JUDGMENT OF THE COURT (Fifth Chamber)

19 September 2002 *

In Case C-336/00,

REFERENCE to the Court under Article 234 EC by the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between

Republik Österreich

and

Martin Huber,

on the validity and interpretation of Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ 1992 L 215, p. 85), as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21 and OJ 1995 L 1, p. 1),

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: P. Jann, President of the Chamber, D.A.O. Edward, A. La Pergola, M. Wathelet (Rapporteur) and C.W.A. Timmermans, Judges,

Advocate General: S. Alber,
Registrar: M.-F. Contet, Administrator,

after considering the written observations submitted on behalf of:

— Republik Österreich, by U. Weiler, acting as Agent,

— M. Huber, by A. Klauser, Rechtsanwalt,

— Austrian Government, by H. Dossi, acting as Agent,

— Council of the European Union, by J.-P. Hix and F.P. Ruggeri Laderchi, acting as Agents,

— Commission of the European Communities, by G. Braun and G. Berscheid, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Republik Österreich, represented by U. Weiler, of M. Huber, represented by B. Girsch, Rechtsanwalt, of the Austrian Government, represented by C. Pesendorfer, acting as Agent, of the Council, represented by J.-P. Hix and F.P. Ruggeri Laderchi, and of the Commission, represented by G. Braun and G. Berscheid, at the hearing on 24 January 2002,

after hearing the Opinion of the Advocate General at the sitting on 14 March 2002,

gives the following

Judgment

1 By order of 26 January 2000, received at the Court on 14 September 2000, the Oberster Gerichtshof (Supreme Court) referred to the Court for a preliminary ruling under Article 234 EC six questions on the validity and interpretation of Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ 1992 L 215, p. 85), as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21 and OJ 1995 L 1, p. 1, hereinafter 'Regulation No 2078/92').

2 Those questions were raised in proceedings between the Republik Österreich and M. Huber, a farmer, regarding a claim for the repayment of aid granted to M. Huber by the Austrian authorities pursuant to Regulation No 2078/92.

Legal framework

Community legislation

3 Regulation No 2078/92, which had as its legal basis Articles 42 of the EC Treaty (now Article 36 EC) and 43 of the EC Treaty (now, after amendment, Article 37 EC) and which was repealed as of 1 January 2000 by Article 55(1) of 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), instituted a series of measures with the objective, according to the first paragraph of Article 1, to:

'...

— accompany the changes to be introduced under the market organisation rules,

— contribute to the achievement of the Community's policy objectives regarding agriculture and the environment,

— contribute to providing an appropriate income for farmers'.

4 The Council intended, in particular, to encourage the use of less polluting and less intensive agricultural production methods and to contribute to balancing the market (see the first, second, fifth, sixth and twelfth recitals in the preamble to Regulation No 2078/92).

5 For that purpose, Regulation No 2078/92 instituted, as expressed in Article 1, a 'Community aid scheme part-financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF)'.

6 Article 2(1) of Regulation No 2078/92 provided:

'Subject to positive effects on the environment and the countryside, the scheme may include aid for farmers who undertake:

(a) to reduce substantially their use of fertilizers and/or plant protection products, or to keep to the reductions already made, or to introduce or continue with organic farming methods;

...'.

7 Article 3(1) of Regulation No 2078/92 provided that Member States were to implement the aid scheme provided for in Article 2 by means of 'multiannual zonal programmes' in order to attain the objectives referred to in Article 1 of the regulation. In accordance with Article 3(3)(d) and (f) of the regulation, those programmes, to be drawn up for a minimum period of five years, were to contain, respectively, 'the conditions for the grant of aid, taking into account the problems encountered' and 'the arrangements made to provide appropriate information for agricultural and rural operators'.

8 Article 4(1) of the same regulation stated:

'An annual premium per hectare or livestock unit removed from a herd shall be granted to farmers who give one or more of the undertakings referred to in Article 2 for at least five years, in accordance with the programme applicable in the zone concerned....'

