# OPINION OF ADVOCATE GENERAL LÉGER

delivered on 11 January 1996 *

1. The questions submitted by the High Court of Justice, Queen's Bench Division, invite the Court of Justice to address itself once more to the rules on milk quotas.

2. The origin of the present reference for a preliminary ruling lies in six separate actions brought before the High Court of Justice, all of which contested decisions by the Ministry of Agriculture, Fisheries and Food ('the Ministry') refusing to allocate milk quotas to the applicants. However, as a result of an order of the High Court withdrawing the questions concerning four of those actions, the President of the Court of Justice ordered, by order of 14 December 1994, that the case be removed from the register in so far as it concerned the parties to those actions. As the proceedings now stand, the reference for a preliminary ruling concerns only the questions submitted in the context of the two cases still pending in the main proceedings, which have been brought by H. & R. Ecroyd Holdings Ltd ('Ecroyd Ltd') and John Ecroyd ('John Ecroyd').

3. Before setting out the facts in each of those two cases, it is necessary for me to set out the relevant Community provisions as briefly as possible.

## Legal background

4. The common organization of the market in milk and milk products was established in 1968 by Regulation (EEC) No 804/68. [1] Since that market was characterized, from the outset, by a tendency to an imbalance between supply and demand, leading to structural surpluses, the Community rules have always been adopted with the aim of putting a brake on the increase in production.

5. Consequently, Regulation (EEC) No 1078/77 [2] provided for a number of measures which aimed to reduce supply. In particular, it introduced a scheme for granting premiums to farmers who gave a written undertaking that they would not market milk or milk

* Original language: French.

1 — Council Regulation of 27 June 1968 (OJ 1968 L 148, p. 13).

2 — Council Regulation 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).

products from their holdings for a period of five years ('non-marketing premiums').

6. Article 4(1) of that regulation laid down the amount of those premiums and prescribed the method for paying them as follows:

'The non-marketing premium shall be calculated on the basis of the quantity of milk or its equivalent in milk products delivered by the producer during the 1976 calendar year.

(...)

50% of the premium shall be paid during the first three months of the non-marketing period.

The balance shall be paid in the third and fifth years in two equal instalments of 25% of the premium, provided the recipient satisfies the competent authorities that the undertakings provided for in Article 2 have been fulfilled.'

7. Article 6 of that same regulation laid down the rules applicable to transfers. Any person taking over an agricultural holding could claim the balance of the premium allocated to his predecessor, provided that he undertook *in writing* to continue to carry out the undertakings given by his predecessor.

8. In 1984 it was found that, despite the measures established in 1977, there continued to be an inexorable increase in milk production. Since it had become necessary to adopt more rigorous measures, the common organization of the market in milk and milk products was therefore radically amended by the introduction of the supplementary levy scheme, also referred to as the 'milk quota scheme'.

9. Article 5c of Regulation No 804/68, which had been added by Article 1 of Regulation (EEC) No 856/84, [3] instituted a system of additional levies to be paid by each producer or purchaser of milk on quantities exceeding an annual individual reference quantity, that annual reference quantity being known as a 'milk quota'. Established initially for a period of five years, that scheme was extended in 1988 [4] until 31 March 1992. In 1992, in the course of the reform of the common agricultural policy,

3 — Council Regulation of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1984 L 90, p. 10).

4 — Council Regulation (EEC) No 1109/88 of 25 April 1988 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1988 L 110, p. 27).

the Council retained the milk quotas scheme for a period of eight years.

10. Under Article 5c(3) of Regulation No 804/68, the sum of the reference quantities allocated to persons subject to the levy in a particular Member State may not exceed a *guaranteed total quantity*, which differs for each Member State and is equal to the sum of the quantities of milk delivered to undertakings treating or processing milk or other milk products in each Member State during the 1981 calendar year, plus 1%.

11. The general rules for the application of the additional levy were established by Regulation (EEC) No 857/84. [5] In the United Kingdom, the reference quantity was fixed on the basis of the 1983 calendar year.

12. That system did not provide for the possibility of allocating a quota to producers who, because of their participation in the temporary non-marketing system provided for by Regulation No 1078/77, had not delivered or sold milk during the reference year adopted for the allocation of quotas (those producers are commonly referred to as 'Slom producers' [6]).

13. In its judgments in Case 120/86 *Mulder* [7] and Case 170/86 *Von Deetzen*, [8] the Court of Justice held that in so far as, specifically, those rules did not provide for the allocation of reference quantities to Slom producers they infringed those producers' legitimate expectation that the effects of the system to which they had rendered themselves subject would be limited, and they therefore had to be annulled.

