OPINION OF ADVOCATE GENERAL LÉGER
delivered on 8 May 2003 [1]

1. In 1984, in order to reduce the production of cows' milk in the European Community, the Community legislature introduced arrangements known as 'the additional levy on milk'. [2] Under those arrangements, each producer whose production exceeds the individual reference quantity, commonly called the 'milk quota', allotted to him must pay a levy on such excess.

2. In 1999, the Italian authorities carried out a correction of the individual reference quantities allotted to Italian producers for the marketing years 1995/96 and 1996/97. As a result, after re-allocating unused reference quantities, they re-calculated the additional levies owed by those producers for those years.

3. These operations led to a very large number of actions before the Tribunale amministrativo del Lazio (Regional Administrative Court for Lazio) (Italy). [3] As a result of those actions, the national court made 25 references to the Court for preliminary rulings. Eleven of these have been stayed pending the judgment of the Court in the present proceedings.

4. For the purposes of the oral procedure and the judgment, Case C-231/00 has been joined with Cases C-303/00 and C-451/00. [4] Cases C-480/00 to C482/00, C-484/00, C-489/00 to C-491/00 and C-497/00 to C-499/00 have been joined for the purposes of the oral and written procedure and also the judgment. [5] A joint hearing was held, on 12 December 2002, for the first and second groups of cases and also Case C-495/00. The present opinion relates to the two groups of cases above and to Case C-495/00.

5. In all the cases at issue, the court making the reference is raising two questions of a similar nature. The court asks whether the corrections made by the Italian authorities

1 — Original language: French.

2 — Otherwise called the 'additional levy arrangements'.

3 — Approximately 5 000 cases (see the order for reference in Case C-495/00, p. 14).

4 — Otherwise known as the 'first group of cases'.

5 — Otherwise known as the 'second group of cases'.

are compatible with the Community rules applicable and, if they are not, whether these rules are valid in the light of Article 39 of the EC Treaty (now Article 33 EC).

6. In the second group of cases, the court making the reference raises five further questions. Three of these relate to the question whether individual reference quantities must be notified to producers and to the form of such notification. The two other questions relate to the discretion that is left to Member States to determine which categories of producers may be allotted unused reference quantities.

7. Lastly, in Case C-495/00, the court making the reference asks also whether Member States are permitted to bear the cost of settlement of sums due in accordance with Community law.

I — Relevant provisions

A — *Community legislation*

1. Background

8. Within the European Community, there has been a common market organisation (CMO) for milk since 1964. This CMO is a part of the common agricultural policy (CAP) and, pursuant to Article 39 of the Treaty, its objectives include ensuring a fair standard of living for the agricultural community concerned. [6] The CMO therefore involves the Council of the European Union setting a target price for milk which producers must receive throughout the Community.

9. In order to attain the target price, the CMO introduced a number of intervention measures. These are intended to ensure market equilibrium through action to affect supply and consumption and include direct purchases of certain milk products by public agencies; they also include export refunds offsetting the difference in price, for the exporters, between the Community market and the world market as well as fixed customs duties on import.

10. From the 1970s onwards, the production of milk exceeded consumption. In order to stem the growth in production, in 1977 the Community legislature introduced a 'co-responsibility' levy payable by all producers on quantities of milk delivered to dairies or sold at the farm in the form of

6 — Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organisation of the market in milk and milk products (OJ, English Special Edition (I) 1968, p. 176), fourth recital.

other milk products. [7] However, the effects of the levy proved insufficient and, considering that the development of the costs for disposal of the excess milk output was jeopardising the future of the CAP, the Community legislature then introduced arrangements for the additional levy on milk, in Regulation (EEC) No 856/84, [8] in order to restore the equilibrium of the market. [9] The rules for the application of these arrangements were set in Regulation (EEC) No 857/84. [10]

11. Regulation No 856/84 laid down that a guaranteed total quantity was to be set for the Community as a whole. That quantity was distributed among the Member States on the basis of deliveries on their territories during the 1981 calendar year; it covered sales to purchasers (the dairies) and direct sales to the consumer. Member States could distribute the quantity for sales to dairies among either purchasers or producers and could also allocate a part of their guaranteed quantity to a national reserve intended to enable them to adapt individual reference quantities in accordance with the particular circumstances of certain producers. The reference quantity allotted to producers or purchasers was equal to the quantity of milk which they had produced or purchased during a particular reference year and, if that reference quantity was exceeded over a 12-month period running from 1 April to 31 March, they were required to pay an additional levy of not less than 75% of the reference price for milk. This additional levy was intended to finance the cost of marketing the surplus. The levy was payable by the producer or by the purchaser, who recovered it from the producer.

12. The arrangements for the additional levy on milk, initially introduced for a period of five years, were extended until 31 March 1992, [11] then until 31 March 1993. [12] Subsequently they were renewed for a period of seven years, in Regulation (EEC) No 3950/92. [13] This measure and Regulation (EEC) No 536/93, [14] which defines the detailed rules of application, are the legislation applicable in the present cases. Lastly, the arrangements were extended by Regulation (EC) No 1256/1999 [15] until 2008.

7 — Council Regulation (EEC) No 1079/77 of 17 May 1977 on a co-responsibility levy and on measures for expanding the markets in milk and milk products (OJ 1977 L 131, p. 6).

8 — Council Regulation of 31 March 1984 amending Regulation No 804/68 (OJ 1984 L 90, p. 10).

9 — Third and fourth recitals.

10 — Council Regulation 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 (OJ 1984 L 90, p. 13).

11 — Council Regulation (EEC) No 1109/88 of 25 April 1988 amending Regulation No 804/68 (OJ 1988 L 110, p. 27).

12 — Council Regulation (EEC) No 816/92 of 31 March 1992 amending Regulation No 804/68 (OJ 1992 L 86, p. 83).

13 — Council Regulation of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1).

14 — Commission Regulation of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12).

15 — Council Regulation of 17 May 1999 amending Regulation No 3950/92 (OJ 1999 L 160, p. 73).

2. Regulation No 3950/92

13. Regulation No 3950/92 repeals and replaces the existing provisions in order to simply and clarify the arrangements of the additional levy on milk with a view to ensuring the legal certainty of producers and other parties concerned. [16]

14. In Article 1 it introduces, for seven new consecutive periods of 12 months commencing on 1 April 1993, an additional levy payable by producers of milk on quantities delivered to a purchaser or sold directly for consumption in excess of a quantity to be determined. This levy is set at 115% of the target price for milk.

15. Article 2 of Regulation No 3950/92 provides that the levy shall be shared between the producers who contributed to the overrun. In accordance with a decision of the Member State, each producer's contribution shall be determined after unused reference quantities have been reallocated or not. Where the levy is payable and the amount collected is greater than that levy, the Member State may redistribute it to producers who fall within priority categories.

16. Article 4 of the regulation sets the criteria for calculating the milk quota available to each producer, and reads as follows:

'1. The individual reference quantity available on the holding shall be equal to the quantity available on 31 March 1993 and shall be adjusted, where appropriate, for each of the periods concerned, so that the sum of the individual reference quantities of the same type does not exceed the corresponding global quantities...

2. Individual reference quantities shall be increased or established at the duly justified request of producers to take account of changes affecting their deliveries and/or direct sales. The increase or establishment of such a reference quantity shall be subject to a corresponding reduction or cancellation of the other reference quantity the producer owns. Such adjustments may not lead to an increase in the sum of the deliveries and direct sales... for the Member State concerned.'

17. The Member State may effect an 'across-the-board' reduction in all the individual reference quantities in order to replenish the national reserve so as to be able to allot additional or specific quantities to producers determined in accordance with

16 — Second recital in the preamble.

objective criteria agreed with the Commission. [17]

18. Article 6 of Regulation No 3950/92 applies to temporary transfers of individual reference quantities; it provides that Member States are to authorise such transfers, for the 12-month period concerned, before a date that they are to determine and by 31 December at the latest.