9 Article 4(2) set the maximum eligible amount of the premium, while under Article 5(1) of the regulation, Member States were obliged to determine, in order to achieve its objectives:

'(a) the conditions for granting aid;

(b) the amount of aid to be paid, on the basis of the undertaking given by the beneficiary and of the loss of income and of the need to provide an incentive;

(c) the terms on which the aid for the upkeep of abandoned land as referred to in Article 2(1)(e) may be granted to persons other than farmers, where no farmers are available;

(d) the conditions to be met by the beneficiary to ensure that compliance with the undertakings may be verified and monitored;

(e) the terms on which the aid may be granted where the farmer personally is unable to give an undertaking for the minimum period required.'

10 In accordance with Article 7 of Regulation No 2078/92, national aid programmes were to be communicated for approval to the Commission, which was to determine their compliance with the regulation, 'the nature of the measures eligible for part-financing' and 'the total amount of expenditure eligible for part-financing'.

11 Article 10 of Regulation No 2078/92 provided that Member States might impose additional aid measures, provided that those measures complied with the objectives of the regulation and with Article 92 of the EC Treaty (now, after amendment, Article 87 EC), as well as Articles 93 and 94 of the EC Treaty (now Articles 88 EC and 89 EC).

12 Furthermore, under Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218), which was repealed by Article 16(1) of Council Regulation (EC) No 1258/99 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103), Member States were to take the

measures necessary to, *inter alia*, recover sums lost as a result of irregularities or negligence. According to the first subparagraph of paragraph 2 of that provision, in the absence of recovery, the Community should in principle bear the financial consequences, unless the irregularities or negligence in question might be attributed to administrative authorities or other bodies of the Member States.

National legislation

13 In order to implement Regulation No 2078/92, the Austrian Federal Ministry of Agriculture and Forestry adopted a special directive concerning the Austrian programme of aid for extensive agriculture compatible with the requirements of the protection of the environment and the maintenance of the countryside (ÖPUL) (hereinafter, 'the ÖPUL directive'). The Commission approved that programme by decision of 7 June 1995.

14 The ÖPUL directive was published only in the form of a brief note in the *Amtsblatt zur Wiener Zeitung* (official gazette published with the *Wiener Zeitung*) of 1 December 1995, a bulletin in which it was mentioned that the directive could be consulted at the Federal Ministry of Agriculture and Forestry.

15 The ÖPUL directive, to which several annexes are attached, comprises a general part relating, *inter alia*, to the conditions for the grant of aid which are common to different branches of the programme, to the clearing of claims for aid and to the repayment in case of failure to comply with the conditions under which the aid is granted, as well as a part devoted to the specific conditions governing the award of aid.

16 Directives such as the ÖPUL directive do not, in Austrian law, have the status of abstract and general rules, but they are taken into consideration, when a contract is concluded, as clauses with contractual effect.

The main proceedings and the questions referred for a preliminary ruling

17 On 21 April 1995, Mr Huber applied for aid under the ÖPUL directive. That aid was granted to him on 12 December 1995 by Agrarmarkt Austria — a public-law corporation set up by the Federal Ministry for Agriculture and Forestry to clear aid under the ÖPUL directive — on behalf of the Republik Österreich, amounting to ATS 79 521. The ÖPUL directive had not been communicated to the beneficiary.

18 When Mr Huber received a letter from Agrarmarkt Austria seeking repayment of the aid he had received, he assumed that he had made a mistake and proposed to repay that aid by monthly instalments of ATS 5 000.

19 On 13 May 1998, the Finanzprokurator (Representative of the Federal Finance Ministry), duly authorised by Agrarmarkt Austria, ordered Mr Huber to repay the total aid which he had received, together with interest — namely, a sum of ATS 90 273.

20 Subsequently, in legal proceedings, the Republik Österreich, represented by the Finanzprokurator, claimed the repayment of ATS 79 521, increased by the amount of interest due since 12 December 1995. It based its claim on the fact that

Mr Huber had, in disregard of the ÖPUL directive, used prohibited plant protection products — namely, the fungicides Euparen, Orthophaldan, Delan and Folit. Mr Huber was also said to have admitted that the claim for repayment was well founded.

