OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 12 July 2001 [1]

I — Introduction

1. In this case the High Court of Ireland has referred to the Court three questions on the interpretation of Article 7(1) of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector. [2] These questions relate to the admissibility of a national rule, under which, in the case of the transfer of a holding, part of the milk quota attached to that holding does not also pass to the transferee of the holding but is added to the national reserve. In the present case such a measure is referred to as 'clawback'. [3]

II — Legal background

2. The scheme for an additional levy on cow's milk was introduced on 1 April 1984 by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Council Regulation (EEC) No 804/68 [4] of 27 June 1968 on the common organisation of the market in milk and milk products. [5] According to Article 5c of Regulation No 856/84, as amended, the objective of the levy is 'to curb the increase in milk production while at the same time permitting the structural developments and adjustments required, having regard to the diversity of the situations among individual Member States, regions and collection areas in the Community'. Under the regulation, each producer of milk products — who fulfilled certain conditions — received a milk quota. [6]

3. 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 [7] laid down further rules. Article 7 of that regulation provides as follows:

'1. Where an undertaking is sold, leased or transferred by inheritance, all or part of the

1 — Original language: Dutch.

2 — OJ 1992 L 405, p. 1.

3 — The national court also uses the term 'siphoning off'.

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

5 — OJ 1984 L 90, p. 10.

6 — The regulation refers to 'reference quantities'.

7 — OJ 1984 L 90, p. 13.

corresponding reference quantities shall be transferred to the purchaser, tenant or heir according to procedures to be determined.

...

3. Member States may provide that a part of the quantities be added to the reserve referred to in Article 5.'

That regulation was repealed on 1 April 1993.

4. In Regulation No 3950/92 this system was maintained until 1 April 2000. [8] Article 1 of that regulation provides as follows:

'For seven new consecutive periods of 12 months commencing on 1 April 1993, an additional levy shall be payable by producers of cow's milk on quantities of milk or milk equivalent delivered to a purchaser or sold directly for consumption during the 12-month period in question in excess of a quantity to be determined. The levy shall be 115% of the target price for milk.'

5. Article 4(1) of Regulation No 3950/92 provides:

'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 referred to in Article 3, taking account of any reductions made for allocation to the national reserve provided for in Article 5.'

6. Regulation No 3950/92 also maintained the national reserve scheme. For a good summary of that scheme I refer to the 13th recital in the preamble to the regulation, which states as follows: 'Experience has shown that implementation of this scheme presupposes the existence of a national reserve to accommodate all those quantities which, for whatever reasons, are not, or are no longer, allocated individually; whereas a Member State may need to have reference quantities available to cater for special situations, determined by objective criteria; whereas it should be authorised, to this

8 — In Council Regulation (EEC) No 1256/1999 of 17 May 1999 amending Regulation (EEC) No 3950/92 establishing an additional levy in the milk and milk products sector (OJ 1999 L 160, p. 73) the duration of that system is again extended, until 1 April 2008.

end, to top up its national reserve, especially following a linear reduction in all reference quantities.' More specifically, the first paragraph of Article 5 of Regulation No 3950/92, as amended by Regulation (EEC) No 1560/93,[9] states as follows:

'Within the quantities referred to in Article 3, the Member State may replenish the national reserve following an across-the-board reduction in all the individual reference quantities in order to grant additional or specific quantities to producers determined in accordance with objective criteria agreed with the Commission, without prejudice to the provisions of the second and third subparagraphs of Article 3(2).'

7. Finally, I set out Article 7(1) of Regulation No 3950/92:

'1. Reference quantities available on a holding shall be transferred with the holding in the case of a sale, lease or transfer by inheritance to the producers taking it over in accordance with detailed rules to be determined by the Member States taking account of the areas used for dairy production or other objective criteria and, where applicable, of any agreement between the parties. Any part of the reference quantity which is not transferred with the holding shall be added to the national reserve.

The same provisions shall apply to other cases of transfers involving comparable legal effects for producers.'

8. The Irish measures for the implementation of those Community provisions were — at the time material to the present proceedings — the European Communities (Milk Quota) Regulations 1995.[10] Article 4(1) of those rules provided that where a holding is transferred the milk quota is transferred with it. Under Article 4(19) the Minister for Agriculture and Food ('the Minister') may, however, determine cases in which part of the quota is not transferred with the holding and is added to the national reserve (the 'clawback'). He is to make that determination by way of a notice published in a national newspaper.

9. Since October 1995 the Minister has adopted a series of clawback measures in accordance with the above regulations. In particular, the Minister, by Notice No 266/19 published in the press on 19 March 1998, laid down a clawback measure pursuant to which, in the case of

9 — Council Regulation (EEC) No 1560/93 of 14 June 1993 amending Regulation (EEC) No 3950/92 establishing an additional levy in the milk and milk products sector (OJ 1993 L 154, p. 30).

10 — Statutory Instrument No 266 of 1995.

sale or lease of a milk holding, 20% of the milk quota would not be transferred with the holding but would be added to the national reserve. This notice, and all other previous notices concerning clawback, were replaced by Notice No 266/20, which was published in the press on 4 April 1998. The replacement notice was issued *inter alia* because of questions which had arisen as to the precise application of the clawback to transactions which had been concluded around 19 March 1998. In short, the Minister applied a clawback of 20% of the milk quota to each sale or lease of land after 19 March 1998.

III — Facts and procedure

10. The questions have arisen in the course of a dispute between G. Mulligan, T. O'Sullivan, T. Power and H. Duncan, on the one hand, and the Irish Minister for Agriculture and Food and the Attorney General, on the other.

11. Mr Mulligan, the first applicant, is a former dairy farmer who felt compelled to sell his holding on account of rheumatic arthritis in April 1998. It was a family holding, which was sold to Mr O'Sullivan, a neighbouring landowner. The value of Mr Mulligan's holding was adversely affected by the application of the 20% clawback by the Minister. Mr Mulligan had a milk quota of 50 915 gallons which was attached to a holding of approximately 115 acres in Clonin Rhode in the County of Offaly.

12. Mr O'Sullivan, the second applicant, is the owner of neighbouring land situated in Clonin Rhode in the County of Offaly. He bought the land and the reference quantity of milk from the first applicant in April 1998. As a result of the purchase, the Minister applied a clawback of 20% to the reference quantity of milk. As a consequence of the 20% clawback a (lower) price of IEP 438 000 was paid. The land in question was registered in the name of P. O'Sullivan, the son of the second applicant.