19. Next, Article 7 refers to transfers of individual reference quantities and provides that reference quantities available on a holding are to be transferred with the holding in the case of sale, lease or transfer by inheritance to the producers taking it over, in accordance with detailed rules to be determined by the Member States.

20. The additional levy is intervention to stabilise agricultural markets and is to be used to finance expenditure in the milk sector. [18]

3. Regulation No 536/93

21. In Regulation No 536/93, the Community legislature has introduced, among others, measures to ensure payment of the additional levy in good time and rules on checks permitting verification of proper collection of the levy.

22. The measures intended to ensure the payment of sums due are laid down in Articles 3 and 4 which refer to sales to purchasers and to direct sales, respectively. The Commission sought to set mandatory deadlines for purchasers to report collection figures and for producers to report direct sales, and for the payment of sums due. [19] In sales to purchasers, the purchasers are responsible for implementation of the arrangements for the additional levy on milk.

23. Article 3 of Regulation No 536/93 reads as follows:

'...

2. Before 15 May each year, the purchasers shall forward to the competent authority of the Member State a summary of the statements drawn up for each producer or, where appropriate, by decision of the Member State, the total quantity, the quantity corrected in accordance with

17 — Article 5.

18 — Article 10.

19 — Fifth recital.

Article 2(2) and average fat content of the milk and/or milk equivalent delivered to it by producers and the sum of the individual reference quantities and the average representative fat content of such producers' production.

Where that time-limit is not observed, the purchaser shall be liable to a penalty...

3. Member States may provide that the competent authority shall notify the purchaser of the levies payable by him after reallocating, or not, by decision of the Member State, all or part of the unused reference quantities either directly to the producers concerned or to purchasers with a view to their subsequent allocation among the producers concerned.

4. Before 1 September each year, the purchaser liable for levies shall pay the competent body the amount due in accordance with rules laid down by the Member State.

Where the time-limit for payment is not met, the sums due shall bear interest at a rate per annum fixed by the Member State and which shall not be lower than the rate of interest which the latter applies for the recovery of wrongly paid amounts.'

24. Article 4 of Regulation No 536/93 sets the same deadlines for producers making direct sales and provides:

'...

2. Before 15 May each year, the producer shall forward declarations to the competent authority of the Member State.

Where that time-limit is not observed, the producer shall be liable to the levy on all the quantities of milk and milk equivalent sold directly in excess of his reference quantity or, where there is no overrun, to a penalty equal to the amount of levy due for a 0.1% overrun of his reference quantity....

Where a declaration is not submitted before 1 July, the second paragraph of Article 5 of Regulation... No 3950/92 shall apply 30 days after the Member State has served notice.

3. The Member State may provide that the competent authority shall notify the producer of the levies payable by him after

reallocating, or not, by decision of the Member State, all or part of the unused reference quantities to the producers concerned.

4. Before 1 September each year, the producer shall pay the amount due to the competent body in accordance with rules laid down by the Member State.

Where the time-limit for payment is not met, the sums due shall bear interest at a rate per annum fixed by the Member State and which shall not be lower than the rate of interest which the latter applies for the recovery of amounts wrongly paid.'

25. Article 5 of Regulation No 536/93 relates to determination by the Member State of the priority categories of producers to whom the additional levy may be refunded where there is an excess charge. In particular it provides that these categories may be determined on the basis of the geographical location of the holding and that mountain areas have priority.

26. Lastly, the Commission intended the Member States to have suitable means of conducting ex-post checks to verify whether and to what extent the levy has been collected in accordance with the provisions in force. [20]

27. For that purpose, Article 7 of Regulation No 536/93 provides:

'1. Member States shall take all the verification measures necessary to ensure payment of the levy on quantities of milk and milk equivalent marketed in excess of any of the quantities referred to in Article 3 of Regulation... No 3950/92...

...

3. Member States shall physically verify the accuracy of the accounting with regard to the quantities of milk and milk equivalent marketed and, to that end, shall check milk transport during collection at farms and shall, in particular, check:

(a) at the premises of the purchasers, the statements referred to in Article 3(1), the credibility of stock accounts and supplies as referred to in paragraph 1

20 — Eighth recital.

(c) and (d) with regard to the commercial documents and other documents proving how the collected milk and milk equivalent have been used;

(b) at the premises of the producers with a reference quantity for direct sales, the credibility of the declaration referred to in Article 4(1) and the stock accounts referred to in paragraph 1(f) ...'.

B — *National legislation*

28. According to the court making the reference, the first legislative provisions adopted in Italy to implement the arrangements for the additional levy on milk date from only 1992. [21]

29. There were various challenges to these provisions. For instance, the Commission considered that the provisions requiring unused quantities to be re-allocated to the producer associations rather than to producers themselves, directly or through the purchasers, infringed Community legislation. The Commission issued a reasoned opinion on 20 May 1996. The proceedings for failure to comply with obligations were subsequently dropped when the Italian authorities repealed the disputed provisions. Similarly, in two judgments given on 28 December 1995 and on 11 December 1998, the Italian Corte costituzionale ruled that the provisions relating to the reduction of milk quotas and the provisions relating to the criteria applied for national adjustments were invalid.

30. Furthermore, the arrangements introduced by the Italian authorities for determining actual milk production did not make it possible to collect reliable data, in particular for the production years 1995/96 and 1996/97. Those authorities therefore set up a government commission of inquiry to determine whether there were any irregularities in the management of quotas, the production of milk and the checks relating to these. [22]

31. Decree-Law No 411 of 1 December 1997, converted into law with amendments

21 — See the order for reference in Case C-231/00 (page 8). This statement by the national court was confirmed at the hearing by the Italian Government, which stated that Italian milk producers were only required to pay the additional levy from the 1995/96 production year. The Italian authorities' failure, until 1992, to apply the additional levy arrangements, in particular the failure to allocate individual reference quantities or to check on overrunning of those quantities, was recorded in a number of reports (see, in particular, Special Report 4/93 on implementation of quota arrangements to restrict milk production, together with the response from the Commission, OJ 1994 C 12, p. 1). This non-application is referred to also in a number of judgments of the Court (see judgments in Case 394/85 *Commission* v *Italy* [1987] ECR 2741, in Case C-55/91 *Italy* v *Commission* [1993] ECR I-4813 and in Case C-69/95 *Italy* v *Commission* [1996] ECR I-6233).

22 — See the order for reference in Case C-231/00 (p. 11).

by Law No 5 of 27 January 1998,[23] and Decree-Law No 43 of 1 March 1999, converted into law with amendments by Law No 118 of 27 April 1999,[24] were adopted in order to remedy the irregularities referred to above, and to take account of the report by the commission of inquiry. These were the basis for the measures disputed in the main proceedings.

32. Under Law No 5 of 27 January 1998, cited above, the Azienda di Stato per gli interventi nel mercato agricolo (State Agency for interventions in the agricultural market)[25] is responsible for determining, on the basis of the report from the government commission of inquiry and checks carried out by the regions, the actual quantities of milk produced and marketed during the years 1995/96 and 1996/97. AIMA notifies producers of the individual reference quantities allocated to them and the quantities of milk marketed. Producers may ask for these data to be re-examined.

33. Pursuant to Decree-Law No 43, and on the basis of those data, AIMA re-allocates reference quantities unused at national level for the years 1995/96 and 1996/97 and calculates the additional levy payable by each producer. This decree-law sets the deadlines for AIMA to notify its calculations and the deadline for producers to pay the relevant sums.

