OPINION OF ADVOCATE GENERAL LENZ

delivered on 27 February 1992 *

Mr President,
Members of the Court,

A — Facts

1. The reference from the Bayerisches Verwaltungsgericht Regensburg to be considered today concerns, once again, the Community rules regarding the additional levy on milk which was introduced in Article 5c of Regulation No 804/68 [1] in order to counteract structural surpluses in the market in milk products.

2. In order to determine the quantity produced or purchased which is not subject to the levy (the 'reference quantity'), the Community legislature laid down rules, in Article 2 of Regulation No 857/84 [2] regarding the appropriate reference year, which, according to that article, may be one of the calendar years between 1981 and 1983.

3. The situation of a farmer who produced no milk during the reference year in question because he had previously entered into a non-marketing or conversion undertaking, in return for a premium, under Regulation No 1078/77 [3] was taken into account by the Community legislature in 1989, following the judgments in the *Mulder* [4] and *von Deetzen* [5] cases, by means of a special set of rules laid down, in particular, in Regulation No 764/89, [6] which supplemented Regulation No 857/84 by inserting Article 3a.

4. Among those special rules, which the Court has already frequently had to consider, is one implementing the latter regulation, namely Article 3a of Regulation No 1546/88, [7] as amended by Regulation No 1033/89, [8] paragraph 1 of which provides, in particular, as follows:

'The requests referred to in Article 3a(1) of Regulation (EEC) No 857/84 shall be made

* Original language: German.

1 — Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (OJ, English Special Edition 1968 (I), p. 176); Article 5c was inserted by Council Regulation (EEC) No 856/84 of 31 March 1984 (OJ 1984 L 90, p. 10).

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).

3 — Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (OJ 1977 L 131, p. 1).

4 — Case 120/86 *Mulder* v *Minister van Landbouw en Visserij* [1988] ECR 2321.

5 — Case 170/86 *von Deetzen* v *Hauptzollamt Hamburg-Jonas* [1988] ECR 2355.

6 — Council Regulation (EEC) No 764/89 of 20 March 1989 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 1989 L 84, p. 2).

7 — 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).

8 — Commission Regulation (EEC) No 1033/89 of 20 April 1989 amending Regulation (EEC) No 1546/88 laying down detailed rules for the application of the additional levy referred to in Article 5c of Council Regulation (EEC) No 804/68 (OJ 1989 L 110, p. 27).

by the producers concerned to the competent authority designated by the Member State, in accordance with the procedure laid down by it and provided that the producers can prove that they still operate, in whole or in part, the same holdings as those they operated at the time of the approval, referred to in Article 5(2) of Commission Regulation (EEC) No 1391/78, [9] of their premium applications.'

5. The significance of that provision for the present case arises from the chronological sequence of the events underlying the main dispute and from the contested decision of the defendant in the main proceedings (hereinafter 'the defendant').

6. Until the end of October 1981, the plaintiff in the main proceedings (hereinafter 'the plaintiff') operated a dairy farm. Afterwards, for a period of four years beginning on 29 October 1981, he claimed a premium for the conversion of the dairy farm to meat production. When the conversion period expired in 1985, the rules regarding the additional levy were already in force; however, the plaintiff, who, being one of the farmers who had made use of Regulation No 1078/77, had produced no milk or milk products during the reference year applicable in the Federal Republic of Germany (1983), was at first unable to obtain a reference quantity. Later, on health grounds, as the order for reference states, he let all his agricultural land and cowsheds for the period from 1 January 1987 to 31 December 2006. Upon the adoption of Regulation No 764/89 he applied (within the stipulated period) for a reference quantity under that regulation (a special reference quantity), so that first the lessee, during the term of the lease, and thereafter the plaintiff's children might engage in dairy farming.

7. The defendant's authorities rejected that application, since the plaintiff was unable to produce on his holding up to the quantity requested (see Article 3a(1)(b) of Regulation No 857/84). It appears from the order for reference that those authorities take that approach, on the basis of Article 3a of Regulation No 1546/88, where the milk producer has let his holding at the end of either the non-marketing or the conversion period, as the case may be.

