

JUDGMENT OF THE COURT (Second Chamber)

1 July 2004<sup>\*</sup>

In Case C-295/02,

REFERENCE to the Court under Article 234 EC by the Niedersächsisches Oberverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between

**Gisela Gerken**

and

**Amt für Agrarstruktur Verden,**

on the interpretation of Article 10(2)(a) 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 (OJ 1992 L 391, p. 36), Articles 44, 53 and 54 of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 1992 L 327, p. 11), and Article 2(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the financial interests of the European Communities (OJ 1995 L 312, p. 1),

<sup>\*</sup> Language of the case: German.

THE COURT (Second Chamber),

composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet, R. Schintgen, F. Macken (Rapporteur) and N. Colneric, Judges,

Advocate General: P. Léger,

Registrar: M.-F. Contet, Principal Administrator,

after considering the written observations submitted on behalf of:

- Ms Gerken, by R. Mawick, Rechtsanwalt,
- the Amt für Agrarstruktur Verden, by H. v. d. Goltz, acting as Agent,
- the German Government, by W.-D. Plessing and M. Lumma, acting as Agents,
- the Commission of the European Communities, by M. Niejahr, acting as Agent,

having regard to the Report for the Hearing

after hearing the oral observations of the Amt für Agrarstruktur Verden, represented by J. Haselhoff, acting as Agent, of the German Government, represented by M. Lumma, and of the Commission, represented by M. Niejahr, at the hearing on 11 December 2003,

after hearing the Opinion of the Advocate General at the sitting on 11 December 2003,

gives the following

### **Judgment**

- 1 By order of 1 August 2002, received by the Court on 19 August 2002, the Niedersächsisches Oberverwaltungsgericht (Lower Saxony Higher Administrative Court) referred to the Court of Justice for a preliminary ruling under Article 234 EC a question on the interpretation of Article 10(2)(a) 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 (OJ 1992 L 391, p. 36), Articles 44, 53 and 54 of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 1992 L 327, p. 11), and Article 2(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the financial interests of the European Communities (OJ 1995 L 312, p. 1).

2 That question was raised in the course of proceedings between Ms Gerken, a farmer, and the Amt für Agrarstruktur Verden (Office for Agriculture, Verden; hereinafter 'the Amt') regarding the penalty imposed upon her under Article 10(2) of Regulation No 3887/92.

## Legal background

### *The aid scheme applicable to bovine animals*

#### Regulation (EEC) No 805/68

3 Article 4b of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal (OJ English Special Edition 1968 (I), p. 187), as amended by Council Regulation (EEC) No 2066/92 of 30 June 1992 amending Regulation (EEC) No 805/68 and repealing Regulation (EEC) No 468/87 laying down general rules applying to the special premium for beef producers and Regulation (EEC) No 1357/80 introducing a system of premiums for maintaining suckler cows (OJ 1992 L 215, p. 49, 'Regulation No 805/68'), provides:

'1. A producer holding male bovine animals on his holding may qualify, on application, for a special premium. It shall be granted in the form of an annual premium per calendar year per holding within the limits of regional ceilings for not more than 90 animals for each of the age brackets referred to in paragraph 2.

2. The premium shall be granted no more than twice in the life of each male bovine animal:

- the first time at the age of 10 months,
- the second time after it has reached the age of 22 months.

...

*Detailed rules for applying the aid schemes*

Regulation (EEC) No 3508/92

- <sup>4</sup> In accordance with the first indent of Article 1(1)(b) of Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1), each Member State is to set up such a system (hereinafter ‘the integrated system’) applying, in the livestock sector, to the premium arrangements for beef and veal producers established by Articles 4a to 4h of Regulation No 805/68.

Regulation No 3887/92

- <sup>5</sup> As stated by Article 1 thereof, Regulation No 3887/92 lays down detailed rules for applying the integrated system introduced by Regulation No 3508/92.

