JUDGMENT OF THE COURT (Second Chamber)
16 May 2002 *

In Case C-384/00,

REFERENCE to the Court under Article 234 EC by the Niedersächsisches Oberverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between

Heinrich Bredemeier

and

Landwirtschaftskammer Hannover,

joined parties:

Wilhelm Wieggrebe

and

Irmtraut Bredemeier,

on the interpretation of Article 3a(1) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to

* Language of the case: German.

in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), as amended by Council Regulation (EEC) No 1639/91 of 13 June 1991 (OJ 1991 L 150, p. 35),

THE COURT (Second Chamber),

composed of: N. Colneric, President of the Chamber, R. Schintgen and V. Skouris (Rapporteur), Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Mr Bredemeier, Mr Wieggrebe and Mrs Bredemeier, by K.-L. Grages, Rechtsanwalt,

— the Commission of the European Communities, by M. Niejahr, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 28 February 2002,

gives the following

Judgment

1 By order of 28 August 2000, received at the Court on 20 October 2000, the Niedersächsisches Oberverwaltungsgericht (Higher Administrative Court) submitted for a preliminary ruling under Article 234 EC a question on the interpretation of Article 3a(1) 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 (OJ 1984 L 90, p. 13), as amended by Council Regulation (EEC) No 1639/91 of 13 June 1991 (OJ 1991 L 150, p. 35) (hereinafter 'Regulation No 857/84').

2 That question has arisen in proceedings between Mr Bredemeier and the Landwirtschaftskammer Hannover concerning the grant of a special reference quantity under the system of the additional levy on milk.

Legal framework

3 Council Regulation (EEC) No 1078/77 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (OJ 1977 L 131, p. 1), adopted by the Council on 17 May 1977, provided for the payment of a premium to producers who undertook, for a period of five years, not to market milk or milk products or to convert their dairy herds to meat production.

4 On 31 March 1984, the Council adopted Regulation (EEC) No 856/84 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products (OJ 1984 L 90, p. 10) and Regulation No 857/84. Those regulations introduced, from 1 April 1984, a system of additional levies on milk requiring each milk producer, on penalty of an additional levy, only to market the quantities of milk corresponding to the milk quota allocated to him ('reference quantity'). That quota reflects the quantity of milk produced during a reference year, which for the Federal German Republic was 1983.

5 Producers who produced nothing during that year because of their undertaking under Regulation No 1078/77 were excluded from the milk quota scheme.

6 By its judgments in Case 120/86 *Mulder* [1988] ECR 2321 and Case 170/86 *Von Deetzen (I)* [1988] ECR 2355, the Court declared Regulation No 857/84 to be invalid in so far as it did not provide for the allocation of a reference quantity to producers who did not deliver milk during the reference year adopted by the Member State concerned.

7 Council Regulation (EEC) No 764/89 of 20 March 1989, amending Regulation No 857/84 (OJ 1989 L 84, p. 2), was intended to implement the judgments in *Mulder* and *Von Deetzen I*. It thus inserted into Regulation No 857/84 Article 3a, which made it possible, on certain conditions, to allocate a specific reference quantity to the category of producers previously excluded from the milk quota scheme.

8 The detailed rules for the application of the regulation cited in the preceding paragraph were laid down in 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), as amended by Commission Regulation No 1033/89 of 20 April 1989 (OJ 1989 L 110, p. 27) (hereinafter 'Regulation No 1546/88'). That regulation added a new provision, Article 7a, to Regulation No 1546/88 which provides, in particular, that the special reference quantity granted under the conditions laid down in Article 3a of Regulation No 857/84 is, in the event of the transfer of the holding by inheritance or by any similar transaction, to be transferred in accordance with the first and third subparagraphs of Article 7 to the producer to whom the holding is transferred, provided that the latter undertakes to comply with the undertakings of his predecessor.

9 In its judgment in Case C-314/89 *Rauh* [1991] ECR I-1647, the Court held that Article 3a of Regulation No 857/84, as amended by Regulation No 764/89, must be interpreted as meaning that, subject to the conditions laid down therein, a special reference quantity may be granted to a producer who has taken over a holding by way of succession or a similar transaction after the expiry of a non-marketing undertaking entered into pursuant to Regulation No 1078/77 by his predecessor in title.