21 Mr Huber contested that claim, contending, primarily, that he had not infringed the directive, even though he had acknowledged using the products mentioned in the preceding paragraph, or admitted that he was obliged to refund the aid paid to him. More specifically, he contended that the Austrian authorities had merely informed him, when the contract was concluded, that he could not use herbicides in fruit and wine growing, with the result that he had not given up the use of the abovementioned fungicides.

22 Moreover, according to Mr Huber, the ÖPUL directive had not been annexed to the application form and had not been made known to him. He also claimed that the wording of the application was imprecise and that the Austrian authorities paid the aid even though they were aware of his use of the abovementioned fungicides. In those circumstances Mr Huber's conduct was, he claimed, attributable to an error made by the national authorities themselves.

23 The Bezirksgericht Innere Stadt Wien (Central Vienna District Court, Austria) dismissed the application on the ground that the directives could not be pleaded as against Mr Huber and that there had been no admission on his part.

24 The Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna) upheld the appeal brought against the judgment at first instance, on the basis of a ground of appeal raised in the alternative, and referred the case back to the Bezirksgericht.

25 However, the Landesgericht did not find that there had been an admission and considered that it had not been clearly established either that the products used by Mr Huber fell within the category of herbicides or what was the precise content of the documents which had been made available to him. According to that court, the directives adopted by the Republik Österreich did not form part of the contract since they had not been made public, apart from a brief note in the *Amtsblatt zur Wiener Zeitung*. In addition, the description of Mr Huber's obligations was not sufficiently clear, and he could have learned of the aid programme defined in the ÖPUL directive only through costly and difficult enquiries.

26 The Oberster Gerichtshof, hearing an appeal for which leave had been granted by the Berufungsgericht, found, as a preliminary point, that admission does not constitute a valid legal basis for the recovery of aid. It went on to raise questions as to the appropriateness of the legal basis used for the adoption of Regulation No 2078/92, as to the scope of certain of its provisions and as to the conditions governing the recovery of aid wrongly paid under the regulation.

27 In those circumstances, the Oberster Gerichtshof decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Was Council Regulation No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside... validly adopted?

(2) Does a decision on the approval of a programme under Article 7 of Council Regulation No 2078/92 of 30 June 1992 on agricultural production methods

compatible with the requirements of the protection of the environment and the maintenance of the countryside also encompass the content of the programmes submitted by the Member States for approval?

(3) Are farmers who apply for aid under that programme also to be regarded as persons to whom the decision is addressed and is the form of the notification chosen in that regard, in particular the obligation on the Member States to provide farmers with appropriate information, sufficient to make the decision binding on those farmers and any conflicting contracts granting aid ineffective?

(4) May a farmer in this instance, irrespective of the content of the programme within the meaning of Regulation No 2078/92 approved by the Commission, rely on the statements of the administrative bodies of the Member States so that a claim for recovery is precluded?

(5) Is it open to the Member States under Regulation No 2078/92 to implement programmes within the meaning of that regulation either by private-sector measures (contracts) or by forms of State action?

(6) In assessing whether restrictions on the possibilities of claiming recovery on grounds of the protection of legitimate expectations and legal certainty accord with the interests of Community law, is only the specific form of action to be taken into account or also the possibilities of claiming recovery which exist in other forms of action and particularly favour the Community interests?'

28 By order of 18 April 2002, Mr Huber was granted legal aid limited to specific amounts.

The questions referred for a preliminary ruling

First question

29 By its first question, the referring court is asking, essentially, whether Regulation No 2078/92 is valid even though it was adopted on the basis of Articles 42 and 43 of the Treaty and not on the basis of Article 130s of the EC Treaty (now, after amendment, Article 175 EC).

