OPINION OF ADVOCATE GENERAL ALBER

delivered on 24 February 2000 *

I — Introduction

1. The question in this reference from the French Cour de Cassation for a preliminary ruling concerns the common organisation of the market in fruit and vegetables. In the framework of this market organisation it is provided that a Member State may make certain rules on production and marketing adopted by a producers' organisation or an association of such organisations binding on producers who do not belong to the organisation or association in question. If the Member State exercises this power, it may also decide that non-member producers are to pay to the organisation or association all or part of the fees paid by those who are members. The question arising in the present case is whether, where both powers are exercised, the Member State concerned must extend the obligation to pay fees to all producers of the product in question, in this case cauliflower, irrespective of whether it is produced for the fresh-product market or for industrial processing, or whether producers whose products are intended for industrial processing can be exempted from such an obligation.

II — Legal provisions

1. *Community law*

Council Regulation (EEC) No 3284/83 of 14 November 1983 amending Regulation (EEC) No 1035/72 on the common organisation of the market in fruit and vegetables. [1]

2. Article 4 of Regulation No 3284/83 added a new Article 15b to Regulation No 1035/72 so as to enable production and marketing rules of a producers' organisation to be made generally binding, that is to say, applicable to non-members. In addi-

* Original language: German.

1 — Regulation No 3284/83 (OJ 1983 L 325, p. 1); Regulation No 1035/72 (OJ, English Special Edition 1972 (II), p. 437).

tion, Article 15b provides that non-members may be required to pay fees to cover certain costs. The new Article 15b reads as follows:

'*Article 15b*

1. In cases where

— a producers' organisation or

— an association of producers' organisations having adopted the same rules,

operating in a specific economic area, is considered to be representative of production and producers in that area, the Member State concerned may, at the request of the organisation or association and ... make the following rules binding on producers established in the area who do not belong to one of the organisations referred to above:

(a) the rules on notifying production ... ;

(b) the rules on production ... ;

(c) the rules on marketing ... ;

(d) for products listed in Annex II, the rules adopted by the organisation or association with regard to market withdrawals, ... ,

on condition that these rules have been in force for at least one year.

...

8. Where paragraph 1 is applied, the Member State concerned may decide that non-member producers are liable to the organisation, or where appropriate the association, for all or part of the membership fees

paid by the producer members in so far as these are used to cover:

— administrative costs resulting from application of the scheme referred to in paragraph 1,

— the cost of research, market research and sales promotion measures undertaken by the organisation or association and benefiting all producers in the area.

...'.

2. *National provisions*

3. On the basis of the power conferred by Article 15b(1) of Regulation No 1035/72 to make rules for producers binding on non-members of producers' organisations, France issued the Joint Ministerial Decree of 18 June 1992 making the rules of Cerafel, [2] an association of producers' organisations in Brittany, generally binding. That decree also provided that Cerafel could collect from non-member producers fees which should not exceed those paid by members and the amount of which would be fixed annually by decree.

4. The fees in respect of cauliflower for winter-spring 1993/94, with the exception of those intended specifically for the processing industry, were fixed by a decree of 5 July 1993. For the 1994/95 marketing year a decree of 24 June 1994 laid down the fees in respect of cauliflower supplied only to the market for fresh vegetables.

III — Facts

5. Cerafel ('the defendant') brought an action against Mr Le Bars ('the plaintiff'), a producer of cauliflower for industrial processing, for payment of the fees it considered to be due for 1994. Unilet (Union Nationale Interprofessionnelle des Légumes Transformés) intervened in the proceedings in support of the plaintiff, who takes the view that the decrees of July 1993 and June 1994 expressly exempted him, as a producer of cauliflower for the processing industry, from the obligation to pay fees. However, the court of first instance refused to apply those two decrees on the ground that they were inconsistent with the minis-

2 — Comité Économique Régional Agricole Fruits et Légumes de Bretagne.

terial decree of 18 June 1992 making fees generally binding and with Council Regulation No 1035/72 on the common organisation of the market in fruit and vegetables.

6. Unilet and the plaintiff appealed to the Cour de Cassation against that judgment on the ground that it was contrary to Article 15b(8) of Regulation No 1035/72 and to the decrees of June 1992, July 1993 and June 1994.

