

JUDGMENT OF THE COURT (Second Chamber)

24 June 2010 *

In Case C-375/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunale di Treviso (Italy), made by decision of 6 May 2008, received at the Court on 18 August 2008, in the criminal proceedings against

Luigi Pontini and Others,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, P. Lindh, A. Rosas, A. Ó Caoimh (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: N. Jääskinen,
Registrar: L. Hewlett, Principal Administrator,

* Language of the case: Italian.

having regard to the written procedure and further to the hearing on 14 January 2010,

after considering the observations submitted on behalf of:

- Emanuele Rech, Giovanni Forato and Laura Forato, by B. Nascimbene and F. Rossi dal Pozzo, avvocati,
- Adele Adami and Others, by W. Viscardini, avvocato,
- Ivo Colomberotto, by A. Mascotto and O. Bigolin, avvocati,
- Agrirocca di Rech Emanuele and Asolat di Rech Emanuele & C., by G. Donà, avvocato,
- the Agenzia Veneta per i Pagamenti in Agricoltura – AVEPA, by A. dal Ferro and A. Cevese, avvocati,
- the Italian Government, by I. Bruni, acting as Agent, assisted by P. Gentili, avvocato dello Stato,
- the Greek Government, by A. Vasilopoulou and E. Leftheriotou, acting as Agents,

— the European Commission, by P. Rossi and N. Rasmussen, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- ¹ This reference for a preliminary ruling concerns the interpretation of the Community legislation on ‘livestock’ aid applications and, in particular, of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal (OJ 1999 L 160, p. 21, and corrigendum, OJ 2000 L 263, p. 34).
- ² The reference has been made in the course of criminal proceedings brought against Mr Pontini, Mr Rech, Mr Forato, Mr Bonora, Mr Colomberotto, Ms Forato and Ms Adami. Those persons are accused of various criminal offences committed to the detriment of the European Community in connection with the receipt, during the years 2000 to 2004, of Community financial aid in the form of special premiums for male bovine animals and payments for extensification to which, according to the prosecuting authority, they were not entitled.

Legal context

Community legislation

Regulation (EEC) No 3508/92

- ³ Article 1(1) 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) provides that each Member State is to set up an integrated administration and control system ('IACS') applying to various Community aid schemes in the crop sector and the livestock sector.
- ⁴ Under Article 2 of Regulation No 3508/92, as amended by Council Regulation (EC) No 1593/2000 of 17 July 2000 (OJ 2000 L 182, p. 4), the IACS is to comprise a computerised data base, an identification system for agricultural parcels, a system for the identification and registration of animals, aid applications and an integrated control system.
- ⁵ Article 6 of Regulation No 3508/92, as amended by Regulation No 1593/2000, is worded as follows:

‘1. In order to be eligible under one or more Community schemes governed by this Regulation, each farmer shall submit, for each year, an “area” aid application indicating:

- agricultural parcels, including areas under forage crops, and agricultural parcels covered by a set-aside measure for arable land and those laid fallow,
- where applicable, any other necessary information provided for either by the Regulations relating to the Community schemes, or by the Member State concerned.

...

6. For each of the agricultural parcels declared, farmers shall indicate the area and its location, which information must enable the parcel to be identified in the identification system for agricultural parcels.

...’

Regulation (EEC) No 3887/92

- 6 The seventh and ninth recitals in the preamble to 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), as amended by Commission Regulation (EC) No 1678/98 of 29 July 1998 (OJ 1998 L 212, p. 23), ('Regulation No 3887/92') state as follows:

‘... compliance with the provisions on Community aid must be effectively monitored ...;

...

... in the light of experience and having regard to the principle of proportionality and the special problems linked to cases of *force majeure* and natural circumstances, provisions should be adopted to prevent and penalise irregularities and fraud effectively; ...’

7 Article 2(1)(b) of Regulation No 3887/92 provides that, where a forage area is used in common, the competent authorities are to assign it between the individual farmers in proportion to their use or right of use of it.

8 Article 4(1) of Regulation No 3887/92 is worded as follows:

‘Without prejudice to the requirements set out in regulations on individual aid schemes, “area” aid application shall contain all necessary information, in particular:

— the identity of the farmer,

- particulars permitting identification of all the agricultural parcels on the holding, with their area, location, use and, where relevant, whether the parcels are irrigated, and the aid scheme concerned,

- a statement by the producer that he is aware of the requirements pertaining to the aids in question.

By “use” is meant the type of crop or ground cover or the absence of a crop.

...’

