OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 8 October 1996 *

1. By this reference from the Tribunal Administratif (Administrative Court), Amiens, the Court of Justice is asked to give a ruling on compensation for definitive discontinuation of milk production, which is one of the measures adopted under the additional levy system applied in the common organization of the markets in milk and milk products and has given rise to numerous disputes.

2. The question was raised in proceedings in which Michel and Monique Macon, Philippe Macon, Pascal Macon and Jacqueline Sauvrezy sought annulment of the decision of the Préfet de l'Aisne of 27 February 1992 refusing to grant them compensation for definitive discontinuation of milk production because they were not milk producers within the meaning of Article 12 of Regulation (EEC) No 857/84. [1]

3. The Macon family and Jacqueline Sauvrezy formed a GAEC (groupement agricole d'exploitation en commun — collective farming group) in Ardon called the 'GAEC du Canada' which held reference quantities in respect especially of direct sales.

4. In the milk year 1991/92, Michel and Monique Macon and Jacqueline Sauvrezy applied for the compensation for definitive discontinuation of milk production provided for by Regulation (EEC) No 1637/91. [2] That claim was rejected by the competent national authority because the applicants, while holding reference quantities, were not producing milk at the time when they applied for compensation. In spite of the brevity of the national court's decision and the parties' observations, it is established that the plaintiffs in the main proceedings held quotas, although they were making no use of them as they had stopped producing milk. No explanation is given of why the plaintiffs continued to possess quotas.

5. Faced with that situation, the Tribunal Administratif, Amiens, has held that 'the dis-

* Original language: Spanish.

1 — 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).

2 — Council Regulation (EEC) No 1637/91 of 13 June 1991 fixing compensation with regard to the reduction of the reference quantities referred to in Article 5c of Regulation (EEC) No 804/68 and compensation for the definitive discontinuation of milk production (OJ 1991 L 150, p. 30).

pute cannot be settled until it is ascertained whether Article 2 of Council Regulation (EEC) No 1637/91 of 13 June 1991 fixing compensation with regard to the reduction of the reference quantities referred to in Article 5c of Regulation (EEC) No 804/68 and compensation for the definitive discontinuation of milk production must be interpreted as precluding the grant of compensation for definitive discontinuation of milk production to a farmer who, while not producing milk, none the less at the time the application is made possesses milk reference quantities, by virtue of direct sales in particular'.

6. Before replying to the national court's question, it would be useful to summarize the Community rules applicable to cases where milk production is discontinued in connection with the additional levy system.

The applicable provisions

7. With a view to correcting the imbalance between supply and demand for milk and milk products, and the consequent structural surpluses, Regulation (EEC) No 856/84 [3] modified the common organization of the market in the sector by introducing an additional levy system applicable from 2 April 1984. The machinery for the control of milk production was organized as follows:

— A total quantity was laid down for the Community as a whole, corresponding to the guarantee threshold for milk production.

— That quantity was distributed among the Member States on the basis of deliveries of milk on their territory during the 1981 calendar year, increased by 1%, with the exception of the quantity intended for the Community reserve set up to allow for the special needs of certain Member States and certain producers.

— Each Member State distributed its guaranteed quantity amongst its producers, assigning to them an individual reference quantity commonly called the 'milk quota'.

— If they exceeded their reference quantity, producers were required to pay an additional levy intended to finance the expenditure occasioned by the marketing of those excess quantities. The levy was

3 — Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1984 L 90, p. 10).

payable by the producer (formula A) or by the purchaser of the milk with a right to pass the burden to the producer (formula B), depending on the choice made by each Member State. France opted for formula B.

8. The general rules for the application of this additional levy system were laid down by the Council in Regulation No 857/84, which allowed the Member States to choose 1981, 1982 or 1983 as the reference period for the calculation of producers' individual quotas and to establish in addition national reserves of reference quantities to take into account the special situations of certain of their producers.