7. In the order for reference, the national court observes that, as the rules have been made generally applicable and the obligation to pay fees has been extended, Regulation No 1035/72 applies both to fresh products and products for industrial processing, even though the latter may be subject to different quality standards, as is clear from Article 2(1) of the regulation. On this point the national court refers to the judgment of 22 September 1988 by the Court of Justice in the *Unilec* case. [3] The following question has been referred to the Court of Justice by the national court for a preliminary ruling:

'Is Article 15b(8) of Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organisation of the market in fruit and vegetables to be interpreted as meaning that, where a Member State has applied Article 15b(1) of that regulation, that is to say where it has made certain rules on production and marketing adopted by a producers' organisation binding on producers established in the district who do not belong to that organisation, it is entitled to exempt certain non-member producers from the payment of fees, in respect of a given product, in so far as the goods produced by them are intended for industrial processing rather than for the fresh-product market?'

IV — Arguments of the parties

8. Unilet begins by observing that the possibility provided by Article 15b of Regulation No 1035/72 for the rules of producers' organisations to be made binding also on non-members is limited. The wording shows that a Member State may do so only if certain conditions are fulfilled.

9. Subject to those conditions, however, a Member State has a very wide discretion inasmuch as the rules in question are formulated as enabling provisions.

10. According to Unilet, even if a Member State decides to make the producers' rules binding, it does not have to make contributions to costs also mandatory. As it has a very wide discretion on this point, Com-

3 — Case 212/87 [1988] ECR 5075. Unilec (Union Nationale Interprofessionnelle des Légumes de Conserve) was the predecessor of Unilet.

munity law is infringed only if the measure taken conflicts with a rule of market organisation, jeopardises the attainment of its objectives or is contrary to an overriding principle of Community law, in particular the principle of non-discrimination.

11. However, there is no rule of market organisation which expressly prohibits differentiating between products for the fresh-product market and those for industrial processing. Regarding the question whether the objectives of market organisation might be jeopardised, Unilet observes first that the extension of the rules to non-members of producers' organisations is provided for in order to prevent interference with the market. Products intended for industrial processing cannot however, be traded on the same market as fresh products.

12. Unilet then explains in detail why the markets for fresh products and for industrial processing are completely different. The latter is characterised by a close partnership between producers and processors, who conclude cultivation contracts even before crops are sown. In this market it is the processors who carry out market surveys, not the producers' organisations, as in the fresh-product market. Depending on demand, the processor concludes contracts with producers which lay down, for example, specific requirements for the special processing method of deep-freezing. The contracts also specify the quantity, the cultivated area, the technical standards required and delivery dates. This further enables the processor to negotiate with his customers in advance. On the basis of these contracts concluded in advance, the producer has guaranteed sales and a fixed price even before sowing. Consequently, the quantity he produces will not exceed the amount guaranteed to be sold. Products for industrial processing which have already been sold before sowing are not available at all on the market for fresh products.

13. The situation on the latter market is totally different. There is no prior limitation on the amount produced, and the producers' organisation, or the association of such organisations, to which the entire output is delivered, has the task of marketing the products. On this market, surveys are also carried out by associations such as Cerafel. Consequently, there are two completely different markets with different requirements in relation to the products. As Article 2(1) of Regulation No 1035/72 shows, products for industrial processing are not subject to the same quality standards, if any at all, as fresh products. For this reason alone the measures for the common organisation of the market, such

as intervention measures, cannot benefit products for industrial processing. The rules governing the common organisation of the market are therefore of no relevance whatever to the products here in question.

14. Unilet adds that even if producers growing produce for the fresh market were treated differently from those whose products are processed, the prohibition of discrimination would not be infringed because, as already mentioned, two different types of product and two different markets are involved. Since producers for industrial processing are not required to meet the same quality standards as those growing produce for the fresh market, a distinction has already been made by the Community legislature. Such distinction has been possible only because there are separate markets. The purpose of introducing common quality standards is precisely to exclude from the market products which do not conform to those standards. The prohibition of discrimination would be much more likely to be infringed if these different products and markets were made subject to the same rules.

15. Unilet also refers to the new market organisation under Regulation (EC) No 2200/96, which provides[4] that 'the rules which are made binding on all producers in a specific economic area:

...