Regulation (EC, Euratom) No 2988/95

- 9 Article 4(3) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1), provides:

‘Acts which are established to have as their purpose the obtaining of an advantage contrary to the objectives of the Community law applicable in the case by artificially creating the conditions required for obtaining that advantage shall result, as the case shall be, either in failure to obtain the advantage or in its withdrawal.’

10 Article 8 of that regulation is worded as follows:

‘1. In accordance with their national laws, regulations and administrative provisions, the Member States shall take the measures necessary to ensure the regularity and reality of transactions involving the Communities’ financial interests.

2. Measures providing for checks shall be appropriate to the specific nature of each sector and in proportion to the objectives pursued. ...

...’

Regulation No 1254/1999

11 Recital 13 in the preamble to Regulation No 1254/1999 states that ‘given the trend towards intensification of beef and veal production, premiums for stockfarming should be limited with regard to the forage capacity of each holding in relation to the numbers and species of animals held; ... to avoid excessively intensive types of production, the grant of such premiums should be subject to compliance with a maximum stocking density on the holding’.

12 With regard to the need to provide for a flexible framework of additional Community payments, recital 15 in the preamble to that regulation states that ‘... it is essential that

Member States be obliged to use their discretionary powers exclusively on the basis of objective criteria, to pay full regard to the concept of equal treatment and to avoid market and competition distortions’

¹³ ‘Holding’ is defined in point (b) of Article 3 of Regulation No 1254/1999 as ‘all the production units managed by the producer and located in the territory of a single Member State.’

¹⁴ Under Article 4(1) of that regulation, a producer holding male bovine animals on his holding may qualify, on application, for a special premium.

¹⁵ Article 12 of Regulation No 1254/1999, which is entitled ‘Stocking density’, is worded as follows:

‘1. The total number of animals qualifying for the special premium and the suckler cow premium shall be limited by the application of a stocking density on the holding of two livestock units (LU) per hectare and calendar year. This stocking density shall be expressed in LU per unit of forage area of the holding used for the animals carried on it. However, a producer shall be exempt from the application of the stocking density if the number of animals held on his holding and to be taken into account for determining the stocking density is not more than 15 LU.

2. For determining the stocking density on the holding, account shall be taken of:

- (a) the male bovine animals, suckler cows and heifers, sheep and/or goats for which premium applications have been submitted, as well as the dairy cows needed to produce the total reference quantity of milk allocated to the producer. The number of animals shall be converted to LU by reference to the conversion table in Annex III,
- (b) the forage area, meaning the area of the holding available throughout the calendar year for rearing bovine animals and sheep and/or goats. The forage area shall not include:
 - buildings, woods, ponds, paths,
 - areas used for other crops eligible for Community aid or for permanent crops or horticultural crops, except permanent pasture for which area payments are granted pursuant to Article 17 of this Regulation and Article 19 of [Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products (OJ 1999 L 160, p. 48)],
 - areas qualifying for the support system laid down for the producers of certain arable crops, used for the aid scheme for dried fodder or subject to a national or Community set-aside scheme.

Forage area shall include areas in shared use and areas which are subject to mixed cultivation.

3. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 43. These rules shall, in particular, concern those:

- relating to areas in shared use and to areas which are subject to mixed cultivation,
- enabling improper application of the stocking density to be prevented.'

¹⁶ Article 12(1) of Regulation No 1254/1999 was amended by Council Regulation (EC) No 1512/2001 of 23 July 2001 (OJ 2001 L 201, p. 1), which inserted, after the first sentence of that provision, the following sentence:

'The stocking density shall be 1.9 LU from 1 January 2002 and 1.8 LU from 1 January 2003.'

¹⁷ Paragraph 1 of Article 13 of Regulation No 1254/1999, which is entitled 'Extensification payment', provides:

'Producers receiving the special premium and/or the suckler cow premium may qualify for an extensification payment.'

- 18 Article 45 of Regulation No 1254/1999 provides that Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103) and the provisions adopted in implementation thereof are to apply to the products listed in Article 1 of Regulation No 1254/1999.

Regulation (EC) No 1258/1999

- 19 Under Article 1 of Regulation No 1258/1999, the European Agricultural Guidance and Guarantee Fund ('EAGGF') is to include a Guarantee Section which is to finance, inter alia, the intervention intended to stabilise the agricultural market.

- 20 Article 8(1) of that regulation provides:

'The Member States shall, in accordance with national provisions laid down by law, regulation or administrative action, take the measures necessary to:

(a) satisfy themselves that transactions financed by [the EAGGF] are actually carried out and executed correctly;

(b) prevent and deal with irregularities;

(c) recover sums lost as a result of irregularities or negligence.

The Member States shall inform the Commission of the measures taken for those purposes and in particular of the state of the administrative and judicial procedures.'