30 In that regard, it should be borne in mind that, according to the settled case-law of the Court, the choice of the legal basis for a Community measure must rest on objective factors which are amenable to judicial review, including in particular the aim and the content of the measure (see, *inter alia*, Case C-300/89 *Commission* v *Council* [1991] ECR I-2867, known as '*Titanium dioxide*', paragraph 10, and Case C-269/97 *Commission* v *Council* [2000] ECR I-2257, paragraph 43).

31 If examination of a Community act shows that it has a twofold purpose or twofold component and if one of these is identifiable as main or predominant, whereas the other is merely incidental, the act must be founded on a sole legal basis, that is, the one required by the main or predominant purpose or component (see Case C-155/91 *Commission* v *Council* [1993] ECR I-939, paragraphs 19 and 21, Case C-42/97 *Parliament* v *Council* [1999] ECR I-869, paragraphs 39 and 40,

and Case C-36/98 *Spain* v *Council* [2001] ECR I-779, paragraph 59). Exceptionally, if it is established that the act simultaneously pursues a number of objectives, indissociably linked, without one being secondary and indirect in relation to the other, such an act may be founded on the various corresponding legal bases (see, to that effect, the *Titanium dioxide* judgment, paragraphs 13 and 17, and *Parliament* v *Council*, cited above, paragraph 38, as well as Opinion 2/00 [2001] ECR I-9713, paragraph 23).

32 In this case, the parties agree that Regulation No 2078/92 simultaneously pursued objectives of agricultural policy and environmental protection.

33 The Court has held that Articles 130r of the EC Treaty (now, after amendment, Article 174 EC) and 130s of the Treaty are intended to confer powers on the Community to undertake specific action on environmental matters, while leaving intact its powers under other provisions of the Treaty, even if the measures in question pursue at the same time one of the objectives of environmental protection (see Case C-405/92 *Mondiet* [1993] ECR I-6133, paragraph 26). The third sentence of the first subparagraph of Article 130r(2) of the Treaty, in its version prior to the entry into force of the Treaty of Amsterdam, the substance of which was repeated in Article 6 EC, provides, in that respect, that environmental protection requirements are to be a component of the Community's other policies, so that a Community measure cannot be part of Community action on environmental matters merely because it takes account of those requirements (see, to that effect, the abovementioned *Titanium dioxide* judgment, paragraph 22, and *Mondiet*, paragraph 27).

34 As regards Article 43 of the Treaty, it is settled case-law that that article is the appropriate legal basis for any legislation concerning the production and marketing of the agricultural products listed in Annex II to the EC Treaty which contributes to the attainment of one or more of the objectives of the common agricultural policy set out in Article 39 of the EC Treaty (now Article 33 EC) (Case 68/86 *United Kingdom* v *Council* [1988] ECR 855, paragraph 14, Case

C-180/96 *United Kingdom* v *Commission* [1998] ECR I-2265, paragraph 133 and *Commission* v *Council*, cited above, paragraph 47). Moreover, Article 42 of the Treaty authorises the Council to provide for the grant of aid for production of and trade in agricultural products, account being taken of the objectives set out in Article 39, notwithstanding the provisions of the chapter of the Treaty which concern rules on competition.

35 As pointed out by the Commission and the Council, as well as by the Advocate General at point 35 of his Opinion, it is clear from the recitals and Article 1 of Regulation No 2078/92 that the main purpose of the support measures for which that regulation provided was to regulate the production of agricultural products within the meaning of Annex II to the Treaty, in order to promote the transition from intensive cultivation to a more extensive cultivation, of better quality, with farmers being compensated for the financial consequences of this by the granting of aid.

36 The fact that Regulation No 2078/92 was of a nature such as to promote more environmentally-friendly forms of production — which is certainly a genuine objective, but an ancillary one, of the common agricultural policy — cannot in itself justify the legal basis of that regulation being constituted not only by Articles 42 and 43 but also by Article 130s of the Treaty.

37 Accordingly, consideration of the first question has not disclosed any factor of such a kind as to affect the validity of Regulation No 2078/92.