II — Facts, procedure and the questions referred for a preliminary ruling

A — *First-group Cases C-231/00 and C-451/00, the cases in the second group and Case C-495/00*

34. In the first-group Cases C-231/00 and C-451/00, in the cases in the second group and in Case C-495/00, the Tribunale amministrativo regionale del Lazio gives a similar presentation of the facts in the main proceedings. It states that the applicants dispute the legality of the measures whereby AIMA implemented Article 1 of Decree-Law No 43 and effected 'offset' or 'adjustment' (meaning the reallocation of unused individual reference quantities) for the milk production years 1995/96 and 1996/97.[26] The parties maintain in particular that these measures are illegal because they were adopted on the basis of a retrospective determination of individual reference quantities.[27]

23 — *GURI* No 22, 28 January 1998.

24 — *GURI* No 100, 30 April 1999 (hereinafter 'Decree-Law 43').

25 — Hereinafter 'AIMA'.

26 — See the order for reference in Case C-231/00 (p. 2).

27 — Ibid. (pp. 2 and 3).

35. The Tribunale amministrativo regionale del Lazio uses the same reasoning in all the orders for reference in the cases cited above, stating that it needs to be ascertained whether the national legislation providing for 'retrospective' allocation of individual reference quantities is compatible with the general principles of Community law. Indeed, it would be necessary to ascertain this in order to resolve the dispute in the main proceedings.

36. The national court notes that, under Articles 1 and 4 of Regulation No 3950/92 and Articles 3 and 4 of Regulation No 536/93, individual reference quantities may be adjusted. However, the court stresses that the Community legislature has not envisaged that it could be necessary to re-allocate quotas for a marketing year which has been closed.

37. In this context, the court considers that the Member States must be able to pursue the objectives of Article 39 of the Treaty, even if belatedly. Those objectives are compromised if rigid interpretation of the relevant provisions of Community law makes it impossible to reconcile them with the principle of the protection of legitimate expectations. The essential point in setting quotas is to ascertain the actual production of a holding at a given date. The producer therefore cannot have a legitimate expectation of a reference quantity which does not correspond to the quantity of product which he marketed in actual fact. Lastly, since it is the Community legal system itself which prohibits Member States from bearing the cost of additional levies, that argues for an interpretation whereby, in case of dispute, the operations needed for levies can be carried out beyond the periods of time shown in Regulations Nos 3950/92 and 526/93.

38. Following these considerations, the Tribunale amministrativo regionale del Lazio decided to stay proceedings and to submit the following questions to the Court for a preliminary ruling:

— in Case C-231/00, in the cases in the second group and Case C-495/00:

'(1) May the provisions contained in Articles 1 and 4 of... Regulation No 3950/92... and Articles 3 and 4 of... Regulation No 536/93... be interpreted as meaning that it is possible, in cases of administrative or judicial challenge to the relevant measures, to derogate from the time-limits prescribed for the allocation of quotas and the operation of adjustments and levies?

If not:

(2) Are the provisions contained in Articles 1 and 4 of... Regulation No 3950/92... and Articles 3 and 4 of... Regulation No 536/93... valid, in the light of Article 33 (ex Article 39) of the Treaty, in so far as they do not provide that derogations may be made from the periods prescribed by those provisions for the allocation of individual reference quantities, for adjustments and levies in cases of administrative or judicial challenge to those provisions?'

— in Case C-451/00:

'(1) May Articles 1 and 4 of... Regulation No 3950/92... and Articles 3 and 4 of ... Regulation No 536/93... be interpreted as meaning that the time-limits prescribed for the allocation of quotas and the operation of adjustments and levies may be extended where a challenge is brought in the Community court and the Member State concerned finds it necessary to modify the rules applicable?

If not:

(2) Are the above Community provisions valid, pursuant to Article 33 (ex Article 39) of the Treaty, in so far as they do not provide for extension of the time-limits for allocation and for adjustment where an action is brought in the Community court?'

39. In the cases in the second group and Case C-495/00, the Tribunale amministrativo regionale del Lazio felt it necessary to raise the following further questions:

— in Cases C-480/00, C-482/00, C-489/00 to C-491/00 and C-497/00 to C-499/00:

'(3) Must... Regulations Nos 3950/92 and 536/93 be interpreted as meaning that the arrangements which they introduce may be applied without the individual reference quantities that have been allocated to producers being notified to those producers officially or without the relevant Member State making an official redistribution among the producers of its guaranteed global quantities?

(4) May... Articles 3 and 4 of... Regulation No 3950/92 be interpreted as meaning that the Member State does not necessarily have to notify producers officially of the individual reference quantities that have been allocated to them or that it may allocate reference quantities to those producers without notifying them individually?'

— in Case C-484/00:

'[(5)] May... Regulations Nos 3950/92 and 536/93 be interpreted as meaning that individual reference quantities do not necessarily have to be notified individually to each producer but may be notified in other forms such as by publishing bulletins?' [28]

— in Cases C-480/00, C-490/00 and C-491/00:

'[(6)] May Article 2(1) of Regulation No 3950/92 and Article 3(3) of Regulation No 536/93 be interpreted to mean that they leave Member States the possibility of determining the categories of producers who must have priority over other producers in receiving adjustments?' [29]

— in Case C-481/00:

'[(7)] May Regulations Nos 3950/92 and 536/93 be interpreted as meaning that they allow Member States to determine privileged categories of producers who must have priority over other producers in receiving adjustments, in particular putting mountain zones higher in the order of priority than "less-favoured" zones?' [30]

— in Case C-495/00:

'[(8)] If retrospective adjustment is precluded, do the applicable Community rules authorise the Member

28 — This is the third question in the order for reference. For convenience of presentation, I am taking this as the fifth question referred to the Court in this file.

29 — This is the fifth question in the orders for reference in these three cases. For convenience of presentation, I am taking this as the sixth question referred to the Court in this file.

30 — This is the third question in the order for reference. For convenience of presentation, I am taking this as the seventh question referred to the Court in this file.

State to bear the cost of settlement of sums due in accordance with Community law without incurring penalties?' [31]

42. The Tribunale amministrativo regionale del Lazio stated that, while the legal issue appeared to be the same as in Case C-231/00, it felt that the facts in Case C-303/00 required the following further questions to be put to the Court:

B — *First-group Case C-303/00*

40. Azienda Agricola Marcello Balestreri e Maura Lena produces milk in the commune of Stagno Lombardo (Italy) and is the holder of an individual reference quantity which it leased, and then purchased, from another producer. Following checks made on the latter, the Italian authorities reduced the individual reference quantity which had been allocated to him. Since that reference quantity had been transferred, the competent authorities corrected the reference quantity held by Azienda Agricola Marcello Balestreri e Maura Lena.

41. Azienda Agricola Marcello Balestreri e Maura Lena challenged this correction chiefly on the ground that AIMA could not make ex-post corrections in respect of years long since closed.

'(1) Do the provisions in Article 1, 4, 6 and 7 of... Regulation No 3950/92... and in Articles 3 and 4 of... Regulation No 536/93... allow derogations from the time-limits prescribed for the allocation of individual quantities and, hence, for adjustments and levies where, during checks on the legality of contracts to lease or sell such quantities, it is found that the quantities originally allocated to the assigning party were allocated in error, for reasons not attributable to the administration?

(2) Are the above Community provisions valid, in the light of Article 33 (ex Article 39) of the Treaty, in so far as, during ex-post checks of the individual reference quantities leased or sold by individual undertakings, they do not provide for those quantities to be allocated retrospectively by correcting the particulars given erroneously in the bulletins concerned because of errors not attributable to the administration?'

31 — This is the third question in the order for reference. For convenience of presentation, I am taking this as the eighth question referred to the Court in this file.

III — Assessment

43. The questions referred for a preliminary ruling in the various cases at issue relate to four separate points. The first and second of these questions ask whether ex-post corrections to individual reference quantities and to additional levies due are compatible with Community legislation. The third, fourth and fifth questions relate to notification to producers of individual reference quantities. The sixth and seventh questions refer to the Member States' discretion in determining categories of producers who may be given priority when allocating unused reference quantities. The eighth question is on the Member States' power to settle sums due. I shall consider each of these four points in turn.