13. Mr Power, the third applicant, is a dairy farmer and owner of 125 acres in Garrynoe Ballingarry Thurles in the County of Tipperary. He was the owner of a milk quota of 38 000 gallons which was attached to his land. Owing to his ill health and increasing debts, part of his land was advertised for sale in or around March 1998. There was a number of interested purchasers. With the coming into operation of Notice No 266/20 of April 1998 the interest of potential purchasers evaporated and he was obliged to dispose of his milk quota to the purchaser of his milk, a dairy cooperative, through a restructuring scheme, for less money.

14. Mr Duncan, the fourth applicant, was the owner of a holding of some 55 acres and a milk quota of 59 000 gallons at

Mount Alexander Gorey in the County of Wexford. He purchased the land towards the end of the 1980s at the market price. The milk quota attached to the holding also determined the market price. At the beginning of 1998 he decided to cease milk production and to lease his land and milk quota. As a consequence of the introduction of the 20% clawback he ran the risk of incurring two 20% clawbacks of milk quota if he were to lease the land and quota for some time and then sell it. He therefore felt that he had no choice but to sell his land and milk quota rather than to lease it. After the sale, he learnt that the 20% clawback had led to significantly lower proceeds of sale.

15. The four applicants in the main proceedings dispute the validity of Notice No 266/20 and have brought an action seeking restoration of the original situation, including damages and interest.

16. By order of 30 July 1999, received at the Registry of the Court of Justice on 18 August 1999, the High Court of Ireland referred to the Court the following questions for a preliminary ruling:

'1. Is Article 7(1) of Council Regulation No 3950/92 to be interpreted as meaning that a Member State may provide that a part of the reference quantity available on a holding shall not in the case of sale or lease be transferred with the holding to producers taking it over but shall instead be added to the national reserve by means of a "claw-back" or "siphoning off" or some similar deduction mechanism?

2. If the answer to 1 above is in the affirmative is the procedure chosen by the Member State to make such provision subject only to principles of national law or is the said procedure subject to the fundamental principles of Community law including a principle of legal certainty?

3. If the answer to 1 above is in the affirmative and the national procedure is subject to Community law is a national procedure whereby the Member State by Statutory Instrument empowers the Competent Authority to make a determination of the cases of transfers referred to in Article 7(1) of Council Regulation No 3950/92 where any part of the Milk Quota is not to be transferred with the holding but added to the national reserve and provides that such determination be made by administrative notice to be published in a national newspaper contrary to the principle of legal certainty in Community law?'

IV — The background to this case

The additional levy scheme: a stable scheme

17. The additional levy scheme was introduced on 1 April 1984 for the purpose of controlling milk production in the European Community. The introduction of individual milk quotas was intended to restrict milk production to existing dairy farms and to discourage the advent of new holdings. Individual milk quotas determine the amount of milk which a dairy farmer may produce without having an additional — prohibitive — levy imposed on him. The amount of that individual milk quota is in principle determined by reference to past milk production on a holding.

18. The scheme is characterised by its stability. Milk production is fixed both at the level of the European Union and of the Member States and also at the level of an individual dairy farm. I would add that the amounts are not conclusively fixed. First, there is a time-limit to the scheme; in 1984 a period of five years was laid down. Second, the extent of total milk production must be in proportion to demand on the market for milk products. This means that limited, often yearly variations in the amount of individual milk quotas are inherent in the additional levy scheme. Third, the restriction of milk production may not result in the impossibility of further development in the dairy farming sector. In particular circumstances it is also possible to acquire rights to produce milk which are not or not wholly based on historical production. Part of the rights to produce milk allocated to the Member State may be used for that purpose.

19. All these subtle distinctions do not, however, alter the fact that the chief feature of the scheme is stability. Stability arises from the very design of the scheme, but has become even stronger now that the additional levy scheme, which originally had a duration of five years, has remained in force until the present day without any major amendments.

20. In my view, it was inevitable that a scheme characterised by stability would be introduced in order to control milk production. The scheme is directed primarily at the dairy farmer. He must be able to make business decisions on a reasonably secure footing. Investments in a dairy farm, such as the purchase of land, the construction of a cow shed or the acquisition of cattle, do not, after all, directly produce an income. Nor can a dairy farmer vary the extent of his production from one day to the next without a major accompanying risk to the continuance of his holding.

21. I emphasise the need for stability, because that imposes conditions for State action. I will deal with this in more detail below. The need for stability distinguishes the additional levy scheme from other parts of the common agricultural policy in which the possibility of effective and flexible adjustment of government measures to a quickly changing market is rightly paramount. I refer, for example, to the export refund scheme which is directed at dealers who sell agricultural products on the world market and who are accustomed and able to take account of a rapidly changing market situation.

Changes in the scheme

22. That stable scheme has, however, nevertheless changed over the years. The legal but also the economic significance of the milk quotas originally did not go beyond the purpose for which they were introduced, the restriction of the scale of milk production on a holding and the basis for the levy.

23. Closely connected with that purpose, rules have been laid down for the transferability of those milk quotas; they may in principle only be transferred with the land to which they are attached. In other words, the milk quotas belong to the holding. If a holding is transferred, the milk quota is automatically transferred with it. In that way the Community legislature intended to prevent the additional levy scheme from resulting in a concentration of dairy farming amongst a few major producers who had funds to purchase milk quotas. That would again lead to an undesirable intensification of milk production.

24. Gradually milk quotas are acquiring yet another social function. [11] Although not originally intended by the additional scheme — and although not based on any amendments to that scheme — those milk quotas have turned into assets with a monetary value. They contribute to the value of the land and the value of holdings, also, for example, in the eyes of banks when they grant loans secured by mortgage or other types of loans. The milk quotas themselves are also the subject-matter of business transactions. They may, for example, be leased or temporarily transferred.

25. Over the years, moreover, the rules on the transferability of milk quotas have been made more flexible, but without any amendment to the main rule, namely that

11 — See, in this regard, also the interesting Opinion of Advocate General Ruiz-Jarabo Colomer in Case C-186/96 *Demand* [1998] ECR I-8529.

a milk quota follows the land. As early as 1988 [12] a first exception to the main rule was made in the case of the transfer of land to the public authorities and/or for public use and, in certain cases, on the expiry of a rural lease. Regulation No 3950/92 provides for further exceptions. Article 6(1) of that regulation allows the temporary transfer of a milk quota if the producer entitled to it does not intend to use it. This temporary transfer is normally referred to as the leasing of a milk quota. Furthermore, Article 8 of Regulation No 3950/92 provides for the possibility of transferring milk quotas without land 'with a view to completing restructuring of milk production at national, regional or collection area level, or to environmental improvement'. These relaxations were not only of significance for transfers of land and milk quota but also contributed to the independent value of milk quotas.

