JUDGMENT OF THE COURT (Third chamber)
11 July 1989 *

In Joined Cases 196/88 to 198/88

REFERENCE to the Court under Article 177 of the EEC Treaty by the cour d'appel (Court of Appeal), Rennes, for a preliminary ruling in the proceedings pending before that court between

Daniel Cornée

and

Coopérative agricole laitière de Loudéac (Copall) (Loudéac Dairy Cooperative) (Case 196/88)

and between

1) **Jean-Claude Ollivier**

2) **Jean-François Buan**

3) **Louis Théodore Loutrage**

and

Laiterie coopérative du Trieux (Trieux Dairy Cooperative) (Case 197/88)

and between

1) **Jean-François Seger**

2) **Guy Yves Marie Boulbin**

3) **Monique Hélène Marie Connan**

* Language of the case: French.

4) **Jean Yves Marie Daniel**

5) **Jean François Duigou**

6) **François Guegan**

7) **Gildas Guyomard**

8) **Dominique Larvor**

9) **Roland Yves Le Scrour**

10) **Claude et Patrice Robin**

11) **Jean François Toudic**

and

Laiterie coopérative du Trieux (Case 198/88)

on the interpretation of Article 40(3) of the EEC Treaty and Article 3 of Council Regulation 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 (Official Journal 1984, L 90, p. 13),

THE COURT (Third Chamber)

composed of: O. Due, President, acting as President of the Chamber, J. C. Moitinho de Almeida and M. Zuleeg, Judges,

Advocate General: W. Van Gerven
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

the applicants, by Mr Pitois-Sillart, Mr Olive, Mr Cabot and Mr Dohollou, of the Rennes Bar,

the French Government, by Edwige Belliard and Géraud de Bergues, assisted at the hearing by Mr Giacomini and Mr Riou of the Ministry of Agriculture, acting as Agents,

the Commission of the European Communities, by G. Lawrence and P. Hetsch, members of its Legal Department, acting as Agents,

having regard to the Report for the Hearing and further to the hearing on 20 April 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 30 May 1989,

gives the following

Judgment

1 By judgments of 29 June 1988, which were received at the Court Registry on 20 July 1988, the cour d'appel, Rennes, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions, which are identical in the three joined cases, on the interpretation of Article 40(3) of the Treaty and Article 3(1) of Council Regulation No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation No 804/68 in the milk and milk products sector (Official Journal 1984, L 90, p. 13).

2 Those questions were raised in proceedings brought by 15 milk producers in the *département* of Côtes du Nord against the Loudéac Dairy Cooperative (Case 196/88) and the Trieux Dairy Cooperative (Cases 197 and 198/88) relating to the levies imposed by those dairies on the producers in question pursuant to the Community rules governing the additional levy on milk.

3 It should be recalled at the outset that by Regulation No 856/84 of 31 March 1984 amending Regulation No 804/68 on the common organization of the market

in milk and milk products (Official Journal 1984, L 90, p. 10) the Council introduced an additional levy which is imposed on quantities of milk delivered in excess of a reference quantity to be determined. The levy is payable either by milk producers (formula A) or by purchasers of milk or other milk products who pass on the levy to producers who have increased their deliveries, in proportion to their contribution to the exceeding of the purchaser's reference quantity (formula B).

4 The detailed rules for calculating the reference quantity, that is to say the quantities exempted from the additional levy, were laid down in Council Regulation No 857/84. Pursuant to Article 2(1) of this regulation, the reference quantity is to be equal to the quantity of milk or milk equivalent delivered or purchased during the 1981 calendar year, plus 1%. However, under Article 2(2) Member States may provide that on their territory the reference quantity shall be equal to the quantity of milk or milk equivalent delivered or purchased during the 1982 or 1983 calendar year, weighted by a percentage established so as not to exceed the guaranteed quantity laid down for the Member State concerned.

5 Derogations from those rules are envisaged, for certain special situations, in Articles 3, 4 and 4a of Regulation No 857/84. In particular, Article 3(1) authorizes Member States, subject to the conditions laid down therein, to grant special reference quantities to producers who have adopted milk production development plans under Council Directive 72/159/EEC of 17 April 1972 on the modernization of farms (Official Journal, English Special Edition 1972 (II), p. 324).