A — *Ex-post correction of individual reference quantities and additional levies due*

1. The purpose of the first question referred for a preliminary ruling

44. In all the cases at issue, the national court is asking, in the first question referred, whether the correction which the Italian authorities made in 1999 to individual reference quantities and to the additional levies due from milk producers after re-allocating unused reference quantities, in respect of the years 1995/96 and 1996/97, infringes Articles 1 and 4 of Regulation No 3950/92 and Articles 3 and 4 of Regulation No 536/93. In Case C-303/00, the court asks further whether such corrections infringe Articles 6 and 7 of Regulation No 3950/92.

45. This first question from the national court also makes reference to the circumstances in which the disputed corrections occurred. In Case C-231/00, in the cases in the second group and in Case C-495/00, the national court refers to a situation where there is an administrative or judicial challenge to the national measures adopted to implement the arrangements for the additional levy on milk. In Case C-451/00, the national court's purpose was to show the Court that the disputed correction occurred after the Commission, on 20 May 1996, had given a reasoned opinion on the relevant Italian legislation. Lastly, in Case C-303/00, the question notes that the milk quota was corrected after it had been verified that the quota had been duly transferred between producers.

46. As will be seen later in this Opinion, these different instances do not affect the

answer to be given to the court making the reference. Similarly, the reasoning underlying that answer is largely the same as regards each of the articles of Regulation No 3950/92 or Regulation No 536/93 which are referred to in the separate cases at issue.

47. I therefore propose that the Court consider all these first questions together and regard them as asking whether Articles 1, 4, 6 and 7 of Regulation No 3950/92 and Articles 3 and 4 of Regulation No 536/93 must be interpreted as precluding a Member State, after checks have been made, from correcting the individual reference quantities allocated to each producer and, consequently, after reallocation of the unused reference quantities, recalculating the additional levies due, after the final date for payment of such levies for the production period concerned.

2. Analysis

48. It is common ground that no article of Regulation No 3950/92 or Regulation No 536/93 makes provision for correction of the individual reference quantities allocated to milk producers or consequent correction of the additional levies which they owe. In particular, Article 7 of Regulation No 536/93, which requires Member States to take all control measures necessary to verify that the additional levy is paid in accordance with the rules in force, makes no reference to any verification of individual reference quantities. [32]

49. However, unlike the applicants in the main proceedings, I consider, as do the Commission and the Italian and Greek Governments, that the corrections made by the Italian authorities do not infringe Regulations Nos 3950/92 and 536/93.

50. The basis for my view is, firstly, the content of the articles referred to by the national court and, secondly, the objectives and the scheme of the legislation of which they are part.

(a) The wording of the articles referred to by the national court

51. From an examination of the wording of each of these articles, it is apparent that they make no provision which precludes the making of corrections like those made in the main proceedings.

32 — Nor were there any such provisions in Regulations Nos 856/84 or 857/84, in which the Community legislature established the arrangements for the additional levy on milk, nor in the many amendments adopted prior to Regulation No 3950/92.

52. Firstly, unlike what might be suggested by the formulation of the first question in the orders for reference, Articles 1 and 4 of Regulation No 3950/92 lay down no time-limit as regards the allocation of milk quotas. Article 4 simply provides that the reference quantity available on the holding is to be equal to the quantity available on 31 March 1993. It should be noted that the purpose of Regulation No 3950/92 is to continue the arrangements for the additional levy on milk introduced by the earlier legislation. Thus it is a continuation of that legislation and is based on the premiss that producers already hold milk quotas pursuant to that legislation. [33] It therefore logically lays down that the individual reference quantities allocated for future production periods are to be determined from the milk quotas held by producers on the last day on which that legislation was applicable, meaning 31 March 1993.

53. These quotas are however not set once and for all for the duration of the extended additional-levy arrangements: Article 4 of Regulation No 3950/92 expressly provides that they may be adapted for each of the production periods concerned, so that the sum of the individual reference quantities for sales to dairies and for direct sales does not exceed the corresponding guaranteed global quantity allocated to the Member State, taking account of any reductions made for allocation to its national reserve.

54. It is therefore not possible to read Articles 1 and 4 of Regulation No 3950/92 as preventing national authorities, subsequent to the production period concerned, from correcting erroneous individual reference quantities, since the very purpose of such corrections is for the Member State's production free from additional levies not to exceed the guaranteed global quantity allocated to that State.

55. Secondly, as regards Articles 6 and 7 of Regulation No 3950/92, on transfers of individual reference quantities, the court making the reference does not state how these might prevent the controls and the corrections disputed. [34]

56. It should be noted that Article 6 of Regulation No 3950/92 provides that Member States are to authorise temporary transfers of milk quotas for a period of 12 months, before a date that they are to

33 — See the judgment in Case C-292/97 *Karlsson and Others* [2000] ECR I-2737, paragraph 32.

34 — It should be noted here that the arguments used by the applicant in the main proceedings in Case C-303/00 relate essentially to an infringement of the Italian legislation prescribing the dates by which the national authorities must carry out the check that the quota transfer is valid (see the party's written observations, p. 20).

determine and by 31 December at the latest. This article does not mean that, after such date, the quantity transferred for one production period may not be subject to checking and correction. Indeed, the date of 31 December is only the point in time beyond which producers are no longer authorised to agree a transfer of milk quotas for the current production period. And Article 7 of the regulation sets no time-limit that can be interpreted as meaning that the national authorities are not authorised to check ex-post the accuracy of the quota transferred.

57. Thirdly, it should be noted that Article 3(2) and Article 4(2) of Regulation No 536/93 provide that, before 15 May, purchasers, and producers selling their output direct, must forward to the competent national authority a statement of collections or of production for the past year. Article 3(3) and Article 4(3) state that Member States may provide that the competent authority is to notify the purchaser, or producer, of the amount of levy payable by him after reallocating, or not, all or part of the reference quantities unused. Lastly, Article 3(4) and Article 4(4) provide that purchasers and producers must pay the sums due by 1 September.

58. As the applicants in the main proceedings point out, it is common ground that the time-limits laid down in Articles 3 and 4 of Regulation No 536/93 are mandatory, because the Community legislature has taken care to prescribe penalties to be imposed on purchasers and producers who do not observe them. That also is the interpretation given by the Court in the judgment in *Molkereigenossenschaft Wiedergeltingen*.[35]

59. However, these factors do not show that Articles 3 and 4 preclude ex-post correction of erroneous individual reference quantities and additional levies due for a given production period. Firstly, these time-limits relate to the conduct of the normal administrative procedure and not to the carrying out of checks and corrections of errors or irregularities by the competent national authorities. Moreover, the mandatory nature of the time-limits laid down for the administrative procedure intended to ensure proper execution of the Community legislation is not incompatible with carrying out checks and corrections ex-post when these are also intended to ensure proper application of that legislation.

60. It should be pointed out here that Article 7 of Regulation No 536/93 expressly provides for ex-post checks on

35 — Case C-356/97 [2000] ECR I-5461 (paragraphs 38 to 41). That judgment referred to the final date of 15 May for forwarding statements of collections and direct sales.

the accuracy of the statements of collections and direct sales drawn up by purchasers and producers. [36] It is established that such checks can be made only after expiry of the production period concerned, since they are intended to verify the statements drawn up for that period. Furthermore, such checks can indeed lead to corrections of the additional levies due from a purchaser or producer subsequent to the final date for payment of sums payable in respect of that period. The applicants are therefore not justified in claiming that Articles 3 and 4 of Regulation No 536/93 preclude ex-post correction of erroneous individual reference quantities or, consequently, adjustment of additional levies payable for a given production period.

