for the purposes of meeting their costs.

41. The applicants in the main proceedings – undertakings active in the optical equipment trade – challenged the levies imposed by HBA at the request of a private opticians' association, the Nederlandse Unie van Opticiens (NUVO). The applicants maintained that the services provided by means of the advertising campaign constituted State aid within the meaning of the Treaty and that HBA's bye-laws introducing the levies intended to finance that aid were unlawful, since they had not been notified to the Commission beforehand.

42. In its judgment, the Court dismissed those claims and essentially followed the analysis of the measures conducted by Advocate General Ruiz-Jarabo Colomer.[19] First, the Court observed that the monies used by HBA for the purpose of funding the advertising campaign had been collected from its members who benefited from the campaign, by means of compulsory levies earmarked for the organisation of that advertising campaign. Since the costs incurred by the public body for that campaign were offset in full by the levies imposed on the undertakings benefiting therefrom, HBA's action did not tend to create an advantage which would constitute an additional burden for the State or that body.[20]

15 — Case C-379/98 [2001] ECR I-2159.

16 — Cited above.

17 — Paragraphs 58 and 59 of the judgment.

18 — Paragraphs 51 and 52 of the judgment.

19 — See, in particular, points 54 to 78 of his Opinion in *Pearle and Others*.

20 — *Pearle and Others*, cited above, paragraph 36.

43. Second, the Court pointed out that the initiative for the organisation and operation of the advertising campaign was that of NUVO, a private association of opticians, and not that of HBA. The latter served merely as a vehicle for the levying and allocating of resources collected for a purely commercial purpose previously determined by the trade and which had nothing to do with a policy determined by the Netherlands authorities. [21]

44. The Court thus distinguished the case from that giving rise to the judgment in *Steinike & Weinlig*. First, the fund concerned in the latter case was financed both by direct State subsidies and by contributions from the member undertakings, the rate and basis of levying of which were set by the law establishing the fund. Second, the fund in question served as a vehicle for the implementation of a policy determined by the State, namely, the promotion of national agriculture and forestry and of the national food industry. [22]

45. The Court held that the condition laid down in what is now Article 107(1) TFEU on State resources was not satisfied in the circumstances of that case.

C – *The measure in the main proceedings*

46. It is by reference to the principles arising from the above case-law that the measures forming the subject-matter of the main proceedings must, in my view, be examined.

47. The applicants in the main proceedings and the Commission, basing themselves on very similar arguments, claim that the measures referred to by the Conseil d'État constitute State aid since they satisfy all of the conditions laid down in Article 107(1) TFEU. The applicants in the main proceedings as well as the Commission consider there to be two elements distinguishing this case from that giving rise to the judgment in *Pearle and Others*.

48. First, they consider that the State has the power to ensure that inter-trade organisations act in a manner consistent with national economic policy. In this respect, they rely on the fact that Articles L. 632-1 and L. 632-2 of the Rural Code establish, in general terms, the objectives that inter-trade organisations must pursue if they wish to be recognised by the State and, more specifically, when they apply to extend the validity of their agreements.

49. Second, they refer to the powers of control over inter-trade organisations that are exercisable by public authorities at different stages of the lifetime of those associations, in particular when they apply for State recognition or to extend their agreements to all affected operators. Furthermore, ex post control also exists in that inter-trade organisations are required to provide certain documents and information to the public authorities every year under Article L. 632-8-1 of the Rural Code.

50. I must state from the outset that I do not agree with the arguments put forward by the applicants in the main proceedings and the Commission. I am not persuaded that the differences claimed to exist between this case and *Pearle and Others* are determinative. On the contrary, like the French Government and CIDEF, I find there to be significant similarities between these cases, at least as regards the relevant aspects for the purposes of determining the legal issues raised by the referring court.

51. In particular, as in *Pearle and Others*, I do not think that the measures at issue can be classified as State aid within the meaning of Article 107(1) TFEU since two necessary components are missing: State resources and imputability of the measures to the State.

21 — Ibidem, paragraph 37.

22 — Ibidem, paragraph 38.

