

OPINION OF ADVOCATE GENERAL

KOKOTT

delivered on 16 December 2004<sup>1</sup>

**I — Introduction**

1. There are in the Netherlands rules on prices under which dairies impose on producers, that is to say on the relevant farmers, price deductions for raw milk of inferior quality. At the same time these price deductions are used to fund moderate price supplements for those producers who, over a specific period, have delivered to the dairies raw milk of unblemished quality.

3. In this connection the Netherlands College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) (also 'the national court') asks for the Court's assistance in interpreting the prohibition of aids laid down in Community law (Article 87(1) EC), the prohibition on implementation laid down in the law on aids (Article 88(3) EC), and Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organisation of the market in milk and milk products ('Regulation No 804/68').<sup>2</sup>

**II — Relevant legislation**

2. In the present case these rules on prices are being assessed in the light of Community law. Mr Kuipers, whose raw milk was, in some cases, classified as being of inferior quality by the dairies to which it was delivered, disputes the price deductions made by these dairies. He considers that such deductions are contrary to Community law.

*A — Community law*

4. The relevant legislation in this case comprises Article 36(1) EC, Article 87(1)

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

<sup>2</sup> — OJ, English Special Edition 1968 (I), p. 176.

EC, Article 88(3) EC, and Regulation No 804/68.<sup>3</sup> 7. Article 88(3) EC stipulates as follows:

5. Under Article 36(1) EC, the provisions of the Chapter relating to rules on competition are to apply to production of and trade in agricultural products only to the extent determined by the Council within the framework of Article 37(2) and (3) EC and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 33 EC.

‘The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 87, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.’

6. Article 87(1) EC reads as follows: 8. Articles 23 and 24 of Regulation No 804/68 are worded as follows:<sup>4</sup>

‘Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.’

‘Article 23

Save as otherwise provided in this Regulation, Articles 92 to 94 of the Treaty shall apply to the production of and trade in the products listed in Article 1.

3 — Regulation No 804/68 was replaced by 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; Regulation No 1255/1999) with effect from 1 January 2000. However, the facts of the main proceedings relate to 1995 and therefore Regulation No 804/68 is still applicable to them *ratione temporis*.

4 — Articles 23 and 24 of Regulation No 804/68 are identical in content to Articles 37 and 38 of Regulation No 1255/1999. See also Annex III to Regulation No 1255/1999. Previous Articles 92 to 94 of the EC Treaty to which Regulation No 804/68 refers correspond to Articles 87 to 89 EC which are now in force.

Article 24

ment of aids granted by Member States and the prohibition of those which are incompatible with the common market should be made to apply to milk and milk products; ... .

1. Subject to the provisions of Article 92 (2) of the Treaty, aids the amount of which is fixed on the basis of the price or quantity of products listed in Article 1 shall be prohibited.

10. Reference should also be made to Article 3 of Regulation No 804/68 which contains the following rules on fixing the price for milk:

2. National measures permitting equalisation between the prices of products listed in Article 1 shall also be prohibited.'

'Article 3

The goods listed in Article 1 of Regulation No 804/68, to which Article 24(2) thereof refers, are in particular milk, cream, butter, cheese, curds, lactose and lactose syrup.

1. Before 1 August of each year a target price for milk shall be fixed for the Community in respect of the milk year beginning in the following calendar year.

9. The following overall explanation is provided in the 12th recital in the preamble to Regulation No 804/68:

...

'Whereas the establishment of a single market based on a common price system would be jeopardised by the granting of certain aids; whereas, therefore, the provisions of the Treaty which allow the assess-

2. The target price shall be that price which it is aimed to obtain for the aggregate of producers' milk sales, on the Community market and on external markets, during the milk year.

3. The target price shall be fixed for milk containing 3.7% fat, delivered to dairy.  
...<sup>5</sup>

11. Furthermore, at the time of the facts of the main proceedings the second subparagraph of Article 5(1) stipulated as follows:<sup>6</sup>

‘Milk used for making ... drinking milk shall have been subject to a system of payment varying according to quality. This system must guarantee that milk used as raw material for making drinking milk reaches certain standards of quality, including composition.’

Law on the Quality of Agricultural Products (*Landbouwkwaliteitswet*: ‘the Law on Agricultural Product Quality’),<sup>7</sup> the Decree on the Quality of Agricultural Products: raw milk and dairy production (*Landbouwkwaliteitsbesluit rauwe melk en zuivelbereiding*: ‘Netherlands Basic Decree on Milk’),<sup>8</sup> and the Implementing Regulation of the Secretary of State for Agriculture, Nature Management and Fisheries on the Quality of Agricultural Products: payment for farm milk according to quality (*Landbouwkwaliteitsregeling uitbetaling van boerderijmelk naar kwaliteit*: ‘Netherlands Implementing Regulation on Milk’).<sup>9</sup> There is also a byelaw and a decision adopted by the Productschap Zuivel (Milk and Milk Products Board), the defendant in the main proceedings.

13. Essentially, the following emerges from the extremely complex interaction between all these provisions:

## B — National law

12. As regards national Netherlands law, particular reference should be made to the

14. Article 2(1) of the Law on Agricultural Product Quality, in conjunction with Article 3(a) of the Netherlands Basic Decree on Milk, grants authority to lay down provisions on the quality of [agricultural] goods, namely raw milk. Such provisions may provide for inter alia payment according to the quality of products.

5 — With effect from 1 July 1996 Article 3(1) of Regulation No 804/68 was replaced by the following wording: ‘Each year a target price for milk shall be fixed for the Community.’ (Council Regulation (EC) No 1587/96 of 30 July 1996, OJ 1996 L 206, p. 21). Article 3 of Regulation No 1255/1999 in force since 1 January 2000 retains the system of target prices but no longer provides for an annual price review as a matter of course.

6 — Regulation (EEC) No 1411/71 of the Council of 29 June 1971 laying down additional rules on the common organisation of the market in milk and milk products for products falling within tariff heading No 04.01 (OJ 1971 L 148, p. 4). The regulation was repealed with effect from 1 January 1998.

7 — *Staatsblad* 1971, p. 371, amended by Law of 23 December 1993 (*Staatsblad* 1993, p. 690).

8 — *Staatsblad* 1994, p. 63, amended by Decree of 26 June 1995, *Staatscourant* 122.