61. I believe that this analysis is confirmed by the objectives and the scheme of the relevant legislation.

(b) The objectives and scheme of the relevant legislation

62. The arrangements for the additional levy on milk, introduced in 1984, are a market-regulating instrument intended to balance milk production and consumption. That balance is necessary if the Community is to maintain a target price for milk, capable of ensuring a fair standard of living for producers, without having to bear excessively high intervention costs. [37] Thus, the additional levy arrangements are intended to enable the Community to support production prices whilst controlling the expenditure incurred in that support.

63. In order to attain those objectives, the Community legislature provided for the additional levy arrangements to be based essentially on two operations. First, the arrangements involve setting the global reference quantity for the Community, which is the limit within which the Community is capable of supporting prices and, as a consequence, of guaranteeing producers a fair income. Second, this global guaranteed quantity has to be allocated among the milk producers of the various Member States, requiring those who exceed their share to bear for themselves the cost of disposing of that excess. The quota thus imposed on each producer and the obligation to pay an additional levy if that quota is exceeded are the consideration for the benefits secured from setting a target price. The arrangements for an additional levy on

36 — According to the eighth recital in the preamble to Regulation No 536/93, the Community legislature intended the Member States to have suitable means of conducting checks ex post facto.

37 — Since quotas were introduced, CAP spending within the milk sector has fallen from EUR 5 224 million in 1984 (28.5% of the total cost of the CAP, at EUR 18 330 million) to EUR 2 800 million in recent years (6.5% of the total cost of the CAP, at EUR 40 447 million). See Commission report of 10 July 2002 on milk quotas (SEC (2002) 789 final, point 3.2).

milk are thus based on the co-responsibility of all Community milk producers who, in exchange for the support given to their production, share the quantity up to the extent that the Community is able to give them such support.

64. In Regulations Nos 3950/92 and 536/93, the Community legislature decided to extend these arrangements in order to achieve a better market balance, choosing to continue the method of setting a global reference quantity which is not to be exceeded by the sum of the individual reference quantities. In order to make the arrangements more effective, Regulation No 536/93 lays down strict rules on the times for communicating figures on collection and direct sales and for payment of the sums due.

65. In the light of these factors, attainment of the objectives pursued by the Community legislature necessarily requires that the quantity of milk which each producer is authorised to produce free of the additional levy be determined precisely and also that the additional levies owed by producers on production in excess of that quantity actually be recovered on behalf of the Community.

66. In other words, the objectives of the arrangements for the additional levy on milk would be prejudiced if individual reference quantities were miscalculated and the production of milk in one Member State then exceeded the global guaranteed quantity allocated to the Member State but that excess did not result in payment of the additional levy due. If that occurred, there would be a breach of the co-responsibility which underlies the arrangements for the additional levy on milk, in that producers would enjoy the benefits afforded by setting a target price for milk without suffering the restrictions whereby it is possible to maintain such a target price. The producers whose excess production was thus unduly exempted from the additional levy would enjoy an unjustified competitive advantage over the producers of the Member States which apply the Community legislation properly.

67. I draw two inferences from this analysis. The first inference is that Member States must be able to correct erroneous individual reference quantities subsequent to the production period concerned and to modify the additional levies due for that period. The second inference is that the provisions intended to ensure timely payment of the levy must not be interpreted in such a way as to preclude such corrections. I shall consider each of these inferences in turn.

68. Firstly, I believe that the obligation on the Member States to correct erroneous individual reference quantities subsequent to the production period concerned and to modify the additional levies due is based upon Article 5 of the EC Treaty (now Article 10 EC).

69. That article provides that 'Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community'. The Court has consistently held that, according to the general principles on which the Community is based and which govern relations between the Community and the Member States, it is for the latter, under Article 5 of the Treaty, to ensure that Community rules are implemented within their territories. In so far as Community law, including its general principles, does not include common rules to this effect then, when the national authorities implement Community rules, they are to act in accordance with the procedural and substantive rules of their own national law, it being understood that these rules must be reconciled with the need to apply Community law uniformly so as to avoid unequal treatment of economic operators. Moreover, those rules may not have the effect of making it impossible in practice to implement the Community rules. [38]

70. From that case-law, I infer that, since the applicable Community legislation does not contain rules on correction, subsequent to a production period, of erroneous milk quotas and additional levies due for that period, it is for the Member State concerned to take the measures necessary for that purpose, in accordance with the rules of its national law.

71. As the national court indicates in the orders for reference, that obligation clearly applied in the circumstances of this case: the facts related by the court show that the individual reference quantities allocated originally by the Italian authorities contained a large number of errors, due in particular to the fact that the actual production on the basis of which those quantities were allocated had been certified by the producers themselves. [39] Among the errors so identified, the government committee of inquiry found inter alia that more than 2 000 farms which had reported that they produced milk did not possess any cows. [40] It is undeniable that, pursuant to Article 5 of the Treaty, the Italian authorities had to take the measures necessary to correct such irregularities. [41] These corrections were therefore necessary to ensure due

38 — See judgments in Joined Cases 205/82 to 215/82 *Deutsche Milchkontor and Others* [1983] ECR 2633, paragraph 17; in Case C-290/91 *Peter* [1993] ECR I-2981, paragraph 8; and in *Karlsson*, paragraph 27.

39 — See order for reference in Case 231/00, p. 11.

40 — Ibid., p. 19.

41 — See to this effect Case C-352/92 *Milchwerke Köln/Wuppertal* [1994] ECR I-3385, paragraph 23.

performance of the arrangements for the additional levy on milk during the 1995/96 and 1996/97 production periods. [42]

72. Moreover, these corrections entirely meet the specific aims of the applicable legislation: [43] it should be noted that Article 7 of Regulation No 536/93 requires Member States to take all the verification measures necessary to ensure payment of the additional levy. Among other things, they must physically verify the accuracy of the accounting with regard to quantities collected or sold by purchasers or producers. By this provision, therefore, the Community legislature intended the Member States to establish means of conducting ex-post checks to verify that the additional levy has been collected in accordance with the provisions in force. [44] Obviously, that objective can be attained and any additional levy owed by producers can be correctly determined only if the individual reference quantities from which the production overrun has been calculated are accurate.

73. Secondly, I infer from the objectives and the broad logic of the relevant legislation that, contrary to the contentions of the applicants in the main proceedings, the provisions to ensure that the additional levy is paid in good time must not be interpreted as meaning that they would preclude correction of erroneous individual reference quantities after the production period concerned.

74. As the Commission rightly claimed in the hearing, it would be paradoxical and contrary to the aim of these provisions to interpret them as precluding corrections which are also intended to ensure recovery of additional levies actually due under the relevant Community legislation. To see it otherwise would be tantamount to encouraging non-application of the legislation, for a Member State would need only to fail to apply it correctly, and refrain from making any correction to milk quotas before or during the production period concerned, to become unable to correct irregularities committed during that period.

42 — This analysis is also consistent with the case-law of the Court as regards operations financed by the European Agricultural Guidance and Guarantee Fund (EAGGF): the Court has held consistently that the Member States are under an obligation to take the measures necessary to satisfy themselves that the transactions financed by the EAGGF are actually carried out and are executed correctly and to prevent and take action against irregularities, even if the specific Community act does not expressly provide for the adoption of particular supervisory measures (see judgments in Case C-54/95 *Germany* v *Commission* [1999] ECR I-35, paragraph 66; and in Case C-277/98 *France* v *Commission* [2001] ECR I-8453, paragraph 40). It should be noted that measures intended to stabilise markets in the milk sector are financed by the guarantee section of the EAGGF (Article 1(2) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition, 1970 (I), p. 218)).

43 — On this, see the judgment in *Karlsson and Others* (paragraph 35).

