JUDGMENT OF THE COURT (Second Chamber)
9 October 1997 *

In Case C-152/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal Administratif, Amiens (France), for a preliminary ruling in the proceedings pending before that court between

Michel Macon and Others

and

Préfet de l'Aisne

on the interpretation of 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 (OJ 1991 L 150, p. 30),

THE COURT (Second Chamber),

composed of: R. Schintgen, President of the Chamber, G. F. Mancini and G. Hirsch (Rapporteur), Judges,

* Language of the case: French.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Michel Macon and other persons, by Alain Letissier, of the Laon Bar,

— the French Government, by Catherine de Salins, Deputy Director of the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Gautier Mignot, Secretary of Foreign Affairs in the same Directorate, acting as Agents,

— the Commission of the European Communities, by Gérard Rozet, Legal Adviser, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 8 October 1996,

gives the following

Judgment

1 By judgment of 20 April 1995, received at the Court on 15 May 1995, the Tribunal Administratif (Administrative Court), Amiens, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of

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 (OJ 1991 L 150, p. 30).

2 That question has been raised in proceedings between Michel Macon and other persons, members of the Groupement Agricole d'Exploitation en Commun (collective farming group) du Canada in Ardon (the 'GAEC du Canada') and the Préfet de l'Aisne concerning payment of compensation for definitive discontinuation of milk production for the marketing year 1991/92.

3 Having milk reference quantities in the context of direct sales, the GAEC du Canada applied, in respect of the milk marketing year 1991/92, for the compensation for definitive discontinuation of all milk production provided for by Regulation No 1637/91, a regulation which forms part of the additional levy scheme.

4 According to the second sentence of the first subparagraph of Article 5c(1) of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (OJ, English Special Edition 1968 (I), p. 176), as amended by Council Regulation (EEC) No 856/84 of 31 March 1984 (OJ 1984 L 90, p. 10), the objective of the additional levy introduced by the latter regulation was 'to curb the increase in milk production while at the same time permitting the structural developments and adjustments required'.

5 Under formula B, set out in the second subparagraph of that provision and applied by the French Republic, a levy is payable by every purchaser of milk or other milk products on the quantities of milk or milk equivalent which have been delivered to him by a producer and which, during the 12 months concerned, exceed a reference quantity to be determined.

6 Pursuant to Article 5c(2), the levy is also payable by every milk producer on the quantities of milk and/or milk equivalent he has sold for direct consumption and which, during the 12 months concerned, exceed a reference quantity to be determined.

7 The rules determining reference quantities are contained in 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).

8 Within the framework of those rules, which were originally laid down for five consecutive 12-month periods, but subsequently extended until the end of the 1991/92 marketing year, the Council, in adopting decisions relating to the fixing of agricultural prices for the year 1991/92 which were made necessary by persistent excess production of milk, reduced the reference quantities and established a Community system for financing the discontinuation of milk production in Regulation No 1637/91, the fourth recital in the preamble to which provides for 'granting any producer, at the latter's request and provided that he fulfils certain eligibility requirements, compensation, to be paid after the definitive discontinuation of all milk production ...'.

9 Article 2 of Regulation No 1637/91 provides:

'1. 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 during the last quarter of each of the following calendar years 1992, 1993, 1994, 1995 and 1996, without prejudice to the possibility for the Member States to pay the compensation on earlier dates and/or in a single payment if they ensure the pre-financing.

...

2. (a) Eligible 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, excluding producers who have benefited from quantities pursuant to Article 3c of Regulation (EEC) No 857/84.

...'

10 Article 12 of Regulation No 857/84, as amended by Council Regulation (EEC) No 1305/85 of 23 May 1985 (OJ 1985 L 137, p. 12), which added a second subparagraph to Article 12(c), defines 'producer' and 'holding' as follows:

'(c) producer: 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;

Producer groups and associations thereof, recognized under Regulation (EEC) No 1360/78 and the statutes of which provide, in respect of associated producers, for the obligation referred to in the first indent of Article 6(1)(c) of the said Regulation, shall be deemed to be producers.