D – *State resources and imputability to the State*

52. In this case, I believe that a three-stage analysis must be carried out. First, are inter-trade organisations public entities in the sense of entities forming part of the State's administration? If they are not, are monies used by these organisations to fund their activities 'public resources' in so far as they directly or indirectly originate from the State or other public bodies? Failing which, could those monies be treated as 'public resources' and considered to be imputable to the State because, despite originating from private undertakings, the activities they fund are subject to effective control by public authorities?

1. Public entity

53. With respect to the first stage, I think it is beyond doubt that inter-trade organisations such as those in the main proceedings cannot be regarded as forming part of the public administration: they are private law associations created on the initiative of their members and decide on their actions alone. As far as it is possible to determine, no representatives of public authorities sit on the boards of those organisations or hold executive or management powers within such organisations.

2. Public resources

54. Moving on to the second stage, I must draw attention to a fundamental premiss underpinning my line of reasoning. As previously noted, the court actions raised by the applicants in the main proceedings relate to the intervention of the State making CVOs established by inter-trade organisations compulsory for all members of a trade. The referring court mentions those contributions as a source of funding for 'publicity activities, promotional activities, external relations activities, quality assurance activities, research activities, activities in defence of the sector's interests, and the use of studies and consumer panels' carried out by the inter-trade organisations. Consequently, my examination of the nature of that State intervention as possible State aid is conducted on the premiss that such activities are exclusively funded by CVOs.

55. My analysis might lead to different conclusions if the activities were to be financed, wholly or partly, by public funds. I note that, in accordance with Article L. 632-2-I of the Rural Code, '[r]ecognised inter-trade organisations … may enjoy priority in the allocation of public aid'. Likewise, Article 8 of CIDEF's Constitution states that the resources of the association include 'subsidies it may be awarded'.

56. Obviously, the condition relating to State resources as provided for in Article 107(1) TFEU would be satisfied if the measures at issue were funded or co-funded by public subsidies, even though it might be difficult to distinguish between activities funded solely by CVOs and those funded by public subsidies where, as in this case, the inter-trade organisations do not keep separate accounts. [23]

57. However, private funds used by inter-trade organisations do not become 'public resources' simply because they are used alongside sums originating from the public purse. In other words, the public nature of certain funds does not automatically extend to other sources of financing which, in principle, do not satisfy the conditions set forth in Article 107(1) TFEU.

58. On any view, the exact relationship between public and private funds in the budget and the activities of inter-trade organisations would fall to be determined by the national court making the reference (or the Commission in the context of a procedure under Article 108 TFEU).

23 — This was confirmed by the French Government at the hearing.

59. I would again point out that the Conseil d'État's question to the Court in these proceedings is limited to the relationship between the concept of State aid and the State's decision to extend to an entire sector the decision of an inter-trade organisation to establish a contribution enabling promotional activities to be carried out in that sector. Consequently, in order to answer the question posed by the Conseil d'État, I shall examine the nature of CVOs only from the perspective of Article 107(1) TFEU.

60. In my view, CVOs do not constitute State resources as they do not generate additional expenditure for the State or any other public entity. CVOs directly originate from economic agents that operate in the markets concerned by inter-trade organisations.

61. Furthermore, CVOs are not resources that would normally have to be paid over to the State budget, as in the case of tax exemptions. The State has no entitlement to claim those sums. In addition, inter-trade organisations are required to bring legal proceedings when a member of one of the trades in the industry refuses to pay CVOs. The State is not a party to such proceedings in any way whatsoever.

62. That interpretation is confirmed by the wording of Article L. 623-6 of the Rural Code, which provides that CVOs, 'notwithstanding their binding nature, remain debts subject to private law' and 'are not exclusive of parafiscal charges'. This point is not contested by the Commission or the applicants in the main proceedings. Moreover, the private nature of CVOs was recently reaffirmed by the Conseil constitutionnel (Constitutional Court) which, in its decision of 17 February 2012, held that such contributions could not amount to 'charges of any kind' within the meaning of Article 34 of the French Constitution. [24]

3. Control by public authorities and imputability to the State

63. I shall now turn to the third stage: are sums received by inter-trade organisations ultimately made available to public authorities, in so far as those authorities could, at a given point in time, exercise powers of control in respect of such resources? [25] Are those public authorities involved, in one way or another, in the adoption of measures financed by such sums?

