OPINION OF ADVOCATE GENERAL ELMER

delivered on 17 July 1997 *

1. In the present case the Hessisches Finanzgericht (Finance Court, Hesse) has asked the Court to interpret the term 'any levy amount due' in the Community rules on the additional milk levy ('the levy') and to determine when that levy amount becomes payable.

Facts

2. Hartmut Simon is a milk producer. Official inquiries revealed that over the 12-month period 1988/89 he delivered to his purchaser 14 619 kg more milk than was allowed free of levy. However, this excess delivery was not indicated in the purchaser's original declarations. By decision of 12 November 1993 the competent customs authorities imposed a levy of DM 9 709.94, which Mr Simon paid on 20 December 1993.

3. By decision of 21 June 1994 the competent administrative authorities sought interest of DM 4 274.63 for late payment of the above levy, calculated on the basis of the rules on the common organisation of the market in milk referred to below. The authorities considered that the relevant period began to run on 1 July 1989 and applied the interest rate in force in Germany, corresponding to 3% over the current discount rate of the German Federal Bank.

Applicable Community rules

4. The common organisation of the market in milk and milk products is regulated by Regulation (EEC) No 804/68 of the Council of 27 June 1968 [1] ('the basic regulation'). Article 5c of that regulation provides as follows:

'1. During five consecutive periods of 12 months beginning on 1 April 1984, an additional levy payable by producers or purchasers of cows' milk shall be introduced. ...

* Original language: Danish.

1 — OJ, English Special Edition 1968 (I), p. 176, as amended by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 805/68 on the common organisation of the market in milk and milk products (OJ 1984 L 90, p. 10).

The levy system shall be implemented in each region of the territory of the Member States in accordance with one of the following formulas:

Formula A

— A levy shall be payable by every milk producer on the quantities of milk and/or milk equivalent which he has delivered to a purchaser and which for the 12 months concerned exceed a reference quantity to be determined.

Formula B

...'

In the Federal Republic of Germany the levy scheme was implemented by way of Formula A.

5. Council Regulation (EEC) No 857/84 of 31 March 1984 [2] ('the application regulation') contains general provisions on the application of the additional levy on milk and milk products introduced by Article 5c of the basic regulation. The following provisions of that regulation are relevant in the present case:

'*Article 4a*

...

3 (a) The levy shall be charged on all quantities in excess of the individual reference quantities, after any corrections have been made.

...

Article 9

(1) Where [Formula] A ... [is] applied, the levy shall be collected by means of annual payments. To this end there shall be adopted, for each person liable, an account after the end of the 12-month period concerned, on the basis of actual excess during this same period beyond his annual reference quantity

...

2 — 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), as amended by Council Regulations (EEC) No 590/85 of 26 February 1985 (OJ 1985 L 68, p. 1), (EEC) No 1305/85 of 23 May 1985 (OJ 1985 L 137, p. 12) and (EEC) No 774/87 of 16 March 1987 amending Regulation (EEC) No 857/84 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 1987 L 78, p. 3).

(2) Where Formula A is applied, the levy shall be collected from each producer by the purchaser. ...

Article 10

...

(3) The levy shall be charged on all quantities in excess of the individual reference quantities, after any corrections have been made.'

6. The detailed rules for the application of the additional levy referred to in Article 5c of the basic regulation are laid down in Commission Regulation (EEC) No 1546/88 of 3 June 1988 [3] ('the implementing regulation'). Article 15 of the implementing regulation provides, *inter alia*, as follows:

'1. Purchasers shall, within 45 days following the end of the first half of the year, transmit to the competent agency a statement indicating:

— in cases where Formula A is applied, for each producer concerned, the quantities of milk or milk equivalent delivered during the first half of the year; the statement shall also indicate the quantities delivered by each producer during the first half of the year, expressed as a percentage of the latter's annual reference quantity,

— ...

2. Purchasers shall, within 45 days following the end of each 12-month period, transmit to the competent agency a statement indicating:

— in cases where Formula A is applied, and separately for each producer concerned:

— the total quantity of milk or milk equivalent delivered during the 12-month period concerned,

— the quantities, if any, of milk or milk equivalent which exceed the buyer's annual reference quantity of the producer concerned,

...

3 — Commission Regulation (EEC) No 1546/88 of 3 June 1988 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1988 L 139, p. 12).

