

JUDGMENT OF THE COURT (Sixth Chamber)

11 January 2001 \*

In Case C-403/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunale Civile e Penale di Cagliari, Italy, for a preliminary ruling in the proceedings pending before that court between

**Azienda Agricola Monte Arcosu Srl**

and

**Regione Autonoma della Sardegna,**

**Organismo Comprensoriale No 24 della Sardegna,**

**Ente Regionale per l'Assistenza Tecnica in Agricoltura (ERSAT),**

on the interpretation of Article 2(5) of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures (OJ 1985

\* Language of the case: Italian.

L 93, p. 1) and of Article 5(5) of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures (OJ 1991 L 218, p. 1),

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, V. Skouris and F. Macken (Rapporteur), Judges,

Advocate General: J. Mischo,  
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- Azienda Agricola Monte Arcosu Srl, by C. Ribolzi and E. Ribolzi, avvocati,
  
- the Commission of the European Communities, by F.P. Ruggeri Laderchi, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Azienda Agricola Monte Arcosu Srl and of the Commission at the hearing on 20 January 2000,

after hearing the Opinion of the Advocate General at the sitting on 30 March 2000,

gives the following

### Judgment

- 1 By order of 26 March 1998, received at the Court on 13 November 1998, the Tribunale Civile e Penale di Cagliari (Civil and Criminal District Court, Cagliari) referred for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) two questions on the interpretation of Article 2(5) of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures (OJ 1985 L 93, p. 1) and of Article 5(5) of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures (OJ 1991 L 218, p. 1).
  
- 2 Those questions have been raised in proceedings between Azienda Agricola Monte Arcosu Srl ('Monte Arcosu'), on the one hand, and Regione Autonoma della Sardegna (Autonomous Region of Sardinia), Organismo Comprensoriale No 24 della Sardegna (a body responsible for land registration in Sardinia) and Ente Regionale per l'Assistenza Tecnica in Agricoltura (ERSAT; regional authority for technical assistance to agriculture), on the other, concerning the rejection by Organismo Comprensoriale No 24 della Sardegna of Monte Arcosu's application to be entered in the Register of Farmers Practising Farming as their Main Occupation.

## Community law

- 3 Article 2(5) of Regulation No 797/85 provides:

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

- 4 That provision is identical to Article 5(5) of Regulation No 2328/91.
- 5 Under Article 32(1) of Regulation No 797/85, Member States were required, within six months of 1 April 1985, to bring into force the measures necessary to comply with that regulation.

## National law

- 6 Article 12 of Italian Law No 153 of 9 May 1975, defining what is meant by 'farmer practising farming as his main occupation', laid down the criterion of two-thirds both for the farmer's total income and for the working time devoted to work unconnected with the holding.
  
- 7 Under Article 13 of that Law, persons other than natural persons, namely agricultural cooperatives established in accordance with the legislation on cooperation, and farmers' associations, qualify for the measures prescribed in Title III of that Law, provided that, in both cases, 'all the members derive at least 50% of their own income from farming and associated activity and devote at least 50% of their working time to farming and associated activity'.
  
- 8 Article 15 of Law No 19 of the Region of Sardinia of 23 March 1979, defining what is meant by 'farmer practising farming as his main occupation', confers that status on those who 'devote not less than two-thirds of their own total working time to farming and derive not less than two-thirds of their own total earned income from farming'.
  
- 9 Article 21 of that Law extends the benefits conferred by the Law to farming cooperatives and farmers' associations established in accordance with the legislation in force, 'provided that each member derives at least 50% of his own income from farming and devotes at least 50% of his own working time to farming and associated activity'.