9 — *Staatscourant* 1994, p. 25. Expired with effect from 8 January 2000.

15. Article 2(2)(f) of the Law on Agricultural Product Quality, in conjunction with Article 3(a) and (c) of the Netherlands Basic Decree on Milk, permits in respect of raw milk the introduction of a system of price reductions and price supplements depending on the quality of the product.

farm milk according to quality (*Landbouwkwaliteitsverordening 1994, Uitbetaling van boerderijmelk naar kwaliteit: '1994 Byelaw'*),<sup>11</sup> which reads as follows, as far as is relevant:

'Article 2

16. Article 8 of the Law on Agricultural Product Quality enables private-law legal persons to be entrusted with supervisory functions and also with the inspection of agricultural products and implementation of the provisions of law concerning payment according to the quality of products. Under Article 3(1)(c) and Article 7 of the Netherlands Basic Decree on Milk this competence for the dairy farming is essentially transferred to the *Stichting Centraal Orgaan voor Kwaliteitsaangelegenheden in de Zuivel* ('the COKZ')<sup>10</sup> based in Leusden.

1. The recipient of farm milk shall pay the dairy farmers concerned for that milk according to the quality, having due regard to the provisions set out in or pursuant to this byelaw.

...

17. Article 2 of the Netherlands Implementing Regulation on Milk in turn authorises the competent board — the *Productschap Zuivel* — to lay down by byelaw rules relating to payment according to quality for farm milk insofar as concerns inter alia quality testing, the withholding of a price deduction and payment of a quality supplement. Having regard to Article 2 of the Implementing Regulation on Milk, the *Productschap Zuivel* adopted the *Byelaw on the Quality of Agricultural Products 1994: Payment for*

3. The recipient of farm milk shall,
  - (a) have the quality of farm milk received from dairy farmers determined, and

10 — Central Council for Dairy Product Quality Assurance.

11 — *PBO-blad* 1994, afl. No 9. On 15 September 1999 the *Productschap Zuivel* adopted a new byelaw, the *Zuivelverordening 2000, Uitbetaling van boerderijmelk naar kwaliteit, samenstelling en gewicht*, which entered into force on 1 January 2000. It repealed inter alia the 1994 Byelaw.

- (b) register the result of the quality testing referred to at (a), having due regard to the provisions set out in or pursuant to this byelaw.
2. The amount of the quality supplement shall be fixed per 100 kg of milk for each region determined by the chairman, after hearing the views of the COKZ, in such a way that the total amount of quality supplements per period is the same or approximately the same as the total amount of deductions withheld.

...

## Article 12

### Article 10

1. An assessment shall be attributed by the milk monitoring station to the results of the quality testing, in accordance with a system comprising standards, deduction points and other deductions to be imposed, adopted by the chairman after hearing the views of the COKZ.

For each sampling period, the recipient of farm milk shall withhold, on the basis of the total number of deduction points assigned, a deduction to be determined by the chairman after hearing the views of the COKZ, in respect of the total quantity of farm milk delivered in that period by the dairy farmer concerned, as well as any deduction(s) in respect of individual deliveries on account of the presence of substances which inhibit the growth of bacteria and which are not naturally present in milk.'

...

### Article 11

1. The recipients of farm milk shall, in respect of a fixed period of twelve weeks, pay a quality supplement to dairy farmers who in the period in question are assigned in total not more than 1 deduction point and whose milk is found not to contain any substance which inhibits bacteria growth and is not naturally present in milk. ...

18. The deductions to be imposed *inter alia* are laid down in a decree adopted by the chairman of the *Productschap Zuivel*, namely the *Besluit vaststelling frequentie en beoordeling resultaten kwaliteitsonderzoek* (Decree on the determination of frequency and assessment of results of quality testing).<sup>12</sup> In accordance with that decree, the price deduction amounts to NLG 0.50 (EUR 0.23) where residues of antibiotics are found in milk which has been delivered.

<sup>12</sup> — *PBO-blad* 1994, afl. No 20, p. 25, amended by the Decrees of 19 July 1994 (*PBO-blad*, afl. No 42) and of 15 February 1995 (*PBO-blad*, afl. No 15).

### III — Facts and main proceedings

#### A — Summary of the operation of the Netherlands payment scheme <sup>13</sup>

19. The Netherlands dairies have the quality of the raw milk delivered to them checked on a constant basis. Quality defects are given deduction points in a points system and result in a price deduction which the relevant dairy withholds.

20. The dairies pay a quality supplement to those milk producers whose total deliveries over a period of 12 weeks are given no more than one deduction point and whose milk is found to contain no residues of antibiotics. This supplement is recalculated periodically by the COKZ on the basis of the data provided by the dairies.

21. In this respect the amount of the quality supplement is fixed per 100 kg of milk in such a way that the total amount of quality supplements per period is the same or approximately the same as the total amount of deductions withheld. Where in a specific period a dairy has overall withheld more by way of price deductions than it has paid by

way of quality supplements, it transfers the difference to the COKZ which distributes them among other dairies which are in the opposite position.

22. It is clear from the order for reference that the milk price in the Netherlands in 1995 was NLG 71.43 per 100 kg, that is to say NLG 0.7143 (EUR 0.32) per kg. Where the milk was found to contain residues of antibiotics, the price deduction to be effected was NLG 0.50 (EUR 0.23) per kg.

23. The Court has not been informed how many producers received price supplements in the relevant period and how high these supplements were in each case. However, when asked at the hearing the Netherlands Government stated without being challenged that the amount of the supplements was very small. Mr Kuipers considers that around 70% to 80% of Netherlands farmers receive such supplements for their milk.

24. In addition, the order for reference makes clear that in the Netherlands in 1995 the proportion of *all* quality supplements in relation to the overall value of *all* milk deliveries amounted to 0.217%. In the following years (1996 to 1999) this proportion was slightly higher on only one occasion (0.227% in 1996), otherwise it steadily

<sup>13</sup> — See, to that effect, in particular paragraphs 20 to 22 of the written observations of the Netherlands Government and its pleadings at the hearing.

decreased somewhat (between 1997 and 1999 it declined and after standing at 0.196% in 1997 and 0.185% in 1998 it finally reached 0.174% in 1999).

administrative and judicial decisions adopted previously and ordered *inter alia* that Mr Kuipers' original objection be remitted for review to the Productschap Zuivel.

