JUDGMENT OF THE COURT
9 July 1985 *

In Case 179/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretore [Magistrate], Cremona, Italy, for a preliminary ruling in the action pending before him between

Piercarlo Bozzetti, a stock farmer, of Derovere, Cremona,

and

Invernizzi SpA, whose registered office is at Melzo (Milan),

and

Ministero del Tesoro,

on the interpretation and validity of Council Regulation No 1079/77 of 17 May 1977 on a co-responsibility levy and on measures for expanding the markets in milk and milk products (Official Journal 1977, L 131, p. 6) and of Commission Regulation 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 (Official Journal 1977, L 203, p. 1),

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco and O. Due (Presidents of Chambers), P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot and R. Joliet, Judges,

Advocate General: M. Darmon,
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities on behalf of

the plaintiff in the main proceedings, by Emilio Cappelli and Paolo De Caterini, of the Rome Bar,

* Language of the Case: Italian.

the Government of the Italian Republic, by Arnaldo Squillante, Head of the Department for Contentious Diplomatic Affairs, Treaties and Legislative Matters in the Ministry of Foreign Affairs, assisted by Ivo M. Braguglia, Avvocato dello Stato,

the Council of the European Communities, by Antonio Sacchettini, an adviser in the Legal Department, assisted by Arthur Brautigam, an administrator in that Department,

the Commission of the European Communities, by its Legal Adviser, Alberto Prozzillo,

after hearing the Opinion of the Advocate General delivered at the sitting on 23 May 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order dated 1 June 1984 which was received at the Court on 9 July 1984, the Pretore [Magistrate], Cremona, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation and validity of Council Regulation 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 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, as subsequently amended and supplemented.

The regulations

2 By Regulation No 1079/77 the Council introduced a co- responsibility levy, which was intended to reduce the structural surpluses on the market in milk and milk products in the Community. According to the second recital in the preamble to the

regulation, the levy is intended to establish a more direct link between production and outlets for milk products. It must apply in a uniform manner to all milk delivered to dairies and to certain farm sales of milk products.

3 Article 2 of the regulation provides that the amount of the levy is to be fixed for each successive milk year in accordance with the procedure laid down in Article 43 (2) of the Treaty, that is to say by the Council, acting by a qualified majority on a proposal from the Commission. The amount of the levy, fixed as a percentage of the 'milk target price valid for the milk year in question', must take account of the market situation, forward estimates of supply and demand for milk products, and the development of stocks.

4 For the 1977/78 milk year, the levy was fixed at 1.5% of the target price for milk; the percentages applicable for the following milk years were fixed by regulation. According to the information contained in the documents put before the Court, the levy at the material time was 2% of the target price, as provided for in Council Regulation No 1189/82 of 18 May 1982 (Official Journal 1982, L 140, p. 8).

5 According to Article 3 of Regulation No 1079/77, in the case of deliveries to an undertaking treating or processing milk the levy is to be deducted by the buyer of the milk from the payment to be made to the producer, and transferred monthly in arrears by the buyer to the competent agency designated for the purpose by each Member State. Article 5 states that the co-responsibility levy is to be regarded 'as forming part of the measures to stabilize agricultural markets'.

6 Commission Regulation No 1822/77, to which the questions put by the Pretore also refer, sets out detailed rules for the collection of the co-responsibility levy but does not contain any rules of special relevance to the questions. That regulation will therefore be considered in the context of the appraisal of Council Regulation No 1079/77, whose validity is contested.

7 It should be noted that the 'target price' referred to in Article 2 of Regulation No 1079/77 is defined in Article 3 of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176), as 'that price which it

is aimed to obtain for the aggregate of producers' milk sales, on the Community market and on external markets, during the milk year'. That price is fixed by the Council annually 'for milk containing 3.7% fat, delivered to dairy'.

Background to the dispute

8 It appears from the order made by the Pretore that the plaintiff in the main proceedings, a stock farmer in Derovere, Cremona, summoned Invernizzi SpA, whose registered office is at Melzo, Milan, and the Ministero del Tesoro to appear before the Pretore on 5 April 1984 in order to obtain repayment of an amount deducted by Invernizzi SpA, on behalf of the Ministero del Tesoro, as the co-responsibility levy from the sale price of milk which had been produced by the plaintiff and purchased by Invernizzi in April and May 1983.

