

OPINION OF ADVOCATE GENERAL

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delivered on 8 June 2004<sup>1</sup>

1. The College van Bereop voor het bedrijfsleven (Administrative Court for Trade and Industry) has referred for a preliminary ruling three questions on interpretation relating to the manner of calculating a time-limit laid down in the legislation concerning the common organisation of the market in beef and veal, and one question on validity relating to the proportionality of the consequences of failure to comply with that time-limit.

**I — The facts, legal background and questions referred for a preliminary ruling**

2. The parties in the main proceedings are two cattle-breeding companies (Maatschap Toeters and M.C. Verberk) and the Productschap Vee en Vlees (Cattle and Meat Board). The companies applied for an early marketing premium for veal calves under the common organisation of the market in beef

and veal. Their applications were rejected by the Productschap Vee en Vlees because they had been lodged outside the three-week period laid down in the relevant legislation.

3. To be specific, the Maatschap Toeters calves were slaughtered on 12, 13 and 16 March 1998. The Productschap Vee en Vlees considered that the period for lodging applications had expired on 3, 6 and 7 April 1998, respectively, and that the application, which was received on 8 April 1998, had been lodged out of time. The calves owned by M.C. Verberk were slaughtered on 27 and 28 January 1998, so the Productschap Vee en Vlees considered that the three-week period had ended on 18 and 19 February 1998, respectively, and that the application, which was received on 20 February 1998, had also been lodged out of time.

4. The companies brought an action before the national court, which held that its judgment depended on the interpretation of Article 3 of Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971

<sup>1</sup> — Original language: Portuguese.

determining the rules applicable to periods, dates and time-limits.<sup>2</sup> That provision states:

‘1. ... Where a period expressed in days, weeks, months or years is calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be considered as falling within the period in question.

2. Subject to the provisions of paragraphs 1 and 4: ...

(c) a period expressed in weeks, months or years shall start at the beginning of the first hour of the first day of the period, and shall end with the expiry of the last hour of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day from which the period runs. ...’

5. The national court considered that the judgment also depended on the interpreta-

tion and validity of Article 50a(1) of Regulation No 3886/92,<sup>3</sup> according to which ‘any application for [an early marketing] premium [for calves] shall be lodged with the competent authority of the Member State concerned no later than three weeks following the day of slaughter’.

6. In that context, the court has referred the following questions for a preliminary ruling:

‘1 a. Is Article 3(2)(c) of Regulation No 1182/71 to be interpreted as meaning that a period expressed in weeks such as that laid down by Article 50a of Regulation No 3886/92 ends with the expiry of whichever day in the last week is the same day of the week as the day following the day on which the calves were slaughtered?

b. Is a Member State free, when applying Article 50a of Regulation No 3886/92, to establish the time at

2 — OJ, English Special Edition 1971 (II), p. 354.

3 — Commission Regulation (EEC) No 3886/92 of 23 December 1992 laying down detailed rules for the application of the premium schemes provided for in Council Regulation (EEC) No 805/68 on the common organisation of the market in beef and repealing Regulations (EEC) No 1244/82 and No 714/89 (OJ 1992 L 391, p. 20), as amended by Commission Regulation (EC) No 2311/96 of 2 December 1996 (OJ 1996 L 313, p. 9).

which a premium application has been lodged pursuant to national rules of procedure which apply within the national legal system of that Member State to comparable, national periods for making applications?