10 Article 2 of the Italian Ministerial Decree of 12 September 1985 provides:

‘Beneficiaries

1. The following farmers shall qualify for the intervention measures referred to in Title I of the abovementioned regulation in so far as they satisfy the subjective criteria set out in Article 2(1) of that regulation:
  - (a) farmers who cultivate their own land, whether they are owners or tenants, share-croppers and tenant-farmers, whether without the agreement of the lessor or together with the lessor, perpetual lease-holders, family members helping the farmer on a regular and permanent basis;
  - (b) owners, usufructuaries and tenants;
  - (c) agricultural cooperatives established in accordance with the legislation in force on cooperation;
  - (d) associations of farmers who cultivate their own land, perpetual lease-holders, tenant-farmers, family members helping the farmer on a regular and permanent basis, owners, usufructuaries and tenants;

(e) partnerships which directly manage agricultural holdings which they own or of which they have the use in whatever form. The regions and autonomous provinces shall define, within the limits set in Article 6 of the Regulation, the conditions as to eligibility.

2. The criterion of being a farmer practising farming as his main occupation and that relating to occupational skill and competence, which are laid down in Article 2(1)(a) and (b) of the abovementioned regulation, shall be defined on the basis of the regional legislative provisions adopted pursuant to Directive 72/159/EEC. Failing that, Articles 12 and 13 of Law No 153 of 9 May 1975 shall apply.

3. The cooperatives referred to under (c) above, whose sole object is the management of agricultural holdings, may seek to obtain the investment aid provided for under Title I of the Regulation even if only 20% of their members satisfy the subjective criteria prescribed.

11 Law No 17 of the Region of Sardinia of 27 August 1992 provided for the creation of a Register of Farmers Practising Farming as their Main Occupation, specifying that the criteria for the management of the Register were to be determined by the Regional Council in accordance with the provisions of Regulation No 2328/91.

### **The main proceedings**

12 Monte Arcosu is a private limited company whose object is to carry on farming activities.

- 13 Monte Arcosu has acquired several holdings of agricultural land in Uta, Siliqua and Decimomannu. It stipulated in the public deed of sale that it intended to obtain the status of a farmer practising farming as its main occupation and therefore claimed the benefit of registration duties at 8% as provided for in Note 1 to Article 1 of the tariff annexed to Presidential Decree No 131 of 26 April 1986.
- 14 It is clear from the order for reference that Monte Arcosu subsequently applied to the Organismo Comprensoriale No 24 della Sardegna for entry in the Register of Farmers Practising Farming as their Main Occupation.
- 15 That application was rejected by decision of 11 September 1991 on the ground that the regional rules did not provide for commercial companies to be entered in that register.
- 16 Consequently, Monte Arcosu brought proceedings against Regione Autonoma della Sardegna, Organismo Comprensoriale No 24 della Sardegna and Ente Regionale per l'Assistenza Tecnica in Agricoltura in order to obtain its entry in the Register of Farmers Practising Farming as their Main Occupation on the basis of Article 2(5) of Regulation No 797/85 or Article 5(5) of Regulation No 2328/91.
- 17 Since it took the view that the resolution of the dispute before it depended on the interpretation of the abovementioned provisions, the Tribunale Civile e Penale di Cagliari decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Despite the silence of the Italian legislature, is it in any event possible to apply the Community provisions in question to persons other than natural persons, and in particular to companies having legal personality?’



- (2) If an affirmative answer is given to the first question, what are the necessary and sufficient conditions for conferring the status of farmers practising farming as their main occupation on persons other than natural persons and, in particular, on companies with legal personality?’

### Admissibility of the questions referred for a preliminary ruling

- 18 At the outset, the Commission expresses doubts as to the admissibility of the questions referred.
- 19 It states that those questions arise from a dispute concerning the application of a national fiscal provision which limits the benefit of a reduced rate of registration duties payable on acquisitions of agricultural land to farmers practising farming as their main occupation.
- 20 It points out that, in Case C-162/91 *Tenuta il Bosco v Ministero delle Finanze* [1992] ECR I-5279, paragraph 26, the Court held that a reduced rate of registration duty on acquisitions of agricultural land by farmers does not fall within the scope of Regulation No 797/85 and is thus governed by national law alone. It states, moreover, that the concept of farmer practising farming as his

main occupation, which is used in the national fiscal provision, does not refer to that used in Community law.