## B — *The main proceedings*

25. The plaintiff in the main proceedings, Mr Kuipers, is a dairy farmer in the Netherlands and in 1995 delivered raw milk to the Netherlands dairy *Zuivelfabriek De Kievit B. V.* in Meppel. By letters of 24 July, 28 July, 8 August and 15 August 1995 headed 'quality report', the dairy informed Mr Kuipers that the milk delivered by him had been shown to contain residues of an antibiotic.<sup>14</sup> For this reason a price deduction of NLG 0.50 (EUR 0.23) per kg was made from the payment for the raw milk delivered by Mr Kuipers, pursuant to Article 12 of the 1994 Byelaw, and the relevant overall amount — a total of NLG 5 428.95 (EUR 2 463.55) — was withheld.

26. Initially Mr Kuipers unsuccessfully lodged various internal appeals with the COKZ. In response to his action the *Raad van State, Afdeling bestuursrechtspraak*<sup>15</sup> finally set aside at second instance the

27. On 20 December 2000 the Productschap Zuivel dismissed as unfounded the objection by Mr Kuipers which had since been remitted to it. Mr Kuipers brought proceedings against that dismissal before the national court.

## IV — Reference for a preliminary ruling and procedure before the Court

28. By order of 27 June 2003, the College van Beroep voor het bedrijfsleven stayed proceedings and referred the following questions to the Court for a preliminary ruling:

1. Is a national system of deductions and supplements based on the quality of raw milk delivered to the dairy, such as that at issue, consistent with Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products and in particular with the prohibition of 'equalisation between the prices' in Article 24(2) (now, after

<sup>14</sup> — Literally, the order for reference states '*een bacteriegroei-remmende stof*' (a substance inhibiting the growth of bacteria). Moreover, the national court states that in the pre-litigation proceedings Mr Kuipers himself admitted to using penicillin to control mastitis.

<sup>15</sup> — Council of State, Administrative Appeal Section.

consolidation of amendments to the text, Article 38(2) of Regulation (EC) No 1255/1999)?

2. Is a national system of supplements based on the quality of raw milk delivered to the dairy, such as that at issue, consistent with the prohibition of aid in Article 24(1) of Regulation (EEC) No 804/68?

3. If Question 2 is answered in the affirmative, is such a national system to be regarded as aid the grant of which must be notified beforehand to the Commission under Article 93(3) of the EC Treaty (now Article 88(3) EC)?

29. Mr Kuipers, the Netherlands Government and the Commission have submitted written and oral submissions in the proceedings before the Court.

## V — Appraisal

### A — Question 1: Compatibility of quality-related price deductions and supplements with the European rules on prices for milk

30. By its first question the national court asks essentially whether the common orga-

nisation of the market in milk and milk products, in particular Article 24(2) of Regulation No 804/68, precludes national legislation such as that of the Netherlands which provides for price deductions and price supplements according to the quality of the raw milk delivered to dairies.

31. Whereas the Netherlands Government considers that the system of price deductions and price supplements at issue is compatible with Regulation No 804/68, the Commission regards it as a failure to observe the price rules of the common organisation of the market. Mr Kuipers also considers that the system is unlawful.

32. According to established case-law, the Member States may not undermine through their own provisions at national level the rules on prices laid down in a common organisation of the market. The Member States are under an obligation to refrain from taking any measures which might undermine or create exceptions to the common organisation of the market.<sup>16</sup> Rules which interfere with the proper functioning of a common

<sup>16</sup> — Case 10/79 *Toffoli* [1979] ECR 3301, paragraph 12; Case 166/82 *Commission v Italy* [1984] ECR 459, paragraph 23; Case 237/82 *Jongeneel Kaas* [1984] ECR 483, paragraph 12; and Case C-137/00 *Milk Marque and National Farmers' Union* [2003] ECR I-7975, paragraphs 63 and 80. See also — with regard to other areas of the common agricultural policy — Case 177/78 *Pigs and Bacon Commission* [1979] ECR 2161, paragraph 14; Case C-196 *Compassion in World Farming* [1998] ECR I-1251, paragraph 41; Case C-428/99 *Van den Bor* [2002] ECR I-127, paragraph 35; and Case C-416/01 *ACOR* [2003] ECR I-14083, paragraph 21.

organisation of the market are also incompatible with such common organisation, even if the matter in question has not been exhaustively regulated by it.<sup>17</sup>

milk, Article 3(3) of Regulation No 804/68 provides merely that the target price be fixed *for milk containing 3.7% fat*.<sup>18</sup> On the other hand, the Regulation is silent on the effects which other characteristics of the milk can have on the formation of prices. One need only think of possible quality defects such as, for example, the residues of antibiotics found in the present case.

33. Two matters must be examined in the light of the foregoing. Firstly, does the common organisation of the market leave any scope at all for measures at national level or contain exhaustive rules on prices (see Section 1 below) and, secondly, are such national measures — in so far as scope remains for them — capable of undermining the common organisation of the market (see Section 2 below)? In this respect it will be necessary in each case also to examine Article 24(2) of Regulation No 804/68 cited by the national court.

#### 1. Remaining scope for measures at national level

34. As regards the *remaining scope for measures at national level*, although the common organisation of the market in milk and milk products contains rules on prices which provide inter alia for a target price for

35. It would appear to me unconvincing to conclude from the fact that Article 3 of Regulation No 804/68 is silent that the rules on prices laid down therein are *exhaustive* in every respect. That is because to conclude that the rules were exhaustive would have the perverse effect that in the Community it would always be necessary to aim to obtain the same compensation, based on the target price, for milk of whatever quality, and thus also for milk of poor quality. Rules which provided for greater variation of milk prices, and did so on the basis of factors other than the fat content referred to in Article 3(3) of Regulation No 804/68, would be excluded from the outset. On the other hand, it would appear reasonable to allow reference to be made to other quality characteristics of milk in addition to its fat content, and in particular for account to be taken of quality defects, for the purpose of varying the milk price.

<sup>17</sup> — *Compassion in World Farming*, paragraph 41, and *Van den Bor*, paragraph 35, cited in footnote 16 above.