6 Article 10(2) of Regulation No 3887/92 is worded as follows:

'If the number of animals declared in an aid application exceeds that found during checks the aid shall be calculated on the number of animals found. However, except in cases of force majeure and after paragraph 5 has been applied, the unit amount of the aid shall be reduced:

(a) in cases where an application concerns a maximum of 20 animals:

- by the percentage corresponding to the difference found if this is not more than two animals,
- by twice the percentage corresponding to the difference found if this is more than two but not more than four animals.

If the difference is greater than four animals, no aid shall be granted;

...

The percentages mentioned under (a) are calculated on the basis of the number declared ....

However, where it is found that a false declaration was made intentionally or as a result of serious negligence:

- the farmer in question shall be excluded from the aid scheme concerned for the calendar year in question, and
  
- in the case of a false declaration made intentionally, from the same aid scheme for the following calendar year.

If a farmer has been unable to comply with his retention undertaking as a result of force majeure he shall retain his right to a premium in respect of the number of animals actually eligible at the time when the case of force majeure occurred.

In no case may premiums be granted on a greater number of animals than that shown in the aid application.

...'

Regulation No 2419/2001

- 7 Regulation No 3887/92 was repealed by the first sentence of Article 53(1) of Regulation No 2419/2001.
- 8 Article 44(1) of Regulation No 2419/2001 provides that the reductions and exclusions contained in Title IV of that regulation, headed 'Basis for the calculation of the aid, reductions and exclusions', do not apply when the farmer submitted factually correct information or where he can show otherwise that he is not at fault.
- 9 In accordance with the second sentence of Article 53(1) of the same regulation, Regulation No 3887/92 is to continue to apply in respect of aid applications relating to marketing years or premium periods which start before 1 January 2002.
- 10 Article 54 of Regulation No 2419/2001 provides:

'1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

2. It shall apply to aid applications relating to marketing years or premium periods starting as of 1 January 2002.

...'



*Application ratione temporis of administrative sanctions laid down by Community provisions*

Regulation No 2988/95

11 Article 1 of Regulation No 2988/95 provides:

‘1. For the purposes of protecting the European Communities’ financial interests, general rules are hereby adopted relating to homogeneous checks and to administrative measures and penalties concerning irregularities with regard to Community law.

2. “Irregularity” shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.’

12 Article 2(2) of that regulation is worded as follows:

‘No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively.’

## The main proceedings and the question referred

- 13 On 21 December 1995, Ms Gerken applied for a special premium for 12 male bovine animals in the first and second age brackets under Article 4b of Regulation No 805/68.
- 14 By a decision of 21 June 1996, the Amt rejected the application for 7 of the 12 bovine animals on the ground that Ms Gerken had not provided proof that the animals fulfilled the age condition laid down by Community law. It also refused to grant the premium for the five other animals, in application of Article 10(2)(a) of Regulation No 3887/92.
- 15 Ms Gerken lodged a complaint without success before the Bezirksregierung Lüneburg (Lüneburg local administration) and then brought an action on 23 July 1998 before the Verwaltungsgericht Stade (Stade Administrative Court) (Germany). Before that court she succeeded in providing the proof of age required for three of the seven bovine animals in question. The Amt therefore stated that it was prepared to grant Ms Gerken premiums, proportionally reduced in accordance with Article 10(2)(a) of Regulation No 3887/92, for those three animals and for the five others for which proof of age had already been provided.
- 16 By judgment dated 17 February 2000, the Verwaltungsgericht held that the Amt had been right to reject Ms Gerken's application in respect of the other four bovine animals for which no proof of age had been provided. In that regard, it found that it was immaterial whether the Amt had changed its administrative practice regarding the means of proof of age of bovine animals.