64. In my view, these questions must be answered in the negative in this case, as the national rules referred to by the parties do not in any way suggest that public authorities could exercise actual control over CVOs and the activities financed by them.

65. On the contrary, the decision to introduce CVOs, as well as the determination of the basis for their calculation, their levels and the methods by which they are funded, fall within the absolute discretion of the inter-trade organisations. The State's intervention, in order to extend the application of CVOs to all agents operating in the sector, is clearly intended to avoid free riders, namely undertakings that benefit from the measures taken by inter-trade organisations without contributing to them. In so far as those activities are genuinely in furtherance of the interests of the sector as a whole, and on the assumption that all undertakings active in the sector are able, in one way or another, to derive benefits therefrom, I view the State's intervention as being simply to ensure a level playing field (in other words, to ensure that undertakings can compete on equal terms).

24 — See recital 4 to Decision No 2011 211 QPC of 17 February 2012 of the Conseil constitutionnel, *Société Chaudet et fille et autres*.

25 — See Case C-83/98 P *France* v *Ladbroke Racing and Commission* [2000] ECR I-3271, paragraph 50; *Pearle and Others*, paragraph 36; and *Essent Netwerk Noord and Others*, paragraph 72. See also the Opinion of Advocate General Mengozzi in *Essent Netwerk Noord and Others*, point 109, and the Opinion of Advocate General Kokott in Case C-222/07 *UTECA* [2009] ECR I-1407, points 128 and 129.

66. The system established by the Rural Code appears to be a 'closed' system in the sense that the sums in question are always managed and controlled by private entities: those sums are paid by traders to the inter-trade organisations, which use them for activities that are intended to produce benefits for those very trades. At no time are the sums under public control.

67. Furthermore, I note that in contrast to the case-law in *Steinkine & Weinlig* and *Pearle and Others*, CVOs are not even collected by an entity belonging to the public administration in this case.

68. In addition, I do not share the view held by the applicants in the main proceedings and the Commission that CVOs must be regarded as being under public control because the State can always refuse to extend them (notwithstanding an application from an inter-trade organisation for extension), or decide to extend the agreement only partially or for a limited period of time. In my view, the mere possibility that the State could say 'no' to an inter-trade organisation does not automatically result in the type of control considered to be relevant by the Court in its case-law. [26] The concept of 'control' as referred to in that case-law must be interpreted, in my opinion, as a power to direct or at least influence when or how the funds concerned are used.

69. My conclusion might have been different had the French Government had the possibility of making its favourable decision conditional upon the sums being used for activities specified by the public administration. In those circumstances, the State would be in a position to pursue its own policies as a result of the funds collected by inter-trade organisations.

70. That does not seem to be the case in this instance. The relevant provisions of the Rural Code simply provide that the State can extend the application of the agreements establishing CVOs and that '[a] decision refusing an extension shall state the reasons on which it is based'. [27] There are no provisions conferring upon the competent authority the power to direct or influence the administration of the funds.

71. The Conseil d'État has also held in two recent judgments that the Rural Code does not permit public authorities to exercise control over CVOs 'except to check their validity and lawfulness'. [28] In my view, this seems to exclude all forms of control based on political expediency or to check consistency with the policies of the public authorities. [29] The information which the French Government provided to the Court during the hearing confirms that conclusion. [30]

26 — See, in particular, Case 173/73 *Italy* v *Commission* [1974] ECR 709, paragraph 35; *Steinike & Weinlig*; *France* v *Ladbroke Racing and Commission*, paragraph 50; and *Stardust Marine*, paragraphs 37 and 38.

27 — Article L. 632-4 of the Rural Code.

28 — See judgments of 7 May 2008, *Coopérative Cooperl Hunaudaye et Société Syndigel* (Application Nos 278820 and 279020) and 16 February 2011, *Fédération des Entreprises du Commerce et de la Distribution* (Application Nos 301333 and 317146).

29 — In that respect, I note a further similarity between this case and *Pearle and Others*. In the latter case, the Netherlands Government confirmed that by-laws adopted by bodies such as HBA, which established financial charges, had to be approved by the Sociaal-Economische Raad (Social and Economic Council) and, in certain circumstances, also by the competent minister. Both the Sociaal-Economische Raad and the minister were entitled to withhold approval if, inter alia, the proposed bye-law contravened the law or would be contrary to the public interest.