8. The plaintiff lodged an unsuccessful complaint and then appealed to the national court, which asked the Court to give a preliminary ruling on the following questions:

'1. Question on the interpretation of Article 3a of Commission Regulation (EEC) No 1546/88, inserted by Article 1(2) of Commission Regulation (EEC) No 1033/89 of 20 April 1989:

Is a producer who has let his holding after the end of the conversion period still operating the same holding as he operated at the time of his application for a premium?

9 — OJ 1978 L 167, p. 45.

2. Question on the validity of the rules referred to in Question 1, if that question is answered in the negative:

Is the requirement that the owner of a holding should operate it himself contrary to superior rules of Community law?'

B — Opinion

Question 1

9. There is no need, in my view, to dwell at length on this question. I understand Article 3a of Regulation No 1546/88 to mean that a farmer who had operated a holding at the time of the approval of his premium application no longer operated that holding at the time of his application for a special reference quantity if at that latter time the holding was let to a third party.

10. The term 'operate' means in particular, as may be seen from Article 12(d) of Regulation No 857/84, the activity of the 'producer' in connection with the 'holding', the latter term meaning all the relevant production units. In general usage, however, a person can be regarded as a producer only if he can personally decide on the use of those production units for the purpose of production. That also applies in relation to the legal term applicable here, as is made especially clear in the German version of Article 12(c), third subparagraph, of Regulation No 857/84 as amended by Regulation No 764/89, according to which (here, for the purposes of applying Article 3a of the Regulation No 1546/88) a '*landwirtschaftliche [r] Betriebsleiter*' (literally a person in charge of an agricultural holding; in the English version, a 'person ... farming a holding') is to be regarded as a producer. The associated condition, that the person in question is able personally to decide on the use of the production units for the purpose of production, is met, in the case of a holding which has been let (as a rule — but see the special case dealt with in Case C-341/89 *Ballmann* v *Hauptzollamt Osnabrück* [1991] ECR I-25), not by the lessor but by the lessee. Accordingly, 'operate' refers to the use of the production units by the lessee and thus cannot include the letting of the holding by its owner.

11. That interpretation is confirmed by Article 3a of Regulation No 857/84, under which in order to receive a special reference quantity an applicant must be a producer. In that respect, Article 3a of Regulation No 1546/88 simply clarifies a condition which is already contained in Regulation No 857/84. [10] A further example of a mere clarification of an existing requirement may be seen where Article 3a of Regulation No 1546/88 and the third recital in the preamble to Regulation No 1033/89 state — for the purpose of defining a producer in relation to the time factor — that the producer must still 'operate' the holding *at the time of submitting his application* (which cannot be the case if he no longer has it at his disposal ['*verfügt der Erzeuger nicht ... mehr über dem ... Betrieb*']). That position, too, is already defined in the second part of Article

10 — For the Member States in which Formula B applies, Article 9(1)(a) of Regulation No 1546/88 as amended by Regulation No 1033/89 lays down the necessary consequence for the purchaser's reference quantity.

3a(1) of Regulation No 857/84. More specifically, Article 3a(1)(a) and (b) express the principle that a producer who let his (entire) holding either during the non-marketing or conversion period or afterwards is not entitled to claim a special reference quantity in his capacity as *lessor*. That clearly follows, in the case of a lease during the non-marketing or conversion period, [11] from Article 3a(1)(a) and, in the case of a subsequent lease, from Article 3a(1)b), [12] according to which applicants must be '*able to produce on their holding* ... the reference quantity requested'. [13] That presupposes not only that the corresponding production units exist but also that the applicant has them at his disposal. A lessor does not meet this requirement.

12. In this connection it is finally necessary to answer the plaintiff's argument that the concept of producer may also include a lessee, since the rules relating to milk production never relate to the owner of the holding as a person but to the holding and its constituent parts and since, furthermore, the reference quantity constitutes a transferable asset. In that regard, it should first of all be pointed out that in the present case it is not the lessee but the lessor who is seeking a special reference quantity. Secondly, while the Community rules concerning the right to a special reference quantity take account to a certain extent of the circumstances of the holding, in particular as regards the quantity delivered or sold during the reference period, [14] they confer this right only on *producers*, in other words on persons who, being in charge of a holding, decide on the use of the production units. Thirdly, although it must be conceded that the plaintiff is right to state that the reference quantity may, according to the relevant provisions (Article 7 of Regulation No 857/84 as amended by Regulation No 590/85; [15] Article 7 of Regulation No 1546/88), be transferred from the lessor to the lessee and may then — depending on the terms of the lease — be regarded as a transferable asset, such a transfer takes place, if at all, [16] not in isolation from the holding but only, as can be seen from those provisions, together with it. The intention to *make it possible* for the *lessee* — long after the beginning of the lease — to *produce milk* on the basis of a reference quantity granted to the *plaintiff* is incompatible with that principle.