Regulation (EC) No 1259/1999

²¹ Council Regulation (EC) No 1259/1999 of 17 May 1999 establishing common rules for direct support schemes under the common agricultural policy (OJ 1999 L 160, p. 113), applies, pursuant to Article 1 thereof, to payments granted directly to farmers under support schemes in the framework of the common agricultural policy ('the CAP') which are financed in full or in part by the 'Guarantee' section of the EAGGF, except those provided for under Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80).

²² Under Article 7 of Regulation No 1259/1999, notwithstanding any specific provisions in individual support schemes, no payment is to be made in favour of beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of that support scheme.

Regulation (EC) No 2419/2001

- ²³ In 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 2001 L 327, p. 11, and corrigendum, OJ 2002 L 7, p. 48), paragraph 1 of Article 4, which is entitled ‘Identification and minimum size of agricultural parcels’, provides:

‘The identification system referred to in Article 4 of Regulation (EEC) No 3508/92 shall operate at agricultural parcel level. The Member States may provide that another unit, such as the cadastral parcel or production block, be used instead of the agricultural parcel. In such cases the Member States shall ensure that agricultural parcels are reliably identified and in particular shall require area aid applications to be furnished with particulars or accompanied by documents specified by the competent authority that enable each agricultural parcel to be located and measured.’

- ²⁴ Article 5(1) of Regulation No 2419/2001 provides:

‘For the purposes of this Regulation:

...

- (b) where a forage area is used in common, the competent authorities shall notionally allocate it between the individual farmers in proportion to their use or right of use of it;

- (c) each forage area must be available for rearing animals for a minimum period of seven months, starting on a date to be determined by the Member State, which must be between 1 January and 31 March.'

²⁵ Article 10 of Regulation No 2419/2001, which is entitled 'Requirements pertaining to livestock aid applications,' is worded as follows:

'1. A livestock aid application shall contain all information necessary to establish eligibility for the aid, in particular:

- (a) the identity of the farmer;
- (b) a reference to the area aid application if this has already been submitted;
- (c) the number of animals of each type in respect of which any aid is applied for and, for bovines, the identification code of the animals;
- (d) where applicable, an undertaking by the farmer to keep the animals referred to in point (c) on his holding during the retention period and information on the location or locations where the animals will be held including the period or periods concerned;
- (e) where applicable, the individual limit or individual ceiling for the animals concerned;

...

- (g) a statement by the farmer that he is aware of the requirements pertaining to the aid in question.

If the animal is moved to another location during the retention period the farmer shall inform the competent authority in writing in advance.

2. The Member States shall guarantee every animal keeper the right to obtain from the competent authority without constraint at reasonable intervals and without excessive delay information on the data relating to him and his animals kept in the computerised database. When submitting his aid application, the farmer shall declare that this data is correct and complete or he shall rectify any incorrect or add missing data.

...'

- ²⁶ Under Article 15 of Regulation No 2419/2001, administrative and on-the-spot checks are to be made in such a way as to ensure effective verification of compliance with the terms under which aids are granted.

- ²⁷ Article 22 of that regulation, which is entitled 'Determination of areas,' provides:

'1. Agricultural parcel areas shall be determined by any appropriate means defined by the competent authority which ensure measurement of a precision at least equivalent to that required for official measurements under the national rules. ...

2. The total area of an agricultural parcel may be taken into account provided that it is fully utilised according to the customary standards of the Member State or region concerned. In other cases the area actually utilised shall be taken into account.

...

3. The eligibility of agricultural parcels shall be verified by any appropriate means. To this end additional proof shall be requested where necessary.'

²⁸ Article 53(1) of Regulation No 2419/2001 repealed Regulation No 3887/92, whilst providing that it was to continue to apply in respect of aid applications relating to marketing years or premium periods which started before 1 January 2002.

²⁹ Pursuant to Article 54(2) thereof, Regulation No 2419/2001 was to apply to aid applications relating to marketing years or premium periods starting as of 1 January 2002.

Regulation (EC) No 1782/2003

- ³⁰ Article 153(1) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1, and corrigendum, OJ 2004 L 94, p. 70), repealed Regulation No 3508/92, whilst providing that it was to continue to apply to applications for direct payments in respect of the calendar years preceding 2005.
- ³¹ Regulation No 1782/2003 also repealed, with effect from 1 January 2005, certain provisions of Regulation No 1254/1999.

National legislation

- ³² Decree of the President of the Republic No 503 of 1 December 1999, concerning the establishment of a Charter for farmers and fishermen, and a Register of agricultural holdings (GURI No 305 of 30 December 1999; ‘Decree No 503/1999’) governs the information contained in the register of agricultural holdings and in the file of the holding or the producer.