- 17 However, for the other eight bovine animals, the Verwaltungsgericht held that Ms Gerken was entitled to receive full premiums and not premiums reduced in accordance with Article 10(2)(a) of Regulation No 3887/92. It held that the penalties prescribed under Regulation No 3887/92 did not apply in the case because Ms Gerken had not made any fraudulent or erroneous declaration.
- 18 The Amt appealed against the last part of the judgment given at first instance to the Niedersächsisches Oberverwaltungsgericht.
- 19 That court finds firstly that Ms Gerken has failed to adduce the required proof of age for 4 of the 12 male bovine animals declared in her application for aid and that, according to the second indent of Article 10(2)(a) of Regulation No 3887/92, the amount of aid must be reduced by twice the percentage corresponding to the difference when the difference is not more than four animals. Referring to the judgment in Case C-63/00 *Schilling and Nehring* [2002] ECR I-4483, according to which the penalties laid down in that provision apply even where the discrepancy between the number of animals declared and the number of animals found is not attributable to incorrect information given by the applicant, the national court considers that those penalties should therefore apply to Ms Gerken.
- 20 Nevertheless, the court observes that, in support of her application for aid, Ms Gerken produced a document issued by the veterinary officer for Landkreis Verden (Verden district) certifying that the bovine animals were free of leucosis. According to the national court, until the beginning of 1996 the Amt had accepted such certificates as proof of age for bovine animals, but changed that practice, on the basis of two ministerial orders adopted in March and June 1996, only after Ms Gerken had submitted her application. The national court therefore considers that Ms Gerken provided 'factually correct information' within the meaning of Article 44(1) of Regulation No 2419/2001 and that she is not at fault within the meaning of that provision, at least with regard to the allegation that she did not provide proof of age for the four bovine animals in question.

- 21 In these circumstances the national court is unclear whether it should apply the penalties prescribed in Article 10(2)(a) of Regulation No 3887/92. It notes that that regulation was repealed by the first sentence of Article 53(1) of Regulation No 2419/2001, but that that regulation, in accordance with Article 54(1) thereof, did not enter into force until 13 December 2001. Furthermore, it points out that, under the second sentence of Article 53(1) of Regulation No 2419/2001, Regulation No 3887/92 is to continue to apply to aid applications relating to marketing years or premium periods which start before 1 January 2002. It deduces from this that the penalty laid down in Article 10(2) of Regulation No 3887/92 should be applied to Ms Gerken.
- 22 However, the national court notes that, in accordance with Article 2(2) of Regulation No 2988/95, in the event of a subsequent amendment of the Community law provisions introducing administrative penalties, the less severe provisions shall apply retroactively.
- 23 Considering that the resolution of the dispute before it required an interpretation of the provisions of Regulations Nos 3887/92, 2988/95 and 2419/2001, the Niedersächsisches Obergerverwaltungsgericht decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is the amount of aid also to be reduced under the second indent of Article 10(2)(a) of Regulation (EEC) No 3887/92 where the special premium for male bovine animals applied for when this provision of Community law was in force cannot for legal reasons be granted to the farmer but where in the words of Article 44(1) of Regulation (EC) No 2419/2001, the farmer submitted factually correct information or where he can show otherwise that he was not at fault?’

## The question referred for a preliminary ruling

### *Observations submitted to the Court*

- 24 The Niedersächsisches Ministerium für Ernährung (Lower Saxony Ministry of Food; hereinafter 'the Ministry'), acting for the defendant in the main proceedings, and the Amt consider that the less severe penalties provided for by Regulation No 2419/2001 do not apply in the case in the main proceedings.
- 25 Articles 53(1) and 54(2) of Regulation No 2419/2001 show clearly that Regulation No 3887/92 was repealed when the new regulation entered into force and that Regulation No 2419/2001 is applicable only to applications relating to marketing years or premium periods starting as of 1 January 2002. Consequently, Regulation No 2419/2001 should not be applied to applications for premiums relating to earlier years.
- 26 Nor should Article 2(2) of Regulation No 2988/95 be applied. That provision referred to penalties imposed subsequent to an amendment of Community law, whereas Regulation No 2419/2001 repealed Regulation No 3887/92.
- 27 According to the Ministry, Ms Gerken cannot lay claim to protection of a legitimate expectation on the basis of Article 44(1) of Regulation No 2419/2001. The authority responsible for granting premiums is entitled to request proof that the conditions for their grant are fulfilled even where the grant has already been made. Furthermore, the applicant for aid is required to prove, until the end of the fourth year after the calendar year in which the premium was granted, that the conditions for the grant of that premium have been met. For four of the bovine animals in

question, the applicant was not able to do so. If Article 44(1) of Regulation No 2419/2001 should nevertheless apply in the present case, it would be appropriate, for that reason, only to waive application of the exclusions and reductions, but not the refusal of the aid in respect of the four bovine animals in question.