10 Furthermore, in paragraphs 38 and 39 of its judgment in Case C-44/89 *Von Deetzen (II)* [1991] ECR I-5119, the Court interpreted the term 'similar transaction' within the meaning of the first subparagraph of Article 7a of Regulation No 1546/88 and held that it refers to any transaction, whatever its legal basis, which produces effects comparable to those of inheritance and that it embraces, in particular, transactions concluded in respect of the holding concerned between a producer and the potential beneficiary of his estate, provided that the terms of the transaction in question are such that, according to its purpose and subject-matter, the main intention is that the holding should continue to be exploited by the potential beneficiary and not that the marketable value of the holding should be realised by the person from whom he stands to inherit. That is the case where conditions of the contract embodying the transaction in question are such that they place the potential beneficiary in a privileged position compared with that of an operator taking over a comparable holding on an arm's length basis.

11 The first indent of Article 3a(1) and Article 3a(2) of Regulation No 857/84, as amended by Regulation No 764/89, were declared invalid by the judgments in Case C-189/89 *Spagl* [1990] ECR I-4539 and Case C-217/89 *Pastätter* [1990] ECR I-4585.

12 In order to comply with the judgments in *Spagl* and *Pastätter*, the Council adopted Regulation No 1639/91, which contains a new version of Article 3a which provides that a special reference quantity may also be granted to producers who were previously prevented from resuming milk exploitation on the basis of conditions declared invalid in *Spagl* and *Pastätter*.

13 The first recital of the preamble to Regulation No 1639/91 further states that, following the interpretation of Article 3a 'by the Court of Justice in Case C-314/89 [*Rauh*, cited above], producers who acquired the milk holding through an inheritance or similar means and made no application between 29 March and 29 June 1989, or whose applications were rejected, should be allowed to apply or to re-apply'.

14 Thus, Regulation No 1639/91 added a second indent to Article 3a(1) of Regulation No 857/84, worded as follows:

'Producers:

...

— who have received the holding through an inheritance or similar means following expiry of the undertaking entered into under Regulation (EEC) No 1078/77 by the originator of the inheritance, albeit before 29 June 1989,

shall receive on a provisional basis, on application submitted within a time-limit of three months from 1 July 1991, a special reference quantity on the terms laid down in (a), (b) and (d) above.'

Main proceedings and question referred to the Court

15 Mr Bredemeier is a milk producer. Since 1 October 1986, he has leased for an indefinite period, by means of a series of agricultural tenancy agreements, his father-in-law's holding, which he works with his wife. His father-in-law, who lives with his daughter and her husband on their farm and is looked after by them, had at the beginning of the 1980s entered into a non-marketing undertaking pursuant to Regulation No 1078/77, which expired on 10 June 1985, even before Mr Bredemeier took the lease on the holding.

16 Mr Bredemeier stated before the national court that the rent was DEM 500 per hectare, after deduction of DEM 3 600 per annum for the rent of the farm buildings, whereas the normal market price would at the time have been DEM 800 to DEM 1 000 per hectare. The national court states that the rent was agreed on terms which place Mr Bredemeier in a much better position than that of operators who take a comparable holding on market terms.

17 In June 1989 and on 26 September 1991 (and therefore, in the case of the latter date, within the three-month period laid down in Article 3a of Regulation No 857/84), Mr Bredemeier submitted two applications to the Landwirtschaftskammer Hannover for a provisional reference quantity for the holding which his father-in-law had leased to him. The applications were rejected and Mr Bredemeier appealed to the competent Verwaltungsgericht, his wife and father-in-law joining in the proceedings. The two cases were joined and were dismissed by judgment of 20 October 1993.