Action by public authorities

26. The stability of the scheme — and also of the individual milk quotas — places certain conditions on action by the public authorities. They cannot suddenly and unexpectedly interfere with a stable scheme. The milk producers are entitled to expect that the right granted to them will also retain its value in the longer term. In this respect they differ from the abovementioned dealers who sell agricultural products on the world market, using export refunds which they know may change at any moment. Sudden and unexpected interference with individual milk quotas also endangers the vitality of the dairy farm because the risks become too great and there would be a reluctance to carry out the necessary investment.

27. First, the public authorities must have explicit and unambiguous power to intervene. Reduction of the amount of the milk quota has far-reaching consequences for the person concerned. The management of his holding is directly affected and the reduction has direct consequences for his financial position, having regard to the fact that the milk quota represents an asset.

28. The requirement that there be a lawful power to reduce an individual milk quota is also a consequence of the right to property. As I have already stated, in the course of its existence a milk quota has become a kind of independent asset which can be sold on the market. At first sight, they have thereby also become assets to which the person entitled can claim a right to property. That person thereby acquires *inter alia* the protection of Article 1 of the Protocol No 1 to the European Convention on Human Rights. I also note that Article 17 of the

12 — In Article 7(4) of 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).

Charter of Fundamental Rights of the European Union [13] recognises the principle of respect for the right to property. As Community law currently stands, however, the Charter does not have any binding effect.

29. The second requirement to be satisfied by any intervention by a public authority follows from the principle of legal certainty. Even if the public authorities have a legal power to intervene that does not in itself determine how far and under what circumstances intervention is possible. I apply the principle that the greater the amount by which a public authority reduces a milk quota the more conditions that intervention must fulfil. In other words, the intervention by the public authority must be proportionate. The acceptability of intervention by public authorities in a stable system is, from that point of view, determined by the extent to which the legitimate expectation of the milk producer has been respected.

30. With regard to that legitimate expectation, it is significant that the milk quota is a right given by the public authority which can, in principle, also be revoked. On the one hand, the additional levy scheme is marked out by its stability; on the other, it is repeatedly emphasised in the various Community regulations that the scheme is temporary. A milk producer cannot assume that his right to a levy-free quantity is perpetual. There is always a risk that the public authority will intervene. When considering whether a legitimate expectation of a milk producer has been infringed, the decisive issue is whether the risk of a particular form of intervention should reasonably have been expected by the milk producer — in other words, whether the intervention was foreseeable. If the producer should have reckoned with the intervention, he should have taken the necessary measures to limit the damage which may be caused by it. Specifically with regard to the additional levy scheme, that means that a dairy farmer must be able to structure his business in such a way that he can deal, without problems, with — limited — reductions in his milk quota. The size of a milk quota is however not permanently fixed. Even in the case of the transfer or acquisition of land to which the milk quota is attached, a milk producer will have to take into account these limited uncertainties, which may be expressed in the price of his land.

31. The public authority can, moreover, ensure that the substantive consequences of its intervention are limited. First, the extent of the intervention is itself relevant. The authority may reduce the milk quota by a relatively small percentage. As a result, the measure is more likely to satisfy the requirements of proportionality. Furthermore, an in itself unacceptable interference may nevertheless satisfy the requirements of proportionality. In the first place, I have in mind the offer of (financial) compensation. If a dairy farmer is faced with an (unexpected) reduction in his milk quota which will have major consequences for his business, financial compensation

13 — OJ 2000 C 364, p. 1.

may considerably mitigate the consequences. In the second place, a transitional phase may provide some comfort. If a reduction in the milk quota does not take place suddenly, but at sometime in the future, the dairy farmer can also adjust his business gradually.

32. Finally, I point out one more factor. The intervention must be justified from the point of view of the general interest. Regulation No 3950/92 recognises some general interest reasons. I refer to Article 8 of the regulation which refers to the restructuring of milk production and improvement of the environmental situation. For the rest, the Member States enjoy a wide discretion. Thus, in Article 5 of the regulation 'objective criteria' provide a sufficient basis for granting additional quantities to certain milk producers and also for the reduction of milk quotas of the other producers. Article 7 of the regulation also applies the concept of objective criteria. That wide discretion is connected with the idea that the additional levy scheme should prevent development of the dairy farming sector as little as possible.

V — Relevant case-law

33. In section IV of this Opinion I have sketched out the background to this case. Many of the matters to which I have referred have also been discussed in the case-law of the Court of Justice and of the Court of First Instance. This section of my Opinion is concerned with that case-law. Reflecting section IV of my Opinion, I first deal with aspects which may be of importance for the existence of a legal power to reduce an individual milk quota. Those matters are in particular of importance for the national court's first question. I will then discuss, in connection with the answer to the second question, the legal principles in so far as they may restrict the exercise of the power.

Legal power to intervene

34. The additional levy scheme is part of the common agricultural policy and in particular of the common organisation of the market in milk and milk products. The Community legislature's authority in this area is characterised by broad discretionary powers [14] and a large measure of flexibility.

35. As is apparent *inter alia* from the recitals in the preamble to Regulation No 3950/92, the aim of the additional levy scheme is to achieve a balance between

14 — Consistent case-law of the Court of Justice, see *inter alia* Case C-22/94 *Irish Farmers Association and Others* v *Minister for Agriculture, Food and Forestry* [1997] ECR I-1809.

supply and demand on the milk market and to reduce the structural surpluses, but at the same time without hindering structural developments and improvements in the milk market.

36. It is settled case-law of the Court of Justice that in pursuing the objectives of the common agricultural policy the Community institutions must secure the permanent harmonisation made necessary by any conflicts between those objectives taken individually and, where necessary, allow any one of them temporary priority in order to satisfy the demands of the economic factors or conditions in view of which their decisions are made.[15] In the judgment in *Crispoltoni and Others*[16] the Court states that the 'existing situation ... is capable of being altered by the Community institutions in the exercise of their discretionary power ...; this is particularly true in an area such as the common organisation of the markets whose purpose involves constant adjustments to meet changes in the economic situation. It follows that traders cannot claim a vested right to the maintenance of an advantage which they derive from the establishment of the common organisation of the markets and which they enjoyed at a given time.'

37. With a view to making adjustments to changed market circumstances the milk quotas have been amended on many occasions. Reductions in milk quotas have been the subject-matter of cases before the Court on more than one occasion. The Court considers that — in principle (I will return to the limits set by the Court at a later stage) — this is an appropriate device. In the judgment in *Irish Farmers Association and Others*[17] the Court accepted a reduction of 4.5%; in the judgment in *Demand*[18] it upheld a reduction of 4.74%.