44 — Eighth recital in preamble to Regulation No 536/93.

75. I believe that the analysis above can be applied in any of the circumstances described by the national court as being the source of the checks and corrections made by the Italian authorities. It is not important whether the errors in setting the quotas were discovered after the national measures to implement the additional levy arrangements had become the subject-matter of an administrative or judicial challenge, or in the course of checking that transfer of a milk quota was proper, or even after the national legislation was modified to make it compatible with Community law. In all these instances, the Italian authorities are under the same duty to rectify the erroneous individual reference quantities in order to ensure due execution of the arrangements for the additional levy on milk.

76. Contrary to this analysis, the applicants in the main proceedings contend that the disputed corrections infringe the principle of proportionality and that of the protection of legitimate expectations. On the principle of proportionality, they maintain that the penalty of additional levy is admissible only if it does not exceed what is appropriate and necessary in attaining the end sought by the legislation infringed. A request to pay an additional levy after the final date for payment of that sum for the production period concerned is irrational if one considers that the reference quantity from which that levy was calculated is not based on actual production during the year laid down in the Community legislation. The principle of protection of legitimate expectations has been infringed because producers could expect that measures affecting investments for producing and marketing milk would be notified to them in good time. At the hearing, the applicants stressed the point that they were not able to discover the individual reference quantities which had been allocated to them for the production periods concerned, so that the corrections made by the Italian authorities in 1999 were in fact a retrospective allocation of quotas.

77. It is established that compliance with the general principles of Community law — including the principles of proportionality and protection of legitimate expectations — is required of every national authority responsible for applying Community law.[45] However, I do not feel that the arguments of the applicants in the main proceedings can be accepted.

78. As regards, firstly, the principle of proportionality, I am aware that this requires the disputed act not to go beyond the limits of what is appropriate and necessary to achieve the end sought.[46] Contrary to what is suggested by the

45 — See judgments in Joined Cases 201/85 and 202/85 *Klensch and Others* [1986] ECR 3477, paragraph 10; and in Case C-313/99 *Mulligan and Others* [2002] ECR I-5719, paragraph 35.

46 — See, among others, the judgment in Case 137/85 *Maizena and Others* [1987] ECR 4587, paragraph 15.

applicants in the main proceedings, the additional levy is not a penalty that may be compared with those laid down in Articles 3 and 4 of Regulation No 536/93 for failure to comply with the time-limits laid down for notifying statements and paying sums due. This levy is not intended exclusively to ensure that producers comply with the quotas allocated to them, so that to collect it in full some years after expiry of the production period concerned would be disproportionate to the objectives pursued. As I indicated earlier, this levy is also intended to bring the Community the funds necessary for disposal of the milk produced by producers in excess of their quotas. As the Commission said at the hearing, that overrun of production remains long after the end of the production period concerned, in the form, among others, of stocks of milk products. To recover the additional levies due for a given production period some years after it is closed, within the limits set by national law for debts of a similar nature, does not therefore go beyond the objectives of Community legislation in the milk sector.

79. Regarding the question whether the individual reference quantity from which the additional levy due has been calculated was determined in accordance with the relevant Community legislation, I do not think this relevant when considering a breach of the principle of proportionality.

80. Next, the applicants do not appear to me justified in invoking the principle of protection of legitimate expectations, for the reasons following.

81. Firstly, as the national court has rightly pointed out, when milk quotas are allocated by the administration on objective, predetermined and well-known criteria, and the only variable factor is the production achieved by the producer concerned during the reference year chosen for setting the milk quotas, that producer cannot have any legitimate expectation that an inaccurate individual reference quantity will be continued. [47] And, more particularly, farmers who have made false declarations to the competent national authority as to their milk production during the reference period in order to obtain a milk quota that is not due cannot entertain any legitimate expectation that such a quota will be continued and challenge cancellation of the effects of such a fraud subsequent to the production period concerned. [48]

82. Next, producers can have no legitimate expectation that, at the expiry of a production year, a given unused individual refer-

47 — See order for reference in Case C-231/00 (p. 21).

48 — See, to this effect, the judgments in Case 67/84 *Sideradria* v *Commission* [1985] ECR 3983, 3994, and in Case C-96/89 *Commission* v *Netherlands* [1991] ECR I-2461, paragraph 30.

ence quantity will be reallocated: such reallocation is, by its nature, hypothetical and impossible to quantify in advance, for it depends upon the activity of the other producers. Therefore, a producer cannot, before any production year, have a legitimate expectation that a given portion of unused quotas will be reallocated. The applicants in the main proceedings are therefore not justified in challenging a modification, following checks performed by the national authorities, to the reallocation of those quantities which they had originally received for 1995/96 and 1996/97.

83. Lastly, concerning those applicants in the main proceedings who claim that the national authorities did not notify their milk quotas to them before 1998, I have some difficulty in accepting that they could in good faith believe that they were entitled to produce milk without any limit in the years from 1995 to 1997, which is 11 years after introduction of the arrangements for the additional levy on milk. I therefore question whether the competent authorities' poor notification of milk quotas, assuming this happened, can be grounds for relieving those producers of the additional levies owed. As the Commission and the Council have submitted in their oral observations, these levies are collected by the Member States on behalf of the Community in order to finance CAP expenditure in the milk sector. Furthermore, collection of the levy is necessary so that all milk producers should be in a similar competitive position.

84. It will be for producers who consider that poor application by the Italian authorities of the arrangements for the additional levy on milk has caused them a loss to bring proceedings in the competent national court against the Italian state, seeking reparation for such loss. [49]

85. Having regard to all these factors, I propose that the Court should answer the first question referred for a preliminary ruling to the effect that Articles 1, 4, 6 and 7 of Regulation No 3950/92 and Articles 3 and 4 of Regulation No 536/93 must be interpreted as not precluding a Member State, after checks have been made, from correcting the individual reference quantities allocated to each producer and, consequently, after reallocation of the reference quantities unused, recalculating the additional levies due, after the final date for payment of such levies for the production period concerned.

3. The second question referred for a preliminary ruling in all the cases at issue

86. In the second question, the national court asks whether Articles 1, 4, 6 and 7 of

49 — See judgments in Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraphs 41 to 43; in Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 67; and in Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, paragraphs 24 to 31.

Regulation No 3950/92 and Articles 3 and 4 of Regulation No 536/93, in so far as they preclude the disputed verifications and corrections, are consistent with Article 39 of the Treaty.

87. Since this question was asked only on the assumption that the above articles are to be interpreted as meaning that they do preclude the verifications and corrections at issue, I propose that the Court should declare that there is no need to answer it.

B — *Notification of individual reference quantities*

1. Admissibility of the third, fourth and fifth questions referred for a preliminary ruling

88. The Commission questions the admissibility of the third, fourth and fifth questions; it states that the court making the reference only affirmed the need to take the Court's opinion on these questions, not making clear their place within the legal and factual context of the main proceedings, nor why that court considers that the answer to these questions is relevant to the outcome of those cases.

89. I consider that it would be contrary to the spirit of cooperation between courts, which governs the procedure of references for preliminary rulings, to declare these three disputed questions inadmissible. The basis for my opinion is as follows.

90. The facts presented by the national court are indeed very brief and unclear. Thus, it is evident merely from the orders for reference in the second group of cases, which faithfully copy the grounds of the order for reference in Case C-231/00, that the Italian legislation adopted in 1992 provided that bulletins compiled province by province would give the list of producers and milk quotas. It is also stated that these individual quotas are divided into two parts and are allocated on the basis of production during the years 1988/89 or 1991/92.

91. It is really a pity that the national court did not take the trouble to show more precisely why it thought it necessary to ask additional questions in the second group of cases. Nor did it offer any explanation of the reasons for asking the third and fourth questions in 8 of the 10 cases in the second group and the fifth question only in Case C-484/00.