18 Mr Bredemeier appealed against that judgment before the Niedersächsisches Oberverwaltungsgericht.

19 On the issue whether a special reference quantity should have been granted to Mr Bredemeier pursuant to Article 3a of Regulation No 857/84, that court observes that the holding in question was not transferred to Mr Bredemeier in his capacity as potential beneficiary, a question analysed by the Court of Justice in *Von Deetzen II*, because it is not the lessee but his wife who stands to inherit the producer's holding.

20 However, the national court does not preclude the possibility that, owing to the family ties between Mr Bredemeier, his wife and his father-in-law, who lives with them on their own holding and is looked after by them, the holding has been taken over through 'similar means' to an inheritance within the meaning of Article 3a of Regulation No 857/84. That applies *a fortiori* because the lease of the holding to Mr Bredemeier was agreed on much better terms than market terms and because, consequently, the criterion laid down in paragraphs 38 and 39 of *Von Deetzen II* is satisfied.

21 It was in those circumstances that the Niedersächsisches Oberverwaltungsgericht decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Is an agricultural holding received through "similar means" within the meaning of Article 3a of Council Regulation (EEC) No 857/84 of 31 March 1984 (OJ 1984 L 90, p. 13), as amended by Council Regulation (EEC) No 1639/91 of 13 June 1991 (OJ 1991 L 150, p. 35), where, following expiry of the non-marketing undertaking entered into by the producer under Regulation (EEC) No 1078/77, the holding is leased by him to the husband of the designated heir before 29 June 1989 on conditions more favourable than normal market conditions?'

The question referred to the Court

22 By its question, the national court is essentially asking whether the words 'producers... who have received the holding through... similar means' in the second indent of the second subparagraph of Article 3a(1) of Regulation No 857/84 are to be interpreted as meaning that they refer to a producer who is the spouse of the designated heir and to whom the holding has been leased on conditions more favourable than market conditions, following expiry of the non-marketing undertaking entered into by the lessor, the deviser, under Regulation No 1078/77, but before 29 June 1989.

23 In *Von Deetzen II*, the Court interpreted the expression 'similar means' within the meaning of the first subparagraph of Article 7a of Regulation No 1546/88.

24 It is true, as the Advocate General has observed in points 13 to 15 of his Opinion, that that provision related not to the allocation of a special reference quantity to a producer who received the holding by inheritance or similar means, but to the transfer of the special reference quantity already granted to the holding to the producer to whom the holding was then transferred by inheritance or by any similar transaction and that, furthermore, in certain language versions the wording of that provision was slightly different from that of the provision to which the present reference for a preliminary ruling relates.

25 However, in *Rauh* the Court essentially used the wording of Article 7a of Regulation No 1546/88 to interpret Article 3a of Regulation No 857/84 as amended by Regulation No 764/89. It thus held, in paragraphs 12 and 25 of that judgment, that under that provision a special reference quantity may be granted to a producer who has taken over a holding by way of succession or a similar transaction after the expiry of a non-marketing undertaking entered into pursuant to Regulation No 1078/77 by his predecessor in title, notwithstanding the fact that the predecessor in title is not already himself the beneficiary of such a special reference quantity.

26 It follows from the first recital of the preamble to Regulation No 1639/91 that it was in order to comply with the interpretation given by the Court in *Rauh* that the Community legislature referred, in Article 3a of Regulation No 857/84, to producers who have received the holding through an inheritance or 'similar means'.

27 In those circumstances, it must be held that those words are equivalent to the words 'any similar transaction' in the first paragraph of Article 7a of Regulation No 1546/88. Accordingly, the Court's interpretation in *Von Deetzen II* of the

concept of 'any similar transaction' within the meaning of that provision also holds good for the purpose of interpreting the corresponding words in Article 3a of Regulation No 857/84.

28 It must therefore be held that the words 'any similar transaction' refer to any operation, whatever its legal basis, which produces effects comparable to those of inheritance.

29 In paragraph 38 of *Von Deetzen II*, the Court stated that such an operation exists where the transaction concerned, according to its purpose and subject-matter, has as its main intention that the holding should continue to be exploited by the potential beneficiary and not that the marketable value of the holding should be realised by the person from whom he stands to inherit. It further stated, in paragraph 39 of that judgment, that that is the case where the conditions of the contract embodying the transaction in question place the potential beneficiary in a privileged position compared with that of an operator taking over a comparable holding on an arm's length basis.