## II — Assessment

### A — *The first question*

- c. If not, must Article 50a of Regulation No 3886/92 be interpreted as meaning that a premium application has been “lodged” in time if it can be shown to have been posted prior to the expiry of the three-week period and to have been received by the competent authority at such a time that it could have communicated the relevant data to the Commission on the same day as would have been the case had the premium application been received by the competent authority within that period?
2. Is Article 50a(1) of Regulation No 3886/92 valid in so far as it prevents applicants from receiving the full amount of the premium in respect of each occasion on which the period for making applications is exceeded, irrespective of how and by what extent?
7. Observations have been submitted by the Netherlands Government, the Productschap Vee en Vlees and the Commission.
8. By this question, the national court seeks to know how to calculate one of those periods expressed in weeks laid down in Regulation No 1182/71, which begins to run at the moment an event occurs or an action takes place. It deduces from Article 3 of the regulation that the day on which the event occurs or the action takes place, in the present case the day on which the calves were slaughtered, does not fall within the period, but it has doubts as to which is the final day of the period. Article 3(2)(c) of the regulation establishes that the period ends at the end of the day which is the same day of the week or falls on the same date as the day from which the period runs. Does that mean the day on which the event or action from which the period runs occurs or takes place, even though it does not fall within the period? Or is it the following day, which is the first day of the period? The national court points out that, according to the first interpretation, periods expressed in weeks have seven days whereas, according to the second, those periods will have one more day. Thus, a one-week period will have eight days, a two-week period fifteen, etc.
9. According to the Netherlands Government, it is clear from the wording of Article 3

of Regulation No 1182/71 that the last day of a period expressed in weeks is the day in the last week of the period which is the same day of the week as the day following the day on which the event occurs or the action takes place from which the period runs. In the present case, as the day of slaughter is not included in the period, the day from which the period is calculated has to be the following day. Therefore, if the calves were slaughtered on Monday 16 March 1998, the three-week period began to run on Tuesday 17 March 1998 at 00.00 hrs and expired on the Tuesday of the third following week at 24.00 hrs, that is to say, Tuesday 7 April 1998 at 24.00 hrs.

10. The Commission supports the opposite interpretation. Article 3 of Regulation No 1182/71 is based on the concepts of *dies a quo* and *dies ad quem*. The Commission understands from Article 3(1) that the *dies a quo* is the day on which the event or action from which the period must be calculated occurs or takes place. Under Article 3(1), the *dies a quo* does not fall within the period, so that all those subject to the rule have the same period, which does not depend on the moment at which the event or action occurs. However, the day on which the event or action occurs is still the *dies a quo* for the purposes of calculating the last day of the period. Thus, a one-week period is seven days. Otherwise, a one-week period would be eight days, a two-week period would be fifteen, etc, which the Commission considers illogical.

11. This question raises a problem of interpretation which is complex and of some significance, given the wide scope of Regulation No 1182/71. Article 1 states that '[s]ave as otherwise provided, this regulation shall apply to acts of the Council or Commission which have been or will be passed pursuant to the Treaty'. Consequently, the regulation applies to the calculation of the periods, dates and time-limits laid down by Community legislation, except periods which have specific regulations and those laid down in primary law or in acts other than those of the Council or the Commission, for example the Rules of Procedure of the Court of Justice, an act of the Court itself which contains specific provisions relating to periods.

12. My assessment will begin with a brief reference to the legislation and then present a systematic argument which, in my view, gives the correct answer to the question raised.

13. The wording of the language versions which I have consulted does not give a definitive answer. This is due to an ambiguity in all the versions of Article 3 of Regulation No 1182/71. When establishing which shall be the last day of the period expressed in weeks, months or years, Article 3(2) merely states that it is to be whichever day in the last week, month or year is the same day of the week or falls on the same date as the day

from which the period runs, without clarifying whether it refers to the day on which the event or action which causes the period to run takes place or the following day, which is the first day of the period.

the term 'Fristbegins', whereas in paragraph 1 it has used the expression 'Anfang', suggests that the last day of the period must be calculated with reference to the first day of the period, not to the day on which the event or action which causes it to run takes place. Nevertheless, this language version is still ambiguous.

14. I shall refer, first, to the versions of Regulation No 1182/71 which were official at the time of its adoption (German, French, Italian and Dutch). Although the provisions of primary and secondary Community legislation are equally authentic in all the official languages, it may be useful to give particular attention to the language versions in which they were adopted in order to clarify their meaning.

16. The French version makes the last day of the period depend on the 'jour de départ', which may refer both to the first day of the period ('premier jour du délai') and to the day on which the action or event from which the period must be calculated takes place ('à partir du moment où survient un événement ou s'effectue un acte'). The use of 'jour de départ' and of 'à partir' might lead to the conclusion that the legislature was referring to the day on which the event or action takes place, not to the following day, although the latter alternative cannot be ruled out either.