<sup>18</sup> — The target price is fixed by the Council in accordance with the procedure laid down in Article 37(2) EC, in conjunction with Article 3(4) of Regulation No 804/68.

36. Nor do the provisions of secondary law cited by Mr Kuipers lead to any other conclusion. Mr Kuipers invokes Directives Nos 92/46<sup>19</sup> and 92/47.<sup>20</sup> Put simply, these directives introduce, in the same way, moreover, as Regulation No 2377/90,<sup>21</sup> particular health rules for agricultural products and establish the maximum permitted levels of antibiotic residues in those products. Consequently, although products which remain within the fixed limits can in principle be marketed freely, it can in no way be therefore concluded that it is always necessary to aim to obtain the same price for every product which complies with those limits. On the contrary, the existence of limits in no way rules out greater variation being made, within the fixed limits, also according to quality and that variation also being reflected in the price.

37. Furthermore, the converse conclusion from Article 24(2) of Regulation No 804/68 also shows that national measures effecting milk prices cannot be ruled out altogether. Although this provision precludes certain

national measures specified therein (equalisation between prices), it does not prohibit *any* measures of the Member States which effect the formation of prices.

38. I should point out merely in passing that the second subparagraph of Article 5(1) of Regulation No 1411/71, which was still applicable at the material time, confirms this view. This provision lays down — in connection with the production of drinking milk — a system of payment varying according to quality. Therefore, the Community legislature itself obviously considered that the rules on prices contained in Regulation No 804/68 were not exhaustive.

39. However, so long and in so far as the Community has not laid down specific provisions on payment for raw milk based on quality — either in connection with the production of drinking milk or in connection with the production of other milk products —, the formation of milk prices is not regulated exhaustively at Community level and can be supplemented by the Member States, having regard to the requirements of Community law.

19 — Council Directive 92/46/EEC of 16 June 1992 laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products (OJ 1992 L 268, p. 1).

20 — Council Directive 92/47/EEC of 16 June 1992 on the conditions for granting temporary and limited derogations from specific Community health rules on the production and placing on the market of milk and milk-based products (OJ 1992 L 268, p. 33).

21 — Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin (OJ 1990 L 224, p. 1), amended *inter alia* by Commission Regulation (EEC) No 675-92 of 18 March 1992 (OJ 1992 L 73, p. 8) cited by Mr Kuipers, most recently amended by Commission Regulation No 1851/2004 of 25 October 2004 (OJ 2004 L 323, p. 6).

## 2. No undermining of the common organisation of the market

40. The next point to consider is whether national measures such as those of the

Netherlands are specifically capable of *undermining* the common organisation of the market as a whole and the rules on prices laid down therein in particular. This can be assessed only in the light of the spirit and purpose of these rules and the superior objectives and requirements of the EC Treaty.

individual producer for his product must be as close as possible to the target price is incorrect.<sup>24</sup> If the target price is construed not as an individual price guarantee but merely as a political objective, it is necessary merely to aim to obtain on average across the Community a price level which corresponds to this guide value. On the other hand, a target price construed as a political objective does indeed leave scope for variation according to the quality of the relevant product.

#### (a) Target price as a political objective

41. The target price for milk is a *political objective* at Community level. Such a *price guideline* is not a guarantee to all producers in every Member State that they will earn an income corresponding to the target price.<sup>22</sup> This is also demonstrated in the wording of Article 3(2) of Regulation No 804/68 under which the target price is to be 'that price which it is *aimed to obtain* for the *aggregate of producers*' milk sales ... during the milk year.'<sup>23</sup>

42. Consequently, the Commission's argument that the price obtained by each

43. The political objective of a Community-wide uniform price for milk is in no way undermined by a system with quality-related price deductions and price supplements such as that of the Netherlands. As is clear from Article 11(2) of the 1994 Byelaw, the relevant amount of the quality supplement is to be fixed in such a way that the total amount of quality supplements per period is the same or approximately the same as the total amount of deductions withheld. In other words, the system of price deductions and price supplements does not result in any change to the overall amount which the Netherlands dairies spend in a particular period on purchasing raw milk. The system merely means that the dairies do not pay the same price to each producer irrespective of the quality of his raw milk but instead grant higher payments to some producers and lower payments to others depending on the

22 — *Milk Marque and National Farmers' Union* (cited in footnote 16 above, paragraph 88).

23 — Emphasis added.

24 — Paragraph 24 of the Commission's written submission.

quality of the milk which is delivered. Such a *revenue-neutral* system ensures that on average in the Netherlands there is no deviation from the target price laid down by Community law and thus that the functioning of the common organisation of the market is not undermined.

achieve price levels at the production and wholesale stages which take into account both the interests of community production as a whole in the relevant sector and those of consumers, and which also guarantee market supplies without encouraging over-production.<sup>26</sup>

44. That is the fundamental difference between the circumstances of this case and those, for example, in *Toffoli* in which national rules had resulted in a generally higher producer price for milk than that provided for by the target price at Community level (260 lire per kg instead of 204.26 lire per kg).<sup>25</sup> Consequently, there was in that case, unlike in this, a deviation from the target price and thus clear undermining of the common organisation of the market.

(i) Interests of consumers

46. The aim of rules such as those of the Netherlands with their price supplements and price deductions for raw milk is to introduce a system of payments based on quality and to enhance the quality of agricultural products by means of financial incentives. Such rules take account of the *interests of consumers* whose protection is, under Article 153(2) EC, to be taken into account in defining and implementing all Community policies. In particular they take account of the objective of ensuring that supplies reach consumers at reasonable prices (Article 33(1)(e) EC). The criterion of *reasonableness* makes it entirely logical to aim to attain proper cost effectiveness as regards payment for agricultural products and not, for example, to aim to obtain the same price for products of inferior quality and agricultural products of unblemished or even high quality.

(b) Consideration of the interests of consumers and producers; stabilising the markets; ensuring that supplies are available

45. The essential aim of the common organisation of the market in milk is to

26 — *Milk Marque and National Farmers' Union* (cited in footnote 16 above, paragraph 85) and Joined Cases 36/80 and 71/80 *Irish Creamery Milk Suppliers Association* [1981] ECR 735, paragraph 20.

25 — *Toffoli* (cited in footnote 16 above, paragraphs 2 and 6).