The second question

38 By its second question, the referring court is asking, essentially, whether Article 7(2) of Regulation No 2078/92 is to be interpreted as meaning that a

decision approving a national programme of aid also encompasses its content, so that, once approved, the programme must be considered to be an act of Community law.

39 As is clear from Article 7(2) and (3) of Regulation No 2078/92, the Commission approves the programmes referred to in Article 3(1) of the regulation after satisfying itself as to their compliance with the regulation and after determining the nature of the measures 'eligible for part-financing' and the total amount of expenditure linked to their financing. It follows that the Commission's examination necessarily covers the content of those programmes.

40 None the less, Commission approval of a national aid programme does not in any way have the effect of conferring on that programme the nature of an act of Community law. In those circumstances, where an aid contract is incompatible with the programme approved by the Commission, it is for the national courts to draw the appropriate inferences from this in regard to national law, by taking account of the relevant Community law in applying national law.

41 The answer to the second question must therefore be that Article 7(2) of Regulation No 2078/92 must be interpreted as meaning that a Commission decision approving a national aid programme also encompasses its content, without, however, conferring on that programme the nature of an act of Community law.

The third question

42 By its third question, the referring court is asking, essentially, first, whether farmers who applied for aid under Regulation No 2078/92 are to be regarded as persons to whom the Commission's decision approving the national aid

programme referred to in Article 7(2) of the regulation is addressed and, second, whether the publication in an official bulletin of a mere information note mentioning that the programme is available to the public at the Ministry of Agriculture and Forestry is sufficient to make that decision binding on the farmers concerned and to render invalid any aid contracts incompatible with it.

43 It must be observed, in that regard, that the decision by which the Commission approves a national aid programme, thereby acknowledging its compliance with Regulation No 2078/92 in the light of the assessment criteria set out in Article 7(2) of the regulation, is addressed exclusively to the Member State in point.

44 That being the case, it is for the national court, where relevant, to review the legality of an individual support measure adopted in pursuance of the national aid programme in the light both of that programme, as approved by the Commission, and of Regulation No 2078/92.

45 Similarly, the question whether the publicity given to the ÖPUL directive was such as to render it binding on Austrian farmers is primarily a question governed by national law.

46 None the less, without laying down specific methods by which national aid programmes must be publicised, Article 3(3)(f) of Regulation No 2078/92 provides, in a general manner, that those programmes are to contain arrangements made to provide 'appropriate information for agricultural and rural operators'.

47 In that regard, it is not clear that the Austrian authorities fully complied, in the case in the main proceedings, with their obligation to provide appropriate information to the beneficiary of the aid, pursuant to Article 3(3)(f) of Regulation No 2078/92 and, in particular, that they effectively brought to his knowledge the provisions of the ÖPUL directive when the aid was granted or, further, that they took the necessary measures to enable him to learn of the directive under satisfactory circumstances. It is for the referring court to decide that point, taking account of the fact that, at the time Mr Huber submitted his application, the definitive version of the national aid programme, which was to serve as the basis for granting aid, did not exist, since the Commission had not yet approved it.

48 In the light of the foregoing considerations, the answer to the third question must be that a Commission decision approving a national aid programme as referred to in Article 7 of Regulation No 2078/92 is addressed only to the Member State concerned. It is for the national courts to decide, in the light of national law, whether the publicity given to that programme enabled it to become binding on agricultural and rural operators, in particular by ensuring compliance with the requirement of appropriate information laid down in Article 3(3)(f) of that regulation.

The fourth question

49 By its fourth question, the referring court is asking, essentially, whether, and to what extent, a farmer who was granted aid under a national aid programme pursuant to Article 3(1) of Regulation No 2078/92 may rely on the principles of the protection of legitimate expectations and legal certainty for the purpose of resisting recovery of that aid.

50 The referring court finds, first, that Mr Huber submitted an application for support in April 1995, that is, before the national aid programme was approved

by the Commission in June 1995 and before its publication by way of a brief note in the *Amtsblatt zur Wiener Zeitung* in December 1995, and, second, that that application was accepted without reservations by the Austrian authorities.