30 — According to the French Government, 18 applications for extension were refused in recent years out of an approximate total of 300. According to the French Government, the grounds for refusal included the following: (a) infringement of Article 110 TFEU in so far as the planned activity resulted in tax discrimination based on the origin of the products (raw materials from France); (b) incompatibility of the agreement that would have been financed by CVOs with the specifications of designations of origin applicable to the products in question; (c) impossibility of identifying the activities to be financed by CVOs; (d) the fact that the agreement, which would have been financed by CVOs, did not relate to the product for which the inter-trade organisation applying for the extension had been recognised; and (e) the fact that the activity to be financed by CVOs was of an individual rather than collective nature.

72. I also note that Article L. 632-4 of the Rural Code – according to which only agreements adopted unanimously by trades represented within the inter-trade organisation can be extended – would make it difficult for the State to exercise real influence over the content of those agreements. It would be enough for just one trade among those making up the inter-trade organisation to disagree with what the State might suggest or propose in order to make the agreements and, thereby, their extension impossible.

73. The fact that the State is empowered under Article L. 632-8-I of the Rural Code to obtain information from inter-trade organisations on the use to which CVOs have been put does not seem to go against that conclusion. Those powers of ex post inspection appear to be inextricably linked to the fact that CVOs are rendered compulsory by means of a decision taken by the State. Since it falls to the State to authorise the extension of contributions, the law also imposes on the State the task of checking whether its decision was improperly or unlawfully implemented. Consequently, those powers do not confer on the State the specific ability to influence the use to which the funds are put; their sole objective is to prevent fraud and misuse.

74. For the above reasons, I am of the view that ex post control by the State is not only legitimate but even desirable. It could be said that the State is therefore simply discharging its responsibilities towards the undertakings liable to pay CVOs as a result of its decision to extend the effects of the agreement introducing the contributions.

75. Furthermore, I am not aware of a single article of French law or of any factual elements suggesting that the State did in fact exercise decisive influence over the inter-trade organisations' activities and, in particular, that the public authorities were involved, in one way or another, in the adoption of the measures taken by those organisations. In addition, none of the parties have claimed that State authorities attempted to exercise such influence, even through informal channels.

76. First, it should be recalled that the Rural Code lays down a procedure based on tacit consent for the purpose of extending the agreements. The 2009 decision disputed by the applicants in the main proceedings is indeed the result of such a procedure. In my mind, this is difficult to reconcile with the notion of a public authority that seeks to direct and control the activities of inter-trade organisations in general and the use of funds in particular.

77. Second, I note that it is not possible to presume that those organisations are bound to 'take account of directives issued'[31] by public authorities or are unable to take decisions 'without taking account of the requirements' of those authorities.[32]

78. In this connection, the applicants in the main proceedings and the Commission first refer to Article L. 632-1 of the Rural Code, which provides that inter-trade organisations may be recognised by the State only if their tasks include the objectives listed therein. They then refer to the conditions listed in Article L. 632-3 of the Rural Code which must be satisfied in order for the State to extend the agreements to the inter-trade organisation as a whole.

79. It must be noted that the objectives which inter-trade organisations must[33] or may[34] pursue pursuant to Article L. 632-1 of the Rural Code in order to obtain recognition are described therein in very general terms and cover all kinds of activities that are typically carried out by associations which bring together operators in a given economic sector. It is always possible to identify a direct

31 — *Stardust Marine*, paragraph 55. See also Case C-303/88 *Italy* v *Commission* [1991] ECR I-1433, paragraphs 11 and 12, and Case C-305/89 *Italy* v *Commission* [1991] ECR I-1603, paragraphs 13 and 14.

32 — *Stardust Marine*, paragraph 55, and Joined Cases 67/85, 68/85 and 70/85 *Kwekerij van der Kooy and Others* v *Commission* [1988] ECR 219, paragraph 37.

33 — Part one of Article L. 632-1 of the Rural Code.

34 — Part two of Article L. 632-1 of the Rural Code.

commercial interest for the members of the association through the objectives listed in that provision. By no means does it follow from this provision that such associations are required to weigh their own interests against those of society as a whole, or to engage in activities which do not produce any benefits for their members, even though public and private interests may overlap in several objectives (such as food security, for example).