(d) holding: all the production units operated by the producer and located within the geographical territory of the Community'.

11 In France, Article 1 of Decree No 91/835 of 30 August 1991, concerning the grant of compensation for definitive discontinuation of milk production (*Official Journal of the French Republic* 1991, p. 11502), adopted pursuant to, in particular, Regulation No 1637/91 and Commission Regulation (EEC) No 1546/88 of 3 June 1988 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1988 L 139, p. 12), provides:

'Any producer, as defined in the first subparagraph of Article 12(c) of Regulation (EEC) No 857/84, as amended, excluding producers who have obtained an additional milk reference quantity pursuant to Article 3c of that regulation, who is entitled to a reference quantity on the date on which he submits his application pursuant to Article 1 of Decree No 91/157 of 11 February 1981, may apply for the compensation for definitive discontinuation of all production with a view to selling milk or milk products introduced by this decree.'

12 According to Article 3 of that decree, 'compensation shall be calculated for each holding on the basis of the producer's reference quantity in respect of direct sales and deliveries of milk and milk products, excluding reference quantities suspended in accordance with Articles 3(1) and (2), 3a, 3b and 4(1)(b) and (c) of Regulation (EEC) No 857/84 and Article 5(7) of Regulation (EEC) No 1546/88'.

13 By decision of 27 February 1992, the Préfet de l'Aisne refused, on the basis of those provisions, to grant Michel Macon and other persons the compensation requested, on the ground that they were no longer producing milk at the time when they submitted their application and were no longer milk producers within the meaning of Article 12 of Regulation No 857/84.

14 The applicants took the view that they should be treated as producers, solely by virtue of their possessing reference quantities for, *inter alia*, direct sales and brought an action before the Tribunal Administratif, Amiens, for annulment of the Préfet's decision.

15 Since it considered that the outcome of the case depended on the interpretation of Regulation No 1637/91, the Tribunal Administratif stayed proceedings and referred to the Court of Justice the question '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 when the application is made possesses milk reference quantities, by virtue of, in particular, direct sales'.

16 The national court is asking in effect whether Article 2 of Regulation No 1637/91 is to be interpreted as meaning that a farmer may be granted compensation for definitive discontinuation of all milk production only if, on the date of his application, he is producing milk in his capacity as a producer within the meaning of Article 12(c) of Regulation No 857/84 and if he possesses an individual reference quantity in respect of direct sales.

17 The applicants maintain that only Article 2(2)(a) of Regulation No 1637/91 is relevant when determining who is a producer within the meaning of Article 2(1). In their view, the definition of producer in Article 2(1) of Regulation No 1637/91 and Article 12 of Regulation No 857/84 merely defined the conditions on which producers could have a reference quantity in the future, when the provisions were implemented. So, in order to be entitled to compensation for discontinuation, it is sufficient to have a reference quantity.

18 In support of their argument, the applicants refer to paragraph II.2 of Circular DEPSE/SDSA/C 91 No 7036 of the Ministry of Agriculture and Forestry of 7 August 1991 concerning the grant of compensation for discontinuation of milk production in respect of the milk marketing year 1991/92 ('Circular No 7036'), which states that 'All applicants who are farmers in possession of a reference quantity for milk and milk products and/or direct sellers may lodge an application' and 'Consequently, the applicant is not subject to any condition as to delivery or sale of milk; it is enough if he is a farmer with a milk reference quantity ...'.

19 The French Government and the Commission point out that, under Article 2(1) of Regulation No 1637/91, only holders of reference quantities actually operating as milk producers at the time when the application is made are eligible for compensation for definitive discontinuation of milk production. The French Government and the Commission conclude from the judgment in Joined Cases 201/85 and 202/85 *Klensch* v *Secrétaire d'État* [1986] ECR 3477 that spontaneous cessation of milk production means that the producer automatically loses his reference quantities, which are then added to the national reserve. The Commission also refers to the case-law of the Court precluding the right to dispose for profit of an advantage, such as a reference quantity, which does not derive from the assets or occupational activity of the person concerned.