51 The Republik Österreich and the Austrian Government maintain that it was Mr Huber's responsibility to acquaint himself with the national aid programme and with the scope of his contractual obligations before the conclusion of the contract. They refer to 'notices' sent to any farmer intending to apply for aid, which included the relevant information, in particular as regards the existence and content of the ÖPUL directive.

52 The Austrian Government adds that the draft of the ÖPUL directive at the time when Mr Huber submitted his application did not differ from the version which was finally approved by the Commission.

53 By contrast, Mr Huber maintains that, owing to inadequate publication of the national aid programme, which was made available to the public only in the offices of the relevant ministry in Vienna, he could have learned of its precise content, following approval of the ÖPUL directive, only through disproportionate efforts. In those circumstances, the principle of the protection of legitimate expectations precludes repayment of the aid, which had been received in good faith.

54 In that regard, it should be recalled that, under Article 8(1) of Regulation No 729/70, the Member States, in accordance with national provisions laid down by law, regulation or administrative action, were to take the measures necessary to recover sums lost as a result of irregularities or negligence. This was the case as regards amounts paid under a national aid programme approved by the Commission in accordance with a Council regulation and part-financed by the Community.

55 It also follows from the case-law of the Court that, in the absence of provisions of Community law, disputes concerning the recovery of amounts wrongly paid under Community law must be decided by national courts in application of their own domestic law, subject to the limits imposed by Community law, on the basis that the rules and procedures laid down by domestic law must not have the effect of making it practically impossible or excessively difficult to recover the aid not due and that the national legislation must be applied in a manner which is not discriminatory as compared to procedures for deciding similar national disputes (see, to that effect, Joined Cases 205/82 to 215/82 *Deutsche Milchkontor and Others* [1983] ECR 2633, paragraph 19, Case C-366/95 *Landbrugsministeriet* v *Steff-Houlberg Export and Others* [1998] ECR I-2661, paragraph 15 and Case C-298/96 *Oelmühle and Schmidt Söhne* [1998] ECR I-4767, paragraph 24).

56 Accordingly, it cannot be regarded as contrary to Community law for national law, as far as the cancellation of administrative measures and the recovery of sums wrongly paid by public authorities are concerned, to take into account, in addition to the principle of legality, the principles of the protection of legitimate expectations and legal certainty, since those principles form part of the legal order of the Community (see, to that effect, *Deutsche Milchkontor*, cited above, paragraph 30, Joined Cases C-31/91 to C-44/91 *Lageder and Others* [1993] ECR I-1761, paragraph 33 and Joined Cases C-80/99 to C-82/99 *Flemmer and Others* [2001] ECR I-7211, paragraph 60).

57 However, the Community's interest in recovering aid which has been received in breach of the conditions under which it was granted must be taken fully into consideration in assessing the interests in question (*Deutsche Milchkontor*, paragraph 32, *Oelmühle and Schmidt Söhne*, paragraph 24 and *Flemmer and Others*, paragraph 61).

58 Moreover, it is settled case-law that the beneficiary of aid may challenge a demand for recovery only if he acted in good faith when applying for it (see, to

that effect, *Oelmühle and Schmidt Söhne*, paragraph 29). In that regard, it is for the national court to consider:

— whether the ÖPUL directive was sufficiently clear in prohibiting the use of the plant protection products mentioned in paragraph 20 of the present judgment, taking into account the observations set out by the Advocate General at point 127 of his Opinion;

— whether specific obligations relating to the use of plant protection products were clearly evident from the aid application form or the notices annexed to it, taking into account the observations set out by the Advocate General at point 121 of his Opinion;

— whether the ÖPUL directive had been incorporated, in whole or in part, in the aid contract;

— whether the draft of the ÖPUL directive or its final text had in fact been made known to Mr Huber;

— or, if this was not the case, whether Mr Huber had been negligent, as a farmer exercising ordinary care would not have been, in not seeking to obtain precise knowledge of the content of the ÖPUL directive by travelling to the Federal Ministry of Agriculture and Forestry in Vienna in order to consult the text of the directive and, specifically, whether the need for such an on-the-spot consultation in order to learn the full extent of their obligations did not place an excessive burden on the farmers concerned.