9 The plaintiff alleged that the co-responsibility levy, which is calclulated on the basis of the target price, gave rise to discrimination between Community producers because it was calculated by reference to the price of milk containing 3.7% fat, whereas it was well known that milk produced in Italy had a lower fat content. Italian farmers thus bore less responsibility for the surpluses which it was sought to eliminate, but were nevertheless required to pay the same rate of levy as other Community producers. Consequently, the plaintiff considered that the co-responsibility levy should be regarded as unlawful and therefore not payable, with the result that repayment of sums deducted as the levy might be sought by means of legal proceedings.

10 The Pretore stated that the principle that milk producers should be made accountable for the increasingly serious problem of the growing stocks of butter and powdered milk could in itself scarcely be criticized. However, it could not, in his view, be denied that there was some foundation for the doubts raised by the plaintiff regarding the fairness and suitability of the arrangements made by the Community legislature when it determined the detailed rules for the levy, inasmuch as the same rate of levy applied to milk with very different characteristics, particularly as regards fat content, and which did not all contribute to the same degree to butter production.

11 Moreover, as the co-responsibility levy was not included in the so-called 'own resources' of the Community listed in the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Community's own resources (Official Journal, English Special Edition 1970 (I), p. 224), the Pretore has raised the question of the nature of the levy — that is to say whether or not it is a tax — in order to enable him to ascertain whether he has jurisdiction to decide the dispute.

12 In order to obtain clarification of those points, the Pretore referred to the Court the following two questions:

'(1) Are Council Regulation No 1079/77 and Commission Regulation No 1822/77, as amended and supplemented, which created and govern the co-responsibility levy for milk — which does not appear among the so-called "own resources" referred to in the Council Decision of 21 April 1970 — to be interpreted as meaning that that levy is not a tax?

(2) Must Regulation No 1079/77 and Regulation No 1822/77 and in particular Article 2 of Regulation No 1079/77 and Article 2 of Regulation No 1822/77, introducing a co-responsibility levy which applies in an identical manner to products which differ in composition and are therefore likely to lead to butter and powdered-milk surpluses in differing degrees, be regarded as unlawful, on the grounds that they breach the principle of non-discrimination contained in Article 40 (3) of the Treaty and represent a misuse of powers by reason of their manifest inconsistency, and accordingly not be applied?'

The first question: the nature of the co-responsibility levy

13 The plaintiff in the main proceedings takes the view that the levy is not a tax. He draws attention to the fact that the levy is not included in the Community's own resources but is used directly to cover the cost of certain measures provided for in Article 4 of Regulation No 1079/77, to expand the markets for milk products. Moreover, he points out that Article 5 of that regulation provides that 'the co-responsibility levy and the measures referred to in Article 4 shall be considered as forming part of the measures to stabilize agricultural markets'. Although it is not for the Court to resolve the question of jurisdiction raised by the Pretore, it may indicate the principles of Community law which may assist the national court to resolve the question. On that point the plaintiff refers to the judgment of the Court of 19 December 1968 in Case 13/68 *(Salgoil* v *Italy* [1968] ECR 453).

14 The Italian Government considers that the question whether or not the co-responsibility levy must be regarded as a tax for the purposes of determining national jurisdiction is not a question concerning the interpretation of Community law. That question must therefore be answered by the national court in accordance with its own legal system, as the Court confirmed in paragraph 3 of the operative part of the judgment of 19 December 1968 cited by the plaintiff, in which it stated, with regard to the protection of the rights conferred by the Treaty, that 'it is for the legal system of each Member State to determine which court has jurisdiction, and for this purpose to classify those rights according to the criteria of national law'. The Italian Government considers that the fact that the co-responsibility levy is a measure designed to stabilize the markets and the fact that the levy is not among the Community's own resources referred to in Article 201 of the EEC Treaty do not affect the question of jurisdiction, which must be decided according to the rules of national law.

