ORDER OF THE COURT (Second Chamber)
8 January 2004 *

In Case C-69/03,

REFERENCE to the Court under Article 234 EC by the Corte d'Appello di Venezia (Italy) for a preliminary ruling in the proceedings pending before that court between

Caseificio Cooperativo di Cornedo Soc. coop. arl

and

Ministero delle Finanze,

on the interpretation of Council Regulation (EEC) No 1079/77 of 17 May 1977 on a co-responsibility levy and on measures for expanding the markets in milk and milk products (OJ 1977 L 131, p. 6) and Commission Regulation (EEC) No 1822/77 of 5 August 1977 laying down detailed rules for the collection of the

* Language of the case: Italian.

co-responsibility levy introduced in respect of milk and milk products (OJ 1977 L 203, p. 1),

THE COURT (Second Chamber),

composed of: V. Skouris, acting for the President of the Second Chamber, R. Schintgen and N. Colneric (Rapporteur), Judges,

Advocate General: D. Ruiz-Jarabo Colomer,

Registrar: R. Grass,

having informed the national court that the Court proposes to give its decision by way of a reasoned order in accordance with Article 104(3) of its Rules of Procedure,

having invited the persons referred to in Article 23 of the Statute of the Court of Justice to submit any observations which they might wish to make in this regard,

after hearing the Advocate General,

makes the following

Order

1 By order of 6 November 2002, received at the Court on 17 February 2003, the Corte d'Appello di Venezia (Court of Appeal, Venice) referred to the Court for a

preliminary ruling under Article 234 EC a question on the interpretation of Council Regulation (EEC) No 1079/77 of 17 May 1977 on a co-responsibility levy and on measures for expanding the markets in milk and milk products (OJ 1977 L 131, p. 6) and Commission Regulation (EEC) No 1822/77 of 5 August 1977 laying down detailed rules for the collection of the co-responsibility levy introduced in respect of milk and milk products (OJ 1977 L 203, p. 1).

2 That question was raised in appeal proceedings seeking the setting aside of a judgment of the Tribunale di Venezia (Venice District Court) (Italy) of 30 January 1987 concerning an order for payment served on the company Caseificio Cooperativo di Cornedo Soc. coop. arl ('Caseificio Cooperativo') by the Ministero delle Finanze (Finance Ministry) relating to payment of a co-responsibility levy on cows' milk and also to payment of an additional levy for non-payment of the co-responsibility levy.

The relevant provisions of Community law

3 Regulation No 1079/77 introduced a co-responsibility levy uniformly imposed on all quantities of milk delivered to dairies and on some farm sales of milk products ('the co-responsibility levy'). In Regulation No 1822/77 the Commission laid down the detailed implementing rules for the collection of that levy.

4 In its original version Article 1(1) of Regulation No 1079/77 provided that 'during the period from 16 September 1977 to the end of the 1979/80 milk year a

co-responsibility levy shall be due from all milk producers on milk supplied to an undertaking treating or processing milk and, in the cases defined in Article 3(2), on milk sold by the producer in the form of other milk products'.

5 Article 1(1) and (2) of Regulation No 1822/77 provides:

'1. The co-responsibility levy shall be due from all milk producers whose farms are not situated in one of the regions referred to in Article 1(2) of Regulation (EEC) No 1079/77 in respect of all cows' milk bought from them in the natural state by an undertaking treating or processing milk and delivered on or after 16 September 1977.

2. For the purposes of this Regulation:

(a) an undertaking treating or processing milk means both:

— a purchasing body which is an association treating or processing milk,

— an undertaking or association which purchases milk, but which restricts its activities to collection, storage and cooling operations or to one of these operations;

(b) delivery means any delivery, whether transport is carried out by the producer himself, by the undertaking purchasing the milk or through a third party'.

6 That co-responsibility levy scheme was superseded by the additional milk levy scheme introduced by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products (OJ 1984 L 90, p. 10), and Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13). That latter scheme was itself amended and extended by Council Regulation (EEC) No 3950/92, of 28 December 1992, establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1).

7 The first paragraph of Article 1 of Regulation No 3950/92 provides that '[f]or seven new consecutive periods of twelve months commencing on 1 April 1993, an additional levy shall be payable by producers of cows' milk on quantities of milk or milk equivalent delivered to a purchaser or sold directly for consumption during the 12-month period in question in excess of a quantity to be determined.'

8 Under Article 2(2) of that Regulation, '[a]s regards deliveries, before a date and in accordance with detailed rules to be laid down, the purchaser liable for the levy shall pay to the competent body of the Member State the amount payable, which he shall deduct from the price of milk paid to producers who owe the levy or, failing this, collect by any appropriate means.'

9 In accordance with Article 9 of Regulation No 3950/92:

'For the purposes of this Regulation:

...

(c) "producer" means a natural or legal person or a group of natural or legal persons farming a holding within the geographical territory of the Community:

— selling milk or other milk products directly to the consumer,

— and/or supplying the purchaser;

...

(e) "purchaser" means an undertaking or grouping which purchases milk or other milk products from a producer:

— to treat or process them,

— to sell them to one or more undertakings treating or processing milk or other milk products.

...'

The dispute in the main proceedings and the question referred for a preliminary ruling

10 The documents before the Court show that, by the judgment against which an appeal has been brought before the court making the reference, the Tribunale di Venezia upheld Caseificio Cooperativo's appeal against the order served on it by the tax authorities enjoining it to pay a sum supposedly due in respect of the co-responsibility levy and of an additional levy for non-payment of that levy and ordered the tax authorities to repay the sums received on execution of that order.