9. That additional levy system was originally established for a period of five years starting from 1 April 1984 and has been extended until the year 2000. The measures originally adopted were not sufficient to balance supply and demand for milk and milk products. That is why the Community institutions adopted new measures to tighten up the system, including in particular reductions in and temporary suspensions of the total guaranteed quantities of milk, as well as the payment of compensation for discontinuing production, which is at issue in this case.

10. Under Article 4(1) of Regulation No 857/84, it was possible for the Member States to use the payment of compensation for discontinuation of production as a measure to restructure milk production. That procedure was later used by the Community institutions as a further means of reducing milk production. Regulation (EEC) No 1336/86 [4] established a Community system for financing discontinuation of milk production by granting any producer, at his request and provided that he fulfils certain eligibility requirements, compensation in return for his undertaking to discontinue definitively all his milk production.

11. The previous rules were replaced for the marketing year 1991/92 and subsequent years by Regulation No 1637/91, implemented by Commission Regulation (EEC) No 2349/91. [5] The objectives pursued by Regulation No 1637/91 with its system of subsidies for discontinuing production continue to be to reduce the supply of milk and milk products, and also to restructure milk production. The reference quantities freed by means of incentives for definitive discontinuation of production are added to the national reserve and, under Article 2(4), the Member States are to re-allocate them to the producers whose reference quantities have been reduced, to SLOM producers (producers affected by suspension of deliveries of milk

4 — Council Regulation (EEC) No 1336/86 of 6 May 1986 fixing compensation for the definitive discontinuation of milk production (OJ 1986 L 119, p. 21).

5 — Commission Regulation (EEC) No 2349/91 of 31 July 1991 laying down detailed rules for the application of Regulation (EEC) No 1637/91 fixing compensation with regard to the reduction of the reference quantities referred to in Article 5c of Regulation (EEC) No 804/68 and compensation for the definitive discontinuation of milk production (OJ 1991 L 214, p. 44).

and milk products and conversion of dairy herds) and priority producers (small farms and those situated in mountain areas).

12. Regulation No 1637/91 introduces compensation for total and definitive discontinuation of production amounting to a maximum of ECU 10 per 100 kilograms per annum, payable in five annual instalments. All producers having reference quantities before the regulation comes into force are eligible for that compensation, with the exception of SLOM producers.

13. Regulation No 1637/91 leaves the Member States considerable operational freedom in setting conditions for granting compensation for discontinuing production. Article 2(1) permits Member States not to implement the compensation scheme in one, several or all regions for various reasons, such as overriding administrative needs, the need to encourage structural trends and changes, the risk of freeing significant reference quantities and the avoidance of desertification of certain areas. Furthermore, they are allowed to exclude producers with fewer than six cows or a real available reference quantity of less than 25 000 kilograms from receiving compensation. Lastly, the Member States may reduce the amount of compensation or increase it by making additional contributions. Similarly, they may vary the amount of compensation according to the local conditions in their milk-producing areas.

14. The system of compensation for discontinuation of milk production for the marketing year 1991/92 was implemented in France by Decree No 91/835, complying with Regulation No 1637/91, and by Circular DEPSE/SDSA/C 91 of the Ministry of Agriculture of 7 August 1991. A fact material to this case is that point II.2 of that Circular does not impose any requirement as to the supply or sale of milk on applicants for compensation; it is enough that an applicant runs a farm which has reference quantities and in which he has been a milk producer. According to the Circular, the subsidy programme is aimed therefore at all active producers and at all those who, while still farming, have ceased to produce milk without receiving any aid in return for discontinuing milk production.

The national court's question

15. By its question, the Tribunal Administratif, Amiens, seeks to ascertain whether Article 2 of Regulation No 1637/91 includes among the recipients of compensation for discontinuation of milk production producers who are farmers holding reference quantities but who ceased to produce milk before the claim for compensation was made.