11 — To which the following extract from the preamble to Regulation No 1033/89 corresponds: 'where producers no longer operate the same holdings, they have thereby demonstrated, according to the logic of the premium scheme, their intention of ceasing milk production' (third recital).

12 — To which the following extract from the preamble to Regulation No 1033/89 corresponds: 'these special arrangements only concern producers who could not obtain the allocation of a reference quantity for their holdings since their holdings were subject to an obligation in the reference year selected by the Member State; [...] the aim of these arrangements may be to rectify the consequences arising from this situation only to the extent that it turns out to be unchanged' (third or fourth recital, according to the language version).

13 — Emphasis added; see also the second recital in the preamble to Regulation No 764/89.

14 — Article 3a(2) of Regulation No 857/84.

15 — Council Regulation (EEC) No 590/85 of 26 February 1985 amending Regulation (EEC) No 857/84 laying down 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 1985 L 68, p. 1).

16 — See the restriction in Article 3a(4)(2) of Regulation No 857/84 and, on that point, the judgment in Case 44/89 *von Deetzen* v *Hauptzollamt Oldenburg* [1991] ECR I-5119.

13. The first question is therefore to be answered as indicated above.

Question 2

14. I. As regards the validity of the above rules, the national court first expresses doubts as to the compatibility of those rules with Article 3a (specifically Article 3a(1)(b)) of Regulation No 857/84. That article requires only that it must be possible to produce the reference quantity applied for on the holding. In that regard I would refer to my examination of the first question and state that Article 3a of Regulation No 1546/88, on the contrary, merely clarifies a requirement for the allocation of a special reference quantity which is already contained in the regulation adopted by the Council. The reservation expressed by the national court is therefore without foundation.

15. II. The national court then raises the question of the compatibility of that provision with superior rules of law, in particular with the principles of the protection of legitimate expectations and equal treatment.

16. In that respect, two lines of argument may be distinguished, each based on a comparison. First, with regard to the principle of the protection of legitimate expectations, a comparison is drawn with the situation of farmers who did not participate in the Community non-marketing or conversion programme under Regulation No 1078/77. Secondly, the national court, this time with reference to the prohibition of discrimination, relies on examples in which the plaintiff's situation is compared with that of other participants in that programme.

17. The comparison with the first group of farmers must in fact be made for the purpose of applying the principle of the protection of legitimate expectations. Concerning that principle, the Court declared in the *Mulder* [17] and *von Deetzen* [18] cases, cited above,

'that a producer who has voluntarily ceased production for a certain period cannot legitimately expect to resume production under the same conditions as those which previously applied and not to be subject to any rules of market or structural policy adopted in the mean time;'

and furthermore:

'where such a producer, as in the present case, has been encouraged by a Community measure to suspend marketing for a limited period in the general interest and against payment of a premium, he may legitimately expect not to be subject, upon the expiry of his undertaking, to restrictions which

17 — Paragraphs 23 and 24.
18 — Paragraphs 12 and 13.

specifically affect him precisely because he availed himself of the possibilities offered by the Community provisions.' [19]

18. Such a comparison is also necessary in order to ascertain whether the provision infringes the prohibition on discrimination laid down in Article 40(3) of the EEC Treaty [20] (which, in the national court's view, it may do with regard to the situation of other farmers who participated in the Community non-marketing or conversion programme). That principle precludes comparable situations from being treated in a different manner unless the difference in treatment is objectively justified. [21]

19. I shall now compare the plaintiff's situation with that of both groups of farmers. It will be necessary in doing so to distinguish between the three periods mentioned in the order for reference, namely the period before the adoption of Regulation No 764/89, the period after its adoption and the period following the expiry of the lease.