4. The purchasers referred to in paragraphs 1, 2 and 3 shall pay any levy amount due to the competent agency within three months following the end of each 12-month period.

...'

National proceedings and questions referred to the Court

7. Mr Simon considers that the calculation of the interest is illegal. In the proceedings which he brought before the Hessisches Finanzgericht he maintained that only the levy amount resulting from the purchaser's calculation is payable on 30 June of the year following the end of the completed milk marketing year. The amount of the levy which emerged as a result of the inquiries became payable only on the date on which it was established by the authorities. In that regard he referred to the general principle of German law that a levy becomes payable when the authorities concerned have determined the levy and notified the person concerned.

8. The administrative authorities, on the other hand, take the view that the date on which the levy becomes payable falls to be determined by an interpretation of Community law and that Article 15(4) of the implementing regulation must be interpreted as meaning that the actual levy amount due is payable on the date specified therein.

9. By order of 26 March 1996 the Hessisches Finanzgericht stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. In Article 15(4) of [the implementing regulation] is "levy amount due" to be interpreted as the amount of additional levy on milk that would be payable if the figures used to determine the levies payable on deliveries in excess of the delivery reference quantity had been compiled correctly and had formed the basis of the purchaser's calculation of the additional levy

or

does that phrase refer only to the amount derived from the figures, whether correct or not, declared by the purchaser and forming the basis of the calculation of the additional levy?

2. If the first interpretation is correct, is the entire amount of additional levy lawfully due payable on the date specified in the Regulation — at that time 30 June — so that, in the event of part payment resulting from the purchaser's figures being too low, the person liable to pay the additional levy (in Germany the milk producer) must pay from 1 July of that year interest charged under national law on the balance?'

11. Mr Simon maintains that the expression 'any levy amount due' in Article 15(4) of the implementing regulation refers to the levy amount established on the basis of the purchaser's declarations. The dispute, he argues, therefore raises no question of Community law which the Court of Justice would have jurisdiction to interpret and the reference should therefore be declared inadmissible.

Analysis

12. The Commission, on the other hand, takes the view that the expression means that the levy amount is to be regarded as the amount which, following the end of the 12-month period in question, is objectively payable on the basis of the quantities actually delivered during that period. That amount objectively due is payable on the date specified in Article 15(4) of the implementing regulation, which for the purposes of the main proceedings here is 30 June.

10. By its questions the national court seeks to ascertain whether Article 15(4) of the implementing regulation is to be construed as meaning that the expression 'any levy amount due', in the context of Formula A, refers to the amount which the milk producer objectively owes on the basis of the quantity actually delivered or the amount established on the basis of the quantity declared by the purchaser. If the expression refers to the amount objectively due, the national court asks whether that amount becomes payable on the date specified in Article 15(4) of the implementing regulation, since the answer to that question determines when interest can be charged under national law.

13. It seems to follow from the questions submitted that the national court assumes that the resolution of the issues calls for an interpretation of Community law. I agree. In order to ensure that milk producers in all Member States are in the same position, the questions as to what amount is due and when it is payable must be answered in accordance with Community legislation and not in accordance with national law. There can be no doubt, therefore, that the Court has jurisdiction to answer the questions referred to it.

14. Article 5c(1) of the basic regulation provides that under Formula A '[a] levy shall be payable by every milk producer on the quantities of milk and/or milk equivalent which he *has delivered to a purchaser* and which for the 12 months concerned exceed a reference quantity to be determined'. The basis on which the levy is to be calculated is found in Article 4a(3a) and Article 10(3) of the application regulation, which provide as follows: 'The levy shall be charged on *all quantities in excess of the individual reference quantities*, after any corrections have been made'. According to Article 9(1) of that regulation, 'Where [Formula] A ... [is] applied, the levy shall be collected by means of annual payments. To this end there shall be adopted, for each person liable, an account after the end of the 12-month period concerned, *on the basis of actual excess* during this same period beyond his annual reference quantity'. Article 15(1) of the implementing regulation further specifies that for each milk producer 'the quantities of milk or milk equivalent *delivered*' during the first half of the year are to be indicated, while Article 15(2) states that for each 12-month period 'the total quantity of milk or milk equivalent *delivered*' is to be indicated. [4]

15. In my opinion, it is clear from the wording of those provisions that the amount of the levy must be calculated on the basis of the quantities of milk actually delivered during a 12-month period in excess of the given reference quantity. Article 15(4) of the implementing regulation provides that the purchaser, after collecting the levy from the producer in accordance with Article 9(2) of the application regulation, is to pay the amount due to the competent agency by a specified date.