- 28 The Ministry and the Amt consider that if, despite the repeal of Regulation No 3887/92, including the provisions laying down penalties, by Regulation No 2419/2001, the provisions of the latter regulation should have been subject to the rule of retroactive application under Regulation No 2988/95, that should have been explicitly specified in Regulation No 2419/2001.
- 29 The German Government considers that in the present case the penalties laid down in Article 10(2) of Regulation No 3887/92 should continue to be applicable. Application of that provision is not contrary to either Article 2(2) of Regulation No 2988/95 or the general principles of Community law.
- 30 With regard to Article 2(2) of Regulation No 2988/95, it considers that it is permissible to interpret that rule as meaning that it does not apply when there are in existence specific transitory provisions such as those laid down in sector-specific legislation, for example the second sentence of Article 53(1) of Regulation No 2419/2001. That provision, setting out which rules in respect of the integrated system apply before or after a particular date, constitutes, according to the German Government, a *lex specialis* as against the rule of retroactive application in Article 2 (2) of Regulation No 2988/95.
- 31 With regard to the general principles of Community law, the fact that the integrated system provided for in Regulation No 3887/92 continues to apply in respect of aid

applications relating to marketing years or premium periods which start before 1 January 2002, in accordance with the second sentence of Article 53(1) of Regulation No 2419/2001, is contrary neither to the principle of protection of legitimate expectations nor to the prohibition of retroactive measures. Ms Gerken is simply being treated in accordance with the law applicable to the period in respect of which she applied for a premium. The provisions of the second sentence of Article 53(1) of Regulation No 2419/2001 prevent her from relying on a more favourable rule which came into force after she submitted the application in question.

32 According to the German Government, the differences between the control and penalty systems laid down by Regulations Nos 3887/92 and 2419/2001 militate in favour of its proposed answer. Whilst in the scheme applied under the former regulation, the controls and penalties were based on the various applications for aid, in that laid down by the new regulation the controls are made and the penalties applied as part of an integrated approach based on the farm. The German Government points out that, when controls were carried out under Regulation No 3887/92, they were not carried out on the basis of the farm approach and accordingly did not take account of the whole body of Community regulations applicable to bovine animals. Consequently, the controls did not give results based on the farm which could give rise to penalties also based on the farm. As a result, it is impossible to transfer elements bound up with the scheme laid down by Regulation No 2419/2001, such as Article 44(1), into the control and penalty scheme under Regulation 3887/92.

33 The Commission makes the preliminary point that in Case C-354/95 *National Farmers' Union and Others* [1997] ECR I-4559, paragraphs 39 to 41, the Court has already held that the rule in the second sentence of Article 2(2) of Regulation No 2988/95 of retroactive application of less severe penalties applies in principle to Regulation No 3887/92.

34 The facts giving rise to the case in the main proceedings fulfil the conditions for application of that rule of retroactive application.

- 35 Firstly, a farmer who submits an application for aid for livestock not eligible for aid is in breach of a provision of Community law and on that basis commits an irregularity within the meaning of Article 1(2) of Regulation No 2988/95.
- 36 Secondly, the introduction of Article 44(1) of Regulation No 2419/2001 amended the integrated system in that the penalties for which it provides do not apply where the farmer submitted factually correct information or where he can otherwise show that he is not at fault. In that case, that provision leads to an administrative penalty less severe than that laid down by Regulation No 3887/92.
- 37 The Commission contends that the application, in the present case, of Article 2(2) of Regulation No 2988/95 is not excluded by the provisions in Articles 53 and 54 of Regulation No 2419/2001 regarding the latter's entry into force and its application *ratione temporis*. It considers that, together with the provision in Article 54(2) of Regulation No 2419/2001 which is its counterpart, the second sentence of Article 53 (1) of that regulation must only ensure that applications for aid relating to a period prior to 1 January 2002 may continue to be dealt with on the basis of Regulation No 3887/92 which originally applied to them and should not be subject to the new scheme upon its entry into force. The Community legislature did not, by contrast, intend to exclude by those provisions the application of the rule of retroactive application laid down in the second sentence of Article 2(2) of Regulation No 2988/95 for less severe administrative penalties within the integrated system.
- 38 The Commission did, however, accept at the hearing that there is a distinction between cases to which the rule of retroactive application in Article 2(2) of Regulation No 2988/95 applies and those to which it does not. The rule of retroactive application cannot apply when the provisions laying down penalties in Community legislation have been completely restructured as part of a new regulation.



