REPORT FOR THE HEARING
in Case C-341/89 *

I — Facts and procedure

1. *The applicable Community provisions*

(a) *Council Regulation (EEC) No 856/84* of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (Official Journal L 90, p. 10) imposed for a period of five years an 'additional levy' on quantities of milk delivered in excess of a reference quantity to be determined.

(b) The general rules for the application of the additional levy are laid down 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 (Official Journal L 90, p. 13).

Article 2(1) of Regulation No 857/84 determines the reference quantity referred to in the basic Regulation No 856/84, that is to say the quantity exempt from the additional levy. In principle, the latter is equal to the quantity of milk or milk equivalent delivered by the producer during the 1981 calendar year (Formula A) or purchased by a purchaser during the 1981 calendar year (Formula B), plus 1%. Pursuant to Article 2(2), the Member States may nevertheless provide that, on their territory, the reference quantity is to be equal to the quantity of milk or milk equivalent delivered or purchased during the 1982 calendar year or the 1983 calendar year, weighted by a percentage fixed so as not to exceed the guaranteed quantity. Moreover, pursuant to Articles 3a, 4 and 4a of that regulation, the Member States may, in order to determine the reference quantities, take account of certain special circumstances or grant special or additional reference quantities.

Article 7(1) of Regulation No 857/84 provides that:

'Where an undertaking is sold, leased or transferred by inheritance, all or part of the corresponding reference quantity shall be transferred to the purchaser, tenant or heir according to procedures to be determined.'

Article 12 of Regulation No 857/84 defines various terms used in the Regulation, including 'producer' and 'holding' (in paragraphs (c) and (d) respectively):

'(c) producer: a natural or legal person or group of natural or legal persons farming a holding located within

* Language of the case: German.

the geographical territory of the Community:

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

supplying the purchaser;

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

(c) The procedures for the application of the additional levy were laid down in Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for its application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (Official Journal L 132, p. 11).

2. *The main proceedings*

Heinrich Ballmann has a farm with accommodation for 60 cows, including 20 stalls in a new cowshed. Pursuant to the Community provisions concerning the additional levy on milk, he was granted a reference quantity, exempt from the levy, corresponding to the milk production of about 40 cows.

By contract of 15 June 1987, Mr Ballmann leased the 20 stalls in the new cowshed to Berthold Menkhaus, a farmer who has a reference quantity corresponding to the milk production of about 20 cows. According to the lease, Mr Ballmann and Mr Menkhaus are to provide separately for the feeding, milking, insemination and veterinary treatment of their respective cows. Their production is stored in two separate milk tanks. Apart from the general facilities of the cowshed, only the milking machinery is shared; the quantity of milk obtained by each is measured by an electronic gauge.

The Oberfinanzdirektion (Regional Finance Directorate) made it known that, as a result of entering into the lease, the lessee was to lose his status as milk producer under the applicable Community regulations and Mr Ballmann therefore commenced proceedings before the Finanzgericht (Finance Court) for a declaration that the lessee had not lost his status as milk producer by virtue of his entering into the lease and that, consequently, the milk obtained by him should not be set against the lessor's reference quantity.

That claim was dismissed as unfounded by the Finanzgericht, essentially on the ground that the lessee cannot make use of his reference quantity within the lessor's operating unit; Mr Ballmann appealed on a point of law to the Bundesfinanzhof (Federal Finance Court).

Considering that the decision to be given depended essentially on the meaning to be attributed to the term 'producer' under Community law, the Bundesfinanzhof 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?'

3. *Procedure before the Court*

The order for reference was received at the Court Registry on 3 November 1989.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Commission of the European Communities, represented by its Legal Adviser, Dierk Booss, and by Klaus-Dieter Borchardt, a member of the Commission's Legal Department, acting as Agents.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

By decision of 20 September 1990, pursuant to Article 95 of the Rules of Procedure, the Court assigned the case to the Third Chamber.

II — Written observations submitted to the Court

Written observations were submitted by the Commission of the European Communities.