38. In doing so, the Court, without expressly pronouncing on the legal nature of the milk quota, assesses the reduction in the milk quota by reference to the right to property in the following way.[19] I quote the judgment in *Irish Farmers Association and Others*:[20] 'The right to property is certainly one of the fundamental rights whose observance is ensured by the Court. Such rights are not, however, absolute rights but must be considered in relation to their social function. Consequently, restrictions may be imposed on the exercise of those rights, in particular in the context of a common organisation of the markets.' The right to property does not therefore in itself preclude the removal of part of a milk quota.

39. Under the Irish rules in question the clawback of part of a milk quota is linked to the transfer of a dairy holding. In the

15 — See *inter alia* the judgment in Case 203/86 *Spain* v *Council* [1988] ECR 4563, paragraph 10.

16 — Joined Cases C-133/93, C-300/93 and C-362/93 [1994] ECR I-4863, paragraphs 57 and 58.

17 — Cited in footnote 14 above.

18 — Cited in footnote 11 above.

19 — See, for example, *Demand*, cited in footnote 11, paragraph 41.

20 — See footnote 14 above, and paragraph 27 of that judgment. See for example also Case C-292/97 *Karlsson and Others* [2000] ECR I-2737, paragraph 45.

judgment in *EARL de Kerlast*[21] the Court deals with the consequences for a milk quota of a transfer of a holding:

'17 The Court has consistently held that the entire system of reference quantities is based on the general principle laid down by Article 7 of Regulation No 857/84 and Article 7 of Regulation No 1546/88 that a reference quantity is allocated in relation to land and must therefore be transferred with that land ...

18 Council Regulation No 3950/92 ..., which has been applicable from 1 April 1993, implemented that principle when the system of reference quantities was renewed. The first subparagraph of Article 7(1) provides: "Reference quantities ... shall be transferred with the holding in the case of sale, lease or transfer by inheritance to the producers taking it over ...".

19 In principle, therefore, a reference quantity is transferred only by transfer of the land of the holding to which it attaches, provided that such transfer complies with the formal requirements and other conditions laid down in that regard by Article 7 of Regulation No 857/84 and Article 7 of Regulation No 1546/88. In other words, the system of reference quantities precludes the bare transfer of reference quantities alone, except where Community law provides otherwise.'

Legal principles

40. Action by a public authority with regard to a milk quota must satisfy the requirements of proportionality. Failure to fulfil those requirements could be regarded as an (unjustified) infringement of the right to property. I again cite the judgment in *Irish Farmers Association and Others*,[22] namely that in the context of the common agricultural policy restrictions of rights may be made 'provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of those rights'.

41. That judgment concerned a measure which ultimately resulted in a definitive

21 — Case C-15/95 [1997] ECR I-1961.

22 — See footnotes 14 and 20 above and paragraph 27 of that judgment.

reduction of 4.5% in the milk quota. Application of those criteria produced the following result: [23]

'[The] regulations in question form part of a body of a legislation intended to remedy the surpluses on the milk and milk products market and ... they therefore correspond to aims pursued by the Community in the general interest. [C]onversion into a definitive reduction without compensation does not affect the actual substance of that right inasmuch as the Irish producers were able to continue to pursue their trade or profession as milk producers. Moreover, the reduction in milk production led to an increase in the price of milk, thus compensating, at least in part, the loss suffered.'

42. In *Von Deetzen II* [24] the Court came to the following conclusion: 'In the light of the foregoing, it must be stated that [a] rule according to which the special reference quantities in question are to be returned to the Community reserve if the holding is sold or leased before 1 April 1992 reflects the concern to obviate the allocation of such quantities to farmers who do not intend to resume the marketing of milk on an enduring basis but merely seek to obtain a financial advantage from the allocation of a reference quantity under the legislation governing the marketing of milk. It is therefore justified by the fact that it pursues an aim which is in the general interest.' [25]

43. In the judgment in *Wachauf* [26] application of those criteria led to a different result: 'Having regard to those criteria, it must be observed that Community rules which, upon the expiry of the lease had the effect of depriving the lessee, without compensation, of the fruits of his labour and of his investments in the tenanted holding would be incompatible with the requirements of the protection of fundamental rights in the Community legal order. Since those requirements are also binding on the Member States when they implement Community rules, the Member States must, as far as possible, apply those rules in accordance with those requirements.' That could be achieved 'either by giving the lessee the opportunity of keeping all or part of the reference quantity if he intends to continue milk production, or by compensating him if he undertakes to abandon such production definitively'. [27]

44. I would add that the European Union, in accordance with Article 6 of the Treaty on European Union, is to respect funda-

23 — Paragraphs 28 and 29 of the judgment.

24 — Case C-44/89 [1991] ECR I-5119.

25 — See paragraph 29 of the judgment.

26 — Case 5/88 [1989] ECR 2609, paragraph 19.

27 — Paragraph 22 of the judgment. One or other does not however imply that the Member States are obliged to introduce a scheme for payment of compensation by the lessor to the outgoing lessee, see judgment in Case C-2/92 *Bostock* [1994] ECR I-955.

mental rights, as guaranteed by the European Convention for the Protection of Human Rights, as general principles of Community law. The European Court of Human Rights has delivered various judgments concerning assets based on public law. [28] According to the European Court of Human Rights, these fall within the scope of the right to property within the meaning of Article 1 of the Protocol No 1 to the ECHR. The Court in Strasbourg has not yet delivered any judgments concerning individual milk quotas or comparable production rights.

45. There is considerable case-law on the role which legal principles play in the implementation of Community law. I refer in that connection to the judgment in *Belgocodex* [29] — also cited by the Commission in its observations — in which the Court states: 'It must be recalled in this regard that the principle of protection of legitimate expectations and the principle of legal certainty form part of the Community legal order and must be observed by the Member States when they exercise the powers conferred on them by Community directives.' However, as I also pointed out in my Opinion in *Silos*, [30] these principles play a limited role in the implementation of the Community agricultural policy, partly because of the rapidly changing relationship between supply and demand in the relevant markets for agricultural products.

46. On the other hand, the additional levy scheme is characterised precisely by stability. In the present case, I consider that the principle of legitimate expectations in particular is of importance, in conjunction with the protection of legal certainty which dairy farmers require when taking investment decisions. The principle of the protection of legitimate expectations, as I stated in my Opinion in the *Silos* case, finds expression in two forms of reliance which may require protection. First, there is protection against infringement of existing rights. As the Court has permitted reductions in milk quota, that right is clearly not an absolute right.