39 With regard to the application in the present case of Article 44(1) of Regulation No 2419/2001, the Commission observes that an interpretation other than that which it proposes would largely deprive Article 2(2) of Regulation No 2988/95 of its purpose. It would only be possible to exclude the applicability of the rule of retroactive application if it were expressly provided for in the texts. The Commission notes that there is no such express provision in Articles 53 and 54 of Regulation No 2419/2001.

### *Findings of the Court*

40 By the question which it referred for a preliminary ruling, the national court essentially asks whether Article 2(2) of Regulation No 2988/95 is to be interpreted as meaning that where in an application for 'livestock' aid covered *ratione temporis* by Regulation No 3887/92 there is an irregularity giving rise to a penalty under Article 10(2)(a) of that regulation, the competent authorities must apply the provisions of Article 44 of Regulation No 2419/2001 retroactively, on the ground that those provisions penalise less severely the conduct in question.

41 It must be pointed out, firstly, that the aims of Regulation No 3887/92 are, as set out in its seventh and ninth recitals, to monitor effectively compliance with the provisions on Community aid and to adopt provisions which prevent and penalise irregularities and fraud effectively.

42 Article 10(2) of Regulation No 3887/92 is designed to penalise, effectively and as a deterrent, not merely fraudulent declarations or those amounting to serious negligence, but also any irregularity committed by a farmer in his aid application (see *Schilling and Nehring*, cited above, paragraph 27).

- 43 In accordance with the provisions of the second indent of Article 10(2)(a) of Regulation No 3887/92, in force at the time of the aid application at issue in the main proceedings, the amount of the aid is to be reduced by twice the percentage corresponding to the difference found if this is more than two but not more than four animals.
- 44 In accordance with those provisions as interpreted by case-law, the amount of the aid must be reduced even where the discrepancy between the number of animals declared and the number of animals found during checks is not attributable to incorrect information given by the applicant but to the fact that the necessary conditions for the grant of the premiums are not satisfied in regard to certain animals (see *Schilling and Nehring*, paragraph 42).
- 45 After the applicant had lodged the aid application in question, Regulation No 3887/92 was repealed by Article 53(1) of Regulation No 2419/2001. The latter regulation also applies to the methods of implementing the integrated system for certain Community aid schemes established by Regulation No 3508/92.
- 46 In accordance with Article 44(1) of Regulation No 2419/2001, the reductions and exclusions provided for in Title IV of that regulation are not to apply where the farmer submitted factually correct information or can show otherwise that he is not at fault.
- 47 Furthermore, Regulation No 2988/95 states, in particular, in Article 2(2), that in the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions are to apply retroactively.

