

OPINION OF ADVOCATE GENERAL
DARMON

delivered on 9 July 1992 *

*Mr President,
Members of the Court,*

1. The question on which the Court is to deliver a preliminary ruling in this case is concerned with the definition of 'farmer practising farming as his main occupation'. More specifically, it seeks to establish whether where a Member State is asked by a Community regulation to define the content of that concept it may exclude companies with share capital.

2. The single text containing the provisions on the registration duty, which was approved by Decree No 131 of 26 April 1986 of the President of the Italian Republic,¹ provides that conveyances of real property for consideration in Italy are to be liable to an 8% registration duty. That tax increases to 15%² where, on the one hand, the conveyance relates to agricultural land and moveable property treated as forming part of the land and, on the other, the purchaser is not a farmer practising farming as his main occupation, or an association or a cooperative within the meaning of Articles 12 and 13 of Law No 153 of 9 May 1975³ on the implementation of (*inter alia*) Council Directive 72/159/EEC of 17 April 1972 on the modernization of farms⁴ (hereinafter 'the Directive').

3. On the ground that it did not fall within one of the categories provided for in those provisions, the company Tenuta il Bosco, which had purchased agricultural land, was served by the Stradella land registry with notices of assessment applying the rate of 15%.

4. The company appealed against those notices to the Commissione Tributaria di Primo Grado [First Instance Tax Tribunal], Voghera. It based its appeal on the definition of 'farmer' resulting from Article 2(5) of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures⁵ (hereinafter 'the Regulation'), which provides as follows:

'Member States shall, for the purposes of this Regulation, define what is meant by the expression "farmer practising farming as his main occupation".

This definition shall, in the case of a natural person, include at least the condition that the proportion of income derived from the agricultural holding must be 50% or more of the farmer's total income and that the working time devoted to work unconnected with the holding must be less than half of the farmer's total working time.

On the basis of the criteria referred to in the foregoing subparagraph, the Member States

* Original language: Italian.

¹ — *Gazzetta Ufficiale della Repubblica Italiana* (GURI), 30 April 1986, Supplemento Ordinario, Serie Generale No 99.

² — See *ibid.* at the end, Tariffa, Parte Prima.

³ — GURI, 26 May 1975, No 137, p. 3298.

⁴ — OJ, English Special Edition 1972(II), p. 324.

⁵ — OJ 1985 L 93, p. 1.

shall define what is meant by this same expression in the case of persons other than natural persons.'

5. *Tenuta il Bosco* argues that that definition of 'farmer' must be interpreted in the same way as the — almost identical — definition set out in Article 3(1) of the Directive, which reads as follows:

'Member States shall for the purposes of this Directive define what is meant by the expression "a farmer practising farming as his main occupation". Definitions shall, in the case of a natural person, at least include the condition that the proportion of income from farming be not less than 50% of the farmer's total income and that the working time devoted to non-farming activities be less than half of the farmer's total working time.

Having regard, in particular, to the criteria indicated in the preceding subparagraph, Member States shall define the aforesaid expression:

- in relation to a person other than a natural person;
- in respect of a farm owned by a person other than the farmer;
- in respect of a farm worked under a share-cropping agreement.'

6. Indeed, in the judgment of 18 December 1986 in the *Villa Banfi* case,⁶ the Court held

that that article had to be interpreted as precluding a Member State from excluding certain types of legal persons from the scope of the directive solely on grounds of their legal form.

7. The Court stated as follows:

'It should thus be noted that the directive not only does not exclude legal persons but expressly includes them within its scope provided that they fulfil the conditions of Article 2⁷ and meet the definition of "a farmer practising farming as his main occupation" laid down in implementation of Article 3(1). Since those conditions are unrelated to the form in which a legal person is constituted, the inference to be drawn is that Member States are not permitted to withhold from legal persons the benefit of provisions of the directive solely because they have assumed a specific legal form. Differential treatment such as that would, in any event, conflict with the principle of non-discrimination enshrined in Article 40(3) of the EEC Treaty which Member States must observe when giving effect to the common agricultural policy.'⁸

8. In precise terms the *Commissione Tributaria di Primo Grado, Voghera*, asks the Court whether, in so far as Article 2(5) of the Regulation makes the Member States responsible for defining the concept of 'farmer practising farming as his main occupation', that article makes it possible for companies with share capital to be excluded solely because of their legal form.

⁶ — Case 312/85 *SpA Villa Banfi v Regione Toscana and Others* [1986] ECR 4039.

⁷ — That article defines the expression 'a farm suitable for development'.

⁸ — Judgment in *Villa Banfi v Regione Toscana*, paragraph 10.

9. I would observe in the first place that there is no single definition in Community law of 'farmer practising farming as his main occupation'.