1. *The first question*

In the Commission's opinion, the answer to the first question depends essentially on who, under the rules on the additional levy, must be regarded as the producer of the quantities of milk obtained in the leased stalls. Since the definitions in Article 12(c) and (d) of Regulation No 857/84 are framed in broad terms, a producer may be regarded as any person who manages an agricultural holding, the latter characteristically comprising a collection of production units managed by the producer, without the status of producer being conditional upon ownership of the production units in question. As the Court held in its judgement in Case C-5/88 *Wachauf* [1989] ECR 2609, the transfer of a holding or part of a holding to a lessee does not exclude the existence of a production or marketing undertaking within the meaning of Article 12 of Regulation No 857/84.

The interpretation whereby a lessee of production units may also be a 'producer' for the purposes of the additional levy system is also in harmony with realities and conforms to the spirit and purpose of that system. It is usual, not only in Germany but also in other Member States, for a farmer to lease production units of the most modern type available in order to produce the reference quantity attributed to him. That approach not only allows the farmer to turn his investment to better account but it is also entirely in conformity with the system of guaranteed quantities, since it tends to improve competitiveness and the quality of milk production.

In the light of the foregoing, the Commission rejects as unacceptable the interpretation whereby the status of producer is inseparable from the production facilities for the reference year (1983) on the basis of which the reference quantity was granted, and whereby unprofitable holdings must in due course disappear from the market in order to limit production.

In the first place, the Commission observes that the milk quota system is not intended to eliminate all milk production but rather to ensure production, however limited, under the best possible technical and structural conditions. That objective is compatible with a case where a milk producer, in order to produce the reference quantity attributed to him, moves from his old production facilities to more modern, and therefore more profitable, units which he manages on his own account, under a lease.

Furthermore, that conclusion does not conflict with the principle embodied in the milk quota system of a 'link' between the reference quantity and the land. That principle is intended solely to restrict the free trade in reference quantities and the speculation to which such a practice might give rise (see Article 7(1) of Regulation No 857/84). However, it relates only to circumstances where it is intended to transfer reference quantities, as for example in the case of the sale or leasing of a holding or part of a holding. The principle of the 'link with the land' does not thereby imply that the reference quantity must be produced using the production units which yielded the milk production taken as a basis for fixing the reference quantity for 1983. It follows that the quantity of milk which a farmer obtains from production units which he has leased may in principle be set against the reference quantity allocated to him.

2. *The second question*

According to the Commission, the second question concerns the specific conditions under which the quantity of milk obtained by the lessee in the leased production units may be set against the reference quantity allocated to him.

Those conditions are affected by the link, provided for in Article 12(c) and (d) of Regulation No 857/84, between the production of milk and the producer's holding. The status of producer implies that the person concerned directs and manages the holding or milk production unit on his own account. That principle derives from the condition essential to application of the system, namely clear apportionment

between the persons concerned of the quantity of milk produced on a holding.

Where there is a lease, that apportionment may on occasion prove difficult if the parties are both milk producers, as in the present case. In such circumstances, the decision as to the apportionment of the quantities of milk produced in the production units covered by the lease depends essentially on the terms of the lease and the actual production conditions. In that context, the lessee may have the quantity of milk concerned attributed to him where the leased production units are managed in such a way as to ensure a clear and unequivocal delimitation between the deliveries of milk and records of quantities thereof produced by the lessor and the lessee in their respective production units. It is, according to the Commission, the responsibility of the national court to appraise the circumstances of the present case.

Consequently, the Commission suggests that the Court give the following answer to the questions submitted:

'Article 12(c) and (d) of Council Regulation (EEC) No 857/84 of 31 March 1984 must be interpreted as meaning that the quantity of milk obtained under the management of a farmer from his cows kept in leased stalls must be set against the reference quantity attributed to him in the Federal Republic of Germany if those leased stalls are managed and operated in such a manner as to ensure unequivocal separation of the deliveries and records of the quantities of milk produced by the lessor and the lessee.'

M. Zuleeg
Judge-Rapporteur