- 33 Under Article 3(1)(f) of Decree No 503/1999, the information entered in the register is to include, for each holding, the capacity, the form of legal tenure and the land registry references, if they exist, of the buildings, including the cartographic data, and data derived from aerial photogrammetry and remote sensory equipment, in the possession of the administrative authorities.
- 34 According to the order for reference, the applicable national legislation – namely, Decree No 503/1999 and Decrees of the Minister of Agriculture and Forestry Policy of 4 April 2000, 10 August 2001 and 17 April 2003 – provides, with regard to the requirements concerning the producer’s file, that where the form of tenure by right of which the land belonging to the holding is used is not one of ownership, the aid applicant must attach to the application documentary evidence concerning that use.
- 35 The Agenzia Veneta per i Pagamenti in Agricoltura – AVEPA (‘AVEPA’), the paying agency for the Veneto region, took account of the implementation of Decree No 503/1999 through a series of circulars adopted by the Agenzia per le Erogazioni in Agricoltura, one of which is Circular No 35 of 24 April 2001, which provides as follows:

‘(B) Requirements specific to the applications [relating to the CAP, (“the CAP applications”)] concerning arable crops:

In order to improve the handling of the submission stage of the CAP application in relation to arable crops, the producer concerned is to be asked to produce a copy of the updated land registry certificates relating to all the land identified in the application.

Where the producer who submits the application is a person other than the owner registered in the land registry certificates referred to in the first paragraph, he must prove that he has a right to farm the areas concerned (for example, in the case of a lease, a loan-for-use, a life interest, a long-term lease, and so on), by producing a certified copy of the relevant legal document, validly registered in accordance with the legislation in force.

... Where the producer who submits the application is unable to produce the documents relating to the right to farm and/or in the case of an oral contract, he is required to [certify] personally the existence of the contractual relationship upon which the application is based and to undertake to abide by the obligations arising from Law No 448 of 23 December 1998; [that personal declaration] must certify that the producer is the lawful farmer of the land and must contain details of the owner's civil status and specify the date of commencement and expiry of the contract, referring, on his own responsibility, to the form of tenure by virtue of which the holding is farmed and the reasons for which it was necessary to have recourse to [the declaration].'

Background to the dispute and the question referred for a preliminary ruling

- ³⁶ Following inquiries which began in 2004 at the instigation of the Procura della Repubblica di Treviso (Treviso Public Prosecutor's Office), proceedings were brought against Mr Pontini and Others before the Tribunale di Treviso (District Court, Treviso), on the basis of the relevant provisions of the Italian Criminal Code, for criminal association, as well as for serious and sustained fraud to the detriment of the European Community. The prosecuting authorities allege that, in the years 2000 to 2004, the defendants received Community financial aid to which they were not entitled, in the form of special premiums for male bovine animals and payments for extensification, as provided for under Articles 4(1) and 13, respectively, of Regulation No 1254/1999.

- 37 It is apparent from the order for reference that, according to the prosecuting authorities, the defendants had recourse to deception or to fraudulent conduct designed to mislead the competent national authorities, in order to obtain a profit, for themselves or for others, to which they were not entitled. The proceedings are based on the view that special premiums for male bovine animals and payments for extensification were received fraudulently as a result of the production, in an annex to the applications, of loan-for-use agreements which related to the forage areas on the aid applicants' holdings and which had been drawn up without the knowledge of the owners of the land concerned.
- 38 According to the national court, the applicable national legislation provides that the aid applicant must attach to his application documents showing that he is entitled to farm the areas which make up the forage capacity of his agricultural holding. Where the aid applicant is not the owner of the forage areas to which his application refers, he must append to that application the supporting documents relating to their use. According to that court, the applicable national legislation is to be interpreted as meaning that the aid applicant must produce a valid legal document attesting to his right to farm those areas and, contrary to the defendants' contention, the fact that he is actually using the forage areas – regardless of the basis on which he possesses or farms them – is not sufficient.
- 39 Before the national court, the defendants contended that, in certain Member States, the only condition for the grant of Community financial aid such as that at issue in those proceedings is that suitable forage areas must be actually available and actually used, and the question of a legal document attesting to the right to enjoy that land does not arise.
- 40 The national court is uncertain whether, as regards the conditions for granting Community financial aid such as that at issue in the proceedings before it, Regulation No 1254/1999 has laid down strict conditions from which Member States may not derogate, or whether it has established a general reference framework, leaving to the competent national authorities the task of carrying out the necessary implementation and establishing the details.