(b) shall not apply, unless they expressly cover them, to products delivered for processing under a contract signed before the beginning of the marketing year ...'.

Such a measure could not have been adopted without infringing the prohibition of discrimination if the circumstances of the two branches of production had not fundamentally differed from each other.

16. Finally, Unilet discusses the Court's judgment in Case 212/87.[5] According to Unilet, it cannot be inferred from this judgment that a Member State must treat products for industrial processing in the same way as fresh products and must apply the same rules and measures to them. Furthermore, that judgment deals with the conditions under which Unilec could declare its own rules binding.

17. The defendant begins by observing that the decrees of 5 July 1993 and 24 June 1994 to which the plaintiffs refer cannot affect the principle of extension or the types of product involved because these were laid down by the ministerial decree which made the rules generally binding. That decree must be compatible with the regulation. The decree in question, which extends the scope of the rules, was issued on the basis

4 — The reference is to Article 18(4) of Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables (OJ 1996 L 297, p. 1).

5 — Cited in footnote 3.

of Regulation No 1035/72 and, like the regulation, does not provide for any restriction whatever regarding cauliflowers for deep-freezing.

18. The Court's judgment in the *Unilec* case [6] also excluded any distinction whatever being made between fresh products and products for industrial processing. In this connection the defendant cites the Court's observations in paragraph 13 that the basic regulation must 'be able to produce its effects after the fruit and vegetables are harvested, irrespective of the use to which such products are to be put'.

19. The fact that the rules were the same for fresh cauliflowers and for those intended for industrial processing precludes a Member State from adopting rules which would exempt growers of produce for industrial processing from the obligation to pay membership fees. To proceed in any other way would lead to contradictions. The defendant also cites Commission decisions which ruled that marketing rules for cauliflowers were generally binding, without distinguishing according to the intended use of the products.

20. Consequently, according to the defendant, the Court can only interpret Regulation No 1035/72 as meaning that it does not enable a Member State which, pursuant to Article 15b, has made certain production and marketing rules generally binding, to exempt certain producers of the same product who do not belong to a producers' organisation from a compulsory membership fee if their products are not intended for the fresh-product market.

21. The French Government first observes that the defendant, unlike a similar association in northern France, has not proposed different amounts in respect of cauliflowers, but has decided in favour of a uniform amount irrespective of the intended use of the product (fresh market or industrial processing). As the defendant's proposal thus did not take account of the fact that certain marketing rules for the market for fresh products could not be applied to products for industrial processing, the competent French authorities had not been able to specify an appropriate proportion of the costs for those products. Consequently, the first ministerial decree of December 1992 stated that 'in the absence of an appropriate proposal, the proportion of the costs is fixed at FRF 0'. The decrees of July 1993 and June 1994 adopted this phrasing 'in different words' in so far as they excluded products for industrial processing from their scope.

22. The French Government accordingly considers that it should be made clear that the question from the national court seeks a ruling from the Court on whether a Member State has a right, on the basis of Article 15b(8) of Regulation No 1035/72,

6 — Cited in footnote 3.

to impose a different membership fee, in respect of the same product, on producers not belonging to a producers' organisation if their products are not intended for the fresh market but (on the basis of a contract concluded before the beginning of the marketing year) for industrial processing which, in the absence of a suitable proposal, could lead to no fee at all being laid down.

23. According to the French Government, the Court's reply to this question could make more complete the position adopted in the preceding *Unilec* judgment, in which the Court did not address the question of whether the contributions charged in respect of products according their intended use had to be identical. The French Government considers that the conclusion in the present case must be that, on the one hand, Article 15b applies to all producers irrespective of the intended use of their products and, on the other hand, the costs of measures taken by producers' organisations differ according to whether the products are intended for the fresh market or for industrial processing.

24. The French Government goes on to discuss the special features of production for industrial processing, in which contracts are concluded before the beginning of the marketing year and the provisions they contain for the production of cauliflower differ from those relating to produce for the fresh market. The marketing rules also differ according to the end-use of the product. Cauliflowers intended for industrial processing constitute a special sector and, if a Member State considers it appropriate, need not be made subject to the rules which were made generally applicable or subject to contributions to costs. Furthermore, such produce should not be made subject to payments for financing measures which would be of benefit only to produce for the fresh market.