10. Indeed, in the judgment of 28 February 1978 in *Società Santa Anna Azienda Agricola*⁹ the Court held as follows:

'... since the Treaty contains no precise definition of agriculture and still less of agricultural holding, it is for the Community institutions to work out, where appropriate, for the purposes of the rules deriving from the Treaty such a definition of agricultural holding.

Although the words "agricultural holding" are used in various places in the Community rules, including the regulations referred to in the order for reference, adopted by the Council or in certain cases by the Commission, in the sphere of agriculture, the definition of these words is far from being uniform throughout these rules, which are in any case heterogeneous, but on the contrary varies according to the specific objectives pursued by the Community rules in question'.¹⁰

The Court concluded that:

'... it is impossible to find in the provisions of the Treaty or in the rules of secondary Community law any general uniform Community definition of "agricultural holding" universally applicable in all the provisions laid down by law and regulation relating to agricultural production'.¹¹

11. Thus, there is a case now before the Court in which it has been asked to give a ruling on whether agricultural holdings engaged in intensive livestock farming are among those qualifying under Article 1b(3)(a) of Council Regulation (EEC) No 1094/88 of 25 April 1988¹² for the aid scheme to promote extensification for surplus products.¹³

12. It follows that the definition of agricultural holding, as resulting from Article 2(5) of the Regulation, holds good only for situations falling within the scope of that instrument. This is borne out by the actual wording of that article, which, I would point out, provides that 'Member States shall, *for the purposes of this Regulation*, define what is meant by the expression "farmer practising farming as his main occupation"'.¹⁴

13. Consequently, one question must be asked by way of preliminary: are the provisions of the Regulation, in particular Article 2(5), applicable to *domestic tax rules* under which registration duty is to be reduced in the case of certain categories of farmers purchasing land?

14. Until it was repealed by Council Regulation (EEC) No 2328/91,¹⁵ Regulation No 797/85 was the basic instrument relating to the common policy on agricultural structures. It introduced a 'common measure

12 — Regulation amending Regulations (EEC) No 797/85 and (EEC) No 1760/87 as regards the set-aside of arable land and the extensification and conversion of production (OJ 1988 L 106, p. 28).

13 — Case C-190/91, *Lante*, [1993] ECR I-67.

14 — My emphasis.

15 — Regulation on improving the efficiency of agricultural structures (OJ 1991 L 218, p. 1); see Article 40 of that regulation.

9 — Case 85/77 *Società Santa Anna Azienda Agricola v INPS* [1978] ECR 527.

10 — *Ibid.*, paragraphs 8 and 9.

11 — *Ibid.*, paragraph 14.

within the meaning of Article 6(1) of Regulation (EEC) No 729/70, to be implemented by the Member States, ... in order to improve the efficiency of holdings and to help develop their structures, while at the same time ensuring the permanent conservation of the natural resources of agriculture'.¹⁶

15. The investment aid scheme provided for in Articles 3 to 7 of the Regulation — which qualifies for Community funds¹⁷ — covers only strictly determined activities or measures. In particular, it does not cover expenditure incurred in buying land.¹⁸

16. That aid scheme which is *jointly financed by the Community* does not preclude the possibility of Member States' implementing certain *national* aid measures pursuing the same objectives but lacking any Community contribution. That is the aim of Article 8 of the Regulation,¹⁹ which 'règle de façon détaillée l'admissibilité des aides nationales en faveur d'investissements dans les exploitations agricoles' [lays down detailed rules on the permissibility of national aid for investment in farms].²⁰

17. Accordingly, Article 8(5) expressly provides that, whilst certain investment aid is prohibited or subject to limitations, those prohibitions or limitations are not to apply to aids for land purchase.²¹

18. Moreover, above and beyond those specific provisions, Article 31 contains general provisions authorizing Member States to adopt additional aid measures in the field covered by the Regulation with conditions or rules for granting them differing from those laid down in the Regulation, provided that such measures are taken in conformity with Articles 92 to 94 of the Treaty.²²

19. It follows that the Regulation makes a number of national aid measures possible, in particular aid for land purchase. The reduction in registration duty granted to a farmer purchasing land is in my view to be included amongst such aid measures.

20. Although those national aids are compatible, on certain conditions, with the common measure implemented by the Regulation, they do not for all that fall within its scope and are therefore not governed by it. They come under national law alone: national law determines their nature, who is eligible for them and the conditions for granting them in accordance with Articles 92, 93 and 94 of the Treaty.²³

21. The purpose of Article 2(5) of the Regulation is to secure uniform conditions in all the Member States for the investment aid scheme provided for in the Regulation by setting forth the criteria to be employed by the Member States in order to define the concept of 'farmer practising farming as his main occupation'.

16 — Article 1(1) of the Regulation.

