JUDGMENT OF THE COURT (Third Chamber)
10 July 1991 *

In Joined Cases C-90/90 and C-91/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Conseil d'Etat du Grand-Duché de Luxembourg (State Council of the Grand Duchy of Luxembourg) for a preliminary ruling in the proceedings pending before that court between

Jean Neu and Others

and

Secrétaire d'État à l'Agriculture et à la Viticulture

on the interpretation of Articles 39 and 110 of the EEC Treaty and of Article 7 of 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 (Official Journal 1984 L 90, p. 13), as amended by Council Regulation (EEC) No 590/85 of 26 February 1985 (Official Journal 1985 L 68, p. 1),

THE COURT (Third Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, F. Grévisse and M. Zuleeg, Judges,

Advocate General: M. Darmon,
Registrar: J. A. Pompe, Deputy Registrar,

after considering the observations submitted on behalf of

— the plaintiffs in the main proceedings, by Fernand Entringer, Avocat-Avoué, of the Luxembourg Bar,

* Language of the case: French.

— the Luxembourg Government, by Fernand Hoffstetter, Conseiller de Direction Première Classe at the Ministry of Agriculture, Viticulture and Rural Development, acting as Agent,

— the Commission of the European Communities, by Patrick Hetsch, a member of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing oral argument on behalf of the plaintiffs, the defendant and the Commission at the hearing on 7 March 1991,

after hearing the Opinion of the Advocate General at the sitting on 2 May 1991,

gives the following

Judgment

1 By judgments of 21 March 1990, which were received at the Court on 27 March 1990, the Conseil d'Etat du Grand-Duché de Luxembourg referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 7(2) and (3) of Council 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, as amended by Council Regulation (EEC) No 590/85 of 26 February 1985, and of Articles 39 and 110 of the EEC Treaty and the general principles of Community law.

2 Those questions were raised in proceedings between 13 producers established in Luxembourg and the Secrétaire d'Etat à l'Agriculture et à la Viticulture (State Secretary for Agriculture and Viticulture) of the Grand Duchy of Luxembourg concerning the individual reference quantities allocated to those producers under the system of additional levies on milk.

3 The producers in question ceased to deal with the dairy to which they had previously supplied the milk produced on their holdings, in order to supply another dairy. Following that change of purchaser, the State Secretary for Agriculture and Viticulture decided, in accordance with the Luxembourg legislation adopted to implement the relevant Community arrangements, to transfer to the new dairy 90% of the individual reference quantities which the producers in question had, under formula B, with their former purchaser, while allocating 10% of those quantities to the national reserve.

4 The persons concerned therefore instituted proceedings before the Conseil d'Etat du Grand-Duché de Luxembourg for the annulment of the abovementioned decisions, in so far as they had the effect of refusing to transfer in full the reference quantities of those producers to the new dairy. In support of their applications, the plaintiffs in the main proceedings argue, in substance, that the national legislation on which that refusal is based is contrary to Article 7 of Regulation No 857/84, Articles 39 and 110 of the EEC Treaty and the principle of freedom to choose whom to do business with.

5 Taking the view that its decision depended on the interpretation of the abovementioned provisions of Community law, the Conseil d'Etat stayed the proceedings and referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty the following questions, which are identical in the two joined cases:

'(1) Is Article 7 of Council Regulation (EEC) No 857/84 to be interpreted as meaning that, under Article 7(3) of the regulation, a Member State may provide in its national law that when a producer changes his purchaser (formula B) a part of his quota must be transferred to the national reserve instead of being apportioned between the old and the new purchaser or transferred in full to the new purchaser pursuant to Article 7(2) of Regulation No 857/84, thus penalizing any change of purchaser made by a producer?

(2) Do Articles 39 and 110 of the Treaty of Rome and the principle of freedom to choose whom to do business with allow a Member State to reduce indefinitely by 10% the individual additional production quota of a producer merely because he changes purchaser and obtains a better selling price, thereby improving his farming income?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the relevant provisions of Community and national law, 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.

7 The questions submitted, which it is appropriate to examine together, are aimed essentially at establishing whether, having regard to the rules of the EEC Treaty and the general principles of Community law, Article 7(2) and (3) of Regulation No 857/84, as amended by Regulation No 590/85, must be interpreted as allowing the Member States, under formula B, to add to the national reserve a part of the individual reference quantity of a producer who, of his own volition, changes the dairy which he supplies.