14. In order to comply with those judgments, the Council adopted Regulation (EEC) No 764/89, [9] which inserts a new Article 3a into Regulation No 857/84. That article provides for the *provisional allocation of a special reference quantity* (commonly called 'Slom quota') to certain categories of producers who had taken part in non-marketing schemes and who satisfied certain conditions.

5 — Council regulation 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).

6 — The expression 'Slom' comes from the Dutch 'slachtoffers omschakeling' which means 'conversion victims'. The acronym SLOM was previously used in Netherlands practice. It comes from 'stoppage of delivery and conversion of milk production'.

7 — Case 120/86 *Mulder* v *Minister van Landbouw en Visserij* [1988] ECR 2321.

8 — Case 170/86 *Von Deetzen* v *Hauptzollamt Hamburg-Jonas* [1988] ECR 2355.

9 — Regulation of 20 March 1989 amending Regulation (EEC) No 857/84 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 1989 L 84, p. 2).

15. That allocation of a Slom quota was made subject to certain time-limits. Under the new Article 3a, the period of non-marketing had to expire after 31 December 1983 and the request for an allocation had to be made by the producer within a period of three months from 29 March 1989.

16. Article 3a(2) fixed the amount of special reference quantity at 60% of the quantity of milk delivered by the producer during the 12 calendar months preceding the month in which the application for the non-marketing premium had been made, provided that the producer had not lost his entitlement to the premium (*the '60% rule'*). That provision also laid down rules concerning the amount of the quota to be allocated, both to the transferor and the transferee, where part of a holding had been transferred during the course of the non-marketing period.

17. Article 3a(3) specified the conditions upon which a provisional special reference quantity could become definitive: the need to achieve production of 80% of the quota allocated within two years from 29 March 1989, failing which the producer lost his right to quota and it returned to the Community reserve (*the 'all or nothing rule'*).

18. However, under the terms of Article 3a(1), second indent, producers who had already obtained a quota elsewhere in accordance with the conditions laid down by other provisions of the additional levy regime were not entitled to a Slom quota (*the 'anti-accumulation rule'*).

19. In a number of judgments, the Court of Justice subsequently annulled or interpreted certain of those provisions.

20. In Case C-189/89 *Spagl* v *Hauptzollamt Rosenheim* [10] and Case C-217/89 *Pastätter* v *Hauptzollamt Bad Reichenhall*, [11] the Court thus annulled Article 3a(1) and (2), taking the view that they infringed the legitimate expectations of producers who had taken part in the non-marketing scheme, since they provided for the non-allocation of Slom quotas to producers whose period of non-marketing expired before 31 December 1983, and for the 60% rule respectively.

21. The judgment in Case C-314/89 *Rauh* v *Hauptzollamt Nürnberg-Fürth* [12] (hereinafter 'the judgment in *Rauh*') clarified the transfer arrangements. In that case, the

10 — [1990] ECR I-4539.
11 — [1990] ECR I-4585.
12 — [1991] ECR I-1647.

Court of Justice interpreted Article 3a as meaning that, subject to the conditions which it laid down, a special reference quantity might be granted to a producer who had taken over a holding by way of succession or similar means after the expiry of a non-marketing undertaking entered into pursuant to Regulation No 1078/77 by his predecessor in title.

22. Following those judgments, the Council adopted Regulation (EEC) No 1639/91, [13] which once again amended the rules. In substance that regulation:

— removes the time-limit under which only producers whose non-marketing undertaking expired after 31 December 1983 were entitled to a specific reference quantity;

— abolishes the 60% rule;

— abolishes the all or nothing rule (the principle of 80% is retained, but if it is not achieved, the quota does not return to the Community reserve; the producer receives a quota for the part which has actually been produced during those two years);

— amends the transfer rules, in accordance with the judgment in *Rauh*, by providing for the possibility of granting a milk quota to a producer who has received the holding through an inheritance or similar means *following* the expiry of the non-marketing undertaking entered into by the originator of the inheritance before 29 June 1989, if he submits an application within three months from 1 July 1991 (that category of producers is commonly called '*Slom II*');

— maintains the anti-accumulation rule.