41 On the view that the interpretation of Regulation No 1254/1999, in particular as regards the meaning of the term ‘available forage area’ as used in Article 12 thereof, is of great importance for the outcome of the dispute pending before it, the Tribunale di Treviso decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘What are the eligibility conditions for the grant of premiums for male bovine animals and payments for extensification[? Specifically,] is the requirement of use of the forage areas sufficient, irrespective of the existence of a valid legal document attesting to the lawfulness of that use?’

42 In the belief that that question called for an urgent answer from the Court, given that the criminal proceedings have been pending before it since 2004 and that, in the meantime, the competent national authority has suspended the grant of any Community financial assistance to the defendants, the national court submitted a request to the Court for application of the urgent procedure, pursuant to Article 104b of the Rules of Procedure of the Court.

43 The Third Chamber of the Court refused that request by decision of 21 August 2008 on the grounds that this reference for a preliminary ruling does not concern a field covered by the urgent procedure provided for under Article 23a of the Statute of the Court of Justice and Article 104b of the Rules of Procedure and, in any event, the degree of urgency was not such as to warrant application of that procedure.

44 The national court asked the Court, in the alternative and for the same reasons, to place this reference for a preliminary ruling under the accelerated procedure, pursuant to first paragraph of Article 104a of the Rules of Procedure.

- 45 The President of the Court refused that request by order of 29 September 2008 on the ground that the conditions laid down in the first paragraph of Article 104a of the Rules of Procedure were not satisfied.

The question referred for a preliminary ruling

- 46 By its question, the national court asks, in essence, whether there is a requirement under the relevant provisions of the Community legislation concerning ‘livestock’ aid applications – and, specifically, under Regulation No 1254/1999 – to the effect that an application for special premiums for male bovine animals or payments for extensification must be accompanied by a valid legal document attesting to the fact that the aid applicant has the right to use the forage areas to which the application relates.
- 47 It should be stated at the outset that the background to the dispute in the main proceedings gives rise to lively discussion, as was clear from the exchange of oral argument at the hearing before the Court. Those discussions chiefly concern the questions whether loan-for-use agreements were forged and produced by some or all of the defendants in order to obtain Community premiums and whether most of the areas covered by the applications for aid at issue in the main proceedings can be regarded as available forage areas for the purposes of Regulation No 1254/1999.
- 48 However, under Article 234 EC, which is based on a clear separation of functions between the national courts and the Court of Justice, the Court is empowered only to give rulings on the interpretation or the validity of a piece of Community legislation on the basis of the facts which the national court puts before it (see, to that effect, *inter alia*, Case C-321/07 *Schwarz* [2009] ECR I-1113, paragraph 49).

- 49 It is thus for the national court to ascertain the facts which have given rise to the dispute and to establish the consequences which they have for the judgment which it is required to deliver (see, *inter alia*, Case C-435/97 *WWF and Others* [1999] ECR I-5613, paragraph 32).
- 50 The defendants also contest the relevance of the decrees – referred to in paragraph 34 above – which the national court identified as the applicable national legislation and the circulars – referred to in paragraph 35 above – on which AVEPA relied and which, they argue, were not applicable at the material time or carried only administrative weight and not legal authority.
- 51 However, in the context of a request for a preliminary ruling, it is for the national court to elucidate the factual and legislative context of the dispute in the main proceedings (see order in Case C-116/00 *Laguillaumie* [2000] ECR I-4979, paragraph 23). It is not for the Court to identify the provisions of national law relevant for the purposes of the dispute, to give a ruling on their interpretation or to decide whether the interpretation given by the national court of those provisions is correct (see, to that effect, Joined Cases C-378/07 to C-380/07 *Angelidaki and Others* [2009] ECR I-3071, paragraph 48).
- 52 The dispute in the main proceedings chiefly concerns the interpretation of the Community legislation concerning ‘livestock’ aid applications, the conditions established by that legislation for the grant of special premiums for male bovine animals and payments for extensification, as provided for in Articles 4 and 13 of Regulation No 1254/1999, and the way in which the competent national authorities concerned apply the Community legislation.