(ii) Interests of producers

47. At the same time such rules also serve fully the *interests of producers*. The producer of a product of inferior quality cannot expect to obtain the same price for that product as a producer who produces a product of unblemished or even high quality. On the other hand, a person who produces with quality in mind rightly expects to be able to obtain more for his products than the producer of a product of inferior quality.

48. Nor does the increase in the individual earnings of persons engaged in agriculture sought by Article 33(1)(b) EC require that the aim must always be to obtain the same price for agricultural products *irrespective of their quality*.

49. It could be concluded that the interests of producers were prejudiced only if price deductions ordered by the State were disproportionate to the quality defects found.<sup>27</sup> It is for the national court to establish, if

necessary, whether a price reduction such as that applied in this case, that is to say a deduction of more than two thirds from the normal price for milk,<sup>28</sup> is proportionate or disproportionate to the quality defects of a milk delivery containing residues of antibiotics.

(iii) System of payments based on quality as a contribution to the stabilisation of markets

50. The objective of *stabilising markets* referred to in Article 33(1)(c) EC could also probably be attained more easily if the payment of producers were based at least in addition on the quality of their products. Although originally expanding production and assuring, primarily in quantitative terms, the availability of supplies to the public,<sup>29</sup> in particular of basic foodstuffs, may have been at the forefront of the Community's agricultural policy, at a time of undoubtedly reduced consumer confidence in certain agricultural products the quality of production is of greater importance. If payment is based on the quality of products, a greater

27 — With regard to the Member States' obligation to observe the general principles of Community law and in particular the principle of proportionality see — in a somewhat different context — Case C-36/94 *Siesse* [1995] ECR I-3573, paragraph 21, second sentence; Case C-262/99 *Louloudakis* [2001] ECR I-5547, paragraph 67; and Case C-220/01 *Lennox* [2003] ECR I-7091, paragraph 76.

28 — NB: the price deduction where residues of antibiotic were found was NLG 0.50 NLG per kg and the normal price for milk was NLG 0.7143 NLG per kg (see paragraph 22 of this Opinion).

29 — See, to that effect, also Article 33(1)(d) EC.

incentive can also be thereby created to produce quality products and ultimately also to restore lost confidence.

51. In any event, Community legislation displays a general tendency to enhance the quality of products within the framework of the common agricultural policy, in order to promote the reputation of those products.<sup>30</sup> The introduction of a system of payments for agricultural products based on quality is consistent with this objective.

53. Although a system such as that of the Netherlands with its State imposed interventions in the formation of prices does not constitute the ideal in terms of competition policy, the financial incentives for enhancing quality which this system offers can at least contribute towards competition based on quality between producers. Thus, the objectives of the EC Treaty in the field of competition policy militate more in favour than against the lawfulness of rules such as those of the Netherlands.<sup>32</sup>

#### (d) Summary

##### (c) Competition policy objectives

52. Similarly, the Community's competition policy objectives must not be disregarded in assessing a system such as that of the Netherlands. As the Court has already held, the maintenance of effective competition on the market for agricultural products is one of the objectives of the common agricultural policy and the common organisation of the market in milk and milk products. The common organisations of the markets in agricultural products are not a competition-free zone.<sup>31</sup>

54. In the light of the foregoing it is not clear that rules on prices such as those of the Netherlands would be capable of undermining the objectives of the common organisation of the market in milk and milk products — interpreted in the light of the superior objectives and requirements of the EC Treaty.

30 — See, for example — in the context of designations of origin — Case C-388/95 *Belgium v Spain* [2000] ECR I-3123, paragraph 53, and Cases C-469/00 *Ravil* [2003] ECR I-5053, paragraph 48, and C-108/01 *Consorzio del Prosciutto di Parma e Salumificio S. Rita* [2003] ECR I-5121, paragraph 63.

31 — *Milk Marque und National Farmers' Union*, cited in footnote 16 above, paragraph 57 et seq., in particular paragraphs 57 and 61.

32 — As regards Articles 81 EC and 82 EC, it must be concluded that neither the *Productschap Zuivel* nor the *COKZ* act as undertakings or an association of undertakings in implementing the Netherlands rules on prices. The fixing by the *Productschap Zuivel* of the price deductions to be made and the fixing by the *COKZ* of the price supplements to be awarded does not constitute an economic activity but rather an activity carried on by a public authority under the law and on behalf of the State. See, to that effect, for example Case C-343/95 *Cali* [1997] ECR I-1547, paragraphs 16 to 18, and my Opinion in Case C-134/03 *Viacom* [2005] pending before the Court, paragraphs 70 and 71.

3. Prohibition of equalisation between the prices

at Community level, in particular the fixed intervention prices and target prices.<sup>33</sup> However, as has already been shown, no objection can be raised to a price structure based on quality for each of these products individually, subject to the requirements of Community law.

55. Finally, as regards Article 24(2) of Regulation No 804/68, it prohibits only national measures permitting *equalisation between the prices*. More precisely, this prohibition relates to measures permitting equalisation 'between the prices of products listed in Article 1.' These products are in particular milk, cream, butter, cheese, curds, lactose and lactose syrup.

#### 4. Interim conclusion

For all these reasons, Regulation No 804/68 does not preclude national legislation such as that of the Netherlands which provides for price deductions and price supplements depending on the quality of the raw milk supplied to dairies.

56. It is clear from the wording of this provision — the terms 'prices' and 'products' are used in the plural — that it is intended to prohibit only equalisation between the prices of *different milk products*, that is to say, for example, equalisation between the price for milk and the price for cream or between the price for cream and the price for butter. What is meant is, for example, a kind of State imposed or approved cross-subsidy used to keep the price for one of the products referred to artificially low by raising excessively the price for another. The spirit and purpose of the common organisation of the market highlight the fact that the Member States are to be prevented from evading the requirements relating to the formation of the prices for different milk products laid down

#### B — Questions 2 and 3: law on aids

57. By its second and third question the national court essentially raises the issue of the applicability of European law on aids to

<sup>33</sup> — See also, to that effect, the case-law cited in footnote 16 above.

rules on prices such as those of the Netherlands. In this regard there may be an infringement of two provisions of the law on aids, namely the specific prohibition of aids contained in Article 24(1) of Regulation No 804/68 and the general prohibition of aids contained in Article 87(1) EC.