59 In the light of the above, the answer to the fourth question must be that Community law does not preclude the application of the principles of the protection of legitimate expectations and legal certainty in order to prevent the recovery of aid part-financed by the Community which has been wrongly paid, provided that the interest of the Community is also taken into consideration. The application of the principle of the protection of legitimate expectations assumes that the good faith of the beneficiary of the aid in question is established.

The fifth and sixth questions

60 By its fifth and sixth questions, which it is appropriate to consider together, the referring court asks, first, whether it is open to Member States to implement national aid programmes within the meaning of Article 3(1) of Regulation No 2078/92 either by private-sector measures or by forms of State action and, second, whether, when considering a claim for the recovery of aid wrongly paid under that regulation, a comparison should be made between the conditions governing repayment, under national law, of sums not due according to whether they were paid pursuant to private-sector measures or administrative measures.

61 In that regard, in so far as Community law, including its general principles, does not contain common rules, it is settled case-law that the national authorities, when implementing Community legislation, must act in accordance with the rules as to procedure and form laid down by the law of the Member State concerned. However, as the Court has already held, recourse to rules of national law is possible only in so far as it is necessary for the implementation of provisions of Community law and in so far as the application of those rules of national law does not jeopardise the scope and effectiveness of that Community law, including its general principles (see, *inter alia*, *Flemmer and Others*, cited above, paragraph 55).

62 Since Regulation No 2078/92 did not lay down any common rule in that regard, in principle nothing prevented the Republic of Austria from implementing the national aid programmes referred to in Article 3(1) of the regulation through private-sector measures such as contracts.

63 It is for the referring court to decide whether recourse to such measures does not affect the scope and effectiveness of Community law, bearing in mind in particular that recourse to those measures must enable wrongly paid part-financed aid to be recovered under the same conditions as purely national aid of the same type.

64 Consequently, the answer to the fifth and sixth questions must be that it is open to Member States to implement national aid programmes within the meaning of Article 3(1) of Regulation No 2078/92 by private-sector measures or by forms of State action, in so far as the national measures in question do not affect the scope and effectiveness of Community law.

Costs

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

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Oberster Gerichtshof by order of 26 January 2000, hereby rules:

1. Consideration of the first question has not disclosed any factor of such a kind as to affect the validity of Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside, as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded.

2. Article 7(2) of Regulation No 2078/92, as amended by the abovementioned Act of Accession, must be interpreted as meaning that a Commission decision approving a national aid programme also encompasses its content, without, however, conferring on that programme the nature of an act of Community law.

3. A Commission decision approving a national aid programme as referred to in Article 7 of Regulation No 2078/92, as amended by the Act of Accession, is addressed only to the Member State concerned. It is for the national courts to

decide, in the light of national law, whether the publicity given to that programme enabled it to become binding on agricultural and rural operators, in particular by ensuring compliance with the requirement of appropriate information laid down in Article 3(3)(f) of Regulation No 2078/92.

4. Community law does not preclude the application of the principles of the protection of legitimate expectations and legal certainty in order to prevent the recovery of aid part-financed by the Community which has been wrongly paid, provided that the interest of the Community is also taken into consideration. The application of the principle of the protection of legitimate expectations assumes that the good faith of the beneficiary of the aid in question is established.

5. It is open to Member States to implement national aid programmes within the meaning of Article 3(1) of Regulation No 2078/92, as amended by the Act of Accession, by private-sector measures or by forms of State action, in so far as the national measures in question do not affect the scope and effectiveness of Community law.

Jann Edward La Pergola

Wathelet Timmermans

Delivered in open court in Luxembourg on 19 September 2002.

R. Grass P. Jann

Registrar President of the Fifth Chamber