- 53 The defendants contend that to construe the relevant Community legislation as meaning that livestock can be reared only on forage areas belonging to the producer or in relation to which he can show that he holds a specific legal right of enjoyment would be contrary to the spirit of that legislation, which refers to the areas which the producer uses or of which he has the enjoyment, independently of any question concerning the legal basis for that use or enjoyment. According to the defendants, the intention of the Community legislature to make the payments conditional upon the simple use or availability of the forage areas is clear, in particular, from Articles 3, 12 and 17 of Regulation No 1254/1999, Article 1(4) of Regulation No 3508/92 and Articles 5, 6 and 22 of Regulation No 2419/2001.
- 54 The Community legislation concerning the detailed rules for the grant of special premiums for male bovine animals and payments for extensification contains no reference to the legal basis for the occupation of the forage areas: all that matters is the actual use of the areas given over to grazing. Regulation No 1254/1999 lays down a number of strict conditions designed to ensure that the producer rears on his holding a sufficient number of bovine animals to qualify for the premium. The essential factor is the presence of the head of cattle declared.
- 55 The AVEPA, on the other hand, maintains – as do the Italian and Greek Governments – that national legislation which requires an aid applicant to produce a valid legal document attesting to the fact that the area referred to in his application for a special premium for male bovine animals and payment for extensification is actually available to him is not contrary to the relevant Community legislation. It is for Member States, in the framework of the IACS, to introduce supervisory measures and inspection procedures which provide an efficient means of ensuring compliance with the provisions on Community aid and to adopt provisions under which irregularities and fraud are prevented and penalised effectively.

- 56 The AVEPA and the Italian Government maintain, in particular, that requiring production of a valid legal document makes it possible to check whether the data provided in the aid applications is consistent; makes it easier to ensure that the forage capacity of the area in question is not taken into account twice; and prevents rearers from unlawfully making use of land belonging to others, with the manifest aim of circumventing the legislation on financial aid.
- 57 As the Commission correctly argues, it is necessary to examine whether the Community legislation and, in particular, Regulation No 1254/1999, lays down, as an eligibility condition for the grant of the special premiums for male bovine animals and payments for extensification, an obligation to produce a valid legal document attesting to the right to use the forage areas covered by the aid application and, if not, whether the Community legislation precludes Member States from imposing such an obligation under their national legislation.
- 58 It is settled case-law that, in interpreting a provision of Community law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (Case C-34/05 *Schouten* [2007] ECR I-1687, paragraph 25, and Case C-45/05 *Maatschap Schonewille-Prins* [2007] ECR I-3997, paragraph 30).
- 59 With regard, first, to the terms of the Community provisions at issue, Article 3(b) of Regulation No 1254/1999 defines a ‘holding’ as meaning ‘all the production units managed by the producer and located in the territory of a single Member State’.

- 60 Article 12(1) of Regulation No 1254/1999 establishes that the total number of animals qualifying for the special premium provided for in Article 4(1) thereof is to be limited by the application of a stocking density on the holding which varies, over the years material to the main proceedings, between 2 and 1.8 LU per hectare and per reference calendar year.
- 61 As is apparent from Article 12(2)(a) and (b) of Regulation No 1254/1999, that density factor corresponds to a fraction of which the numerator is the number of animals in respect of which aid applications were lodged and the denominator is the forage area of the holding available throughout the calendar year for rearing bovine animals and sheep and/or goats. As a consequence, the greater the forage area given over to the rearing of bovine animals during the year, the higher the number of animals in respect of which the special premium can be claimed.
- 62 Neither the definition of 'holding' in Article 3(b) of Regulation No 1254/1999 nor the reference to 'the area of the holding ... available' in Article 12(2)(b) thereof support the inference that, when submitting his aid application, a producer must, by virtue of that regulation and in order to be able to receive the premiums concerned, produce a valid legal document which either shows that he is himself the owner of the area taken into account, or attests to the fact that he holds another kind of legal right to use the area.
- 63 As the Commission argues, those provisions do not rule out the possibility that mere actual use of a forage area throughout the reference calendar year may constitute 'availability' of that area for the purposes of Regulation No 1254/1999.

- ⁶⁴ It follows both from the final subparagraph of Article 12(2) of Regulation No 1254/1999 and Article 2(1)(b) of Regulation No 3887/92 that the forage areas covered by an aid application may be used in common. Under Article 5(1)(b) of Regulation No 2419/2001, which applies to aid applications submitted in relation to marketing years or premium periods starting on or after 1 January 2002, where a forage area is used in common, the competent authorities may notionally allocate it between the individual farmers in proportion to their use or right of use of that land.
- ⁶⁵ Article 22 of Regulation No 2419/2001, which is entitled ‘Determination of areas’, provides that agricultural parcel areas are to be determined by any appropriate means and that if the total area of an agricultural parcel is not taken into account because it is not fully utilised, the area actually utilised is to be taken into account.
- ⁶⁶ It follows from the provisions referred to above that the grant of the premiums concerned is determined according to the forage areas actually used and the number of animals held on those areas during the calendar year in question and does not depend on the production of a valid legal document attesting to the right to use those areas.
- ⁶⁷ Next, as regards the objectives pursued by Regulation No 1254/1999, it is apparent from recitals 4 and 13 in the preamble thereto that one of those objectives is to halt the trend towards intensification of beef and veal production, whereby producers carry ever-increasing numbers of bovine animals on their holdings and, as the area covered by the holding does not expand, it becomes insufficient to feed the animals (*Schouten*, paragraph 28).