47. Second, the principle relates to the protection of legitimate expectations. I refer to the judgment in *Irish Farmers Association and Others*: [31] 'The Court has consistently held that any trader in regard to whom an institution has given rise to justified hopes may rely on the principle of the protection of legitimate expectations. On the other hand, if a prudent and discriminating trader could have foreseen the adoption of a Community measure likely to affect his interests, he cannot plead that principle if the measure is adopted ... In view of the foregoing considerations, the plaintiffs in the main proceedings had sufficient information to

28 — *Chassagnou v. France*, no. 25088/94, ECHR 1999-III, with regard to hunting law.

29 — Case C-381/97 [1998] ECR I-8153, paragraph 26.

30 — Opinion of 3 April 2001 in Case C-228/99, point 42 et seq.

31 — See footnote 14 above, paragraph 25 of the judgment.

enable them to anticipate, particularly in view of the continuing surpluses on the market, the subsequent reductions ...'.

48. In the cases which have been referred to the Court because no — or an insufficiently large — milk quota was awarded by a Member State, I find two questions which have been dealt with by the Court in two separate ways.

49. The first question relates to milk producers who adopt a development plan in the context of Council Directive 72/159/EEC of 17 April 1972 on the modernisation of farms. [32] Thus, the Court held in the judgment in *Duff and Others* [33] that the Community legislation on the additional levy 'is to be interpreted as meaning that it does not impose on Member States an obligation to grant a special reference quantity to producers who have adopted milk production development plans under Council Directive 72/159'. After considering the principle of legitimate expectations, the Court came to the following conclusion:

'21 Neither the Community rules on development plans, nor the terms or purpose of those plans, nor the context in which the plaintiffs in the main proceedings adopted their development plans indicate that the Community created a situation providing producers who were implementing a development plan with reasonable grounds to expect that a special reference quantity referred to in the first indent of Article 3(1) of Regulation No 857/84 would be allocated and that they would therefore be exempted from the restrictions established by the additional levy scheme.

22 Accordingly ... the Court held that the implementation of a milk production development plan which had been approved by the competent national authorities did not confer on the producer concerned the right to produce the quantity of milk corresponding to the plan's objective without being subject to any restrictions stemming from Community rules adopted after the plan was approved. Consequently, producers with a development plan, even one approved prior to the entry into force of the levy scheme, could not rely on any alleged legitimate expectation based on the implementation of their plan in order to oppose any reductions in such reference quantities ...

23 Moreover, at the time when the plaintiffs in the main proceedings adopted their development plans, which, according to the replies to a question

32 — OJ, English Special Edition 1972 (II), p. 324.

33 — Case C-63/93 [1996] ECR I-569, in particular paragraph 17 et seq.

put by the Court at the hearing, they did not start to implement before 1981, they could not have been unaware that the Community legislature had already, before that time, taken steps to overcome the structural surpluses on the market for milk by a variety of measures ...'

50. The second question concerns milk producers who had taken part in the scheme for the non-marketing of milk, the so-called 'SLOM-producers'. [34] The Court held in the judgment in *Mulder* [35] that 'a producer ... [who] has been encouraged by a Community measure to suspend marketing for a limited period in the general interest and against payment of a premium ... may legitimately expect not to be subject, upon the expiry of his undertaking, to restrictions which specifically affect him precisely because he availed himself of the possibilities offered by the Community provisions. ... Contrary to the Commission's contention, total and continuous exclusion of that kind for the entire period of application of the regulations on the additional levy, preventing the producers concerned from resuming the marketing of milk at the end of the five-year period, was not an occurrence which those producers could have foreseen when they entered into an undertaking, for a limited period, not to deliver milk. ... Such an effect therefore frustrates those producers' legitimate expectation that the effects of the system to which they had rendered themselves subject would be limited.'

51. In the abovementioned judgment in *Duff and Others* the Court compares the two categories of milk producer. The Court states that '[they] are not in the same situation. Unlike in the case of producers who entered into a non-marketing undertaking, the Community legislature did not impose on producers who had adopted a development plan any particular restriction as regards the implementation of their plans. Where, as in the present case, a Member State does not exercise its discretion under the first indent of Article 3(1) of Regulation No 857/84, a producer implementing a development plan is subject to the same restrictions as other producers. Consequently, unlike in the case of producers wholly excluded from any reference quantity and so precluded from producing any milk because of their undertaking given under Regulation No 1078/77, the maintenance of milk production at the level of production in the reference year is guaranteed — as it is for all producers — for those producers who have adopted a development plan.' [36]

Summary

52. I deduce from the case-law of the Court of Justice that individual milk quotas do

34 — Pursuant to 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 (OJ 1977 L 131, p. 1).

35 — Case 120/86 [1988] ECR 2321, paragraphs 24, 25 and 26.

36 — Paragraph 24 of the judgment.

not constitute inviolable rights. The Court permits reduction of those milk quotas in itself. On the transfer of land the milk quota associated with that land is also transferred, unless a Community rule expressly provides for a derogation. If as a result of a transfer of land the milk quota is reduced — and thus part of that quota does not follow the land — an express legal basis is required for that reduction.

53. A measure reducing a milk quota may not, however, affect the very substance of an existing right. This means, first, that it must be possible to continue the milk production on the holding even after a reduction. The continuity of operation of the holding must be ensured. Second, the person concerned must, where necessary, be awarded financial compensation for his efforts.

54. More generally, the case-law of the Court recognises that the legitimate expectations of the milk producer may be infringed. There is an infringement of those expectations, as I interpret the judgment in *Duff and Others*, only if the substance of the milk quota is affected.

VI — Assessment

55. Observations have been received on behalf of the applicants in the main proceedings, the respondents in the main proceedings (the Minister and the Attorney General) and the Commission. At the hearing before the Court on 27 March 2001, they expounded on those observations.

56. The national court's first question concerns the right of the Member State, Ireland, to adopt a clawback measure. I have dealt with this issue in more detail in points 27, 28 and 52 of my Opinion. The second question relates to the acceptability of the measure at issue (see in that regard *inter alia* points 29 to 32 and 53 and 54). The third question is of a completely different nature, since it does not relate to the content of the measure but to the form chosen (a notice from the Minister in a national newspaper).

The first question

Submissions

57. The applicants in the main proceedings submit that Article 7(1) of Regulation No 3950/92 does not permit a clawback or comparable reduction in the milk quota upon the transfer of a holding. Such a measure conflicts with the fundamental principle that a milk quota is attached to a holding. The milk quota cannot be trans-

ferred without the holding nor the holding without the milk quota. The regulation does not recognise any exception. Article 7(1) provides, moreover, that the milk quota is transferred 'in accordance with detailed rules to be determined by the Member States'. Those additional words merely refer to the way in which the milk quota is transferred with the holding but do not provide for the possibility that the milk quota is not transferred with the holding.