15. According to the German version, the period ends at the end of the day of the last week, month or year 'der dieselbe Bezeichnung oder dieselbe Zahl wie der Tag des Fristbeginns trägt' (which is the same day of the week or falls on the same date as the day from which the period runs'). It is not clear which this 'Tag des Fristbeginns' is. Shortly before, Article 3(2)(c) provides that the period begins ('beginnt') at the start of the first hour 'des ersten Tages der Frist' (of the first day of the period), so that it appears to refer to the day following the day on which the event or action causing it to run takes place, since the latter does not fall within the period. The fact that the German version uses, in paragraph 2, the verb 'beginnen' and

17. The Italian version, although not completely clear, appears to support the argument of the Netherlands Government, since it uses the term 'giorno iniziale' ('first day') in Article 3(2)(c) and shortly before states that the period 'comincia a decorrere all'inizio della prima ora del primo giorno del periodo' (shall start at the beginning of the first hour

of the first day of the period), whereas in Article 3(1) it has used the expression 'a partire dal momento in cui si verifica un evento o si compie un atto' (from the moment at which an event occurs or an action takes place).

18. The Dutch text has the same ambiguity, when it refers, in Article 3(2)(c) of the regulation, to the 'dag waarop de termijn ingaat' (the day from which the period runs), whereas a little earlier in the same paragraph it has 'gaat een in weken, maanden of jaren omschreven termijn in ...' (a period expressed in weeks, months or years shall start ...). The use of the same verb ('ingaan') appears to indicate that the last day of the period is the same day of the week as the day on which the period starts to run, that is to say, the day following the day on which the event or action which causes it to run takes place. However, Article 3(1) also uses the verb 'ingaan' to refer to the day which causes the period to run, so it is not clear to which it refers.

19. The same problem arises in the Spanish version ('el día a partir del cual empieza a computarse el plazo'), the Portuguese version ('o dia do inicio do prazo', which appears rather to refer to the first day of the period) and the English version ('the day from which the period runs', which appears to refer to the day of the event or action).

20. This lack of clarity distinguishes the question raised from the interpretation of the procedural time-limits before the Court of Justice and the Court of First Instance, which have their own regulations in Articles 80 to 82 and 101 to 103 of the respective Rules of Procedure. These provisions are clear because they establish that the period expires on 'whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day during which the event or action from which the period is to be calculated occurred or took place.'<sup>4</sup> There is no doubt that the reference day for calculating the expiry date of the period is the day on which the event or action which causes it to run takes place, and therefore the one-week period will be seven days, the two-week period will be fourteen, etc. However, because the provisions are so different, the solution with regard to procedural time-limits does not help us when it comes to interpreting Regulation No 1182/71. Nor is there any reason to interpret Regulation No 1182/71 in the light of the rules of Procedure of the Court of Justice and of the Court of First Instance, or vice versa.

21. As the legislation is not conclusive, it is necessary to resort to other methods of interpretation. The case-law explains that, in the case of textual obscurity or divergence

4 — This is the version resulting from the amendments to the Rules of Procedure of the Court of Justice of 15 May 1991 (OJ 1991 L 176, p. 1). The text is a 'codification' of the judgment in Case 152/85 *Misset v Council* [1987] ECR 223, paragraph 8.

between the language versions of a Community provision, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part.<sup>5</sup> In our case, we may be helped only by a systematic analysis, since the principal aim of Regulation No 1182/71 is neutral on this point. Indeed, the regulation aims to establish 'uniform general rules'<sup>6</sup> and both interpretations secure that aim, provided one of them is chosen.

22. The decisive argument is based on the connection between paragraphs 1 and 2 of Article 3 of Regulation No 1182/71. Paragraph 1 should be read as a provision laying down a special rule for a single type of period, those which are calculated 'from the moment at which an event occurs or an action takes place'. Only for them is it established that the day on which the event or action takes place does not fall within the period. With regard to procedural time-limits, the Court of Justice has stated that 'those rules, which exclude, in the calculation of procedural time-limits, the day of the event from which the period is to run, are designed to ensure that parties are able to make full use of the periods allowed'.<sup>7</sup> Similarly, in the case of Regulation No

1182/71 all individuals are subject to the same time-limit, irrespective of the moment at which the event or action from which it is to be calculated occurs.