6 France implemented the Community rules providing for an additional levy on milk by opting for the year 1983 in the context of formula B (purchaser formula). The reference quantity for purchasers established in France was, for the first year of implementation of the scheme (2 April 1984 to 31 March 1985), equal to the quantity of milk collected by the purchaser in question during the year 1983, less 2% (1% in mountain areas). For the second year of implementation of the scheme (1 April 1985 to 31 March 1986), that quantity was reduced by 1% (except in mountain areas). For producers who had adopted a milk production development plan, the French rules provide essentially that the purchasers to whom such producers are affiliated are to allocate to the latter, within the limits of their own

reference quantities, a single fixed quantity of 9 500 litres, subject, however, to the exclusion from this benefit of such of those producers whose milk deliveries during the year 1983 were greater than 200 000 litres.

7 The milk producers who are parties to the main proceedings implemented milk production development plans pursuant to Directive 72/159. In their actions they are challenging the levies imposed on them on the ground that, when their individual reference quantities were determined, account was not taken of their development plans. In this connection, they claim that the aforementioned French rules were adopted in breach both of the Community provisions relating to the additional levy on milk and the principles of non-discrimination and the protection of legitimate expectations.

8 In order to be able to assess those arguments, the cour d'appel, Rennes, stayed the proceedings and referred the following questions to the Court:

'(1) Does Article 3 of Regulation No 857/84 allow a Member State to allocate a fixed quota to all holders of current development plans without regard to the targets in each plan, and to choose 1983 as the only reference year without providing for any exceptions in the case of producers having a plan completed in 1981 and 1982?

(2) Does Article 40(3) of the Treaty establishing the European Economic Community preclude the Decrees of 22 November 1984 and 10 July 1985 from establishing an order of priority in the allocation of supplementary reference quantities by reference to the quantities freed within each undertaking, the benefit granted thus depending on the quantities available to the purchaser?

(3) When the national authorities adopted in particular the Ministerial Decree of 10 July 1985 limiting the possible increase for the marketing year 1985/86 to 1% of the previous marketing year, did they infringe the principle of protection of legitimate expectations, inasmuch as the holders of development plans were entitled to rely on the stability of commitments which they had previously entered into in order to allow them to increase the productivity of their farms?'

9 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the relevant Community and national provisions, as well as the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

10 The first question consists of two parts.

11 Having regard to the facts of the main proceedings, the first part of the question must be construed as seeking to ascertain whether the first indent of Article 3(1) of Regulation No 857/84 precludes national rules from implementing that provision in such a way that only producers referred to in that provision whose milk deliveries do not exceed a given ceiling are eligible to obtain a special reference quantity and that all such producers obtain a single fixed quantity.

12 Article 3(1) of Regulation No 857/84 provides that: 'Producers who have adopted milk production development plans under Directive 72/159/EEC lodged before 1 March 1984 may obtain, according to the Member State's decision . . . if the plan is still being implemented, a special reference quantity taking account of the milk and milk product quantities provided for in the development plan.' That provision enables producers holding a milk production development plan approved under Directive 72/159/EEC to enjoy the fruits of the investments which they have made in the implementation of such a plan.

13 From the wording of the aforementioned provision it is clear that it grants to the Member States a discretionary power to decide whether special reference quantities should be allocated to the producers mentioned in that provision and, if so, to determine their size.

14 The provision nevertheless requires that, when a Member State chooses to make use of the option of granting special reference quantities pursuant to the provision, the quantities allocated must 'take account' of the production objective provided for in the relevant development plan, that is to say that the special reference quantity in question must bear a relation to the production objective. That interpretation is in keeping with the duty which the Member States have, when implementing a common organization of agricultural markets, to observe the prohibition of discrimination between Community producers, laid down in Article 40(3) of the Treaty.

15 Consequently, national rules implementing the first indent of Article 3(1) of Regulation No 857/84 in such a way as to provide for the allocation of a single fixed additional quantity to all producers covered by that provision, regardless of the objectives of their development plans, are incompatible with that provision.

16 It is otherwise in the case of national rules excluding from the benefit of special reference quantities producers whose milk deliveries during the reference year chosen exceed a given ceiling. The requirement 'to take account' of the objective of the development plan does not in fact mean that there must be a relationship of strict proportionality between that objective and the special reference quantities to be granted. It is therefore permissible for Member States, whilst applying the objective of the development plan as the main criterion, to take account of other objective criteria as well, in particular social criteria, for example in order to accord some priority to small producers. National rules which, in order to allow greater additional quantities to be allocated to small producers, provide that only producers whose milk deliveries do not exceed a given ceiling are eligible to obtain a special reference quantity meet such objective criteria. It follows that such rules do not go beyond the limits of the discretionary power which Member States enjoy in implementing the first indent of Article 3(1) of Regulation No 857/84.