58. The applicants also refer to the second sentence of Article 7(1). This shows, according to them, even more that the Member States do not have a right to prevent part of a milk quota from being transferred. Where reference is made to part of the reference quantity not being transferred, that is merely a description of fact. The applicants submit that the wording of Regulation No 3950/92 in that regard is substantially different from Article 7(3) of Regulation No 857/84 in which Member States are given a right to provide that upon the transfer of a holding part of the milk quota is to be added to the national reserve. They submit that such an extensive power as a clawback must be granted in clear and explicit terms.

59. The respondents in the main proceedings state that Article 7(1) of Regulation No 3950/92 provides that a milk producer must transfer the milk quota at the same time as the transfer of his holding. That provision gives, however, the Member States power to introduce a clawback. They refer in particular to the second sentence of Article 7(1). That sentence clearly envisages that there will be circumstances in which part of a reference quantity will not be transferred with the holding upon a transfer of that holding. If a clawback were not permitted, that sentence would have no meaning. Moreover, the first sentence of Article 7(1) provides that the milk quota is to be transferred in accordance with 'detailed rules to be determined by the Member States'.

60. It must be inferred from the 13th recital in the preamble to Regulation No 3950/92 — because of the use of the word 'especially' — that the national reserve may be filled in various ways. The linear method in Article 5 of the regulation is not the only method, according to the respondents.

61. The respondents also point to the fact that a number of Member States apply a clawback. They refer to Belgium, Denmark and France. Moreover, the Irish Government notified the European Communities (Milk Quota) Regulations 1995 to the Commission and the Commission raised no queries.

62. The Commission refers to the general principle in Article 7(1), namely that upon a transfer of a holding the milk quota is transferred with the holding. That principle is confirmed by the case-law of the Court,

inter alia, in the judgment in *EARL de Kerlast*.[37] However, Article 7(1) also provides that the detailed rules concerning the transfer are to be determined by the Member State 'taking account of the areas used for dairy production or other objective criteria'. According to the Commission, it necessarily follows from Article 7(1), which provides that the part of the milk quota which is not transferred with the holding is to be added to the national reserve, that the Member States may introduce a clawback system. The Commission agrees on that point with the respondents in the main proceedings. It is for the national court to determine whether the criteria applied by the Minister were objective. However, in the Commission's view, the criteria appear to have been completely objective.

63. At the hearing the Commission submitted in addition that — contrary to the applicants' assertion — Article 7(1) of Regulation No 3950/92 is, as regards its meaning, in essence the same as Article 7(3) of Regulation No 857/84, although the wording of Regulation No 857/84 was somewhat clearer.

Opinion

64. First of all, I find that, according to the case-law of the Court, milk quotas do not constitute inviolable rights but are regarded as advantages granted in the context of the common organisation of the markets. That is also apparent from the fact that the size of a milk quota may vary from year to year. I refer, *inter alia*, to Article 5 of Regulation No 3950/92, which empowers Member States to make an across-the-board reduction. Moreover, in its judgments in *Irish Farmers Association and Others* and *Demand*[38] the Court expressly recognised the power of the Member States to reduce milk quotas.

65. Furthermore, it is significant that the reduction in the milk quota takes place upon transfer of a holding and is thus an exception to the main rule that the milk quota follows the land.

66. This being the case, it must be asked whether Article 7(1) of Regulation No 3950/92 gives a power to institute a clawback, as the Irish authorities have done. It is therefore a question of interpretation of Article 7(1). That interpretation is also essentially the issue between the parties in the main proceedings.

67. The core of Article 7(1) is constituted by the first part of its first sentence. Upon the transfer of the holding the milk quota is

37 — See point 39 of this Opinion.

38 — See point 37 above.

also transferred. The milk producer may not therefore elect to retain the milk quota in whole or in part or to transfer it separately from the holding to a third party. That is also in accordance with the judgment in *EARL de Kerlast*.[39] The producer cannot rely on a derogation provided for in Community law.

68. The detailed rules for the transfer of the milk quota are to be determined by the Member States, in accordance with the second part of the first sentence of Article 7(1). This is concerned primarily with the conditions under which a quota transfer is possible. Transfer may, for example, be subject to an administrative permit and rules may be laid down also for the procedure applicable upon the transfer of the milk quota.

69. The Member States are to take account 'of the areas used for dairy production or other objective criteria'. These words refer, first of all, it seems to me, to the situation in which not the whole holding but only part is transferred. The Member States must then lay down which part of the milk quota is transferred with it. Generally speaking that is to take place in proportion to the area transferred, but the Member State may also choose to apply other (objective) criteria. That may, for example, be appropriate where not all land is equally suitable for dairy production or, in the case of mixed holdings, if the same land is not always used for dairy farming. The regulation gives the Member State a wide discretion in that regard. The criteria must, however, be in the general interest and more particularly be appropriate to contribute to the aims of the Community legislation concerning the additional levy.

70. The relevant question in this case is, however, more specific: may the Member State also provide, in the event of a transfer of an entire holding, that part of the milk quota is *not* also transferred? In such a case is there a departure from the principle that the milk quota follows the land, for which, according to the case-law of the Court, an express Community legal basis is necessary. Article 7(1), first sentence, of Regulation No 3950/92 is not clear on that point. The power of the Member State must then be inferred from the second sentence of Article 7(1), read in conjunction with the first sentence.

71. The second sentence of Article 7(1) provides for the possibility that, in the case of a transfer as referred to in the first sentence, part of the milk quota is not transferred. That part of the milk quota is then added to the national reserve. The Member States lay down, on the basis of the criteria in the first sentence, the cases in which a part is not transferred. By virtue of the first sentence they have a wide dis-

39 — See point 39 of this opinion.

cretion in that regard. In my opinion, the regulation thus adequately gives the express legal basis necessary for a clawback.

72. I find support for my view in Article 7 of Regulation No 857/84 which gives the Member States power to provide that a part of the milk quota is to be added to the national reserve in the event of the transfer of a holding. Although the wording was amended upon the entry into force of Regulation No 3950/92, nowhere is it apparent that the Community legislature intended to bring about a material amendment to the content of the rules in that regard.

73. Finally, I also refer to the relationship between the clawback and the right to own a milk quota. I merely refer to my earlier finding that the Court permits a reduction in an individual milk quota, provided that the substance of the right to produce is not affected. Whether there is such an unacceptable effect in this case will be considered under the heading of the second question.

74. Having regard to the above, I consider that the Court should answer the national court's question as follows: 'Article 7(1) of Regulation No 3950/92 does not preclude national rules pursuant to which upon the transfer of a dairy holding part of the milk quota attached to that holding is not transferred but is added to the national reserve.'