20 The Court finds that it follows from the wording of Article 2 of Regulation No 1637/91 that the grant of compensation for definitive discontinuation of all milk production is subject to two cumulative conditions: first, under Article 2(1) of that regulation, the farmer applying for compensation must be a producer within the meaning or Article 12(c) of Regulation No 857/84; second, as a milk producer, he must have a reference quantity under Article 2(2).

21 So, it is clear from the fact that Article 2(1) refers to the definition of producer in Article 12(c) of Regulation No 857/84 that that term has not been given an independent meaning for the purposes of the rules on discontinuation of milk production.

22 In its judgment in Case C-341/89 *Ballmann* [1991] ECR I-25, paragraph 12, the Court held that a producer is any person who manages a holding and sells or delivers milk or milk products and that it is not necessary for the farmer to own the production facilities used by him.

23 Only farmers actually selling milk or other milk products can therefore be considered to be producers. By contrast, farmers who have spontaneously ceased milk production are no longer producers for the purposes of Article 2(1) read in conjunction with Article 12(c) of Regulation No 857/84.

24 That interpretation is borne out, first, by the system for granting and spontaneous abandonment of the reference quantity which a producer must possess according to the second condition laid down by Article 2(2) of Regulation No 1637/91, namely, possession of an individual reference quantity. According to the Court's case-law, it follows from the general scheme of the provisions concerning the additional levy on milk that a reference quantity can be allocated to a producer only if he has the status of a producer (*Ballmann*, cited above, and C-15/95 *EARL de Kerlast* [1997] ECR I-1961). Moreover, in *Klensch*, the Court ruled that Regulation No 857/84 precludes a Member State which has opted for formula B from adding the individual reference quantity of a producer who has ceased production to the reference quantity of the purchaser to whom the producer was supplying milk at the time when he ceased production, instead of adding it to the national reserve.

25 Second, that interpretation is consistent with the objective pursued by the Community rules, which is to provide financial support for the discontinuation of milk production and so grant compensation, as provided for in Regulation No 1637/91. It is apparent from the fourth recital in the preamble to that regulation that the compensation is intended to facilitate a decrease in deliveries and direct sales and mobilization of the necessary quantities for other categories of producer. It is no longer possible to achieve that objective once milk production has been spontaneously discontinued, so that the individual reference quantity must be returned to the national reserve.

26 Last, as the Advocate General correctly points out in section 29 of his Opinion, to award compensation for giving up an unused reference quantity would be contrary to the settled case-law of the Court, according to which the right to property safeguarded by the Community legal order does not include the right to dispose, for profit, of an advantage, such as reference quantities, which does not derive from the assets or occupational activity of the person concerned (Case C-44/89 *Von Deetzen II* [1991] ECR I-5119, paragraph 27, and Case C-2/92 *Bostock* [1994] ECR I-955, paragraph 19).

27 In so far as the applicants rely on Circular No 7036, neither Regulation No 1637/91 nor any other provision applicable under the additional levy scheme authorizes the Member States to derogate from the conditions laid down by Community legislation.

28 The answer to the national court's question must therefore be that Article 2 of Regulation No 1637/91 must be interpreted as meaning that a farmer may be granted compensation for definitive discontinuation of all milk production only if, on the date of his application, he is producing milk in his capacity as a producer within the meaning of Article 12(c) of Regulation No 857/84 and if he possesses an individual reference quantity in respect of direct sales.

Costs

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

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Tribunal Administratif, Amiens, by judgment of 20 April 1995, hereby rules:

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 meaning that a farmer may be granted compensation for definitive discontinuation of all milk production only if, on the date of his application, he is producing milk in his capacity as a producer within the meaning of Article 12(c) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector and if he possesses an individual reference quantity in respect of direct sales.

Schintgen Mancini Hirsch

Delivered in open court in Luxembourg on 9 October 1997.

R. Grass R. Schintgen

Registrar President of the Second Chamber