23. It was precisely with regard to the last rule that the Court was asked to give another preliminary ruling. In the judgment in Case C-264/90 *Wehrs* v *Hauptzollamt Lüneburg* [14] (hereinafter 'the judgment in *Wehrs*') the Court held that the anti-accumulation rule in the second indent of Article 3a(1) was invalid in so far as it barred from the allocation of Slom quotas the Slom producers (called '*Slom III*') who had taken over a holding participating in the non-marketing system under Regulation No 1078/77, if those producers (transferees of non-marketing premiums) had already received a

13 — Regulation of 13 June 1991 amending Regulation (EEC) No 857/84 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 1991 L 150, p. 35).

14 — [1992] ECR I-6285.

quota under the general rules laid down by Regulation No 857/84. In the judgment in *Twijnstra* v *Minister van Landbouw, Natuurbeheer en Visserij* [15] the Court held that where there had been a partial transfer of an undertaking participating in the non-marketing system, Article 3a had to be interpreted as meaning that it permitted the Slom quota to be divided between the transferor and the transferee in proportion to the land transferred.

24. In order to comply with those two judgments, the Council adopted Regulation (EEC) No 2055/93, [16] which entered into force on 2 August 1993, and which definitively abolishes the anti-accumulation rule where certain conditions are satisfied.

25. Finally, I should also mention Regulation (EEC) No 2187/93, [17] which entered into force on 8 August 1993 and which provides, subject to certain conditions, for an offer of compensation to certain producers of milk who were temporarily prevented from carrying on their trade, in so far as the original Community rules did not provide for the allocation of milk quota to producers who had entered into a non-marketing undertaking.

15 — Case C-81/91 [1993] ECR I-2455.

16 — Regulation of 19 July 1993 allocating a special reference quantity to certain producers of milk and milk products (OJ 1993 L 187, p. 8).

17 — Council regulation of 22 July 1993 providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade (OJ 1993 L 196, p. 6).

26. All those provisions form the backdrop to the facts of the two disputes at the origin of the present request for a preliminary ruling.

## Facts

### *Ecroyd Ltd*

27. Ecroyd Ltd is a company which was acquired in 1966 by Richard Ecroyd (who is still the majority shareholder) and various family interests, including the trustees of a 'children's settlement trust' (hereinafter 'the Children's Settlement'), set up in 1965 by Richard Ecroyd for his children.

28. Ecroyd Ltd operated, as tenant, nine farms owned by the Ecroyd family and the trustees of the Children's Settlement.

29. In 1976 Ecroyd Ltd and Fountain Farming formed a partnership known as Credenhill Farming to which it sublet four out of the abovementioned nine farms, including a farm known as Lyvers Ocle.

30. In 1980 Ecroyd Ltd submitted an application to take part in a non-marketing scheme in respect of the five farms which it operated and Credenhill Farming did so in respect of the four farms which it operated. Only Credenhill Farming ultimately took part in a non-marketing scheme for a period of five years, a period which began on 14 November 1980 and ended on 13 November 1985. Ecroyd Ltd did not take part in such a scheme and continued to produce milk on the five farms which it operated as tenant and in respect of which it applied for, and received, primary quota in 1984.

31. Between 1980 and 1984 the make-up of Credenhill Farming changed on several occasions. It was ultimately dissolved on 30 September 1984, following the retirement of Richard Ecroyd, at a time when he and Ecroyd Ltd were the two remaining partners. The assets and business of Credenhill Farming were absorbed by the sole remaining partner, Ecroyd Ltd, which continued to operate on its own account. Although Ecroyd Ltd did not undertake in writing, in accordance with Article 6(1) of Regulation No 1078/77, to continue to carry out the non-marketing undertaking given by its predecessor, Credenhill Farming, it nevertheless did not produce milk on the four farms for the remainder of the period of five years covered by that undertaking, on the ground that it considered itself to be bound by the non-marketing undertaking given by Credenhill Farming.

32. On 18 December 1984 the final instalment of the non-marketing premium was paid to Credenhill Farming following a request signed by Richard Ecroyd and John Ecroyd, who described themselves as 'Partners, Director and owner occupier' (at that date the Ministry had not been informed of the dissolution of the partnership).

33. After the expiry of the non-marketing period, Ecroyd Ltd sought to obtain the grant of Slom quotas for the land making up the four farms previously operated by Credenhill Farming. Two successive applications, the first submitted on 17 August 1989 and the other following the judgments of 14 February 1991 in *Spagl*, *Pastätter* and *Rauh*, cited above, were rejected by the Ministry on the ground that the applicant had already received primary quota under Article 2 of Regulation No 857/84 (in respect of the five farms which Ecroyd Ltd had always operated) and that the changes made by Regulation No 1639/91 had not affected its position. It was therefore on the basis of the anti-accumulation rule in particular that the Ministry refused to grant special reference quantities.