The second question

Submissions

75. The applicants submit that the fundamental principles of Community law are applicable to any power to apply a clawback. According to the case-law of the Court of Justice, the principle of legal certainty is one of those principles. They refer to the Opinion of Advocate General Cosmas in *Duff and Others*[40] and to paragraph 17 of the judgment in *Commission* v *Italy*:[41]

'According to the Court's consistent case-law ..., the principles of legal certainty and the protection of individuals require, in the areas covered by Community law, an unequivocal wording which gives the persons concerned a clear and precise understanding of their rights and obligations and enables the Court to ensure that those rights and obligations are observed.'

40 — Cited in footnote 33.
41 — Case C-119/92 [1994] ECR I-393.

76. The respondents accept that national measures for the implementation of a Community regulation are subject to the fundamental principles of Community law. The procedure for the establishment of the national measures is, however, determined by the national law of the Member State. They refer in that context to the judgment in *Eridania*.[42]

77. The Commission refers to various judgments of the court. It cites the judgments in *Belgocodex*,[43] *Wachauf*[44] and *Klensch*.[45] It deduces from them that Member States, when adopting measures to implement Community law, are bound by the legal principles recognised by Community law, *inter alia* the principle of legal certainty.

Assessment

78. The national court asks whether the clawback is subject to the fundamental principles of Community law, including the principle of legal certainty. Having regard to the case-law of the court, the answer is plain. A measure of a Member State which is intended to implement an obligation under Community law must satisfy the general principles of law that are recognised in Community law. I refer in that regard to the judgments cited by the Commission in its submissions.

79. In my opinion, however, the Court cannot merely give such a restricted answer. That also follows from my discussion of the national court's first question. The Court must in addition indicate the circumstances in which the general principles of law are satisfied. It is then for the national court to determine whether the clawback measures in question, Notices No 266/19 and No 266/20, satisfy the requirements laid down by Community law.

80. The Irish measures may have significant consequences for the milk producers concerned. After all, they provide for a reduction of 20% of the milk quota. That reduction can — in the event of several transactions relating to the land, even over a short period — be applied each time. I refer, by way of example, to the case of the fourth applicant, Mr Duncan. He intended, so he submits, first to lease the land and then to sell it, as a result of which the clawback would have been applied twice. That consequence caused him to refrain from doing so.

81. In point 29 I stated that action by the public authorities such as that in question here must satisfy the principle of legal

42 — Case 230/78 [1979] ECR 2749, paragraph 34, and the Opinion of Advocate General Warner.

43 — Cited in footnote 29.

44 — Referred to in footnote 26.

45 — Joined Cases 201/85 and 202/85 [1986] ECR 3477.

certainty. Even if the authorities in fact have a lawful power to intervene it is still necessary to establish the extent to which and the conditions upon which intervention is acceptable. The additional levy scheme is a stable scheme in which major fluctuations in the size of individual milk quotas are not appropriate.

82. Also in point 29, I set out the principle that the greater the amount by which the authorities reduce a milk quota, the more conditions that intervention must fulfil. This leads to an assessment of the proportionality of the action. The decisive criterion is the extent to which the legitimate expectation of the milk producer has been respected.

83. The case-law of the Court gives some pointers for an assessment of proportionality. First of all, the Court has accepted (general) reductions of 4.5 and 4.74%. [46] In my view such reductions are inherent in the additional levy scheme, in which the size of individual milk quotas varies from year to year. Such reductions cannot result in an infringement of the legitimate expectations of the milk producer and are therefore acceptable. Second, a reduction must not affect the substance of the milk quota. The continuity of the operation of the holding must — with normal operation — be ensured and the person concerned must, where necessary, receive financial compensation for the effort he has invested.

84. The case-law does not, however, give a definitive answer for all aspects of the clawback. As regards a reduction of 20%, which is at issue in the present case and which moreover can be applied several times in succession, it is only apparent that it is not inherent in the additional levy scheme. It is, moreover, obvious that such a reduction entails certain risks for the continuance of the holding and affects the financial position of the persons concerned. Such a measure does not, however, necessarily mean that — in the case of a holding operated in a way which is normal in dairy farming — that the continuance of milk production is no longer guaranteed.

85. All in all, that means that such a measure is not necessarily unacceptable on the ground that it infringes legitimate expectations of milk producers. Given that through individual milk quotas an artificial and temporally limited right to produce milk has been created, the extent of which can also vary from year to year, a reduction of 20% may in certain circumstances satisfy the requirement for legal certainty. The question whether the measure in issue satisfies that requirement depends on the restrictions and conditions attached to the measure.

86. A measure pursuant to which a reduction is applied which is more extensive than

46 — See point 37 of my Opinion.

is inherent in the additional levy scheme may in certain circumstances satisfy the principle of legal certainty. In order to assess its acceptability, I consider the following restrictions and conditions to be relevant:

— the maximum extent of the reduction. Can the reduction, on account of its far-reaching nature, endanger the continuance of the holding, for example by virtue of the fact that — as is the case with the Irish measures — it can be applied several times in succession?

— restriction of the area of applicability of the measure. Does the measure affect all milk producers or merely some of them? I refer, by way of example, to the case in point here. Irish Notices 266/19 and 266/20 apply only to milk producers who transfer all (or part) of their holding. That is a time when a milk producer makes fundamental choices regarding the continuance of the holding and weighs up the various risks. A larger reduction may be acceptable at such a time.

— the foreseeability of the measure. An unforeseeable measure may result in an infringement of legitimate expectations. The additional levy scheme has acquired such a stable nature that a milk producer should not be unexpectedly confronted with fluctuations of such a size that he could not have reasonably taken them into account in the operation of his holding or in reaching his decision regarding the transfer of his holding.

— the speed with which the measure is introduced. Is the person concerned given an opportunity — for example through a long introductory period or a transitional period for particular cases — to adjust to the change? There may, however, be good reasons precisely to avoid any introductory or transitional period, for example in order to prevent speculation.

— the existence of measures which limit the consequences of the reduction. They may include, for example, financial compensation to the person concerned, but also hardship rules for particular cases.

— the aim of the measure. Is it taken in the general interest, and more particularly in the interest of the common agricultural policy. Having regard to the broad discretion which the Member States enjoy when filling the national

reserve and using that reserve for the benefit of particular (categories of) milk producers, that criterion will in practice not play a major role in the assessment.