30 The taking of a holding can there be regarded as having been effected by a similar means to inheritance only if it favours the potential beneficiary in the way stated in the preceding paragraph.

31 It is true, admittedly, that in *Von Deetzen II* the Court made the above observations with reference, in particular, to transactions between a producer and his potential beneficiary.

32 However, as the use of the expression 'in particular' in paragraph 38 of *Von Deetzen II* suggests, those are not the only transactions capable of favouring the potential beneficiary in the sense indicated by the Court in that judgment.

33 More specifically, it is conceivable that taken together the elements of fact and of law which characterise the operation concerned give reason to consider that the main intention of the operation is not that the market value of the holding be realised by the predecessor but that the activity of the holding be pursued for the benefit of the potential beneficiary, even though it is not the latter who takes over the holding. In order to determine whether that condition is satisfied in the present case, where the holding is leased to a person other than the potential beneficiary, it is necessary to take into consideration not only the amount of the rent specified in the lease but also other factors such as the duration of the lease and the possibility of termination by one of the parties.

34 Where, as in the case before the national court, the holding is leased to the spouse of the designated heir, it is important, as the Commission has rightly stated in its written observations, that the terms of the legal relations between the parties to the contract be such that the advantage which the deviser intends to confer on his heir is guaranteed in the long term, even if the spouses should separate or the marriage be dissolved.

35 It is for the national court to ascertain, by assessing all the elements of fact and of law which characterise the lease in issue in the main proceedings, whether the lease satisfies the conditions set out in the two preceding paragraphs.

36 In that regard, however, the fact that, according to the information in the file submitted to the Court, the holding in question was let to the spouse of the designated heir of the lessor at a more advantageous price than the market price, and also the fact that the holding is worked jointly by the two spouses, argue strongly in favour of assimilating the letting in question to the taking of a holding by a similar means to inheritance, within the meaning of the second indent of the second subparagraph of Article 3a(1) of Regulation No 857/84.

37 Having regard to the foregoing considerations, the words 'producers... who have received the holding through... similar means' in the second indent of the second subparagraph of Article 3a(1) of Regulation No 857/84 must be interpreted as meaning that they refer to a producer who is the spouse of the designated heir and to whom the holding has been let on conditions more favourable than market conditions, following the expiry of the non-marketing undertaking entered into by the lessor (the deviser) under Regulation No 1078/77, provided that it follows from all the elements of fact and of law which characterise the letting that:

— the main intention of the arrangement is that the holding should continue to be exploited for the benefit of the designated heir and not that the market value of the holding should be realised by the deviser, and that

— the terms of the legal relations between the parties to the contract are such that the advantage which the deviser intends to confer on his heir is guaranteed in the long term, even if the spouses should separate or the marriage be dissolved.

Costs

38 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (Second Chamber),

in answer to the question referred to it by the Niedersächsisches Oberverwaltungsgericht by order of 28 August 2000, hereby rules:

The words 'producers... who have received the holding through... similar means' in the second indent of the second subparagraph of Article 3a(1) 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, as amended by Council Regulation (EEC) No 1639/91 of 13 June 1991, must be interpreted as meaning that they refer to a

producer who is the spouse of the designated heir and to whom the holding has been let on conditions more favourable than market conditions, following the expiry of the non-marketing undertaking entered into by the lessor (the deviser) under Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds, provided that it follows from all the elements of fact and of law which characterise the letting that:

— **the main intention of the arrangement is that the holding should continue to be exploited for the benefit of the designated heir and not that the market value of the holding should be realised by the deviser, and that**

— **the terms of the legal relations between the parties to the contract are such that the advantage which the deviser intends to confer on his heir is guaranteed in the long term, even if the spouses should separate or the marriage be dissolved.**

Colneric Schintgen Skouris

Delivered in open court in Luxembourg on 16 May 2002.

R. Grass N. Colneric

Registrar President of the Second Chamber