80. The same observation can be made in respect of the objectives which agreements concluded by inter-trade organisations must pursue under Article L. 632-3 of the Rural Code so that the competent authority can extend their effects.

81. First, the list of objectives is rather long and varied and is also non-exhaustive ('in particular').

82. Second, if it is true (as the Commission maintains) that those objectives are often the same as those inherent in general government policies, it is also true, first and foremost, that they reflect the common interests of all members of the inter-trade organisations. This is apparent from the wording of the Rural Code, which refers to 'common initiatives … or initiatives taken in furtherance of a common interest', which are, at the same time, 'consistent with the public interest and compatible with the rules of the Common Agricultural Policy'. After all, it would be surprising if the general commercial interests of members in a given commercial sector only rarely coincided with the general interests of the State in that sector. In all spheres of the economy, the State also seeks to strengthen and support undertakings present on the market.

83. Finally – and most importantly, in my view – the fact that public authorities and inter-trade organisations might have certain interests in common does not mean that promotional activities and activities in defence of those interests carried out by such organisations must necessarily take account of the wishes and requirements of the authorities or implement policies drawn up by them.

84. For those reasons, I am not persuaded by the arguments advanced by the Commission, which regards CVOs as a vehicle for State policy since the activities they finance do not pursue 'purely private commercial objectives'. In this respect, suffice it to note that the measure at the centre of *PreussenElektra* was clearly adopted in furtherance of a public interest objective (the reduction of carbon dioxide emissions).[35] Similarly, the Netherlands law governing the activities of HBA before the Court in *Pearle and Others* obliged that body to take account of the public interest alongside the interests of the undertakings in the sector concerned and of their staff.[36]

85. I am therefore of the view that when the Court referred to a policy determined (or established) by the State in *Pearle and Others*,[37] it was referring to something more specific and precise than a mere indication of the general objectives to be pursued. In my opinion, there can be no question of there being a 'State policy' in the case of a straightforward list of general objectives, without a description of the specific measures or activities that must be carried out in order to achieve those objectives. I believe that this last element is clearly missing in the present case.

86. Third, the applicants and the Commission note that under Article L. 632-2-I of the Rural Code, '[r]ecognised inter-trade organisations may be consulted on the guidelines and measures in respect of industry policies concerning them' and '[s]uch organisations shall contribute to the implementation of national and Community economic policies'.

35 — *PreussenElektra*, cited above, paragraph 73.

36 — *Pearle and Others*, cited above, paragraph 7. In addition, as the Netherlands government confirmed in those proceedings, the same law describes, in general terms, the tasks of organisations such as HBA.

37 — Ibidem, paragraphs 36 and 37.

87. Unlike the applicants in the main proceedings and the Commission, and despite the references to public policies in Article L. 632-2-I of the Rural Code, I see nothing more in this provision than a reflection of the reality prevailing in a number of countries (and in the Union itself): it is normal for organisations which represent a sector of the economy or a category of market operators sharing the same commercial interests to act as interlocutor with the State. The existence of dialogue between governors and the governed is a characteristic feature of many modern democracies, regardless of whether it is organised by informal means or takes place in a more formal context. The institutionalisation of such dialogue does not mean that the State can use those interlocutors as their *longa manus* or vehicles through which to implement their policies.

88. Likewise, the reference in Article L. 632-2-I of the Rural Code to the fact that inter-trade organisations 'shall contribute to the implementation of national and Community economic policies' is not decisive. In my view, this provision simply lays down an axiom: in so far as inter-trade associations pursue interests that are genuinely shared by all operators in their business sector, interests which often overlap with what could be described as the public interest, they clearly make a positive contribution to the implementation of national and EU economic policies in that sector.

89. To conclude, it does not follow from the provisions of the Rural Code referred to by the applicants in the main proceedings and the Commission that inter-trade organisations have been allocated a real public role or that public authorities have been endowed with powers to control the activities carried out by those organisations.