87. It is for the national court to test a specific measure against those criteria. By way of illustration — and possibly as a further pointer for the national court — I consider that it is nevertheless useful to indicate what might be the result of an assessment of the Irish measure in question. The reduction is large, particularly having regard to the fact that the reduction can be applied several times in succession. On the other hand, the circle of parties affected by it is restricted. Moreover, they are affected at a moment (a transfer of the whole or part of a holding) at which the continuance of the holding is under consideration. The milk producers concerned can, in principle, take the reduction into account when reaching their decision regarding the transfer. They may not, however, be able to do so in all cases. Sometimes the speed of the introduction of the measure results in the milk producer's having no choice, sometimes there may also be other circumstances which result in the absence of any freedom of choice. Thus, the first and third applicants in the main proceedings refer to their poor state of health. Taking everything into consideration, the following result might be possible: The clawback of 20% satisfies the principle of legal certainty, provided that associated measures are taken to compensate for some lack of balance in the measure. The issues there are that the reduction can be applied successively to one particular milk quota and that some milk producers demonstrably cannot freely reach a decision whether to transfer all or part of their holding.

The third question

Submissions

88. The applicants submit that the introduction of the clawback measure through an administrative notice in a national newspaper does not satisfy Article 7(1) of Regulation No 3950/92. Moreover, the principle of legal certainty and the principle of legality are infringed. Referring to the Opinion of Advocate General Cosmas in *Duff and Others*[47] they submit, *inter alia*, that this method of establishing the measure leads to a lack of certainty for individuals. They cannot establish the precise legal implications of a notice in a newspaper with reasonable certainty.

89. The respondents state that the power of the Minister is expressly based on a statutory rule. The applicants are not disadvantaged by the method of publication in a national newspaper. The alternative, publication in the Official Gazette in Ireland, which is not read by the broad public, would not result in the measure coming to the attention of interested parties. The procedure has been approved by the Irish High Court as being consistent with Irish

47 — Cited in footnote 33.

law. Finally, the respondents refer to the necessity for a mechanism by which rapid and flexible measures are possible.

90. The Commission states that according to the case-law of the Court directives must be implemented by means of binding legal instruments, whose terms must be sufficiently clear and unambiguous. Administrative circulars are not appropriate for that purpose. The same holds for measures implementing Article 7(1) of Regulation No 3950/92. The Commission submits, furthermore, that the measures implementing Article 7(1) are not intended to govern the relationship between private individuals but solely between an individual and the Member State. A simple notice may therefore suffice, provided it is binding and satisfies the requirements of clarity and certainty.

91. Also as regards the method of publication, the Commission refers to the case-law on the implementation of directives. There must have been sufficient publicity given to an implementing measure so that the persons concerned can plainly know their rights and obligations. Whether those requirements are satisfied depends in the present case on the circulation and readership of the newspaper concerned (the *Irish Farmers' Journal*). The Commission submits that this is a matter to be assessed by the national court.

Opinion

92. The parties to the main proceedings and the Commission agree that a measure must be binding and must satisfy the requirements of clarity and legal certainty. It is also clear to me that those requirements must be satisfied. The Court must answer the question whether, within those limits, a notice from the administration in the national press can suffice. The question can be divided into two parts. First of all, it is necessary to consider whether the 'notice' as an instrument satisfies the above criteria. Then it must be considered whether the chosen method of publication in a national newspaper adequately serves legal certainty for the parties concerned.

93. First of all, I point out that it is settled case-law of the Court that mere administrative practices, which by their nature are alterable at will by the authorities and are not given appropriate publicity, cannot be regarded as constituting proper fulfilment of the obligations imposed by the EC Treaty. Contrary to what the Commission's observations suggest, this settled case-law is not solely applicable to the implementation of directives but also to other obligations arising under the Treaty. I refer, by way of example, to the judgment in *Commission* v *Belgium*,[48] which concerned a breach of

48 — Case C-203/98 [1999] ECR I-4899.

Articles 6 and 52 of the EC Treaty (now, after amendment, Articles 12 EC and 43 EC).

94. In my opinion a case such as the present case does not involve a mere administrative practice. On the contrary, I consider the notice relating to the clawback to be a form of delegated legislation permitted by Community law. In the case of national legislation, here the European Communities (Milk Quota) Regulations 1995, the Minister for Agriculture has delegated authority to draw up more detailed rules concerning the part of the milk quota which is not transferred upon transfer of a holding. The Minister has therefore made use of his power to determine by way of 'notice' or, as the national court terms it, by administrative notice. In spite of the terminology used, I consider the exercise of the power not to be a mere administrative practice, such as a circular or other type of soft-law. On the contrary, on the basis of the power given to him, the Minister has adopted a binding decision which has the significance of a ministerial regulation or a ministerial decree.

95. I therefore reach the following conclusion on this point. If a national measure laying down the part of the milk quota not transferred with the land is in the form of an authorised binding decision of a national authority, the principle of legal certainty is satisfied. It is of no consequence in that regard that the decision is referred to in the national context as a 'notice' or an 'administrative notice'.

96. The second part of the national court's question refers to the method of publication of the measure. As the Commission correctly submits, the decisive point is whether the measure is given publicity in such a way that the persons concerned can plainly be aware of their rights and obligations.

97. Community law does not require that a measure be published in an official journal. Sometimes other methods of publication would be just as or even more effective. I am thinking, for example, of publication on a government website. The publication of a measure intended to implement a Community regulation should, in my view, satisfy two requirements. First, as the Commission has indicated, the publication should be made in a medium which is widely circulated amongst the group of persons concerned. Second, I consider that it is important that the measure should have been brought to the attention of the persons concerned in an effective way. In the case of a newspaper that is adequately ensured if the notice appears in a prominent place in the newspaper or if the persons concerned could reasonably expect the notice, for example because such notices are published with a certain regularity.

VII — Conclusion

98. On the basis of the foregoing considerations, I propose that the Court should answer the questions of the High Court of Ireland as follows:

As regards the first question: Article 7(1) of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector does not preclude a national rule which provides that upon the transfer of a dairy holding part of the milk quota attached to that holding is not transferred but is added to the national reserve.

As regards the second question: A measure of a Member State such as that referred to in the answer to the first question which is intended to implement a Community obligation must satisfy the general principles of law recognised in Community law. Such a measure, under which a reduction is applied that is greater than is inherent in the additional levy scheme may in certain circumstances satisfy the requirement of legal certainty. The question whether the measure actually satisfies that requirement depends on the restrictions and conditions attached to the measure regarding the maximum extent of the reduction, the area of application of the measure, the foreseeability of the measure, the speed of introduction of the measure, the existence of accompanying measures, and the aim of the measure.

As regards the third question: A measure of a Member State such as that referred to in the answer to the first question must be in the form of an authorised binding decision of a national authority. It is of no consequence how the measure is referred to in the national context. The measure does not need to be published in an official journal provided that the announcement takes place in a medium which is widely circulated within the group of persons concerned and the measure is brought to the attention of the persons concerned in an effective way.