23. On the other hand, the rule in paragraph 2 applies to all kinds of periods, not only to those which depend on an event or an action. That is why it was drafted '[s]ubject to the provisions of paragraphs 1 and 4' (the latter refers to the specific case in which the last day of the period is a public holiday, Sunday or Saturday). It is this paragraph, Article 3(2), not Article 3(1), which establishes the beginning and end of the periods in general terms, and we shall see at once that it does so in such a way that the periods expressed in weeks always have one day more than if we were to take into account seven-day weeks. The same happens with periods expressed in months or years.

24. Let us suppose that the legislature were to establish a one-week period which was not calculated from an event or action but from a specific day,<sup>8</sup> for example 19 March 2004. The special rule in Article 3(1) will not apply, because it is not one of the periods covered by that provision. That is logical because in the case of a period fixed from a particular

5 — See, for example, the judgment in Case C-372/88 *Cricket St Thomas* [1990] ECR I-1345, paragraph 19.

6 — The second recital in the preamble to Regulation No 1182/71.

7 — Order in Case C-406/01 *Germany v Parliament and Council* [2002] ECR I-4561, paragraph 14, which refers to paragraph 8 of the judgment in *Misset v Council*, cited above.

8 — Periods of this kind are often fixed. See, for example, those laid down in Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Council Regulation (EEC) No 3950/92 establishing an additional levy on milk and milk products (OJ 2001 L 187, p. 19).

date all those affected have full use of the first day of the period. In such a case, under Article 3(2), the period will begin to run at 00.00 hrs on Friday 19 March 2004 and will end at 24.00 hrs on whichever day in the last week of the period — the following week — is the same day of the week, that is, at 24.00 hrs on Friday 26 March. If we count the number of days which have elapsed, we shall see that it is eight full days. Therefore, for Regulation No 1182/71 a period expressed in weeks will always have one day more than those corresponding to the number of weeks fixed. Thus, a one-week period will have eight days, a two-week period will have fifteen, etc. The same will happen with periods expressed in months or years. I therefore consider that the argument put forward by the Commission, which seeks to adapt the periods established by Regulation No 1182/71 to the scheme of the conventional calendar, is incorrect.

weeks, months or years, with no justification at all for introducing that difference in treatment. Furthermore, since the periods expressed in days will always be of the same length irrespective of whether they are calculated from a specific day or from an event or action, it would likewise be illogical for the length of a period expressed in weeks, months or years to vary according to the type of period concerned.

25. The conclusion ought to be clear because the periods envisaged in Regulation No 1182/71 expressed in weeks, months or years cannot differ according to whether they start on a specific date or depend on an event or action. If the legislature, when laying down the special rule in paragraph 1, intended to ensure the equal availability of the periods, it would not be consistent to treat individuals subject to a period whose beginning depends on an event or action in one way and individuals subject to a period which is calculated from a specific date in another way. The interpretation supported by the Commission would give the latter one more day in the case of periods expressed in

26. It must therefore be held that Article 3 (1) of Regulation No 1182/71 moves the beginning of the *dies a quo* to the beginning of the following day for periods whose commencement depends on an event or action. In fact the remaining hours of the day in which the event or action takes place cannot be used for carrying out the action which depends on the period, because they do not fall within it. As the *dies a quo* has thus been fixed as the day following the event or act on which the period depends, the end date must coincide with the day of the week or date of that *dies a quo*, not with the previous day, which, although it starts the period running, does not fall within it.



27. I think this argument is necessary and sufficient to settle the first question in the manner suggested by the Netherlands Government, but I could still add other reasons. The first consists in pointing out that, in the Commission's original proposal, paragraphs 1 and 2 of Article 3 corresponded to different articles (Articles 3 and 5) of the regulation,<sup>9</sup> so that it is difficult for a term in the second to refer to a concept in the first. The nearness and unlikelihood of a reference from paragraph 2 to paragraph 1 when paragraph 2 itself contains a natural term of reference for the last day of the period may also be taken into account when it comes to interpreting the text finally adopted by the legislature. Finally, faced with the ambiguity of the legislation, the interpretation which I consider to be the right one is also the one which provides the highest level of legal certainty, both for individuals and for the national authorities which must apply the periods governed by Regulation No 1182/71.

or falls on the same date as the day following the day on which the event or action from which the period was to be calculated took place.