16. The regulation therefore appears to have been drafted on the assumption that there is no discrepancy between the quantities declared by the purchaser and those actually delivered. The regulation is 'cut out' for the normal situation, in which the purchaser declares the amounts actually delivered, the levy amount due is established on that basis and the amount due then becomes payable. In the normal situation there can thus be no doubt that the expression 'any levy amount due' refers to the amount which is objectively due on the basis of the amounts delivered.

17. In my opinion, the fact that it subsequently transpires that the amount actually delivered differed from the amount originally indicated by the purchaser cannot alter the interpretation of the expression 'any levy amount due'. The amount actually delivered in itself still forms the basis on which the levy, and therefore the amount due, are to be calculated. There is nothing in the relevant provisions to indicate that the fact that the purchaser provides incorrect declarations to

4 — Emphasis added.

the competent authorities can have any bearing on the amount due, which is payable on the specified date.

18. It might be argued that it is not the milk producer's fault that the competent authorities have been provided with incorrect declarations of quantities delivered, but that the fault lies with the purchaser. However, the milk producer not only was able, but also had good reason, to check how much milk he had delivered to the purchaser and thereby establish the extent to which the specified reference quantity was exceeded. The milk producer naturally has reason not only to check that he is paid for the milk delivered but also to make sure that he does not find himself in the opposite situation to that in the main proceedings, namely that in which the quantity of milk delivered which the purchaser declares is too high, so that the levy which the producer is required to pay is too high.

19. Article 15(4) of the implementing regulation provides that the amount due is to be paid to the competent agency within three months following the end of each 12-month period. At the material time in this case each 12-month period ended on 31 March, so that the amount due was to be paid no later than 30 June. Article 15(4) therefore determines when the amount objectively due *must* be paid, that is, when it becomes payable. Where that amount is not paid in time interest can be charged.

20. In any event, it is only if the amount objectively due is taken to be the amount payable at the time specified in Article 15(4) that all milk producers can be guaranteed equal treatment. A milk producer whose purchaser imposes too low a levy, or even no levy at all, would otherwise be at an advantage in the period up to the time when the balance between the amount established earlier and the amount objectively due is subsequently charged (more than four years in the case before the national court) compared with other milk producers whose purchasers indicated from the outset the correct quantities delivered and therefore the correct levy amounts to the competent authorities.

21. The Court has already given a ruling on a similar question. The case in point concerned a levy which a milk producer was required to pay when his reference quantity was reduced with retrospective effect. Owing to a miscalculation, for which the purchasing association was to blame, the reference quantity was set too high. The Court held that: [5]

'... the producer remains liable for payment of the balance owed in the event of the

5 — Case C-352/92 *Milchwerke Köln/Wuppertal* v *Hauptzollamt Köln-Rheinau* [1994] ECR I-3385, paragraphs 18, 19 and 20.

amount paid by way of the additional levy being lower than that which was actually payable.

According to ... it should be possible to derogate from that system in the event of irregularities on the part of a purchaser in calculating the reference quantities initially allocated.

That solution cannot be accepted.'

22. In my opinion, the answer to the questions referred to the Court should, in the circumstances, be that Article 15(4) of the implementing regulation must be construed as meaning that the expression 'any levy amount due' refers, within the context of Formula A, to the levy amount objectively payable by the milk producer at the end of each 12-month period on the basis of the quantities actually delivered during that period which exceed his individual reference quantity, and that this levy amount is payable on the date specified in that provision.

Conclusion

23. I therefore propose that the Court should answer the questions referred to it as follows:

Article 15(4) of Commission Regulation (EEC) No 1546/88 of 3 June 1988 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 must be construed as meaning that the expression 'any levy amount due' refers, within the context of Formula A, to the levy amount objectively payable by the milk producer at the end of each 12-month period on the basis of the quantities actually delivered during that period which exceed his individual reference quantity. That levy amount is payable on the date specified in that provision.