EC, and thus the *general prohibition of aids* laid down in the EC Treaty, are also applicable to the production of and trade in milk and milk products, under Article 36 EC, in conjunction with Article 23 of Regulation No 804/68. Moreover, this is also confirmed by the second half-sentence of the 12th recital in the preamble to Regulation No 804/68, according to which the provisions of the EC Treaty concerning aids should (in principle)<sup>35</sup> be made to apply to milk and milk products.<sup>36</sup>

58. Aids the amount of which is fixed on the basis of the price or quantity of milk or milk products are expressly prohibited under Article 24(1) of Regulation No 804/68. It is true that this *specific prohibition of aids* has, on account of its reference to price and quantity, a narrower field of application than the general prohibition of aids contained in Article 87(1) EC. However, within this field of application Article 24 of Regulation No 804/68 is much more stringent than Article 87 EC in that it permits no derogations such as those laid down in Article 87(3) EC but restricts itself to the exemptions provided for in Article 87(2) EC.<sup>34</sup>

60. The words 'Save as otherwise provided' in Article 23 of Regulation No 804/68 in no way mean that Article 24(1) of this regulation contains exhaustive rules on the lawfulness or otherwise of aids in the milk sector. Otherwise Article 23 would become a dead letter and be deprived on its practical effect. Instead, Article 24(1) is merely a specific prohibition of particular aids for milk and milk products and contains no exhaustive rules.

59. In addition to this specific prohibition of aids, the provisions of Articles 87 EC and 88

35 — The word '*grundsätzlich*' in the German version of the recital has no equivalent in other language versions, in particular in the French, Italian, Spanish, Portuguese, Dutch and English versions.

36 — The judgment in Case C 173/02 *Spain v Commission* [2004] ECR I-973, is unclear on this point. It appears to reverse the relationship between rule and exception set out in Article 23 of Regulation No 804/68 (applicability of the law on aids as a rule, non-applicability only in cases expressly provided for in the regulation: 'As regards the aid in that sector, it is clear from Article 23 of Regulation No 804/68, read in combination with Article 36 EC, that Articles 87 EC, 88 EC and 89 EC are applicable to the production of and trade in milk products only to the extent that such application is provided for by the regulation which lays down the common organisation of the market' (*Spain v Commission*, paragraph 17)).

34 — See the introductory words 'Subject to the provisions of Article 92(2) of the Treaty ...' in Article 24(1) of Regulation No 804/68 which should now be read as a reference to Article 87(2) EC.

1. Price supplements in the context of the prohibition of aids (Article 24(1) of Regulation No 804/68 and Article 87(1) EC)

according to which the provisions of the EC Treaty concerning aids should be made to apply within the framework of the common organisation of the markets.

61. By its second question the national court essentially asks whether national legislation such as that of the Netherlands which provides for price deductions for milk of inferior quality and uses them to finance price supplements for consistent deliveries of raw milk of unblemished quality are covered by the prohibition of aids laid down in Article 24(1) of Regulation No 804/68.

64. According to case-law, the prohibition on aids is subject to four cumulative conditions. First, there must be an intervention by the State or through State resources. Second, it must be liable to affect trade between Member States. Third, it must confer an advantage on the recipient. Fourth, it must distort or threaten to distort competition.<sup>37</sup>

62. Whilst the Commission and Mr Kuipers take the view that quality supplements such as those of the Netherlands constitute aids, the Netherlands Government is of the opposite opinion.

65. In the present case it is primarily the first condition (through State resources) and the third condition (advantage for the recipient) which pose problems. I shall consider these conditions below.

#### (a) Through State resources

63. It is a basic requirement for the application of the prohibition of aids that aid exist in the first place in a specific case. Article 24(1) of Regulation No 804/68 contains no independent definition of the notion of aids. The notion of aids in this provision should therefore be interpreted in the same way as that contained in Article 87 EC (and Article 88 EC). This is also consistent with the aim of Article 23 of Regulation No 804/68 and the 12th recital in the preamble thereto,

66. It is first necessary to consider whether the quality-related price supplements paid by the dairies are awarded *through State*

<sup>37</sup> — Case C-345/02 *Pearle and Others* [2004] ECR I-7139, paragraph 33, and Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 75.

*resources* in the first place and are thus *imputable to the State*.<sup>38</sup>

the award of the quality supplements must constitute an *additional burden* for the State or the body acting on its instructions.<sup>41</sup>

67. These considerations should be based on the fact that the supplements at issue are granted to the milk producers by private dairies and come from resources of private origin, namely from the revenue from the price deductions withheld from suppliers of raw milk of inferior quality.

68. The fact that the Netherlands dairies are *required by law* to grant such price supplements is not in itself sufficient to confer on them the character of aids.<sup>39</sup>

69. Instead, two factors are decisive according to case-law. Firstly, even if the means used to pay the quality supplements are permanent assets of the public sector they must at least constantly remain *under public control*, and therefore be available to the competent national authorities.<sup>40</sup> Secondly,

70. The fact that in the Netherlands system the dairies can be regarded as paying agents acting on the State's instructions and the COKZ,<sup>42</sup> which also acts on the State's instructions, manages these payments overall indicates *public control* of the means in question. To this end the COKZ not only calculates the amount of the quality supplements to be paid per period on the basis of the data provided by the dairies but in particular also functions itself as a distribution agent. For example, it takes surplus receipts which individual dairies obtain from price deductions and passes them specifically on to those dairies whose receipts from price deductions were lower in the corresponding period than was necessary to pay the price supplements. At the hearing the Commission coined the term 'virtual funds' to describe this. Therefore, unlike in the case of *PreussenElektra*,<sup>43</sup> for example, at least some of the monies used for the quality

38 — See, to this effect, *Pearle*, cited in footnote 37 above, paragraph 34, and also paragraphs 37 and 38; Case C-303/88 *Italy v Commission* [1991] ECR I-1433, paragraph 11; Case C-482/99 *France v Commission* [2002] ECR I-4397, paragraph 24; and Case C-126/01 *GEMO* [2003] ECR I-13769, paragraph 24.

39 — Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraphs 59 to 61.

40 — Case C-83/98 P *France v Ladbroke Racing and Commission* [2000] ECR I-3271, paragraph 50, and *France v Commission*, cited in footnote 38 above, paragraph 37. See, to similar effect, also paragraph 165 of the Opinion of Advocate General Jacobs in Case C-379/98 *PreussenElektra* [2001] ECR I-2103.