#### B — *The second question*

29. This question is somewhat easier than the first. An indication of this is that the Commission and the Netherlands Government have suggested, on the basis of similar arguments, that it should be answered in the negative.

28. To conclude, Article 3(2)(c) of Regulation No 1182/71 should be interpreted as meaning that the periods expressed in weeks, months or years which have to be calculated from the moment an event occurs or an action takes place will terminate at the end of whichever day in the last week, month or year of the period is the same day of the week

30. Community law lays down specific conditions for submitting the applications involved in the present matter in the rules resulting from Regulations Nos 3886/92 and 1182/71. Those regulations help to establish, respectively, a common organisation of the market in beef and veal and uniform general rules concerning the periods, and they do so exhaustively as regards the matters with which we are concerned (the length of the period within which the premium application must be lodged and the manner of calculating it). If it were possible to apply the national administrative provisions, the uniformity of Community law and equality between economic operators would be jeopardised.

<sup>9</sup> — Commission Proposal (EEC, Euratom) on the method of calculating time-limits, presented by the Commission on 27 July 1969 (*Journal Officiel* 1969 C 108, p. 10).

31. I therefore consider that a Member State is not free, when applying Article 50a of Regulation No 3886/92, to establish the time at which a premium application has been lodged pursuant to national rules of procedure which apply within the national legal system of that Member State to comparable, national periods for making applications.

### C — *The third question*

32. I think that the answer to the third question too is straightforward. I consider, as do the Netherlands Government and the Commission, that Article 50a of Regulation No 3886/92 should be interpreted as meaning that what matters is not the posting of the application but its receipt by the competent authority.

33. This is the correct interpretation for a large majority of the language versions. They are the French version ('est à introduire auprès de l'autorité compétente'), the Spanish version ('se presentarán ante la autoridad competente'), the English version ('shall be lodged with the competent authority'), the Italian version ('dev'essere presentata all'autorità competente'), the Portuguese version ('devem ser apresentados à autoridade competente'), the German version ('sind ... bei der zuständigen Behörde ... einzureichen'), the Danish version ('indgives til medlemsstatens myndigheder') and the Swedish version

('skall lämnas in till den ... beröriga myndighet'). The English and French versions are particularly clear because of the verb used, which refers to the time at which the application is physically lodged with the competent authority. The others are also clear, especially bearing in mind that what matters is that the application be lodged *with the competent authority*. Although the verb used in other versions (in Finnish 'toimittaa', which may apparently mean both to send and to deliver; in Greek 'υποβάλλεται') is perhaps a little more ambiguous, the specific mention of the competent authority makes the more natural interpretation that which considers that it is the date of receipt by the authority, not the date of posting, which matters.

34. The clarity of the provisions distinguishes our case from Case C-1/02 *Borgmann*,<sup>10</sup> in which, since the relevant date for some language versions of the applicable legislation was the date of posting and for others the date of receipt, the Court of Justice opted for the date of posting, considering that that interpretation suited both the aim and the structure of the legislation and that legal certainty was thereby ensured for economic operators. In the present case, however, there are no language divergencies justifying such an interpretation.

<sup>10</sup> — [2004] ECR I-3219.

35. The argument that the national authority could have sent the relevant information to the Commission at the same time regardless of whether the date of posting or the date of receipt was taken into account does not seem to me capable of altering the interpretation of Article 50a of Regulation No 3886/92. A period is established in general terms for all operators and in principle its effect is that the action to which it relates cannot be carried out once the period has elapsed. Otherwise, an extension of the periods depending on the dates on which the lambs are slaughtered and on which the data has to be sent to the Commission would be difficult to reconcile with the principles of equality and legal certainty, apart from the practical difficulties which it would entail for the competent national authorities.

36. I therefore consider that Article 50a of Regulation No 3886/92 must be interpreted as meaning that a premium application cannot be regarded as lodged in due time if it is shown to have been posted prior to the expiry of the three-week period and to have been received by the competent authority at such a time that it could have communicated the relevant data to the Commission on the same day as would have been the case had the premium application been received by the competent authority within that period.

