JUDGMENT OF THE COURT (Third Chamber)
15 January 1991 *

In Case C-341/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof for a preliminary ruling in the proceedings pending before that court between

Heinrich Ballmann

and

Hauptzollamt Osnabrück,

intervener:

Berthold Menkhaus,

on the interpretation of Article 12(c) and (d) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (Official Journal L 90, p. 13),

THE COURT (Third Chamber)

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

Advocate General: G. Tesauro
Registrar: J. A. Pompe, Deputy Registrar

after considering the observations submitted on behalf of the Commission of the European Communities, by Dierk Booß and Klaus-Dieter Borchardt, members of its Legal Department, acting as Agents,

* Language of the case: German.

having regard to the Report for the Hearing,

after hearing oral argument presented by the Commission at the sitting on 14 November 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 14 November 1990,

gives the following

Judgment

1 By order of 26 September 1989, which was received at the Court on 3 November 1989, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 12(c) and (d) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (Official Journal L 90, p. 13).

2 The questions were raised in proceedings brought by Heinrich Ballmann, a milk producer, against Hauptzollamt Osnabrück. Mr Ballmann has a farm with 60 stalls for cows, 20 of which are in a new cowshed. Under the Community regulations on the additional levy on milk, he was granted a reference quantity corresponding to the milk production of about 40 cows.

3 By contract of 15 June 1987, Mr Ballmann leased the 20 stalls in the new cowshed to Mr Berthold Menkhaus, another milk producer. A reference quantity had been allocated to Mr Menkhaus corresponding to the milk production of about 20 cows, based on the production previously achieved on his own holding.

4 Under the lease, Mr Ballmann and Mr Menkhaus were to provide separately for the feeding, milking, insemination and veterinary treatment of their respective cows. The milk produced is stored in two separate tanks. Apart from the general facilities of the cowshed, only the milking machinery is shared. The quantity of milk obtained by each farmer is measured by an electronic gauge.

5 Having regard to the lease contract, the competent administrative authority gave notice that Mr Menkhaus could not be regarded as a milk producer within the meaning of the applicable Community provisions and that, consequently, the milk production obtained by him using the facilities on Mr Ballmann's farm would be set against Mr Ballmann's reference quantity. Mr Ballmann contested that decision before the Finanzgericht (Finance Court).

6 His action was dismissed on the ground that the lessee could not rely on his own reference quantity on the lessor's holding; Mr Ballmann appealed on a point of law to the Bundesfinanzhof (Federal Finance Court), which stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'Should Article 12(c) and (d) of Regulation (EEC) No 857/84 or any other provision of the Community rules on guaranteed milk quantities be interpreted as meaning that milk obtained under the management of a farmer from his cows kept in leased stalls is to be set against the reference quantities allocated to that farmer in the Federal Republic of Germany? Or is the milk obtained in that way to be set against the reference quantity of the lessor farmer, himself a milk producer?

Does the answer depend on the details of the lease, the circumstances of the case (and if so, which ones) or both?'

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the relevant Community provisions, the course of the procedure and

the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 The questions, which it is appropriate to consider together, essentially seek to determine whether Article 12(c) and (d) of Regulation No 857/84 must be interpreted as meaning that the milk production obtained by a farmer in production units leased by him must be set against his own reference quantity or, on the contrary, whether that production must be set against the lessor's reference quantity.

9 It must first be pointed out that the general scheme of the provisions concerning the additional levy on milk shows that a reference quantity can be allocated to a farmer only if he has the status of producer. Consequently, in order to answer the questions submitted, the concept of producer within the meaning of the provisions at issue must first be considered.

10 That concept is defined in Article 12(c) of Regulation No 857/84. According to that provision, a producer is

'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'.

11 The definition of 'producer' must be read in conjunction with that of 'holding' which, pursuant to Article 12(d) of Regulation No 857/84, means

'all the production units operated by the producer and located within the geographical territory of the Community'.

12 It is apparent from the above definitions that the status of producer is accorded to any person who manages a holding, that is to say a set of production units located within the geographical territory of the Community, and sells or delivers milk or milk products, and that it is not necessary for the farmer to own the production facilities used by him. The concept of producer cannot therefore be interpreted as excluding the category of lessees of a holding.

13 That interpretation is confirmed by Article 7(1) of Regulation No 857/84, which provides, *inter alia*, that where an undertaking is leased the corresponding reference quantity is to be transferred to the tenant. That provision implies that a person entitled to use a holding may, in the same way as the owner of such a holding, qualify to be granted a reference quantity under the additional levy scheme.

14 It follows that the quantity of milk or milk products sold or delivered by a lessee, corresponding to milk production achieved by him on the leased premises, must, in principle, be set against the lessee's reference quantity, it being immaterial whether or not the lessor too is a milk producer and, as such, has been granted a reference quantity.

15 It must, however, be pointed out that, in order to facilitate effective administrative monitoring of the application of the scheme, production can only be set against the lessee's reference quantity if the latter operates independently the production units for whose operation he has leased certain facilities. More specifically, in circumstances such as those of the main proceedings, where the lessor and lessee share the use of certain facilities, production may be set against the lessee's reference quantity only if the quantities of milk produced by him are clearly distinguished from those produced by the lessor and, in particular, are stored and delivered separately.

16 It is the responsibility of the national court to make the necessary factual assessments to determine whether those conditions are fulfilled in this case.

17 For those reasons, it must be stated in reply to the questions submitted that Article 12(c) and (d) of Council Regulation (EEC) No 857/84 of 31 March 1984 must be interpreted as meaning that milk production obtained by a farmer in leased facilities must be set against that farmer's reference quantity if he manages on an independent basis the production units for whose operation he has leased certain facilities and clear separation of the quantities of milk produced by the lessee and lessor respectively is ensured.

Costs

18 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in reply to the questions submitted to it by the Bundesfinanzhof, by order of 26 September 1989, hereby rules:

Article 12(c) and (d) 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 must be interpreted as meaning that milk production obtained by a farmer in leased facilities

must be set against that farmer's reference quantity if he manages on an independent basis the production units for whose operation he has leased certain facilities and clear separation of the quantities of milk produced by the lessee and lessor respectively is ensured.

Moitinho de Almeida Grévisse Zuleeg

Delivered in open court in Luxembourg on 15 January 1991.

J. G. Giraud
Registrar

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