17 The answer to the first part of the first question must therefore be that the first indent of Article 3(1) of Council Regulation No 857/84 of 31 March 1984 precludes national rules from implementing that provision in such a way that all the producers covered by that provision obtain a single fixed quantity. However, that provision does not preclude national rules from providing that only producers

whose milk deliveries do not exceed a specified ceiling may obtain a special reference quantity.

18 The second part of the first question essentially seeks to ascertain whether the second indent of Article 3(1) of Regulation No 857/84 requires the Member States to take into account, as the reference year for the determination of the special reference quantities of producers referred to in that provision, the year during which the milk production development plan was completed, even if that year preceded the reference year generally applied by the Member State concerned.

19 It appears from the evidence in the file that none of the producers who are parties to the main proceedings completed his milk production development plan during the course of the year prior to 1983, the year chosen by France as the reference year for general application. In those circumstances, the second part of the first question does not need to be answered.

The second question

20 The second question essentially seeks to ascertain whether Regulation No 857/84, interpreted in the light of the prohibition on discrimination laid down in Article 40(3) of the Treaty, precludes national rules allowing purchasers, in the context of formula B, to re-allocate, pursuant to Article 3(1) of that regulation, individual reference quantities freed by producers affiliated to them to other producers affiliated to the same purchaser.

21 With regard to that question, it should be pointed out that the Court has held in its judgment of 25 November 1986 in Joined Cases 201/85 and 202/85 *Klensch* v *Secrétaire d'Etat* [1986] ECR 3503 that the prohibition on discrimination between producers in the Community laid down in Article 40(3) of the Treaty required Regulation No 857/84 to be interpreted as meaning that it precluded a Member State which had opted for formula B from deciding to add the individual reference quantity of a producer who had ceased production to the reference quantity of the purchaser to whom that producer was supplying milk at the time when he ceased production, instead of adding it to the national reserve. The Court explained in

particular that a different interpretation would have the effect of enabling the purchaser to re-allocate that quantity to producers affiliated to him, which would favour the latter unjustifiably in relation to producers affiliated to other purchasers.

22 It is clear from those considerations that national rules which make the allocation of special reference quantities to the producers referred to in Article 3(1) of Regulation No 857/84 dependent on the size of the individual reference quantities freed by other producers affiliated to the same purchaser are in principle incompatible with that regulation, as interpreted in the light of the prohibition on discrimination laid down in Article 40(3) of the Treaty.

23 It should, however, be stated that the Member States, which have the task of applying the Community scheme at the administrative level, cannot be prohibited from providing for the decentralized management of the levy, based on the collaboration of purchasers. It cannot, therefore, be regarded as contrary to the requirements of Community law for national rules to be framed in such a way that, in the context of formula B, purchasers provisionally retain all or part of the individual reference quantities freed by producers affiliated to them, in order for those quantities to be re-allocated to other producers affiliated to the same purchaser, provided that if necessary such re-allocations are adjusted subsequently in order to neutralize any differences of treatment between producers affiliated to different purchasers.

24 The reply to the second question must therefore be that Council Regulation No 857/84 of 31 March 1984, interpreted in the light of the prohibition on discrimination laid down in Article 40(3) of the Treaty, does not preclude national rules allowing purchasers, in the context of formula B, provisionally to re-allocate, under Article 3(1) of that regulation, all or part of the individual reference quantities freed by producers affiliated to them to other producers affiliated to the same purchasers, provided that if necessary such re-allocations are adjusted subsequently in order to neutralize any differences in treatment between producers affiliated to different purchasers.

The third question

25 The third question essentially seeks to ascertain whether the principle of the protection of legitimate expectations precludes national rules from implementing the Community rules governing the additional levy on milk in such a way that producers having a milk production development plan approved before the entry into force of the levy system receive for the 1985/86 marketing year reference quantities fixed at a level lower than that applicable to the preceding marketing year.

26 With regard to that question, it should be observed first of all that the implementation of a milk production development plan which has been approved by the competent national authorities does not confer on the producer concerned the right to produce the quantity of milk corresponding to the plan's objective without being subject to any restrictions stemming from Community rules adopted after the plan was approved, in particular in the context of market or structural policy, unless those restrictions affect the producers having such a plan in a specific way, owing precisely to the implementation of their plan.