#### D — *The fourth question*

37. With regard to the question concerning the validity of Article 50a of Regulation No 3886/92, I shall point out first of all that it does not refer to the validity of the three-week period but to the validity of the consequence of failure to comply with it, which is always the rejection of the application, irrespective of the extent by which the period has been exceeded. According to the national court, the principle of proportionality requires a scale of reduction in the amount of the premium depending on the number of days by which the period is exceeded. That would be consistent with a provision which is not applicable to the premium with which this case is concerned, Article 8 of Regulation (EEC) No 3887/92,<sup>11</sup> which provides: 'Except in cases of force majeure, late lodgement of an aid application shall lead to a 1% reduction per working day in the amounts affected by the application, to which the farmer would have been entitled if the application had been lodged within the deadline. If the delay amounts to more than 20 days the application shall be considered inadmissible and no aid shall be granted'.

38. The Netherlands Government and the Commission consider that Article 50a of Regulation No 3886/92 is compatible with the principle of proportionality. The Netherlands Government distinguishes the present

11 — 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 1648/95 of 6 July 1995 (OJ 1995 L 156, p. 27).

case from the *Pressler* case,<sup>12</sup> in which the Court of Justice declared invalid a provision relating to a structural measure which did not take into account the extent to which the time-limit was exceeded when an application was submitted. The Court of Justice considered that the national authorities still had a very long time in which to communicate to the Commission a summary of the declarations. In this case, however, the measure is a contingency one, unlike the structural premiums in respect of which the legislation provides for a scale of penalties where the application is lodged out of time. Furthermore, because it is a contingency measure, the Commission must be able to evaluate its effects continuously and effectively. According to the Netherlands Government and the Commission, that requires strict observance of the time-limit, which makes the consequences of failing to comply with it compatible with the principle of proportionality, because they do not go beyond what is necessary to achieve the objectives of the measure in question.

39. This question enables us to try and clarify an aspect of the case-law on the application of the principle of proportionality in respect of time-limits, case-law which does not always distinguish between time-limits for which non-compliance leads to a penalty (the loss of a deposit or imposition of a fine, for example) and time-limits for which non-compliance results in an unfavourable decision (not granting a premium, for example). I think this distinction is important, because in the case of penalties a dual

examination is warranted: it is necessary to consider whether the time-limit is proportionate and also whether the penalty imposed is proportionate to the seriousness of the infringement. From this point of view, it is understandable that the Court of Justice should have declared invalid provisions which imposed an identical penalty irrespective of the seriousness of the infringement, the extent to which the time-limit was exceeded or its effect on the achievement of the objective of the legislation concerned.<sup>13</sup>

40. On the other hand, in the case of a time-limit for which non-compliance leads not to a penalty but to an unfavourable decision, the examination of proportionality must be limited to the time-limit fixed without extending to the consequences of failure to comply with it. The judgment in *Pressler*, cited above, might seem to oppose this approach, since the Court of Justice declared invalid a provision which did not allow economic traders to obtain an aid if they submitted their application out of time, 'irrespective of the extent to which the time-limit ... is exceeded ...'.<sup>14</sup> However, the reasoning which led the Court of Justice to declare that provision invalid shows that what was disproportionate with respect to the objectives of the legislation was the time-

13 — See, for example, the judgments in Case 122/78 *Brittoni* [1979] ECR 677 and Case C-356/97 *Molkereigenossenschaft Wiedergeltingen* [2000] ECR I-5461.

14 — Paragraph 17.

limit fixed, not the consequences of failing to comply with it.<sup>15</sup>

In the remaining cases the review must be limited to the proportionality of the time-limit fixed.