- 21 In that regard, it is clear from settled case-law that the procedure provided for in Article 177 of the Treaty is an instrument of cooperation between the Court of Justice and national courts by means of which the former provides the latter with interpretation of such Community law as is necessary for them to give judgment in cases upon which they are called to adjudicate. It follows that it is for the national courts alone which are seised of the case and are responsible for the judgment to be delivered to determine, in view of the special features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they put to the Court (see, in particular, Joined Cases C-297/88 and C-197/89 *Dzodzi v Belgian State* [1990] ECR I-3763, paragraphs 33 and 34; and Case C-231/89 *Gmurzynska-Bscher v Oberfinanzdirektion Köln* [1990] ECR I-4003, paragraphs 18 and 19).
- 22 Furthermore, a reference by a national court can be rejected only if it appears that the procedure laid down by Article 177 of the Treaty has been misused and a ruling from the Court elicited by means of a contrived dispute, or it is obvious that Community law cannot apply, either directly or indirectly, to the circumstances of the case referred to the Court (Case C-28/95 *Leur-Bloem v Inspecteur der Belastingdienst/Ondernemingen Amsterdam 2* [1997] ECR I-4161, paragraph 26).
- 23 In this case, although it is clear from the order for reference that Monte Arcosu lodged an application with the Organismo Comprensoriale No 24 della Sardegna for entry in the Register of Farmers Practising Farming as their Main Occupation after having claimed the benefit of taxation at 8% as provided for in Note 1 to Article 1 of the tariff annexed to Presidential Decree No 131 in respect of the registration duties payable on acquisitions of agricultural land, it is also clear

from that order that the main proceedings concern only the refusal to make an entry in that register which, as the Commission moreover pointed out, does not have the effect of merely preventing Monte Arcosu from benefiting from a reduced rate of registration duties, but also makes access to the aid provided for in connection with Community legislation impossible or, at the very least, more difficult for it.

- 24 It follows from the foregoing that the questions referred are admissible.

#### The questions referred for a preliminary ruling

- 25 It is clear from the order for reference that, by its first and second questions, which it is appropriate to consider together, the Tribunale Civile e Penale di Cagliari essentially seeks to ascertain whether, and under what conditions, a national court may apply to limited companies the last subparagraph of Article 2(5) of Regulation No 797/85 and the last subparagraph of Article 5(5) of Regulation No 2328/91 where the legislature of a Member State has not adopted the provisions necessary for their implementation in the national legal system.
- 26 In this respect, although, by virtue of the very nature of regulations and of their function in the system of sources of Community law, the provisions of those regulations generally have immediate effect in the national legal systems without its being necessary for the national authorities to adopt measures of application, some of their provisions may none the less necessitate, for their implementation, the adoption of measures of application by the Member States.

- 27 That is true of the last subparagraph of Article 2(5) of Regulation No 797/85 and the last subparagraph of Article 5(5) of Regulation No 2328/91 which provide that, on the basis of the criteria used in respect of natural persons, the Member States are to define what is meant by 'farmer practising farming as his main occupation' in the case of persons other than natural persons.
- 28 In the light of the discretion enjoyed by the Member States in respect of the implementation of those provisions, it cannot be held that individuals may derive rights from those provisions in the absence of measures of application adopted by the Member States.
- 29 It follows from the foregoing that the last subparagraph of Article 2(5) of Regulation No 797/85 and the last subparagraph of Article 5(5) of Regulation No 2328/91 may not be relied on before a national court by limited companies seeking to obtain the status of farmers practising farming as their main occupation where the legislature of a Member State has not adopted the provisions necessary for their implementation in the national legal system.

### Costs

- 30 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, 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 (Sixth Chamber),

in answer to the questions referred to it by the Tribunale Civile e Penale di Cagliari by order of 26 March 1998, hereby rules:

The last subparagraph of Article 2(5) of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures and the last subparagraph of Article 5(5) of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures may not be relied on before a national court by limited companies seeking to obtain the status of farmers practising farming as their main occupation where the legislature of a Member State has not adopted the provisions necessary for their implementation in the national legal system.

Gulmann

Skouris

Macken

Delivered in open court in Luxembourg on 11 January 2001.

R. Grass

C. Gulmann

Registrar

President of the Sixth Chamber