92. However, it should be remembered that the requirement of an adequate description of the legal and factual context of the principal action in the order for reference has two purposes. Firstly, it seeks to enable the Court to provide an interpretation of Community law which will be of use to the national court. [50] And, secondly, it is intended to give the governments of the Member States and the other interested parties the opportunity to submit observations pursuant to Article 20 of the EC Statute of the Court of Justice. [51]

93. In this instance, I believe that the details set out above do make it possible to give a useful answer to the three questions concerned. These details show that the milk quotas allocated for the first time to producers in Italy after 1992 were published in bulletins. Moreover, the hearing confirmed that the main proceedings also concerned the point whether such notification was in accordance with the requirements of the applicable Community law, the applicants maintaining that such bulletins were not accessible and that they had not been able to find out the milk quotas allocated to them. The Commission and the Italian Government were later able to make written and oral observations on this point.

94. I therefore propose that the Court should rule these three disputed questions to be admissible.

2. Substance

95. The third, fourth and fifth questions referred for a preliminary ruling should be considered together; essentially, the national court asks whether Regulations Nos 3950/92 and 536/93 must be interpreted as meaning that they require individual reference quantities to be notified to producers and, if so, whether such notification must be given to each producer individually or whether it may be given in other forms such as by publishing bulletins.

(a) Whether there is an obligation to notify

96. The applicants in the main proceedings, the Italian Government and the Commission all agree that individual reference quantities must be notified to produ-

50 — See, among others, the judgments in Case C-83/91 *Meilicke* [1992] ECR I-4871, paragraph 26; and in Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 6.

51 — See, in particular, the order in Case C-422/98 *Colonia Versicherung and Others* [1999] ECR I-1279, paragraph 5; and the judgment in Case C-67/96 *Albany* [1999] ECR I-5751, paragraph 40.

cers. I too believe that, although such notification is not expressly laid down in the applicable legislation, it is manifestly required in the light of the objectives and the broad logic of the arrangements for the additional levy on milk.

97. Firstly, we have seen that the arrangements are intended to avoid the production of milk in the Community exceeding a global guaranteed quantity set at Community level and divided between producers by the Member States. Attainment of that objective therefore logically and necessarily requires producers to be informed of the share of the global guaranteed quantity which they have been allocated and which they must not exceed.

98. Secondly, it is established that producers cannot themselves, from the global guaranteed quantity allocated to their Member State for direct sales and sales to dairies, determine their own shares of each of those quantities. It should be noted here that Regulation No 3950/92 provides that the milk quotas available on the holding on 31 March 1993 may be adjusted by the Member State prior to each production period on the basis of the global guaranteed quantity allocated to that State, so that the sum of the individual reference quantities does not exceed that quantity. [52] Similarly, each Member State may make an across-the-board reduction in the individual reference quantities in order to replenish its national reserve. [53] It is also the Member State which is able to adapt the reference quantities allocated to a producer according to changes in the producer's activity [54] and regulate temporary transfers of such quantities. [55] It follows that only the Member State is in a position to determine exactly what the new reference quantity will be for the producer or producers concerned following such adjustments. All the more so must the same view be taken of the Member States' initial allocation of individual reference quantities, to which Regulation No 3950/92 refers implicitly. Here, the national authorities are for the first time applying to the specific circumstances of a single producer the rules adopted by the Member State, in accordance with Community law, for division of the global guaranteed quantity which has been allocated to it.

99. Lastly, it should be noted that, in the additional levy arrangements, Member States and purchasers are but intermediaries between the Community and producers, since the latter are the principal debtors to the Community for the additional levy. [56]

52 — Article 4(1) of Regulation No 3950/92.

53 — Ibid., Article 5.

54 — Ibid., Article 4(2). Under this regulation, each producer may have two individual reference quantities, one for sales to a purchaser and the other for direct sales.

55 — Ibid., Article 6.

56 — As regards the Member States, see the judgment in *France* v *Commission*, cited above, and, as regards purchasers, see the Opinion of Advocate General Geelhoed in Case C-230/01 *Penycoed Farming Partnership*, pending before the Court.

100. Implementation of the arrangements for the additional levy on milk therefore necessarily requires individual reference quantities to be notified to the producers concerned upon allocation and upon modification.

(b) Arrangements for notifying individual reference quantities

(i) Arguments of the parties

101. The applicants in the main proceedings maintain that milk quotas must be notified individually to the producers concerned. Failure to notify individually, they claim, infringes the principle of legal certainty and the fundamental right to property.

102. The Italian Government contends that Regulations Nos 3950/92 and 536/93 contain no specific requirement on this point and that dissemination as effected in this instance, by means of bulletins, is compatible with Community law. At the hearing the Italian Government stated that the bulletins had been sent to the competent provincial offices, where each producer could consult them, and that they had also been published in the *Gazzetta ufficiale della Repubblica Italiana*.

103. The Commission maintains that, where there are no specific Community provisions, individual reference quantities must be notified in accordance with the rules of national law and those rules must be applied in such a manner as to attain the objectives of the arrangements for the additional levy on milk. That means that the communication must be in a form that will ensure that the producer has effective knowledge of the milk quota allocated to him. The Commission notes that it was satisfied with the form of communication adopted by the Italian authorities for the initial allocation of individual reference quantities, which were notified under the legislation adopted in 1992, that is by registered letter with advice of receipt.

(ii) Analysis

104. Like the applicants in the main proceedings, I believe that individual reference quantities must be notified to each producer individually. My view is based on the following considerations.

105. In accordance with Article 5 of the Treaty and the case-law cited in point 69 of this Opinion, where the relevant Community legislation has no specific rules on notification of individual reference quantities, such notification must be effected according to the rules of national law. The case-law of the Court also shows that those

rules must secure the scope and effectiveness of the arrangements for the additional levy on milk. [57] Moreover, we have seen that those rules must be consistent with uniform application of Community law, which is necessary to avoid unequal treatment of economic operators. Lastly, it should be noted that, in accordance with their duty of genuine cooperation, the Member States must ensure performance of the obligations arising from the Community rules concerned, so that the aims of those rules are attained. [58]

106. It is established that the arrangements for the additional levy on milk are intended to dissuade producers from exceeding the individual reference quantities allocated to them. [59] Attainment of the aims of these arrangements therefore requires all producers of all Member States to have accurate knowledge of the amount of their milk quotas. In other words, the aims of the additional levy arrangements would be compromised if, in one Member State, the milk producers or some of them did not know the exact amount of their individual reference quantities and exceeded these unawares. In such circumstances, the production of the Member State concerned would exceed its global guaranteed quantity and recovery from those producers of the additional levy due because of the overrun might encounter difficulties and be the subject of challenges. Moreover, uniform application of Community law would be jeopardised because those economic operators would not be in the same situation as those of Member States where the national authorities ensure that each producer is in fact informed of his milk quota.

107. From these considerations I infer that the method used by Member States for notifying individual reference quantities must satisfy two requirements. First, it must be such as to ensure that each producer is in fact informed of the quota allocated to him. Second, it must also enable the competent national authorities to be sure that each producer has indeed received that information.

108. I believe that the only method of notification which can really give such assurance is individual notification: the effectiveness of a general or public means of notification is intrinsically subject to the uncertainty of it being consulted by the addressees. Furthermore, such a method of notification does not enable the competent national authorities to be certain that each of the addressees has indeed been informed.

57 — See, to this effect, the order in Case C-2/88 IMM *Zwartveld and Others* [1990] ECR I-3365, paragraph 17, and the judgment in Case C-336/00 *Huber* [2002] ECR I-7699, paragraph 61.

58 — See, among others, the judgments in Case 14/88 *Italy* v *Commission* [1989] ECR 3677, paragraph 20; and in Case C-251/89 *Athanasopoulos and Others* [1991] ECR I-2797, paragraph 57.