- ⁶⁸ The stocking density laid down in Article 12 of Regulation No 1254/1999 is therefore designed to ensure that premiums are granted only for animals held on holdings which cover an area large enough to feed them. As the Commission has correctly argued, the calculation of the stocking density on the basis of the available forage area is therefore made by reference to the actual forage capacity of the holding and entails the monitoring of the actual use of that capacity: it is not made by reference to the forage capacity which is formally or legally available in that area, but not actually used.
- ⁶⁹ As the defendants contend, the attainment of that objective of Regulation No 1254/1999 does not require, as a pre-condition for the grant of the premiums concerned, the production of a valid legal document attesting to the right to use the forage areas covered by the aid application, proof of the actual use of the areas being sufficient in that regard.
- ⁷⁰ It follows from the above that Article 12 of Regulation No 1254/1999 does not make the eligibility of an aid application conditional upon production of a valid legal document attesting to the applicant's right to use the forage areas covered by that application. The relevant provisions of Regulation No 1254/1999, the context in which they operate and the objectives pursued, in particular, by that regulation indicate that it is the actual use of the forage area which constitutes one of the eligibility conditions for the grant of the premiums concerned.
- ⁷¹ However, even if such a condition is not established by the Community legislation, it is necessary to determine – as is clear from paragraph 57 above – whether the Community legislation precludes Member States from imposing, under their national legislation, an obligation to produce a valid legal document attesting to the aid applicant's right to use the forage areas covered by his application.

- ⁷² In that regard, it is necessary to consider the nature and objectives of the IACS introduced by the Community legislation on Community financial aid schemes and to determine the breadth of the discretion accorded to Member States for the purposes of ensuring compliance with the conditions for the grant of the aid in the framework of the IACS.
- ⁷³ In accordance with Articles 1 and 2 of Regulation No 3508/92, each Member State is required to set up an IACS, including a computerised data base; an identification system for agricultural parcels; a system for the identification and registration of animals; aid applications; and an integrated control system.
- ⁷⁴ The IACS has the objective, in accordance with the seventh and ninth recitals in the preamble to Regulation No 3887/92, of monitoring effectively compliance with the provisions on Community aid and of adopting provisions which prevent and penalise irregularities and fraud effectively (see, to that effect, Case C-354/95 *National Farmers' Union and Others* [1997] ECR I-4559, paragraph 51; Case C-63/00 *Schilling and Nehring* [2002] ECR I-4483, paragraph 25; and Case C-295/02 *Gerken* [2004] ECR I-6369, paragraph 41).
- ⁷⁵ It follows clearly from the Community legislation concerning the IACS, the protection of the financial interests of the European Communities and the financing of the CAP that the Member States have the task of adopting measures to ensure the proper implementation of the IACS and that they are especially required to take the necessary measures to ensure the reality and the regularity of the aid schemes financed by the Communities in general and by the EAGGF in particular, as well as to prevent and deal with irregularities.

- ⁷⁶ It follows also from an examination of the relevant provisions of the Community legislation on Community aid schemes and the IACS that the Member States have a measure of discretion for the purposes of implementing those schemes and when choosing the national measures which they consider necessary in order to prevent and penalise irregularities and fraud effectively.
- ⁷⁷ Thus, Article 6(1) of Regulation No 3508/92 provides that, in order to be eligible under one or more of the Community aid schemes governed by that regulation, each farmer is to submit, for each year, an 'area' aid application referring to the agricultural parcels, including areas under forage crops, and, where applicable, to 'any other necessary information provided for either by [those] Regulations relating to the Community [aid] schemes, or by the Member State concerned'.
- ⁷⁸ Similarly, Article 4(1) of Regulation No 3887/92 provides that an 'area' aid application is to contain all necessary information and, in particular, details enabling the identification of all the agricultural parcels on the holding, with their area, location and use.
- ⁷⁹ The discretion which the Member States enjoy in relation to the monitoring of aid applications also flows from Regulation No 2419/2001. It is apparent from recital 48 in the preamble to that regulation that the Member States should take any further measures necessary to ensure the proper functioning of that regulation. Under Article 4 of Regulation No 2419/2001, the Member States are to ensure that agricultural parcels are reliably identified and, in particular, they are to require 'area' aid applications to be furnished with particulars or accompanied by documents specified by the competent authority which enable each agricultural parcel to be located and measured. Under Article 22(3) of that regulation, the eligibility of agricultural parcels is to be verified by any appropriate means and, to that end, additional proof may be requested where necessary.