20. (1) Regarding the disadvantages which farmers in the plaintiff's situation suffered because *before the adoption of Regulation No 764/89* they obtained no (special) reference quantity of which they could make use at that time either by operating the holding themselves or by leasing it, the only comparison to be considered is that with the situation of a farmer who did not take part in the Community programme. Here, however, it is sufficient to state that any disadvantage which the plaintiff may have suffered derives not from Article 3a of Regulation No 1546/88 but from the absence of a set of rules applying to the group of farmers to which he belongs. [22] That does not give rise to any doubts as to the validity of the provision in question.

21. (2)(a) With regard to the period *after the adoption of Regulation No 764/89*, during which, according to the plaintiff, the desired reference quantity should now make it possible for the *lessee* to engage in milk production, it is first necessary to consider the comparison with farmers who did not take part in the Community non-marketing or conversion programme.

22. In that respect it follows that the plaintiff could at the most be adversely affected by the provisions which make it impossible for the *lessee* to obtain such a reference quantity. If a farmer who held a reference quantity after the adoption of Regulation No 857/84 had let his holding in 1987 for 20 years, he would have lost that reference quantity at the beginning of the lease, in accordance with both Article 7(1) of Regulation No 857/84 and Article 5(1) of Regulation No 1371/84 [23] (see also Article 7(1) of

19 — Emphasis added.

20 — See, most recently, Case C-177/90 *Kühn* v *Landwirtschaftskammer Weser-Ems* [1992] ECR I-35, paragraph 18.

21 — See, for example, Joined Cases C-267/88 to C-285/88 *Wuidart and Others* v *Laiterie Coopérative Eupenoise and Others* [1990] ECR I-435, paragraph 13.

22 — On the question of a claim for compensation from this point of view, see in particular Joined Cases C-104/89 and C-37/90 [1992] ECR I-3061, in which Advocate General van Gerven delivered his Opinion on 28 January 1992; see in particular paragraph 33.

23 — Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1984 L 132, p. 11).

Regulation No 1546/88) to the lessee, who would therefore have been the holder of the reference quantity when the contested application was submitted.

23. That situation is an expression of the general principle (even disregarding Regulation No 764/89) that, as between lessor and lessee, for the duration of the lease only the latter, as the 'person ... farming a holding', [24] can be the person entitled to a reference quantity.

24. In so far as Article 3a of Regulation No 1546/88 (as amended by Regulation No 1033/89) now precludes a claim by a *lessor*, because he no longer farms the holding which he operated at the time of his application for a premium, such a farmer is himself in no worse position on that account than other farmers belonging to the abovementioned reference group.

25. Since the wording of the question referred and the facts of the main proceedings relate only to the legal consequences which the provision in issue entails for the rights of the *lessor*, the foregoing considerations are sufficient, in my opinion, to dispel the doubts experienced by the national court on that particular aspect.

26. A few remarks may nevertheless be permitted regarding the legal position of the lessee, to show that it must be determined in the light of the legitimate expectations of his legal predecessor and that the protection of those expectations does not appear to be affected by the application of the general principle which I have described above.

27. It might indeed appear at first sight that in the present case Article 3a also precludes a claim for a special reference quantity by the lessee, since he did not operate the holding in question at the time of the approval of the premium application under Article 5(2) of Regulation (EEC) No 1391/78. Such a consequence would show that the person farming the holding, who as such fulfilled an essential formal requirement for entitlement under Regulation No 764/89, is a person other than the one whose legitimate expectations were the reason for the introduction of the rules.

28. This problem already arises in the context of Article 3a(1) of Regulation No 857/84. A comparison of the first and second subparagraphs might create the impression that only a producer who has *himself* fulfilled a non-marketing or conversion obligation may claim a special reference quantity. The consequence — that, in the event of the transfer of a holding, regardless of its legal nature, *after* the expiry of the non-marketing or conversion period, the transferee is precluded from receiving a special reference quantity because logically such an obligation can no longer affect him — may be regarded as indirectly confirmed in the third subpara-

24 — See the definition of the term 'producer' in Article 12(c), *first subparagraph*, of Regulation No 857/84.

graph of Article 3a(2). The Court has expressed its views of that consequence in the *Rauh* case, [25] in which, following the expiry of the non-marketing period, the owner of the holding had transferred it in a manner similar to succession. The Court considered it a restriction inconsistent with the protection of the legitimate expectations of the original producer that he, after the expiry of the non-marketing obligation which he had undertaken, was unable (in a transaction similar to succession) to transfer the benefit of the grant of a reference quantity (paragraph 18). In paragraph 19 the Court declared in that respect:

'Those restrictions would be maintained if Article 3a of Regulation No 857/84 were interpreted as not permitting such an heir or successor to have granted to himself, in the same way as the producer himself, a special reference quantity under the conditions laid down in Article 3a.'