17 — *Ibid.*, Article 26(2).

18 — *Ibid.*, Article 4(1).

19 — Activities provided for under Article 8 do not give rise to eligible expenditure reimbursable by the Fund (Article 26(1) and (2) of the Regulation).

20 — R. Priebe, 'Le droit communautaire des structures agricoles', *Cahiers de droit européen*, 1988, No 1-2, p. 26.

21 — The provisions of Article 8(5) have been taken over in Article 12(5) of Council Regulation (EEC) No 2328/91, cited above.

22 — See R. Priebe, *op. cit.*, p. 27.

23 — See for this view C. Blumann, *Juristischer Europe, Marché commun agricole, Politique commune des structures agricoles*, Fascicule 1340, point 63, paragraph 2.

22. Its purpose is not to impose on Member States criteria for determining the scope *ratione personae* of a domestic tax instrument that implements neither Community law or Community funding, such as Decree No 131 of 26 April 1986 of the President of the Italian Republic.

23. Besides, whilst it is necessary in the Community to adopt uniform criteria in order to define the term 'farmer' in the case of the introduction of a common measure jointly financed by the Community, that is not necessary where the aid is a purely domestic measure which does not come under the Community investment aid scheme.

24. Of course, the national legislative body was free, in defining the term 'farmer' in a tax instrument, to refer to a domestic instrument²⁴ adopted pursuant to Community measures, which, moreover, do not include Regulation No 797/85. Consequently, it is a matter for the Italian court to assess the exact scope of that reference and to evaluate whether the exclusion, in Articles 12 and 13 of Italian Law No 153 of 9 May 1976, of companies with share capital from the definition of 'farmer' constitutes discrimination under Italian law.

25. After these protracted preliminary observations on the scope of the Regulation — which to my mind are essential in order to provide the national court with a worthwhile answer to its question — let us now turn to the question itself.

26. As we have seen, Article 2(5) of the Regulation asks Member States to define 'farmer practising farming as his main occupation' in terms virtually identical to those employed in Article 3(1) of the Directive, on which the Court ruled in *Villa Banfi*. Is therefore the interpretation which the Court gave to that article applicable to Article 2(5) of the Regulation?

27. The Directive and the Regulation constitute two essential stages in the development of the common policy on agricultural structures.²⁵

28. Each of them refers to Article 39(1) and Articles 42 and 43 of the EEC Treaty and each of them are concerned to improve agricultural structures through investment aid measures or incentives. Both of them constitute 'common measures' within the meaning of Article 6(1) of Council Regulation (EEC) No 729/70, implemented by the Member States and jointly financed by the Guarantee Section of the EAGGF.²⁶

29. Furthermore, the two instruments exhibit undeniable continuity. As Professor Blumann has observed with regard to the investment aid scheme introduced by the Regulation, 'This is the central element of the Regulation and in that respect it continues the work undertaken by Directive 159/72 on the modernization of farms, which, among other provisions, introduced development plans. The new instrument *preserves the former spirit* while taking

25 — The Regulation replaced and repealed the Directive: Article 33(2) of the Regulation.

26 — See the 19th and 20th recitals in the preamble to the Directive and Article 15 thereof and the 25th recital in the preamble to the Regulation and Article 1 thereof.

24 — See Articles 12 and 13 of Italian Law No 153 of 9 May 1976, cited above.

account of the desire to maintain the maximum number of farms in operation, hence moreover the more ready recourse to national aid and the more flexible scheme for physical improvement plans, which replace development plans'.²⁷

30. The two instruments refer, using virtually identical wording,²⁸ the definition of 'farmer' to the Member States and ask them to use the same criteria.

31. One of them refers to 'farms suitable for development',²⁹ the other to 'holdings',³⁰ without specifying the legal form which the farms or holdings have to take.

32. It follows that if the exclusion of companies with share capital from the definition of 'farmer' is contrary to Article 3(1) of the Directive, it will also necessarily be contrary to Article 2(5) of the Regulation.

33. I therefore propose that the question referred by the national court for a preliminary ruling should be answered as follows:

- (1) Article 2(5) of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures must be interpreted as not authorizing Member States, when they define the criteria which persons other than natural persons must satisfy in order to be regarded as farmers practising farming as their main occupation, to exclude from the scope of that regulation certain types of companies merely on account of their legal form.
- (2) National rules governing the tax treatment of conveyances of real property do not fall within the scope of the aforesaid regulation.

27 — Blumann, *Jurisclasseur Europe*, op. cit., point 43, my emphasis.

28 — Leaving aside the last two indents of Article 3(1) of the Directive, which are not included in Article 2(5) of the Regulation. That difference has no bearing on the question referred for a preliminary ruling.

29 — Directive, Article 1.

30 — Regulation, Article 1.