90. In that respect, I note that as in *Pearle and Others* the CVO initiative originated from the private sector. Therefore, the State was simply acting – in the words of the Court in *Pearle and Others*[38] – as a 'vehicle' in order to make the contributions introduced by the inter-trade organisations compulsory, for the purposes of pursuing the objectives established by them.

91. I am, it is true, well aware of the fact that numerous State aid measures are adopted by the State at the request of the undertakings concerned. This is typically the case with aid for the rescue and restructuring of distressed undertakings. It therefore follows that private initiative does not preclude, in all cases, the imputability of a measure to the State. However, the circumstances here are very different as the initiative for the measures originates from undertakings that are both providers *and* beneficiaries of the funds.

92. For all of the above reasons, I see nothing in this case to suggest that the management of and responsibility for the activities carried out by the inter-trade organisations could be attributed to entities other than the organisations themselves.

93. In the light of the foregoing, I conclude that the CVOs do not constitute State resources and that the decisions on the use of those contributions are not imputable to the State.

E – *Final remarks*

94. My first remark is linked to the fact that there are a high number of inter-trade organisations in France (and elsewhere in the EU) with many different types of legal status. CIDEF itself makes this point in its written observations.

95. Thus, while my opinion in this case may be valid in many situations, it might not be valid in all. Indeed, as discussed above, there may be situations where inter-trade organisations receive public funds aimed at financing or co-financing activities which are capable of producing economic benefits for market operators. Likewise, it cannot be ruled out that in certain circumstances the State (for

38 — Ibidem, paragraph 37.

example, acting through bodies such as the Conseil supérieur d'orientation et de coordination de l'économie agricole et alimentaire, established on the basis of Article L. 611-1 of the Rural Code) might be in a position to exercise, *de jure* or *de facto*, a genuine influence on how funds collected by inter-trade organisations through CVOs are used.

96. That observation calls for a case-by-case analysis. None the less, these proceedings demonstrate that there can be no presumption that all measures adopted by inter-trade organisations and funded by means of CVOs amount to State resources and are imputable to the State.

97. My second remark is of a more general nature and concerns the concept of State aid. I support the position taken by several Advocate Generals who, in the past, have cautioned against over extending the meaning of State aid. [39]

98. In that respect, I note that the applicants in the main proceedings and the Commission mention the fact that CIDEF, at least in the past, ran campaigns to promote French meat. I also note that under Article L. 632-6 of the Rural Code, CVOs 'may also be levied on imported products under the conditions established by decree. At the request of the beneficiary inter-trade organisations, such contributions shall be recovered by the customs authorities, at the expense of the former'.

99. In situations such as those described in the preceding point, it is not appropriate, in my view, to extend the meaning of State resources and therefore State aid beyond the boundaries established by Article 107(1) TFEU. Indeed, the absence of State resources or the fact that the State does not exercise any powers of control over how some private funds are used does not mean that all activities carried out by organisations such as inter-trade organisations are necessarily compatible with EU rules.

100. First, measures adopted by inter-trade organisations may infringe internal market rules. The fact that associations such as CIDEF are not controlled by the State does not, in itself, prevent the application of treaty provisions on the internal market. For instance, as regards Article 56 TFEU, the Court has consistently held that compliance with this provision 'is also required in the case of rules which are not public in nature but which are designed to regulate, collectively, the provision of services. The abolition, as between Member States, of obstacles to the freedom to provide services would be compromised if the abolition of State barriers could be neutralised by obstacles resulting from the exercise of their legal autonomy by associations or organisations not governed by public law'. [40] The Court has followed the same line of reasoning with respect to, inter alia, freedom movement for persons [41] and freedom of establishment. [42]

101. In particular, the decision by the State to extend the compulsory nature of contributions used to support promotional or advertising campaigns – run by inter-trade organisations in order to promote domestic production or products – might also infringe internal market rules, regardless of the origin of the funds used. For example, it is settled case-law that a charge which is imposed on domestic and imported products according to the same criteria may be prohibited if the revenue from such a charge is intended to support activities which specifically benefit the taxed domestic products. If the advantages which those products enjoy wholly offset the burden imposed on them, the effects of that charge are apparent only with regard to imported products and that charge constitutes a charge

39 — See, inter alia, the following Opinions: Advocate General Capotorti in Case 82/77 *Van Tiggele* [1978] ECR 25, point 8; Advocate General Jacobs in *PreussenElektra* and *Stardust Marine*, points 150 to 159 and 53 to 55 respectively; and Advocate General Poiares Maduro in Case C-237/04 *Enirisorse* [2006] ECR I-2843, points 44 to 46.