41 — Joined Cases C-72/91 and C-73/91 *Sloman Neptun* [1993] ECR I-887, paragraph 21; Case C-200/97 *Ecotrade* [1998] ECR I-7907, paragraph 35; Case C-53/00 [2001] ECR I-9067, paragraph 16; and *Pearle*, cited in footnote 37 above, paragraph 36, final half-sentence.

42 — The fact that the Productschap Zuivel acts on the State's instructions is clear from Article 2 of the Netherlands Implementing Regulation on Milk, and the fact that the COKZ does likewise is clear in particular from Articles 3 and 7 of the Netherlands Basic Decree on Milk (see paragraphs 16 and 17 of this Opinion).

43 — Cited in footnote 39 above.

supplements flows beforehand ‘through the hands’ of the State and more specifically through the COKZ acting on the State’s instructions.

71. Furthermore, the award of quality-related price supplements forms part of the policy formulated by the Netherlands State<sup>44</sup> to enhance the quality of agricultural products and serves to implement it. In this regard the present case differs from, for example, the case of *Pearle*<sup>45</sup> where the measure of a trade association at issue was attributable to the initiative of a private individual.

72. On the other hand, there is no evidence in this case, as in *Pearle*,<sup>46</sup> to show that the award of the quality supplements could result in an *additional burden* on the public finances. Even though a body acting on the State’s instructions may be operating as a distribution agent or a trustee of a ‘virtual fund’, the fact remains that public authorities inject no additional monies into the system for the award of quality supplements and in that connection forgo no revenue which would otherwise be due to them.

73. Consequently, this case does not essentially concern publicly funded support for particular traders, but rather a State imposed intervention in the formation of prices between the dairies, on the one hand, and the producers of raw milk (farmers) on the other. However, where traders are favoured at the expense of others, the advantages arising therefrom are not granted, directly or indirectly, through State resources.<sup>47</sup>

74. In those circumstances the price supplements cannot be regarded as payments *from State resources*.

#### (b) Advantage for the recipients

75. However, even if it were concluded — contrary to the opinion taken here — that the means paid out originated from the State, it would still be necessary to consider whether price supplements such as those at issue in the main proceedings constituted an *advantage* for the recipients in the first place which would justify regarding them as aids

44 — See, in particular, Article 2(2)(f) of the Law on Agricultural Product Quality, in conjunction with Article 3(a) and (c) of the Basic Decree on Milk and Article 11 of the 1994 Byelaw.

45 — Cited in footnote 37 above. See in particular paragraphs 15, 37 and 38, and the references cited therein.

46 — *Pearle*, cited in footnote 37 above, paragraph 36.

47 — See Case 82/77 *van Tiggele* [1978] ECR 25, paragraphs 23 to 25, in which the Court held that the fixing of minimum retail prices with the objective of favouring distributors of a product at the exclusive expense of consumers did not constitute an aid.

within the meaning of Article 87 EC and Regulation No 804/68.

*obligations*, such a measure is *not* caught by Article 87(1) EC.<sup>50</sup>

76. Only measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained in normal market conditions are regarded as aid.<sup>48</sup>

79. This idea is ultimately merely an expression of the general principle that the law on aids does not apply to legal relationships in which a normal market consideration corresponds to a service because a person who provides a service and obtains a normal market consideration in return is not a recipient of aid but rather operates on the market under conditions of normal competition.<sup>51</sup>

77. The decisive question is therefore whether price supplements such as those at issue in the main proceedings are ultimately only a normal market consideration for milk producers or whether they constitute a financial advantage which the milk producers concerned would have been unable to obtain under market conditions and which therefore put them in a more favourable position than their competitors.<sup>49</sup>

80. The available information on the main proceedings suggests that price supplements such as those awarded in the Netherlands must in fact be regarded as *compensation* for the services provided by the milk producers and not as, for example, a special advantage for them. In no way are individual deliveries of raw milk viewed in isolation *remunerated a second time*, that is to say in addition to the normal price already due for goods of unblemished quality. Instead, the price supplements at issue in this case are linked also to a *time element* in addition to the *quality element*. They serve as additional recognition for the *consistent* delivery of raw milk of unblemished quality *over an*

78. In this connection the Court has just recently ruled that where a measure must be regarded as compensation for services provided in order to discharge *public service*

50 — *Altmark Trans and Regierungspräsidium Magdeburg*, cited in footnote 37 above, paragraphs 87, 89 and 94, and *Enirisorse*, cited in footnote 48 above, paragraph 31.

48 — Joined Cases C-34/01 to C-38/01 *Enirisorse* [2003] ECR I-14223, paragraph 30, and *Altmark Trans and Regierungspräsidium Magdeburg*, cited in footnote 37 above, paragraph 84, and the references contained therein.

49 — Case C-39/94 *SFEI* [1996] ECR I-3547, paragraph 60, and *Altmark Trans and Regierungspräsidium Magdeburg*, cited in footnote 37 above, paragraph 87.

51 — On the other hand, there can be aid where no compensation is paid for a service or where a service is provided on preferential terms. See, to that effect, *GEMO*, cited in footnote 38 above, paragraph 29, and also Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others v Commission* [1988] ECR 219, paragraph 28, and *SFEI*, cited in footnote 49, paragraph 62.

*extended period* and are therefore used to reward an element of *sustained quality* over and above the mere individual delivery. In order to benefit from the quality supplement the producer concerned must have delivered, over a period of twelve weeks, milk which is assigned not more than one deduction point and found not to contain any substance which inhibits bacteria growth and is not naturally present in milk.<sup>52</sup>

81. It is more difficult to answer the question whether such compensation in the form of a quality supplement is *normal on the market* in terms of its amount when the market is heavily regulated.<sup>53</sup> It could be said that is not normal on the market at most if the amount of the price supplements awarded went beyond what it would have been possible to obtain had the market forces been allowed free play. However, in the present case it is established that the amount of the quality supplements paid to the individual producers was very small.<sup>54</sup> In this context it would appear extremely unlikely that the recipient milk producers could not have obtained quality supplements of the same order under normal market conditions, that is to say without State influence on the formation of prices.