- 48 It is therefore appropriate to examine whether that provision applies to circumstances such as those at issue in the main proceedings.
- 49 Firstly, the irregularity found in Ms Gerken's aid application, to which Article 10(2) (a) of Regulation No 3887/92 could apply, namely the fact that she made an application for bovine animals in respect of which she had not given the required proof of age, constitutes an irregularity within the meaning of Article 1(2) of Regulation No 2988/95.
- 50 Secondly, the reduction in the amount of 'livestock' aid or the withdrawal of that aid constitutes an administrative penalty within the meaning of Article 2(2) of Regulation No 2998/95 (see, to that effect, *National Farmers' Union and Others*, cited above, paragraph 40, and *Schilling and Nehring*, cited above, paragraphs 26 and 27).
- 51 Thirdly, the penalty schemes relating to aid applications laid down by Regulation No 3887/92 were last amended at the time of the entry into force of Regulation No 2419/2001.
- 52 Finally, Article 44(1) of Regulation No 2419/2001 laid down provisions establishing penalties less severe than those applicable under Article 10(2)(a) of Regulation No 3887/92.
- 53 The German Government's argument that retroactive application of those less severe penalties, in accordance with Article 2(2) of Regulation No 2988/95, should be excluded by application of the second sentence of Article 53(1) and of Article 54 (2) of Regulation No 2419/2001 cannot be accepted.

- 54 The latter provisions state respectively that Regulation No 3887/92 is to continue to apply in respect of aid applications relating to marketing years or premium periods which start before 1 January 2002 and that Regulation No 2419/2001 is to apply to aid applications relating to marketing years or premium periods starting as of 1 January 2002.
- 55 However, it is apparent from the fourth recital in the preamble to Regulation No 2988/95 that the effectiveness of the combating of fraud against the Communities' financial interests calls for a common set of legal rules to be enacted for all areas covered by Community policies. Furthermore, according to the fifth recital, irregular conduct and the administrative measures and penalties relating thereto are provided for in sectoral rules in accordance with Regulation No 2988/95.
- 56 It follows that, in the area of checks and penalties for irregularities committed under Community law, the Community legislature has, by adopting Regulation No 2988/95, laid down a series of general principles and has required that, as a general rule, all sectoral regulations comply with those principles.
- 57 Nothing in Regulation No 2419/2001 suggests that that regulation intended to exclude the principle of the retroactive application of less severe penalties in Article 2(2) of Regulation No 2988/95.
- 58 The second sentence of Article 53(1) and Article 54(2) of Regulation No 2419/2001 should therefore be construed as applying without prejudice to the application of that principle.

59 Without prejudice to the question whether the other provisions of Title IV of Regulation No 2419/2001 relating to the basis for the calculation of the aid, reductions and exclusions could also be applied retroactively in certain circumstances in accordance with Article 2(2) of Regulation No 2988/95, it is appropriate, under that latter provision, to apply retroactively the less severe provisions in Article 44(1) of Regulation No 2419/2001 to applications for aid covered *ratione temporis* by Regulation No 3887/92.

60 Accordingly, if a farmer shows, in accordance with Article 44(1) of Regulation No 2419/2001, that he has provided correct factual information in support of an ongoing application for aid or otherwise shows that he is not at fault in respect of irregularities in that application for aid, the penalty laid down in Article 10(2)(a) of Regulation No 3887/92, consisting of a reduction in the amount of his aid by a set percentage corresponding to the excess in the number of animals found, should not apply.

61 In light of the foregoing, the answer to the question referred must be that Article 2 (2) of Regulation No 2988/95 is to be interpreted as meaning that where, in an application for 'livestock' aid covered *ratione temporis* by Regulation No 3887/92, there is an irregularity giving rise to a penalty under Article 10(2)(a) of that regulation, the competent authorities must apply retroactively the provisions of Article 44(1) of Regulation No 2419/2001, on the ground that those provisions are less severe as regards the conduct in question.

## Costs

- 62 The costs incurred by the German Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Niedersächsisches Oberverwaltungsgericht by order of 1 August 2002, hereby rules:

**Article 2(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the financial interests of the European Communities is to be interpreted as meaning that where, in an application for ‘livestock’ aid covered *ratione temporis* by 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, there**

is an irregularity giving rise to a penalty under Article 10(2)(a) of that regulation, the competent authorities must apply retroactively the provisions of Article 44(1) of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92, on the ground that those provisions are less severe as regards the conduct in question.

Timmermans

Puissochet

Schintgen

Macken

Colneric

Delivered in open court in Luxembourg on 1 July 2004.

R. Grass

C.W.A. Timmermans

Registrar

President of the Second Chamber