8 It should be pointed out that Article 7(1) of Regulation No 857/84, as amended by Regulation No 590/85, provides that 'where a holding is sold, leased or transferred by inheritance, all or part of the corresponding reference quantity shall be transferred to the purchaser, tenant or heir according to procedures to be determined'. Paragraph 2 of that article provides essentially that, under formula B (the 'purchaser' formula), 'where a purchaser replaces, wholly or in part, one or more purchasers', the reference quantity of the original purchaser is to be transferred to the same extent to the new purchaser with effect from the time of such replacement. However, according to paragraph 3 of that article, 'Member States may provide that part of the quantities concerned shall be added to the reserve referred to in Article 5 or to that referred to in Article 6(3), as the case may be', that is to the national reserve.

9 While the actual wording of the abovementioned provisions in the various language versions shows clearly that the Member States may, under formula B, add to the national reserve a part of the reference quantity of a purchaser who 'replaces', wholly or in part, another purchaser, following the transfer of an undertaking, that wording leaves open the question whether such an allocation to the national reserve may also be made in respect of the individual reference quantity of

a producer who, under formula B, ceases to deal with the purchaser to whom he supplied the milk produced on his holding in order to supply another purchaser, without there having been a transfer of an undertaking between the purchasers.

10 On that point, the Luxembourg Government and the Commission consider that the option conferred on the Member States by Article 7(3) of Regulation No 857/84, as amended, to provide that a part of the quantities concerned are to be added to the national reserve, applies to all situations where a purchaser replaces, in whole or in part, another purchaser, without its being necessary to make any distinction according to the reason for such replacement. That provision thus applies not only to a case in which a purchaser transfers his reference quantities of his own volition, but also to a case in which a producer transfers his individual reference quantities because he has decided to change purchaser. The Luxembourg Government and the Commission state that the provisions under consideration, so interpreted, are compatible with the rules of the Treaty and the general principles of Community law, taking into account the wide discretion which the Community legislature has with regard to the common organization of the market, and whose limits have not been exceeded in the present case.

11 The plaintiffs in the main proceedings, on the other hand, maintain that Article 7(3) of Regulation No 857/84, interpreted in the light of the provisions of the Treaty and of the principle of freedom to choose whom to do business with, does not apply to a situation where a producer decides to change purchaser.

12 That point of view must be upheld. It is settled case-law (see, in particular, the judgment in Joined Cases 201/85 and 202/85 *Klensch* v *Secrétaire d'Etat* [1986] ECR 3477, paragraph 21) that, when it is necessary to interpret a provision of secondary Community law, preference should as far as possible be given to the interpretation which renders the provision consistent with the provisions of the Treaty and the general principles of Community law.

13 In that respect, it must be stated that the freedom to pursue a trade or profession, which, according to the consistent case-law of the Court (see, in particular, the judgments in Case 44/79 *Hauer* v *Land Rheinland-Pfalz* [1979] ECR 3727, para-

graphs 31 to 33, and in Case 265/87 *Schräder* v *Hauptzollamt Gronau* [1989] ECR 2237, paragraph 15), forms part of the general principles of Community law, includes, as a specific expression of that freedom, the freedom to choose whom to do business with. That freedom of choice would not be guaranteed if a change of dairy by a producer, of his own volition, were capable of leading to a reduction in his individual reference quantity as a result of the allocation of a part thereof to the national reserve, when no such reduction can be made where the producer continues to supply the same dairy. Rules to that effect would be such as to discourage producers from changing purchaser in order to supply the dairy offering them the most favourable conditions.

14 Furthermore, such a reduction in the individual reference quantity of a producer, as a result of his decision to change purchaser, is not justified by the need to ensure that the quantities of milk and milk products marketed do not exceed the overall guaranteed quantity for the Community, since the change of purchaser does not entail the marketing of any additional quantity of the products in question.

15 In the light of the foregoing considerations, therefore, Article 7(3) of Regulation No 857/84 must be interpreted as meaning that it does not apply to a situation where, under formula B, a milk producer of his own volition changes the dairy which he supplies.

16 For those reasons, the answer to the questions submitted must be that the provisions of Article 7(2) and (3) of 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, as amended by Council Regulation (EEC) No 590/85 of 26 February 1985, must be interpreted as meaning that they do not allow Member States, under formula B, to add to the national reserve a part of the individual reference quantity of a producer who, of his own volition, changes the dairy which he supplies.

Costs

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

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Conseil d'Etat of the Grand Duchy of Luxembourg, by judgments of 21 March 1990, hereby rules:

The provisions of Article 7(2) and (3) of 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, as amended by Council Regulation (EEC) No 590/85 of 26 February 1985, must be interpreted as meaning that they do not allow Member States, under formula B, to add to the national reserve a part of the individual reference quantity of a producer who, of his own volition, changes the dairy which he supplies.

Moitinho de Almeida Grévisse Zuleeg

Delivered in open court in Luxembourg on 10 July 1991.

J.-G. Giraud
Registrar

J. C. Moitinho de Almeida
President of the Third Chamber