25. The costs in respect of which contributions may be required under Article 15b(8) differ according to the branch of production. This is clear above all with regard to the costs of research, market research and sales promotion. Products for industrial processing should not have to comply with the same rules as those for fresh-market produce. This applies particularly to the packaging and presentation of vegetables. Finally, advertising measures for the fresh market are of no benefit at all to cauliflowers intended for processing.

26. The French Government accordingly concludes that for both types of costs referred to by Article 15b(8) in respect of measures which are not of benefit to all products, a Member State can comply with the conditions of Article 15b(8) only if it provides for contributions which differ according to the intended use of the products.

27. The French Government then refers to the new market organisation under Regulation No 2200/96, Article 18(6)(b) of which provides that the rules for each of the two branches of production may be made generally binding.

28. The French Government also considers that cauliflowers grown for industrial processing constitute a separate market which, if a Member State deems fit, may be made subject to appropriate rules and contributory payments. However, no contributions need be paid which serve to finance measures which benefit only products for the fresh market. Because of the differences in the two types of product, which are reflected in differing costs, only a power to set different contributions appears compatible with Article 15b of Regulation No 1035/72. A power to lay down different contributions may, in the absence of an appropriate proposal, lead to a contribution of FRF 0 being fixed, as in the present case.

29. Referring to the Commission's arguments, the French Government concludes by observing that a Member State must not exercise its discretion in such a way as to infringe the prohibition of discrimination and that this requirement has been met in the present case. The regulation must therefore be interpreted as meaning that a Member State may fix for products intended for industrial processing a special contribution which, in the absence of a suitable proposal, may even be virtually nil.

30. Finally, the Commission observes that both Article 15b(1) and Article 15b(8) are formulated as optional provisions. So far as paragraph 8 is concerned, this means that a Member State may make producers' rules, determined in accordance with Article 1, generally binding, even without requiring the payment of certain contributions by non-member producers. A Member State which decides to apply this provision has a certain discretion. It may thus, according to the Commission, require less than would actually be possible on the basis of its discretion. There is nothing which compels the Member State to require all producers in a specific economic area to pay particular contributions. Consequently the State has the right to require only certain groups of non-members of a producers' organisation to make payments, provided that this is permitted by the general principles of Community law.

31. According to the Commission, the only principle which might have to be taken into account here is that of non-discrimination between producers within the Community, as laid down by Article 40(3) of the EC Treaty (now, after amendment, Article 34(2) EC). However, the Commission considers it consistent with this principle to

exclude from payment of the contribution products intended for processing.

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32. There is a special marketing organisation for these products, which is why they are subject to completely different arrangements from those laid down in Regulation No 1035/72. At this point the Commission also refers to the Court's judgment in the *Unilec* case, although in its view it does not follow that Member States must treat all fresh fruit and vegetables in the same way, regardless of their intended use.

33. The Commission concludes by listing the main differences between products for processing and those intended for fresh consumption. The varieties grown accordingly very often differ. Cultivation and harvesting methods likewise may be completely different and in some cases certain methods, such as mechanical harvesting, can be used only for products intended for processing. Finally, by virtue of Article 3(3) of Regulation No 1035/72, quality standards do not apply to products for processing.

34. The Commission for those reasons considers it reasonable to exempt from the payment of certain fees cauliflowers which are intended for processing. This exception is entirely consistent with the principle of non-discrimination between producers.

35. It is already clear from the wording of Article 15b(1) and (8) that these are optional provisions which leave it to the discretion of the Member States whether they make the rules of producers' organisations generally binding. If they do so, paragraph 8 gives them a discretion as to whether membership fees should be levied from non-member producers. That is not disputed in the present case. The question here is rather whether, on the basis of that discretion, a Member State has the right, as regards the obligation to pay fees, to exempt, among the producers who are not members of a producers' organisation, those who grow produce for industrial processing, when otherwise fees would be payable by all non-member producers.

36. In the defendant's opinion, the *Unilec* judgment shows that no distinction may be made between products for the fresh market and those intended for industrial processing, with the result that growers of products for industrial processing must also be required to pay fees.