15 The Council acknowledges that the question of jurisdiction raised by the national court must be decided solely on the basis of rules of national law, as the Court stated in paragraph 18 of its judgment of 27 March 1980 in Joined Cases 66, 127 and 128/79 (*Amministrazione delle Finanze* v *Salumi*, [1980] ECR 1237). However, the Council points out that the Court has already stated, in its judgment of 22 February 1979 in Case 138/78 (*Stölting* v *Hauptzollamt Hamburg-Jonas*, [1979] ECR 713), that all the measures provided for by Regulation No 1079/77 are 'designed to stabilize the market in milk products and thus to supplement the existing intervention system'. The Court has therefore ruled out the possibility that such a levy might be a tax. It therefore seems to the Council that it would be difficult for a national court to define the same levy differently.

16 According to the Commission, the question asked concerns a problem not of Community law but of national law — namely, which court has jurisdiction. It considers that that question must be decided by the national court in accordance with its own legal system.

17 As the Court stated in its judgment of 19 December 1968, *Salgoil*, to which the parties have referred, it is for the legal system of each Member State to determine which court has jurisdiction to hear disputes involving individual rights derived from Community law, but at the same time the Member States are responsible for

ensuring that those rights are effectively protected in each case. Subject to that reservation, it is not for the Court to intervene in order to resolve any questions of jurisdiction which may arise, within the national judicial system, as regards the definition of certain legal situations based on Community law.

18 However, as the Council has rightly remarked, the way in which the co-responsibility levy is defined under Community law is not without significance as regards national law. There is therefore some purpose in informing the national court of the rules of Community law which may help to solve the problem of jurisdiction with which it is faced.

19 On that point, it should be noted that Article 5 of Regulation No 1079/77 expressly states that the co-responsibility levy is to be regarded 'as forming part of the measures to stabilize agricultural markets'. Thus the levy serves essentially an economic purpose, inasmuch as it performs the same function as the other types of intervention provided for within the common organization of the market in milk and milk products. The fact that the co-responsibility levy, which is used directly to cover certain expenses incurred in the context of the common organization of the market in milk, is not included among the Community's 'own resources' does not affect the way in which it must be defined in so far as it is designed to contribute to stabilizing the market in question.

20 The answer to the first question must therefore be that Community law requires that the co-responsibility levy introduced by Council Regulation No 1079/77 and regulated in detail by Commission Regulation No 1822/77 be defined by reference to its economic purpose as one of the intervention measures designed to stabilize the market in milk products. It is for the national court to draw from that finding the conclusions which are necessary to enable it to determine whether it has jurisdiction in this case.

The second question: the validity of the method of fixing the co-responsibility levy

21 The plaintiff in the main proceedings maintains that the method of calculating the co-responsibility levy on the basis of the target price fixed for milk containing 3.7% fat adopted by Council Regulation No 1079/77 and Commission Regulation

No 1822/77 discriminates against producers such as the plaintiff whose milk has never contained such a high level of fat, as compared with producers from other regions in the Community whose milk has a fat content of 3.7% or even higher. It is milk of that kind which has contributed most to the surplus production, in particular the butter surpluses. The reference to the target price fixed for milk containing 3.7% fat thus constitutes discrimination contrary to Article 40 (3) of the Treaty and a misuse of powers on account of the manifest inconsistency of such a method of fixing the levy.

22 The plaintiff also argues that the Community legislature ought to have taken into account regional differences by fixing the levy in such a way as to require it to be paid by those producers who are in fact responsible for the surplus production, granting total or partial exemption from the levy to producers whose milk has a lower fat content. The plaintiff points out that in the rules governing the collection of the new additional levy in Council Regulation No 857/84 of 31 March 1984 (Official Journal 1984, L 90, p. 13) and Commission Regulation No 1371/84 of 16 May 1984 (Official Journal 1984, L 132, p. 11) account was taken of the different levels of fat contained in the milk.