29. Accordingly, the Court ruled that Article 3a of Regulation No 857/84 must be interpreted as meaning

'that, subject to the conditions laid down therein, a special reference quantity may be granted to a producer who has taken over a holding by way of succession or a similar transaction after the expiry of a non-marketing undertaking entered into pursuant to Council Regulation (EEC) No 1078/77 of 17 May 1977 by his predecessor in title.'

30. Concerning the problem that the producer making the application is not the person whose legitimate expectations are protected, [26] the Court declared that for the purposes of Article 3a 'producers' meant

'not just farmers who themselves entered into an undertaking pursuant to Regulation No 1078/77 but also those who, after the expiry of the undertaking entered into by the farmer, have taken over the holding in question by succession or by a similar transaction.'

31. If all these principles were to be transposed to the present case — which the Council does not appear to have assumed to be so, however, in its amending regulation, Regulation (EEC) No 1639/91 (OJ 1991 L 150, p. 35) — it would not be sufficient to interpret Article 3a of Regulation

25 — Case C-314/89 *Rauh* v *Hauptzollamt Nürnberg-Fürth* [1991] ECR I-1647.

26 — Even though Regulation No 764/89, adopted in response to the *Mulder* and *von Deetzen* judgments, was aimed only at the legitimate expectations of those taking part in the non-marketing and conversion programme, it may be necessary to examine in a particular case whether Community law protects the possible expectations of a lessee or purchaser who has taken over a holding following the expiry of the non-marketing or conversion period. However, there is no need to go into that question in this case.

No 857/84 accordingly. It would also be necessary to give Article 3a of Regulation No 1546/88 a consistent interpretation, so that its requirements would be regarded as fulfilled if the lessor, as the legal predecessor of a lessee seeking a reference quantity, operated the holding when the application for the premium was granted.

32. The legal position of the lessee under Article 3a of Regulation No 1546/88 must thus be determined with due regard to the principle of the protection of legitimate expectations. It cannot, therefore, be contrary to that principle to refer the lessor to the general rule expressed in concrete terms in that article that, in the relationship between himself and the lessee for the duration of the lease, only the lessee, if anyone, may be entitled to a reference quantity.

33. To sum up, I consider that the contested provision, in so far as it is relevant here, does not, with regard to the period after the adoption of Regulation No 764/89, place the plaintiff in a worse position than the group of farmers who did not make use of Regulation No 1078/77 and who, after being allocated a reference quantity, let their holdings in 1987. In that context there is no infringement of the principle of the protection of legitimate expectations.

34. (b) Turning now to the comparison with other farmers who also took part in the Community programme, the national court cites by way of example the situations of such farmers who had not (yet) let their holdings at the time of their applications.

35. (i) In one example the plaintiff's position is compared with that of a farmer who, because of health problems, did not, unlike the plaintiff, let his holding but operated it with the assistance of employed labour. The national court believes that smaller holdings, for which it is more difficult to find labour, might, in cases in which the owner experiences health problems, be placed in a worse position than larger ones.

36. In that respect it should first of all be stated that if there had been no lease the plaintiff would (subject to the remaining requirements of Article 3a of Regulation No 857/84) have been entitled to a special reference quantity. The fact that he does not have such a right in his capacity as lessor, however, is in itself, as has been shown, simply the expression of a general principle underlying the milk quota rules as a whole.

37. Seen thus, the disadvantage to smaller holdings which the national court feared would by no means be confined to the scope of Article 3a of Regulation No 1546/88 but would be a defect associated with the rules as a whole.