34. In the proceedings before the High Court, Ecroyd Ltd claimed that it was entitled to a Slom quota. First, it had taken part in a non-marketing scheme, upon the expiry of which it had acquired a right to the allocation of such a quota under the 1989 rules. Although it was correct that as a matter of form it was Credenhill Farming which had originally given the undertaking to observe

such a scheme, it was nevertheless the case that Ecroyd Ltd was bound by that undertaking when it became the sole remaining partner of the group which had made up Credenhill Farming. There had been no transfer of the undertaking from Credenhill Farming to Ecroyd Ltd for the purposes of Article 6 of Regulation No 1078/77, so that it was unnecessary for Ecroyd Ltd, which had observed the terms of the non-marketing undertaking, to enter into another undertaking. Secondly, Ecroyd Ltd considered that the Ministry's argument based on the anti-accumulation rule could not succeed in the light of the judgment in *Wehrs*.

35. The Ministry considered that on 30 September 1984 there was a transfer from one 'producer' (within the meaning of Article 5(a) of Regulation No 1078/77) to another. Consequently, in so far as on that date Ecroyd Ltd did not give a written undertaking, in accordance with Article 6 of Regulation No 1078/77, to continue to carry out the non-marketing undertaking given by Credenhill Farming, it had no entitlement to a special reference quantity. If, however, Credenhill Farming and Ecroyd Ltd were to be regarded as the same 'producer', it could not be disputed that Ecroyd Ltd had breached its undertaking not to produce milk on its holding and had therefore lost its entitlement to the non-marketing premium, since, during the period of the non-marketing scheme, it had continued to produce milk on five farms. Moreover, the reasoning of the Court of Justice in the judgment in *Wehrs* did not apply to the applicant, since it merely covered the position of assignees of a non-marketing premium, which was not the position in which Ecroyd Ltd found itself.

36. In that context, the High Court has submitted the following questions to the Court:

'1. Does the respondent Ministry have a power and/or duty to award a provisional special reference quantity to the applicant and/or to treat it as if it had been awarded special reference quantity:

(i) pursuant to Council Regulation (EEC) No 857/84 as amended by Council Regulation (EEC) No 764/89; and/or

(ii) following the decision of the Court in Case C-264/90 *Wehrs*,

where:

(a) the applicant was a member of a partnership which farmed the hold-

ing and which gave an undertaking pursuant to a non-marketing scheme;

(b) all of the other members left the partnership before the expiry of the period of the non-marketing scheme and the holding in respect of which the non-marketing undertaking was given by the partnership was thereafter farmed by the applicant for its own account;

(c) following the departure of the other members of the partnership, the applicant did not produce milk on the holding for the remainder of the period of the original non-marketing scheme entered into by the partnership;

(d) no fresh written undertaking was given by the applicant, following the departure of the other members of the partnership, pursuant to Article 6 of Council Regulation No 1078/77 to carry out the non-marketing undertaking given by the partnership;

(e) the applicant had received primary quota in respect of a separate holding.

If so, when did such power and/or duty arise?

2. If the answer to Question 1 above is that the respondent Ministry has no power and/or duty is Article 3a(1) of Council Regulation No 857/84 as amended by Council Regulation No 764/89 unlawful and invalid in so far as it excludes an applicant from an award of a special reference quantity in the circumstances set out above?

3. If the answer to Question 2 is that Article 3a(1) of Regulation No 857/84 is unlawful and invalid to the extent that it excludes the applicant from an award of milk quota, does the respondent Ministry have the power and/or duty to award milk quota to the applicant and/or to treat it as if it had been awarded special reference quantity, before the enactment of further Community legislation to cure or take account of the invalidity of the measure in question?

If so, when does or did such power and/or duty arise?

4. If the answer to the above questions is that the respondent Ministry had the

power and/or duty to award a special reference quantity to the applicant and/or to treat it as if it had been awarded special reference quantity, before such time as the Council of Ministers has adopted fresh legislation and/or following the decision of the Court in Case C-264/90 *Wehrs*, is the applicant entitled in principle to damages from the respondent Ministry for having failed to grant him a special reference quantity?

5. If the answer to Question 4 is that the applicant is entitled to damages from the Ministry, on what basis are such damages to be assessed?'

*John Ecroyd*

37. The applicant in this case is the son of Richard Ecroyd. As is the situation in the first case, he is claiming the allocation of quotas for the Lyvers Ocle farm.