16. Article 2 of Regulation No 1637/91 imposes two cumulative conditions on

recipients of compensation for total and definitive discontinuation of milk production: they must be producers and they must have reference quantities at the time the claim is made.

17. As regards the first condition, that of being a milk producer, Article 2(1) of Regulation No 1637/91 provides as follows:

'At the request of the party concerned and subject to the conditions defined in this regulation, the Member States shall grant to any producer, as defined in the first subparagraph of Article 12(c) of Regulation (EEC) No 857/84, or to any associated producer, where the second subparagraph of Article 12(c) of the aforesaid Regulation is applicable, who undertakes to discontinue definitively all milk production before a date to be determined, compensation payable in five annual instalments (...)'.

18. It is perfectly clear from that provision that the concept of 'producer' referred to in Regulation No 1637/91 is not an autonomous concept but is that used throughout the additional levy system. Its definition is laid down in Article 12(c) of Regulation No 857/84, according to which, 'producer' means 'a natural or legal person or group of natural or legal persons farming a holding located within the geographical territory of the Community:

— selling milk or other milk products directly to the consumer, and/or

— supplying the purchaser'.

Regulation (EEC) No 1305/85 [6] amended that provision for the purpose of deeming certain producer groups and associations thereof recognized under Regulation (EEC) No 1360/78 to be producers. [7] In its observations, the French Government states that Regulation No 1360/78 does not apply in the region of Picardy where the GAEC du Canada is situated.

According to Article 12(d) of Regulation No 857/84, 'holding' means 'all the production units operated by the producer and located within the geographical territory of the Community'.

6 — Council Regulation (EEC) No 1305/85 of 23 May 1985 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 1985 L 137, p. 12).

7 — Council Regulation (EEC) No 1360/78 of 19 June 1978 on producer groups and associations thereof (OJ 1978 L 166, p. 1).

19. As the French Government has noted in its observations, it follows from the wording of Article 12(c) of Regulation No 857/84 that only persons farming a holding and actually selling milk or other milk products to consumers or purchasers are classed as producers. By contrast, persons farming a holding who have already ceased to carry on those activities cannot be considered to be producers.

20. That interpretation of the concept of producer has been confirmed by the Court of Justice, in particular in Case C-341/89 *Ballmann*, [8] in which it held 'the status of producer is accorded to any person who manages a holding, that is to say a set of production units located within the geographical territory of the Community, and sells or delivers milk or milk products, and [...] it is not necessary for the farmer to own the production facilities used by him'.

21. The Court has subsequently reaffirmed the requirement that the producer should operate the holding, taking the view that it is the lessee not the lessor who fulfils that condition. [9] The Court did not expressly state that it was necessary for the producer to sell or supply milk or milk products, but that condition is implicit in all its judgments.

22. The second condition imposed on the recipients of compensation for discontinuation of milk production is, as I mentioned earlier, that they should possess reference quantities at the time the claim is made. According to Article 2(2)(a) of Regulation No 1637/91, '[e]ligible producers are those who have obtained a reference quantity by virtue of Article 5c of Regulation (EEC) No 804/68, in the context of either formulas A or B and/or in the context of direct sales [...]'.

23. In principle, the provisions of the additional levy system allocate reference quantities only to active producers, that is to say, to producers selling or supplying milk or milk products. Since the reference quantities enable the person managing a holding to produce milk or milk products, it makes no sense for a person farming a holding to possess them and not use them. For that reason, I consider that the fact that a trader remains in possession of quotas when he has ceased milk production constitutes an anomaly in the application of the additional levy system. In those cases, the producer's reference quantities fall into the national reserve for reallocation by the authorities of the Member State.

The second paragraph of Article 5 of Regulation (EEC) No 3950/92 of 28 December

8 — Case C-341/89 *Ballmann* [1991] ECR I-25, paragraph 12.

9 — See in particular Case C-236/90 *Maier* v *Freistaat Bayern* [1992] ECR I-4483, paragraph 11, and Case C-98/91 *Herbrink* [1994] ECR I-223, paragraph 20.