23 The plaintiff is supported by the Italian Goverment, which argues that fixing the levy by reference to the target price of milk containing 3.7% fat discriminates against Italian producers, since the average fat content of milk produced in Italy is only 3.5%. It does not challenge the introduction of the co-responsibility levy in principle but considers that the Council ought to have adopted measures which varied according to the different situations obtaining in the Community as regards the composition of milk, in particular its fat content, a high fat content being the chief reason for the financial burdens arising from surplus production. The Italian Government therefore considers the rules to be discriminatory and disproportionate to the aims which they are designed to achieve. In its view, the regulations which subsequently introduced the additional levy prove that different rates could have been fixed for the co-responsibility levy according to the quality of the milk without giving rise to insurmountable practical or administrative obstacles.

24 In defence of the contested regulations, the Council points out that it has a wide discretion in the choice of the measures of economic policy to be used to restore equilibrium on the market in milk and milk products. It recalls that that discretion was recognized in the aforesaid judgment of 21 February 1979, *Stölting*, in which the Court ruled that the introduction of the co-responsibility levy did not infringe the Treaty. The Council stresses that the measure provided for in Regulation No 1079/77 was selected from various possibilities, such as a general reduction in support prices or the introduction of production quotas. The co-responsibility levy itself could have been introduced in various forms, for instance on the basis of the price actually obtained by the producers or the amount of milk that the dairies put into intervention. The different methods of calculating the levy would have affected the various categories of producers in different ways, without its being possible to claim that there was any arbitrary discrimination.

25 The Council explains that the measures introduced by Regulation No 1079/77 were designed to cover the entire Community market in milk. It was therefore logical to choose as a reference the target price, which is the central unit of value of the organization of the market and is fixed by reference to a particular type of milk adopted, since the introduction of the common organization of the market, as representing the Community average.

26 The Council challenges the view put forward by the plaintiff in the main proceedings and the Italian Government to the effect that milk with a high fat content is largely responsible for the surpluses whose disposal burdens the Community budget. It states that the contested levy is designed to reduce total production throughout the market in question by exerting uniform pressure on the price of milk, and therefore it is not sufficient to have regard to the amount of butter produced from milk of differing fat content: milk sold in the form of fresh milk and the production of skimmed-milk powder, condensed milk, cheese and yoghurt must also be taken into account. Furthermore, it is necessary, in its view, to consider the entire range of products disposed of not only on the Community market but also on the export market. In that perspective it was clear that direct action affecting the production of raw milk was the most appropriate measure for such a diversified market.

27 As regards the arguments put forward by the plaintiff and the Italian Government with regard to the different rates which were instituted when the additional levy was introduced, the Council argues that the aims and *modus operandi* of that levy are different from those of the co-responsibility levy, inasmuch as it is intended not only to curb the increase in milk production but also to permit the structural developments and adjustments required in the Member States and in certain regions in the Community. The additional levy, which is in the nature of selective action and the rates of which are fixed at a prohibitive level, is not comparable to the co-responsibility levy and thus cannot furnish any arguments which may be used to assess the validity of Regulation No 1079/77.

28 The Council is supported by the Commission, which contends that the plaintiff's argument is based on a false premise, namely that the common organization of the markets in milk and milk products, and in particular its pricing system, is based exclusively on the fat content of milk. The Commission stresses that even the basic regulation, Regulation No 804/68, states in the fifth recital in the preamble that the aim of the organization of the market is to guarantee the common target price for milk delivered to dairy and that, to that end, other Community intervention measures are required, in addition to intervention in respect of butter and fresh cream, to enable the best return to be obtained from milk proteins and to support the prices of products which have special importance in determining producer prices for milk. Thus, in addition to the general target price, the market organization provides for intervention prices for butter, skimmed-milk powder and Grana Padano and Parmigiano Reggiano cheeses. It also includes levies on imports and refunds on exports, the latter being particularly high for exports of the cheeses referred to. The Commission also points out that the prices which the dairies actually pay to producers in Italy are at least 20% higher than the target price, so that even after application of the co-responsibility levy Italian producers retain a substantial advantage.

29 As to the comparison between the co-responsibility levy and the additional levy, the Commission endorses the explanation given by the Council, pointing out that the rate of the additional levy was based on the fat content of milk in order to prevent fraud in the form of concentrating the volume of the milk by increasing its fat content, the residual skimmed milk being used directly as animal feed.