37. However, no such conclusion can be drawn from that judgment, which also concerned the extension of certain rules (in that case, Unilec's) and the question whether such extension was consistent with the basic Regulation No 1035/72. Unilec

had argued that it was not the latter which was the relevant regulation, but Council Regulation No 516/77 of 14 March 1977 on the common organisation of the market in products processed from fruit and vegetables. [7]

38. In response to that argument, the Court stated as follows:

'It should further be noted that the view that, where the harvested product is intended to be sold to a processor, it no longer falls within the scope of the legislation on fresh products but within that of the legislation on processed products misconstrues the legislative framework set up by the legislative provisions on the common agricultural policy. As the Commission has correctly observed, the attainment of the objectives pursued in the basic regulation concerning the organisation of the market in fresh agricultural products requires that this legislation be able to produce its effects after the fruit and vegetables are harvested, irrespective of the use to which such products are to be put'. [8]

39. The question therefore was whether the extension of the rules relating to those products (intended for industrial processing) was to judged by reference to the basic regulation, to which the Court ultimately replied in the affirmative. However, it did not rule that products must be treated in exactly the same way irrespective of the use to which they are to be put. Such equal treatment in principle is prohibited on the basis of Article 3(3) of Regulation No 1035/72, which provides that products consigned to processing plants, subject to possible establishment of quality standards for products intended for industrial processing, are not obliged to conform to the quality standards.

40. So far as the present case is concerned, therefore, it can only be inferred from the *Unilec* judgment that the extension of the rules of producers' organisations concerning cauliflower and the discretion in that connection conferred upon the Member State in question must be tested by reference to the basic Regulation No 1035/72. Consequently, the defendant's objection that producers for industrial processing should not be exempted from compulsory membership fees because the regulation does not distinguish between the uses to which products are put cannot be upheld without further discussion. The question I wish to consider next is precisely whether the regulation does permit such a distinction to be made. It must be observed that, as I have already shown, the regulation certainly distinguishes in some respects between products for the fresh market and those for industrial processing.

7 — OJ 1977 L 73, p. 1.

8 — See the judgment in Case 212/87, cited in footnote 3, paragraph 13.

41. The defendant's observation that the ministerial decree of June 1992 concerning the general application of rules does not provide for any such distinction can be disregarded because it is for the national court alone, and not the Court of Justice, to examine and interpret national law.

42. It is clear from the wording of Article 15b(8) that a Member State has a discretion as to whether it wishes to levy fees from non-member producers at all. As, furthermore, it can decide whether 'all or part' of the fees are due, it need not in every case levy the full costs, but also has a discretion with regard to the respective amount. However, the question is whether it also has the power to fix different amounts for separate groups of producers or to reduce the amount to zero for certain producers. In the Commission's opinion this is possible. It argues that a Member State which can levy the full costs from all non-member producers also has the power, within the limits of that discretion, to charge less, provided that this does not lead to discrimination between certain producers.

43. However, this is not merely a matter of requiring larger or smaller amounts, which is expressly permitted by paragraph 8, but of differentiating between individual producers. Whether this also constitutes 'less' within the limits of the Member State's powers is the question. In any case it is necessary to consider whether such a measure would be contrary to the spirit and purpose of the common organisation of the market, also in view of the previous decision in the *Unilec* case.

44. Pursuant to Article 15b(8), the fees in question may be levied only to cover certain costs, namely administrative costs resulting from the extension of the scheme, and also the costs of research, market research and sales-promotion measures. The eighth recital in the preamble to Regulation No 3284/83 shows that non-member producers may be required to make a financial contribution because extending the scope of the rules entails additional expenditure for the organisation in question. It follows that non-member producers should be required to contribute to the costs incurred as a result of the rules of the producers' organisation being applied to them or, for example, because they also benefit from any research which is commissioned.

45. However, under Article 15b(1), only the rules referred to in the second and third indents of Article 13(1)(b) can be made generally binding, as well as the rules regarding market withdrawals. The relevant provisions in the present case are those relating to improving product quality, adapting the volume of supply to market requirements, and providing information requested on harvests and supplies.

46. The rules governing quality improvement probably do not apply to producers for industrial processing because, as I have already shown, they are excluded by Article 3(3) of Regulation No 1035/72 from the application of quality standards. The same ought to apply to adapting the volume of supply since producers for industrial processing do not deliver their produce to the producers' organisation, but direct to the processor in accordance with previously concluded contracts. Consequently, the volumes of production and supply are beyond the control of the producers' organisation.