59 — For greater certainty, we may also refer to the second recital in the preamble to Council Regulation (EEC) No 3880/89 of 11 December 1989 amending Regulation No 857/84 (OJ 1989 L 378, p. 3), raising the rate of levy from 100% to 115% of the target price. The recital reads as follows: '[w]hereas an analysis of the way the additional levy arrangements operate has shown an increasing tendency to produce more than the allocated reference quantities; whereas this tendency is due to the weakening of the binding effect of the arrangements; whereas the additional levy should be raised so as to strengthen the dissuasive effect'.

However, such individual notification can take various forms: for example, it may be a registered letter with advice of receipt; it may also consist of verbal notification by purchasers to producers, together with a signature on a register showing that each producer acknowledges having been duly informed. What I see as important is that the method of notification used by the competent national authorities should be such as to inform each producer individually of his rights and obligations and to enable those authorities to have evidence of that information.

109. In my view, the requirement for such individual notification is necessary also in the interest of the producers themselves, according to the principle of legal certainty. The Court has ruled that, where Community legislation allows the Member States a choice between various methods of implementation, as in the present case, they must exercise their discretion in accordance with general principles of law, including the principle of legal certainty. [60]

110. In *Mulligan and Others*, the Court noted that, in accordance with that principle, national measures adopted pursuant to Community legislation require appropriate-publicity. [61] The Court stated that, to be appropriate, publicity must be such as to inform the natural or legal persons concerned by the measure of their rights and obligations under it. [62] The Court has also consistently held that the requirement of legal certainty must be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the extent of the obligations which they impose on them. [63]

111. There is no doubt that the allocation and modification of individual reference quantities may have substantial financial implications for the producers concerned. [64] Moreover, these are individual decisions [65]

60 — See judgment in *Mulligan and Others*, paragraphs 35 and 46.

61 — Paragraph 52. On this, see also the judgments in Case C-334/94 *Commission* v *France* [1996] ECR I-1307, paragraph 30, and in Case C-197/96 *Commission* v *France* [1997] ECR I-1489, paragraph 14.

62 — Paragraph 53. On this, see also the judgment in Case C-415/01 *Commission* v *Belgium* [2003] ECR I-2081, paragraph 21.

63 — See, among others, the judgments in Case 325/85 *Ireland* v *Commission* [1987] ECR 5041, paragraph 18, and in Case C-10/88 *Italy* v *Commission* [1990] ECR I-1229, paragraph 13.

64 — The combined effect of mechanisms to support prices and to allocate milk quotas is that milk producers are assigned a 'quota income', which is the difference between the price obtained and the cost price. In some milk-production areas in various Member States, milk production accounts for more than 50% of agricultural production (see the Commission report of 10 July 2002 on milk quotas, points 3.4.1 and 2.1).

65 — Here, therefore, the circumstances differ from those in the case giving rise to the judgment in *Mulligan and Others*, where the Court held that publication of the measure concerned in the national press could be appropriate publicity, for that was a measure of general scope, a 'clawback' measure under which, in the case of the sale or lease of a dairy holding, 20% of the reference quantity attached thereto was not to be transferred with the holding, but added instead to the national reserve.

which produce legal effects in that they determine the quantity of milk which a producer is authorised to produce free of the additional levy. In the light of these considerations and of the case-law set out above, I take the view that the principle of legal certainty also places an obligation on the Member States to notify each producer individually of the reference quantity allocated to him.

112. Finally, in considering the manner in which Member States must implement the arrangements for the additional levy on milk, it is of interest to point out that these arrangements unquestionably affect the fundamental rights of property and free exercise of a professional activity. [66] Individual notification of milk quotas affords the producers concerned a greater safeguard in the defence of those fundamental rights than a general announcement such as a publication.

113. I therefore propose that the Court should reply to the third, fourth and fifth questions that Regulations Nos 3950/92 and 536/93 must be interpreted as meaning that individual reference quantities must be notified to producers when allocated or modified. Such notification must be given to each producer individually, in a form which enables the competent national authorities to be sure that each producer has indeed received notification of the individual reference quantity allocated to him.

C — *Margin of discretion left to Member States in determining categories of producers able to receive priority allocation of unused reference quantities*

114. In its sixth and seventh questions, the national court asks whether Regulations Nos 3950/92 and 536/93 or certain of the provisions thereof must be interpreted as meaning that they leave to the Member States the possibility of determining the categories of producers who must have priority when unused individual reference quantities are reallocated and whether, in particular, mountain zones come before the 'less-favoured' zones.

115. As I have indicated, the Court has consistently held that the need to provide an interpretation of Community law which will be of use to the national court makes it necessary for the referring court to define the factual and legislative context of the

66 — The Court has already examined the validity of milk quotas in the light of the fundamental rights of property and free exercise of a professional activity. See, among others, the judgments in Case C-177/90 *Kühn* [1992] ECR I-35, paragraph 17; in Case C-63/93 *Duff and Others* [1996] ECR I-569, paragraph 30; and in Case C-22/94 *Irish Farmers Association and Others* [1997] ECR I-1809, paragraph 29. And the European Court of Human Rights has acknowledged that the additional levy imposed on milk producers might be regarded as deprivation of property within the meaning of Article 1 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (see *Procola v. Luxembourg*, judgment of 28 September 1995, Series A No 236).

questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based. [67]

116. It must be stated that the court making the reference has given no information from which one might understand the legal and factual context of these two questions. In the orders for reference where the questions are put, the referring court repeats identically the grounds of the order for reference in Case C-231/00, and then simply adds that, of the other questions which the applicants in the main proceedings had proposed that it submit to the Court, it had considered it useful to choose these two questions. As matters stand, I am therefore unable to see how an answer from the Court to these two questions might be useful in resolving the main proceedings.

117. I therefore propose that the Court should declare these two questions inadmissible.

D — *The power of Member States to settle sums due*

118. In its eighth question, the referring court asks whether the applicable Community rules authorise the Member State to settle sums due in accordance with Community law, assuming that 'retrospective adjustment is precluded'.

119. Here again, I fail to see the place of this question in the main proceedings. Moreover, the national court invites the Court to rule on an assumption, that the Italian state will settle the sums due in accordance with Community legislation.

120. It should be noted that the spirit of cooperation which prevails in the preliminary ruling procedure requires the national court to have regard to the task entrusted to the Court of Justice, which is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions. [68]

121. I take the view that, since the disputed question is purely hypothetical, the Court is unable to give a useful interpretation of Community law. I propose that this question should be declared inadmissible.

67 — See also the judgments in *Telemarsicabruzzo and Others* (paragraph 6) and in Case C-368/98 *Vanbraekel and Others* [2001] ECR I-5363, paragraph 21. For a recent application, see the judgment in Joined Cases C-421/00, C-426/00 and C-16/01 *Sterbenz and Haug* [2003] ECR I-1065, paragraph 20.

68 — See order in Case C-458/93 *Saddik* [1995] ECR I-511, paragraph 17, and the case-law cited.

IV — Conclusion

122. In the light of the considerations above, I propose that the Court should answer as follows the questions put by the Tribunale amministrativo regionale del Lazio:

(1) Articles 1, 4, 6 and 7 of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector, and Articles 3 and 4 of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products must be interpreted as meaning that they do not preclude a Member State, after checks have been made, from correcting the individual reference quantities allocated to each producer and, consequently, after reallocation of the reference quantities unused, recalculating the additional levies due, after the final date for payment of such levies for the production period concerned.

(2) Regulations Nos 3950/92 and 536/93 must be interpreted as meaning that individual reference quantities must be notified to producers when allocated or modified. Such notification must be given to each producer individually, in a form which enables the competent national authorities to be sure that each producer has indeed received notification of the individual reference quantity allocated to him.