11 The Tribunale di Venezia so ruled on the grounds that the provisions of national law, that is to say, of Decree-Law No 282 of 16 June 1978, converted into Law No 426 of 1 August 1978, implementing the provisions of Community law

establishing the co-responsibility levy, ought not to have been applied. The Tribunale ruled against the application of that law inasmuch as it included among the cases where producers were subject to the co-responsibility levy deliveries made by producers of milk to a cooperative the members of which were those same producers. The Tribunale considered that amounted to a substantial enlargement of the ambit of that levy in relation to the provisions of Community law.

12 The Corte d'Appello di Venezia states in the grounds of its order for reference that a different chamber of that court has set aside the judgment given at first instance on the ground that the wording of the Community regulations applicable did not justify so restrictive an interpretation since, in making provision for various instances of transfers of milk and milk products, those regulations made specific mention only of 'sales' in relation to the first case, whilst on the other hand to identify the basis of assessment they used the more general terms of 'supply' and 'delivery'. In that way the regulations support the conclusion — borne out by the greater consistency of such an interpretation with the Community legislature's declared intention, by establishing the co-responsibility levy, of limiting the production of milk — that the Community regulations applied different rules to the various instances considered, including in the basis of assessment any transaction transferring milk, regardless of the legal form under which that transaction was carried out.

13 The Corte Regolatrice (Italy) set aside that last-mentioned decision on the ground that the court of first instance had correctly interpreted and applied the provisions of Community law. It held that those provisions are clear and that the questions raised in this case concern the application and not the interpretation of those rules, so that it was not necessary to refer the matter to the Court of Justice.

14 The Chamber of the Corte d'Appello di Venezia to which the case has been referred back considers that the crucial issue in this dispute is not the actual

identifying of the economic operators subject to the co-responsibility levy or the legal classifying of the acts subject in the circumstances of the present case to that levy, in order to establish whether or not they are among those subject in theory to the levy, in which hypothesis the only question would be one regarding the application of the Community rules. The issue, in that court's view, is rather to identify the activities which are subject to the co-responsibility levy and, in consequence, the dispute concerns the legislative substance of the Community rules.

15 The Corte d'Appello di Venezia has therefore decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Do Regulations (EEC) No 1079/77 and No 1822/77, which establish a co-responsibility levy on cows' milk, apply to all deliveries of cows' milk by the producer to another person, regardless of the legal nature of the relationship on the basis of which the deliveries are made or only to deliveries which result in the acquisition of title in the product by the economic trader to whom the product is delivered?'

Concerning the question referred

16 Taking the view that the answer to that question may clearly be inferred from its judgment in Case C-288/97 *Consorzio Caseifici dell'Altopiano di Asiago* [1999] ECR I-2575, the Court, in accordance with Article 104(3) of its Rules of Procedure, informed the national court that it proposed to give its decision by way of a reasoned order and invited the persons referred to in Article 23 of the Statute of the Court of Justice to submit any observations which they might wish to make in that regard.

17 The Italian Government and the Commission, which alone responded to the Court's invitation to submit observations, have not raised any objection to the Court's intending to give its decision by reasoned order referring to its case-law and, in particular, to its judgment in *Consorzio Caseifici dell'Altopiano di Asiago*.

18 In that judgment the Court answered the question whether, on a proper interpretation of Articles 2 and 9 of Regulation No 3950/92, any recipient of a delivery of milk may be regarded as a 'purchaser' liable to pay the additional levy, regardless of the legal nature of the relationship on the basis of which the delivery is made and, in particular, a group of cooperative societies may be regarded as a purchaser of the milk delivered, but not sold, to it by the members of that cooperative.

19 That question was raised in respect of the Consorzio fra i Caseifici dell'Altopiano di Asiago ('the Consortium'), a body comprising various cooperative societies which are producers of milk. In contesting an administrative penalty imposed on account of irregularities in the keeping of the register of suppliers and of failure to set aside the additional levy in relation to those members of the Consortium who had exceeded their milk quota, the Consortium argued that it could not be regarded as a purchaser within the meaning of the Community rules.

20 In paragraph 25 of its judgment in *Consorzio Caseifici dell'Altopiano di Asiago*, the Court held that in accordance with Articles 2(2) and 9(e) of Regulation No 3950/92, the term 'purchaser' applies to any undertaking which acquires milk from a producer under a contract, irrespective of the manner in which the producer is paid, for the purpose either of treating or processing the milk itself or of transferring it to an undertaking for treatment or processing.

21 It follows that deliveries made to a purchaser within the meaning of that Regulation need not necessarily involve the acquisition of title in order to give rise to additional levies.

22 The case-law on the additional milk levy scheme as laid down in Regulation No 3950/92 holds good also for the co-responsibility levy established by Regulations No 1079/77 and No 1822/77. Irrespective of all the differences between the two schemes, the levy is in both cases based on the quantities of milk delivered by a producer to a purchaser.

23 In light of the foregoing considerations, the answer to be given to the question referred must be that Regulations No 1079/77 and 1822/77 apply to all deliveries of cows' milk made by a producer to another person, regardless of the legal nature of the relationship on the basis of which the deliveries are made.

Costs

24 The costs incurred by the Italian Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Corte d'Appello di Venezia by order of 6 November 2002, hereby rules:

Council Regulation (EEC) No 1079/77 of 17 May 1977 on a co-responsibility levy and on measures for expanding the markets in milk and milk products and Commission Regulation (EEC) No 1822/77 of 5 August 1977 laying down detailed rules for the collection of the co-responsibility levy introduced in respect of milk and milk products apply to all deliveries of cows' milk made by a producer to another person, regardless of the legal nature of the relationship on the basis of which the deliveries are made.

Luxembourg, 8 January 2004.

R. Grass

Registrar

V. Skouris

President