47. For the same reason, the information on harvests and supplies required under the third indent of Article 13(1)(b) is likewise unnecessary in relation to producers for industrial processing. Nor do their products fall within the scope of measures for the withdrawal of certain products from the market, which may be taken by a producers' organisation under certain conditions. It must therefore be concluded that the extension provisions of Article 15b(1) do not apply to producers for industrial processing or are of no benefit to them and consequently no additional costs are attributable to such producers.

48. Assuming that, as the plaintiffs have stated without denial by the defendant, producers of produce for industrial processing deliver their produce direct to the processors under previously concluded contracts, supply and demand in this sector are independent of the fresh-produce market. Therefore, market research and sales promotion measures commissioned by producers' organisations for the fresh-produce sector cannot benefit producers for industrial processing. Consequently there appears to be no reason why they should contribute to the costs in question. It seems reasonable and consistent with the scheme for extending the rules of producers' organisations to exclude such producers from the obligation to pay fees, as has been done in this case.

49. Moreover, an exception of this kind is not precluded by the spirit and purpose of producers' organisations, which are defined by Article 13(1)(a) of Regulation No 1035/72, as amended by Regulation No 3284/83, as any organisation of fruit and vegetable producers which is formed for 'promoting the concentration of supply and the stabilisation of prices at the producer stage' and 'making suitable technical facilities available to producer members for presenting and marketing the relevant products'.

50. Since, as already stated, supply and demand, and therefore prices also, in the

case of products for industrial processing are independent of the market for fresh produce and such products do not come on to that market, products for industrial processing have no bearing on the concentration of supply and stabilisation of prices. It cannot therefore be contrary to the spirit and purpose of the organisation if those products are not subject to the payment of compulsory fees. The same applies to presentation and marketing because it is not denied that here there are different requirements with regard to products intended for industrial processing.

51. For this reason there is in principle nothing inconsistent with the spirit and purpose of the common organisation of the market. In relation to one of the steps to be taken for the introduction of the common organisation of the market, namely the adoption of common standards, Regulation No 1035/72 even provides for an exception for products consigned to processing plants. [9] Consequently it can be stated that the exemption of certain products, namely those intended for industrial processing, from the payment of compulsory fees is not inconsistent with the spirit and purpose of the common organisation of the market or at least with the extension of the rules of producers' organisations to non-members.

9 — Fourth recital in the preamble to Regulation No 1035/72 and Article 3(3) of that regulation.

52. At this point mention should be made of Regulation No 2200/96, although it does not apply to the dispute in the main proceedings. Article 18(4)(b) of that regulation provides that the rules which are made binding on all producers in a specific economic area do not apply, unless they expressly cover them, to products delivered for processing under a contract signed before the beginning of the marketing year.

53. In the regulation on the new market organisation, products which are sold in advance and delivered direct for processing are therefore exempt not only from the payment of compulsory fees but also from any extension of the rules of producers' organisations. This later regulation adds support to the foregoing conclusion that it is reasonable and consistent with the system of extension to exempt products for industrial processing from the payment of compulsory fees.

54. No discrimination arises from the fact that producers who grow produce for industrial processing and who are not members of a producers' organisation are exempt from the payment of compulsory fees, in contrast to other non-member producers who grow produce for the fresh market. As I have already shown, products for processing are not offered on the market for fresh produce, are not subject to the same quality standards and are not covered by the measures taken by produ-

cers' organisations to concentrate supply and stabilise prices, but are delivered directly to processors under contracts signed with them at the beginning of the marketing year. Consequently there are no comparable situations which would have to be treated in the same way. In view of the differences in the products and their marketing, they may be treated differently also on the basis of Regulation No 1035/72.

VI — Costs

55. The costs incurred by the French Government 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.

VII — Conclusion

56. For the reasons set out above, I propose that the court reply as follows to the question from the national court:

Article 15b(8) of Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organisation of the market in fruit and vegetables must be interpreted as meaning that, where a Member State, pursuant to Article 15b(1) of that regulation, has made certain rules on production and marketing adopted by a producers' organisation binding on producers established in the district in question who do not belong to that organisation, the Member State is entitled to exempt certain non-member producers from the payment of fees in respect of a given product, in so far as the goods produced by them are intended for industrial processing rather than for the fresh-produce market.