82. The fact that the amount of the quality supplements can vary does not militate against their classification as normal market compensation. Instead, it is in the natural order of things that, in a period in which a comparatively large number of producers have delivered raw milk of inferior quality, suppliers of consistently unblemished raw milk are accordingly entitled to large quality supplements because their quality efforts have been particularly great in this period. Conversely, in a period in which a comparatively small number of producers have delivered raw milk of inferior quality and a large number of producers have delivered raw milk of unblemished quality the quality supplements are accordingly lower because the quality efforts made by the suppliers of raw milk of consistently unblemished quality have been comparatively less in this period.

83. For the sake of completeness, it should be pointed out that the quality of the milk delivered is tested in accordance with pre-determined criteria and under the supervision of a milk monitoring station set up specifically for this purpose (Article 10(1) of the 1994 Byelaw, in conjunction with Article 7 of the Netherlands Basic Decree on Milk).<sup>55</sup> Furthermore, according to the information available, all producers who

52 — See Article 11(1) of the 1994 Byelaw.

53 — The Community legislature itself exercises not inconsiderable influence on the free play of market force by introducing a price system with a target price for milk and intervention prices for certain processed goods and supporting this system by a safeguard mechanism at the external frontiers of the Community which makes possible levies and export refunds in trade with non-member countries.

54 — See paragraph 23 of this Opinion.

55 — See, similarly, the criteria listed by the Court in *Altmark-Trans and Regierungspräsidium Magdeburg*, cited in footnote 37, paragraph 90, according to which the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. The other criteria listed by the Court in that judgment (paragraphs 89 to 93) specifically concern the discharge of *public service obligations* and therefore cannot be used in respect of the present case.

satisfy the quality criteria listed automatically benefit from price supplements. Consequently, there is no need to fear unequal treatment between producers.

84. In such circumstances, the price supplements awarded by Netherlands dairies for the consistent delivery of raw milk of unblemished quality in no way constitute aid within the meaning of Article 87 EC and Article 24(1) of Regulation No 804/68 but are merely remuneration for special quality efforts made by the producers.

2. Price deductions in the context of the obligation under the law on aids to suspend implementation and inform the Commission (Article 88(3) EC)

85. By its third question the national court essentially asks whether national legislation such as that of the Netherlands, which provides for price deductions for raw milk of inferior quality and uses them to fund price supplements for the consistent delivery of raw milk of unblemished quality are covered by the obligation under the law on aids to suspend implementation and inform the Commission which is contained in Article 88(3) EC.

86. In principle the obligation to suspend implementation and inform the Commission contained in Article 88(3) EC concerns only the *expenditure side*, that is to say the grant of an aid to the recipient or recipients. The *revenue side*, that is to say the levying of charges to fund the aid, is not normally covered by the obligation to suspend implementation and inform the Commission.

87. An extension of this obligation to suspend implementation and inform the Commission to the funding of an aid is possible only in exceptional cases where a direct and inseparable connection exists between the expenditure and revenue side.<sup>56</sup>

88. It is true that in the present case there is a strong indication that such a direct and inseparable connection does exist between the withholding of the price deduction for milk of inferior quality on one side and the price supplements funded by it for the consistent delivery of milk of unblemished quality on the other. In particular, under Article 11(2) of the 1994 Byelaw, the amount of the price supplement per 100 kg of milk is to be fixed in such a way that the total

56 — See in particular Joined Cases C-261/01 and C-262/01 *Van Calster and Cleeren* [2003] ECR I-12249, paragraph 49, and *Ennisorse*, cited in footnote 48 above, paragraphs 43 to 45, and *Pearle*, cited in footnote 37, paragraphs 29 and 30. A comprehensive examination of the matter is to be found at paragraph 32 et seq. of the Opinion of Advocate General Geelhoed in Joined Cases C-174/02 and C-175/02 *Streckge-west Westelijk Noord-Brabant and Others*, pending before the Court.

amount of quality supplements per period is the same or approximately the same as the total amount of deductions withheld. The price deductions withheld are earmarked for a specific purpose and serve solely to fund the price supplements.

C — *Final remark*

89. However, as has already been pointed out,<sup>57</sup> the quality-related price supplement which is awarded in the Netherlands in the present case does not constitute aid within the meaning of Article 87 EC. Under such circumstances, the price deductions withheld to fund it likewise cannot be covered by the obligation to suspend implementation and inform the Commission laid down in Article 88(3) EC.

### 3. Interim conclusion

90. For the reasons set out above, Articles 87 (1) EC and 88(3) EC and Article 24(1) of Regulation No 804/68 do not preclude national legislation such as that of the Netherlands, which provides for price deductions for raw milk of inferior quality and uses them to fund price supplements for the consistent delivery of raw milk of unblemished quality.

91. In his written submissions Mr Kuipers suggests that the Netherlands system of price deductions could be incompatible with the guarantees laid down in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>58</sup> In that respect he invokes inter alia the presumption of innocence.

92. This argument must be rejected for the following reasons. Although Community law guarantees a standard in the matter of fundamental rights which is equal to that laid down in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, an invocation of the presumption of innocence is unsuccessful from the outset in the present case because a system of price deductions such as that of the Netherlands in no way constitutes a State sanction mechanism but merely State intervention in the formation of prices. Nor is there any evidence of an infringement of the fundamental right to a fair trial in this case. In particular, it is clear from the files that Mr Kuipers had ample opportunity to submit observations and also made extensive use thereof.

<sup>57</sup> — See, to that effect, the comments made at paragraphs 61 to 84 of this Opinion.

<sup>58</sup> — Signed in Rome on 4 November 1950.

## VI — Conclusion

93. In the light of the foregoing considerations, I propose that the Court should answer as follows the questions referred to it for a preliminary ruling by the College van Beroep voor het bedrijfsleven:

- (1) Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organisation of the market in milk and milk products does not preclude national legislation such as that of the Netherlands which provides for price deductions and price supplements depending on the quality of the raw milk delivered to dairies.
  
- (2) Articles 87(1) EC and 88(3) EC and Article 24(1) of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organisation of the market in milk and milk products do not preclude national legislation such as that of the Netherlands which provides for price deductions for raw milk of inferior quality and uses them to fund price supplements for the consistent delivery of milk of unblemished quality.