30 In order to resolve the dispute concerning the method of fixing the co-responsibility levy, it should first be noted that, as the Court thas already stated in the aforesaid judgment of 21 February 1979, *Stölting*, which concerned the same levy, the Council must be recognized as having a discretionary power in this sphere which corresponds to the political responsibilities which Articles 40 and 43 impose upon it. When the Council introduced the levy and fixed the rules for its application, it selected from the various possibilities open to it the one which seemed most appropriate for the aim pursued, that aim being to exert direct, albeit moderate, pressure on the price paid to milk producers in order to make them aware of the link between production and outlets for milk products, as is stated in the preamble to Regulation No 1079/77.

31 The aim of the pressure thus exerted at the production stage is to correct a general imbalance on the market in milk products, whether or not such products are subject to intervention measures, in view of the costs incurred in their disposal both on the Community market and on export markets. The plaintiff in the main proceedings and the Italian Government are therefore mistaken in seeking to attribute overriding significance to the fat content of milk, when the measure adopted by the Council is designed to restore equilibrium throughout the market in milk and all its products.

32 The aim of Regulation No 1079/77, which is clearly indicated *inter alia* in the first two recitals in its preamble, is to solve the problem of the imbalance on the market in milk within the framework of the common organization of the market by means of a concerted effort by all Community producers in equal measure, regardless of the quality of their products and the use to which they are put, that is to say regardless of whether milk is used for direct consumption or for the production of butter, milk powder, cheese or other processed products. It is also irrelevant whether such products are to be marketed within the Common Market or exported.

33 Viewed in that light, it is wholly compatible with Article 40 (3) of the Treaty, which provides that any common price policy in the framework of the market organization 'shall be based on common criteria and uniform methods of calculation', for the co-responsibility levy to be determined on the basis of the central unit of value in the common organization of the market, namely the target price, which is fixed by reference to a standard type of milk accepted as typical of Community production.

The fact that the introduction of the co-responsibility levy under the common organization of the market may affect producers in different ways, depending upon the particular nature of their production or on local conditions, cannot be regarded as discrimination prohibited by Article 40 (3) of the Treaty if the levy is determined on the basis of objective rules, formulated to meet the needs of the general common organization of the market, for all the products concerned by it.

It follows from the foregoing that the regulations challenged before the Pretore cannot be regarded as discriminating between producers; nor is it possible to identify any inconsistency in the machinery set up by those regulations, since the method by which the co-responsibility levy is calculated accords with the common organization of the market inasmuch as it is derived from the target price, which is the central unit of value of that organization.

As to the argument put forward by the plaintiff in the main proceedings and the Italian Government on the basis of Council Regulation No 857/84 introducing the additional levy and the Commission's implementing regulation, Regulation No 1371/84, it is sufficient to state that those regulations, which were adopted after those contested before the national court, pursue a purpose different from those to be attained by the co-responsibility levy. The principles underlying those regulations therefore cannot be relied upon retrospectively in order to challenge regulations adopted earlier.

The answer must therefore be that consideration of the second question raised has disclosed no factor of such a kind as to affect the validity of Council Regulation No 1079/77 of 17 May 1977 or of Commission Regulation No 1822/77 of 5 August 1977.

Costs

The costs incurred by the Italian Government and by the Council and Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, so far as the parties to the main proceedings are concerned, 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,

in answer to the questions submitted to it by the Pretore, Cremona, by an order dated 1 June 1984, hereby rules:

(1) Community law requires that the co-responsibility levy introduced by Council Regulation No 1079/77 of 17 May 1977 on a co-responsibility levy and measures for expanding the markets in milk and milk products and regulated in detail by Commission Regulation 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 be defined by reference to its economic purpose as one of the intervention measures designed to stabilize the market in milk products. It is for the national court to draw from that finding the conclusions which are necessary to enable it to determine whether it has jurisdiction in this case.

(2) Consideration of the second question put to the Court has disclosed no factor of such a kind as to affect the validity of Council Regulation No 1079/77 of 17 May 1977 or of Commission Regulation No 1822/77 of 5 August 1977.

Mackenzie Stuart Bosco Due Pescatore

Koopmans Everling Bahlmann Galmot Joliet

Delivered in open court in Luxembourg on 9 July 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President