40 — See, inter alia, Case 36/74 *Walrave et Koch* [1974] ECR 1405, paragraphs 17 and 18; Case C-415/93 *Bosman* [1995] ECR I-4921, paragraphs 83 and 84; Case C 309/99 *Wouters and Others* [2002] ECR I-1577, paragraph 120; and Case C-341/05 *Laval un Partneri* [2007] ECR I-11767, paragraph 98.

41 — Joined Cases C-51/96 and C-191/97 *Deliège* [2000] ECR I-2549, paragraph 47, and Case C-281/98 *Angonese* [2000] ECR I-4139, paragraph 32.

42 — Case C-438/05 *International Transport Workers' Federation and Finnish Seamen's Union* [2007] ECR I-10779, paragraph 59.

having equivalent effect within the meaning of Article 30 TFEU. If, on the other hand, those advantages only partly offset the charge borne by domestic products, the charge in question constitutes discriminatory taxation prohibited by Article 110 TFEU, the collection of which is prohibited as regards the proportion of it used to offset the burden of the charge borne by domestic products. [43]

102. Furthermore, in the famous *Buy Irish* case, the Court ruled that Article 34 TFEU had been infringed on account of the support given by the Irish Government to a private body which had launched a campaign to promote the sale and purchase of domestic products intending to check the flow of trade between Member States. [44]

103. Second, measures adopted, without State aid, by inter-trade organisations might discriminate against producers from other Member States and, therefore, may infringe the rules of the Common Agricultural Policy (second sentence of Article 40(2) TFEU).

104. Finally, the decision of the State to extend the effects of certain agreements concluded between the members of inter-trade organisations might also be caught by Article 101 TFEU, read in conjunction with Article 4(3) of the EU Treaty, if those agreements have as their object or effect the prevention, restriction or distortion of competition within the internal market. According to settled case-law, those provisions require the Member States not to introduce or maintain in force measures, whether legislative or regulatory, which may render ineffective the competition rules applicable to undertakings. That is the case when a Member State requires or encourages undertakings to conclude agreements contrary to Article 101 TFEU, or reinforces the effects of such agreements, or deprives its own legislation of its State character by delegating to private undertakings responsibility for taking decisions to intervene in economic matters. [45]

105. These are just a few obvious examples. It is pointless to dwell on these issues any further, as they are not immediately relevant to the case at hand. None the less, they highlight the fact that EU rules on State aid control are just one of the tools that can be used on measures adopted by organisations of the kind appearing as a party in the main proceedings, measures that could affect the proper functioning of the internal market. I would also point out that the impossibility of using other tools cannot justify over extending the meaning of State aid.

IV – **Conclusion**

106. For all of the aforementioned reasons, I propose that the Court give the following reply to the question from the Conseil d'État:

Article 107 TFEU must be interpreted as meaning that a decision by a national authority, such as that raised by the referring court, extending to all traders in an industry an agreement which introduces the levying of a contribution in an inter-trade organisation recognised by that national authority, thus rendering that contribution compulsory, in order to make it possible to implement publicity activities, promotional activities, external relations activities, quality assurance activities, research activities, activities in defence of the sector's interests, and the use of studies and consumer panels is not related to State aid.

43 — Case 77/72 *Capolongo* [1973] ECR 611, paragraphs 13 and 14; Joined Cases C-78/90 to C-83/90 *Compagnie commerciale de l'Ouest and Others* [1992] ECR I-1847, paragraph 27; Case C-28/96 *Fricarnes* [1997] ECR I-4939, paragraph 24; and *Essent Netwerk Noord and Others*, cited above, paragraph 42.

44 — Case 249/81 *Commission* v *Ireland* [1982] ECR 4005.

45 — Case 13/77 *GB-Inno-BM* [1977] ECR 2115, paragraph 31; Case 267/86 *Van Eycke* [1988] ECR 4769, paragraph 16; and Case C-2/91 *Meng* [1993] ECR I-5751, paragraph 14.