38. In order to assess the national court's doubts in that light, it must first be ascertained whether the abovementioned general principle (and also, inevitably, the provision in issue here) discriminate against smaller holdings. That question is clearly to be answered in the negative. Provided that it is guaranteed that in such a situation the lessee has a reference quantity or may at least claim one, the rules add nothing to the economic distinctions which exist between self-operation and leasing. The disadvantages to which a smaller holding may be exposed in connection with the employment of labour are therefore only those which it must bear in any event.

39. It further follows that, at the most, a particular disadvantage, going beyond this framework, may be experienced by a farmer in the plaintiff's position as a result of the rules under which no special reference quantity is to be allocated to the *lessee*. I would refer in that respect, however, to what I have said regarding the comparison with farmers who did not take part in the Community programme under Regulation No 1978/77 and stress that it is necessary when assessing such claims to observe the superior principles of law, which include the prohibition of discrimination.

40. In those circumstances I am unable to conclude that Article 3a of Regulation No 1546/88, in so far as it requires the holding to be operated by the applicant, discriminates against farmers in the plaintiff's situation in comparison with those who were able to continue to operate their holding with employed labour.

41. (ii) The national court goes on to raise the question whether the plaintiff suffers discrimination owing to the fact that 'whether or not the producer can invoke a special situation as having given rise to a non-marketing commitment depends on the time at which the land happens to be let'. In that respect the national court explains that if the plaintiff had not let his holding he could have relied for the time being on a provisional reference quantity for deliveries. After that quantity had been allocated, the national court adds, the plaintiff could have let the holding, subject to the release of a certain quantity.

42. In that respect it is sufficient to state that the considerations of the national court are based on an incorrect premise, as the Commission rightly points out. The second subparagraph of Article 3a(4) of Regulation No 857/84 provides that the special reference quantity is to be returned to the Community reserve if the holding is sold or leased before the end of the eighth period of application of the additional levy scheme (in other words, before 1 April 1992). In that case not only would the plaintiff lose the special reference quantity, but, instead of being transferred to the lessee, it would be returned to the Community reserve. [27]

27 — On the question of the validity of this rule see *von Deetzen v Hauptzollamt Oldenburg*, cited above, in particular paragraph 33.

43. (3) Finally, with regard to the period after the expiry of the lease, the rules in issue again cause no disadvantage to the plaintiff capable of infringing the principle of the protection of legitimate expectations or the prohibition of discrimination. At that point, the plaintiff will fulfil the requirements of those rules. If he should none the less be unable to claim a reference quantity, and the legal provisions remain unaltered, that would not be because those requirements were not fulfilled at an earlier time. There would, on the contrary, be other legal reasons for such a disadvantage. It will therefore be necessary to examine at that time whether the right to claim a special reference quantity which he enjoyed before granting the lease has been extinguished instead of being transferred to his lessee, so that it cannot revert to him after the expiry of the lease either. [28] The question might also arise whether it might count against the plaintiff that his lessee failed to make an application within the period laid down in Regulation No 857/84. If it should prove, for one of those reasons, that the plaintiff is not entitled to a special reference quantity, that would have nothing to do with the rule in issue here. Nor can I find, in the legal consequences which may be expected in the period following the expiry of the lease agreement, any effect of the requirement in issue which is incompatible with the principle of equal treatment or the protection of legitimate expectations.

C — Opinion

44. All of those considerations lead me to suggest that the Court should rule as follows:

1. Article 3a of Regulation No 1546/88 as amended by Regulation No 1033/89 is to be interpreted as meaning that a farmer who had operated a holding at the time of approval of his premium no longer operated that holding at the time of his application for a special reference quantity if at that latter time the holding was let to a third party.

2. Examination of the second question has disclosed no factor of such a kind as to affect the validity of Article 3a in so far as the legal situation referred to in the first question is concerned.

28 — With regard to the legal position following the expiry of a lease, see Article 7(3) of Regulation No 1546/88 and (concerning its predecessor, Article 5(3) of Regulation No 1371/84) Case 5/88 *Wachauf* v *Bundesamt für Ernährung und Fortwirtschaft* [1989] ECR I-2609, paragraph 15, and Case C-177/90 *Kühn* v *Landwirtschaftskammer Weser-Ems* [1992] ECR I-35, paragraph 22.