80 Moreover, Article 7 of Regulation No 1259/1999 provides that no payment under aid schemes pursuant to that regulation is to be made in favour of beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments, with a view to obtaining an advantage contrary to the objectives of that support scheme.

81 Furthermore, the measures referred to in paragraph 75 above, which the Member States must take in order to satisfy themselves as to the reality and regularity of the transactions financed by the Community must, as is apparent from Article 8(1) of Regulation No 2988/95 and Article 8(1) of Regulation No 1258/1999, be taken in accordance with their national laws, regulations and administrative provisions.

82 It follows clearly from all the abovementioned provisions of the Community legislation on Community aid schemes and the detailed rules for implementing the IACS that the Member States enjoy a measure of discretion as regards the supporting documents and the evidence to be required from an aid applicant in relation to the forage areas covered by the application. In the light of that discretion, it is permissible for the Member States to lay down more detailed rules as to the evidence to be submitted in support of an aid application by referring, in particular, to the usual practices in their territory in the field of agriculture as regards the enjoyment and use of the forage areas, and the legal documents to be produced in respect of that use.

83 None the less, it should be noted that that discretion is subject to certain limits.

- ⁸⁴ Thus, as is apparent from recital 15 in the preamble to Regulation No 1254/1999, Member States are required to base the exercise of their discretion on objective criteria, in order to pay full regard to the concept of equal treatment and to avoid market and competition distortions. Although, in principle, the requirement to produce a valid legal document constitutes such an objective criterion, it is for the national court to determine whether it applies to all applicants for the aid concerned who are in comparable situations.
- ⁸⁵ Similarly, it follows from Article 8(1) and (2) of Regulation No 2988/95 that the measures adopted by Member States providing for checks to ensure the regularity and reality of transactions involving the Communities' financial interests, such as the operations financed by the EAGGF, must be appropriate to the specific nature of each sector and in proportion to the objectives pursued.
- ⁸⁶ Consequently, the exercise by Member States of their discretion in respect of the evidence to be provided in support of an aid application, particularly as regards the possibility of requiring an aid applicant to produce a valid legal document attesting to his right to use the forage areas covered by that application, must be consistent with the objectives pursued by the Community legislation concerned, as well as the general principles of Community law and, in particular, the principle of proportionality.
- ⁸⁷ As the Court has held, the principle of proportionality, in accordance with which measures implemented through provisions must be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it, must be complied with both by the Community legislature and by the national legislative authorities and the national courts which apply Community law (see, to that effect, Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handel and ZVK* [2008] ECR I-69, paragraph 33). In consequence, that principle must be complied with by the competent national authorities in relation to the provisions of Regulation No 1254/1999 and those concerning the IACS.

⁸⁸ As is clear from paragraph 75 above, the Community legislation relating to the IACS, the protection of the financial interests of the Communities and the financing of the CAP requires the adoption of national measures specifically designed to ensure the proper implementation of the IACS, as well as the reality and regularity of the aid schemes financed by the Community. Legislation – such as that applicable in the case before the referring court – which, as is apparent from paragraph 56 above, aims in particular to prevent rearers from being able to make unlawful use of land belonging to others, with the aim of circumventing the Community legislation on financial aid, seeks to comply with those objectives. The requirement, imposed under that legislation, concerning the production of a valid legal document appears to be consistent with the requirements of the principle of proportionality.

⁸⁹ It is for the national court, however, to verify whether that principle has been complied with in the circumstances of the case before it.

⁹⁰ In the light of the above, the answer to the question referred is that the Community legislation – and, in particular, Regulation No 1254/1999 – does not make the eligibility of an application for special premiums for male bovine animals or payments for extensification conditional upon the production of a valid legal document attesting to the aid applicant's right to use the forage areas to which the application relates. However, subject to compliance with the objectives pursued by the Community legislation, as well as the general principles of Community law and, in particular, the principle of proportionality, the Community legislation does not preclude Member States from imposing, under their national legislation, a requirement to produce such a document.

Costs

- ⁹¹ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

The Community legislation – and, in particular, Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal – does not make the eligibility of an application for special premiums for male bovine animals or payments for extensification conditional upon the production of a valid legal document attesting to the aid applicant’s right to use the forage areas to which the application relates. However, subject to compliance with the objectives pursued by the Community legislation, as well as the general principles of Community law and, in particular, the principle of proportionality, the Community legislation does not preclude Member States from imposing, under their national legislation, a requirement to produce such a document.

[Signatures]