41. Otherwise, the approach suggested is in line with the judgment in *Denkavit France*: 'the barring of claims on the ground that the requisite documents have been submitted out of time is not a penalty but, as a general rule, the normal consequence of the expiry of any prescribed period the observance of which is mandatory.'<sup>16</sup> I therefore consider that it is inconsistent to declare that a time-limit for which non-compliance does not incur a penalty is proportionate in the light of the objectives of the legislation and then to examine the proportionality of the consequences of the failure to comply with it. In other words, the adverse consequences of that time-limit for individuals do not constitute a penalty but are a consequence of the fact that the time-limit is prescribed and that its observance is mandatory, that is to say, the natural consequence of expiry for carrying out the action or exercising the right which depends on the time-limit. In this case, the proportionality of the prescription forms part of the assessment of the proportionality of the time-limit itself, to which all individuals are equally subject and which usually serves to meet a general interest connected with sound administration. In short, I consider that only in the event that failure to observe a time-limit leads to the imposition of a penalty must the proportionality of that penalty be examined separately.

42. In the present case, since failure to observe the time-limit does not incur a penalty, judgment need be given only on the proportionality of the time-limit, which clearly alters the terms of the question raised by the national court. As the Commission has pointed out, in matters concerning the common agricultural policy the Community legislature has a discretionary power, which means that the review carried out by the Court of Justice must be limited to the manifestly inappropriate nature of a measure having regard to its objective.<sup>17</sup> Therefore, the principle of proportionality must not be applied strictly but with the aim of determining whether the time-limit is manifestly disproportionate. In the case with which we are concerned, I do not consider the three-week time-limit prescribed in Article 50a of Regulation No 3886/92 manifestly disproportionate but, rather, necessary in the context of the granting of premiums which are temporary and require continuous monitoring by the Commission, in case they need to be adjusted. I also think that its length is reasonable and adequate for possible beneficiaries to be able to submit their applications within the period.

15 — Particularly paragraph 16: 'it does not appear that strict observance of the date of 7 September for the submission of harvest declarations is indispensable in order to ensure that the Commission has adequate information about production and stocks in the wine sector by 10 December.'

16 — Case 266/84 *Denkavit France* [1986] ECR 149, paragraph 21.

17 — See, for example, the judgments in Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 14, and Case 265/87 *Schrader* [1989] ECR 2237, paragraphs 21 and 22.

43. That type of global assessment of the proportionality of a time-limit — without going into an assessment of the proportionality of its consequences — also enables us to avoid having to make a rather arbitrary distinction between contingency measures, for which the time-limits must be strictly observed, and structural measures, for which, *a contrario*, the time-limits are only compulsory if the legislation provides for a scale, in proportion to the extent to which the time-limit has been exceeded, of unfavourable consequences arising from failure to observe it. Finally, it is clear that the legislature may provide for that kind of scale,

but that does not mean that a general principle of Community law with constitutional status — the principle of proportionality — requires it to do so and entails the annulment of provisions which do not provide for such mechanisms.

44. Accordingly, I consider that the examination of the fourth question referred for a preliminary ruling has not revealed anything capable of affecting the validity of Article 50a of Regulation No 3886/92.

### III — Conclusion

45. In the light of the foregoing considerations, I suggest that the Court of Justice give the following reply to the questions referred by the College van Beroep voor het bedrijfsleven:

- (1) Article 3(2)(c) of Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits is to be interpreted as meaning that a period expressed in weeks, months or years which has to be calculated from the time an event occurs or an action takes

place is to end with the expiry of whichever day in the last week, month or year of the period is the same day of the week or falls on the same date as the day following the day on which the event or action from which the period had to be calculated occurred or took place.

- (2) A Member State is not free, when applying Article 50a of Commission Regulation (EEC) No 3886/92 of 23 December 1992 laying down detailed rules for the application of the premium schemes provided for in Council Regulation (EEC) No 805/68 on the common organization of the market in beef and repealing Regulations (EEC) No 1244/82 and (EEC) No 714/89, to establish the time at which a premium application has been lodged pursuant to national rules of procedure which apply within the national legal system of that Member State to comparable national periods for making applications.
- (3) Article 50a of Regulation No 3886/92 must be interpreted as meaning that a premium application cannot be regarded as lodged in due time if it is shown to have been posted prior to the expiry of the three-week period and to have been received by the competent authority at such a time that it could have communicated the relevant data to the Commission on the same day as would have been the case had the premium application been received by the competent authority within that period.
- (4) Examination of the fourth question referred for a preliminary ruling has not revealed anything capable of affecting the validity of Article 50a of Regulation No 3886/92.