27 Consequently, when a common organization of the agricultural markets provides for the imposition of a levy on deliveries of products which exceed certain reference quantities, in order to reduce structural surpluses on the market in question, producers having a development plan, even one approved prior to the entry into force of the levy scheme, cannot rely on any alleged legitimate expectation based on the implementation of their plan in order to oppose any reductions in such reference quantities, provided that the reductions are permitted under the relevant Community rules and do not relate specifically to the reference quantities of that category of producer.

28 As is stated in the preamble to Regulation No 856/84, the total quantity of milk or milk equivalent, guaranteed for the Community, was fixed at 97.2 million tonnes, corresponding to the guarantee threshold laid down by the Council in 1983. That quantity was, however, increased to 98.2 million tonnes for the first year of application of the additional levy scheme, in order to allow for transition. Since under Article 5c(3) of Regulation No 804/68, as amended by Regulation No 856/84, the sum of the reference quantities may not exceed that guaranteed total

quantity, it is implicit in those provisions that the Community legislature intended to permit, by means of the reduction of the total quantity, a corresponding reduction in reference quantities for individual producers.

29 It should also be pointed out that Article 2(3) of Regulation No 857/84 allows the Member States to adjust the percentage weightings applied to milk deliveries for the purposes of calculating reference quantities, so as to ensure the application of Articles 3 and 4. When that provision is read in conjunction with Article 5 of Regulation No 857/84 pursuant to which, for the purposes of applying Articles 3 and 4, additional references may only be granted within the limit of the total quantity guaranteed for the Member State in question, it is clear that, to the extent to which additional reference quantities are granted to certain categories of producer, the reference quantities of other producers must be reduced, if necessary, in order to prevent that total quantity from being exceeded.

30 It follows that national rules adopted in implementation of the Community system, such as the French rules, cannot be considered to be incompatible with the requirements of Community law if those rules provide that all producers established within national territory, including those who have adopted a milk production development plan approved before the entry into force of the Community scheme for an additional levy on milk, except for a certain category of producers whose geographical situation places them at a disadvantage, are to obtain, for the second year of application of the scheme, reference quantities lower than the corresponding quantities which they obtained for the preceding year.

31 For those reasons, the reply to the third question must be that the principle of the protection of legitimate expectations does not preclude national rules from implementing the Community scheme relating to an additional levy on milk in such a way that producers having a milk production development plan approved before the entry into force of the levy scheme obtain for the 1985/86 marketing year reference quantities fixed at a level lower than that applicable to the previous marketing year, unless the reductions relate specifically to the reference quantities of the producers having such a plan.

Costs

32 The costs incurred by the French Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main action are concerned, in the nature of 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 (Third Chamber),

in answer to the questions referred to it by the cour d'appel, Rennes, by judgments of 29 June 1988, hereby rules:

(1) The first indent of Article 3(1) of Council Regulation No 857/84 of 31 March 1984 precludes national rules from implementing that provision in such a way that all the producers covered by that provision obtain a single fixed quantity. However, that provision does not preclude national rules from providing that only producers whose deliveries of milk do not exceed a specified ceiling may obtain a special reference quantity.

(2) Council Regulation No 857/84 of 31 March 1984, interpreted in the light of the prohibition of discrimination laid down in Article 40(3) of the Treaty, does not preclude national rules allowing purchasers, in the context of formula B, provisionally to re-allocate, under Article 31 of that regulation, all or part of the individual reference quantities freed by producers affiliated to them to other producers affiliated to the same purchasers, provided that if necessary such re-allocations are adjusted subsequently in order to neutralize any differences in treatment between producers affiliated to different purchasers.

(3) **The principle of the protection of legitimate expectations does not preclude national rules implementing the Community scheme relating to an additional levy on milk in such a way that producers having a milk production development plan approved before the entry into force of the levy scheme obtain for the 1985/86 marketing year reference quantities fixed at a level lower than that applicable to the preceding marketing year, unless the reductions relate specifically to the reference quantities of the producers having such a plan.**

Due Moitinho de Almeida Zuleeg

Delivered in open court in Luxembourg on 11 July 1989.

J.-G. Giraud
Registrar

O. Due
President, for the President of the Third Chamber