1992, [10] which was adopted after the date of the material events, expressly provides for that allocation to the national reserve, but it is a solution applied by the Court since the *Klensch* judgment of 25 November 1986. [11] In the absence of an express provision in Regulation No 857/84 as to the reallocation of reference quantities allocated to a producer who voluntarily ceases production, the Court held in *Klensch* that Regulation No 857/84 precluded a Member State from deciding to assign those quantities to the purchaser of milk from the producer who had ceased activity instead of adding it to the national reserve.

24. Neither Regulation No 1637/91 nor any other provision applicable in the context of the additional levy system permits a Member State to derogate from the two conditions prescribed for a holding to receive the compensation for discontinuation of milk production where the producer voluntarily ceases activity before submitting the claim. There is, therefore, no way in which the Community rules permit the adoption of a solution such as that contained in Circular DEPSE/SDSA/C 91 of the French Ministry of Agriculture which allows producers who have already stopped producing milk to claim compensation.

In a case such as this, the national courts are required, by virtue of the principle of the primacy of Community law, not to apply national provisions and measures, whatsoever their rank, which allow compensation for discontinuation of milk production to be granted to farmers who hold quotas but who do not carry on any milk production activity.

25. On the basis of the foregoing considerations, I consider that the only persons entitled to compensation for definitive discontinuation of all milk production are farmers who fulfil the two conditions laid down in Regulation No 1637/91, namely: that they be producers within the meaning of Article 12(c) of Regulation No 857/84, and that they hold reference quantities at the time they submit the claim. A farmer who has voluntarily discontinued milk production prior to presenting a claim for compensation cannot be regarded as a 'producer' and, consequently, is not eligible to benefit from the compensation scheme introduced by Regulation No 1637/91, even if he does possess reference quantities.

26. Schematic interpretation of the additional levy system as a whole yields further reasons in support of that conclusion.

10 — Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1).

11 — Joined Cases 201/85 and 202/85 *Klensch* v *Secrétaire d'État* [1986] ECR 3477.

27. First, granting compensation for discontinuation of production to persons who have already voluntarily ceased to produce milk is not, as the French Government notes, compatible with the fundamental objective of Regulation No 1637/91, namely the reduction of marketable quantities of milk, to achieve which the regulation provides for compensation for reduction of guaranteed global quantities and for discontinuation of production.

28. Second, the additional levy system introduced a means of limiting milk production by which the farmer's ability to produce depends on a reference quantity being allocated to his holding. The quota increases the value of the farm to which it is attached and forms part of the farmer's assets so long as he carries on his activity. When the farmer ceases to produce milk, it is logical that he should lose his quota to the national reserve, since he no longer needs it in order to continue production.

29. Last, for farmers who have ceased activity to be able to obtain compensation for discontinuing milk production would be contrary to the settled case-law of the Court of Justice, according to which: '[t]he right to property safeguarded by the Community legal order does not include the right to dispose, for profit, of an advantage, such as the reference quantities allocated in the context of the common organization of a market, which does not derive from the assets or occupational activity of the person concerned'. [12]

30. In the light of the foregoing, I suggest that the Court of Justice reply as follows to the question referred to it for a preliminary ruling:

Article 2 of Council Regulation (EEC) No 1637/91 of 13 June 1991 fixing compensation with regard to the reduction of the reference quantities referred to in

12 — Case C-44/89 *Von Deetzen* [1991] ECR I-5119, paragraph 27, and Case C-2/92 *Bostock* [1994] ECR I-955, paragraph 19.

Article 5c of Regulation (EEC) No 804/68 and compensation for the definitive discontinuation of milk production must be interpreted as meaning that a farmer who has voluntarily discontinued milk production before making a claim for compensation cannot be considered to be a producer and, consequently, is not eligible to benefit from the compensation system established by that regulation, even though he does possess a reference quantity.