38. Lyvers Ocle, which was originally part of a property owned by the trustees of the Children's Settlement, was let by Ecroyd Ltd. It was one of the four farms sublet by Ecroyd Ltd to Credenhill Farming, which operated it under a non-marketing scheme from 14 November 1980 until its dissolution on 30 September 1984. With effect from that date, that farm, like the three others, was operated by Ecroyd Ltd, which observed the non-marketing undertaking until the required date, 13 November 1985.

39. Under the terms of the Children's Settlement, John Ecroyd, as one of the four children of Richard Ecroyd, was entitled to receive one quarter of the trust fund upon his 25th birthday, that is to say on 22 June 1983. The trustees and the beneficiaries subsequently decided to divide the farms between the children rather than to sell them and divide the proceeds of sale.

40. Under that agreement John Ecroyd wished to obtain Lyvers Ocle in satisfaction of his interest in the trust fund. On 21 April 1987 he began milk production on that farm, which he held as subtenant of Ecroyd Ltd, with the primary quota which the latter had assigned to him.

41. On 22 December 1989 Lyvers Ocle was transferred to John Ecroyd by the trustees of the Children's Settlement. Mr Ecroyd was therefore, at the same time, both owner of the land and subtenant of Ecroyd Ltd. At the time of that transfer he had to pay a sum of

UKL 40 877 as an equalization payment representing the difference between the value of the share in the trust fund to which he was entitled under the Children's Settlement and the value of the property assigned (valued at approximately UKL 250 000).

42. On 25 September 1991 John Ecroyd, describing himself as successor to Credenhill Farming, made an application for Slom II quota for Lyvers Ocle. The Ministry rejected his application on the ground that the transfer had taken place after 29 June 1989 and did not therefore give him the status of 'successor' under the provisions of Regulation No 1639/91.

43. Before the national court John Ecroyd claimed that, since he had acquired Lyvers Ocle by inheritance or similar means after the expiry of the non-marketing undertaking entered into by Credenhill Farming, but before 29 June 1989, and had lodged his application from Slom quota within the three months following 1 July 1991, he was entitled under Regulation No 1639/91 to obtain a quota for Lyvers Ocle. He claimed that, even though the conveyance of the property had not taken place until 22 December 1989, he had, in substance, received the holding before the date set by the regulation.

44. On the other hand, the Ministry considered that the applicant did not satisfy any of the conditions for obtaining a special reference quantity as laid down in Regulation No 764/89 or Regulation No 1639/91. First of all, since he had not taken part in a non-marketing premium scheme, he could not be entitled to a Slom I quota under those regulations. Nor was he in the position of an assignee of premium who had assumed the assignor's non-marketing undertaking. Finally, he was not entitled to the grant of Slom II quota, since none of the necessary conditions were satisfied. First, since he had acquired the holding only on 22 December 1989, he did not fall within the period laid down by Regulation No 1639/91, which requires the holding to have been acquired by way of inheritance before 29 June 1989. Secondly, the predecessors in title of the applicant as owner were the trustees of the Children's Settlement, who had not taken part in a non-marketing scheme. Finally, the applicant did not receive Lyvers Ocle by way of inheritance, but rather in satisfaction of his interests in the trust fund.

45. Taking the view that, in this case too, the dispute raised problems regarding the interpretation and/or the validity of certain provisions of the abovementioned regulations, the High Court of Justice has requested the Court to give a ruling on the following questions:

'1. Does the respondent Ministry have a power and/or duty to award the applicant a special reference quantity and/or

to treat him as if he had been awarded special reference quantity:

(i) pursuant to Council Regulation (EEC) No 857/84 as amended by Council Regulation (EEC) No 764/89 and Council Regulation (EEC) No 1639/91; and/or

(ii) following the decision of the Court in Case C-264/90 *Wehrs*,

where:

(a) the applicant was the beneficiary of the Children's Settlement comprising *inter alia* land and became beneficially entitled to his share of that settlement on his 25th birthday in 1983;

(b) the land in question was let by the trustees of the Children's Settlement to, and farmed by, H. & R. Ecroyd Ltd;

(c) part of the land was in turn sub-let to and farmed by a partnership, Credenhill Farming, comprising *inter alia* H. & R. Ecroyd Ltd;

(d) Credenhill Farming entered into a non-marketing undertaking pursuant to Council Regulation No 1078/77 in respect of its holding, i.e. the land sub-let as aforesaid;

(e) all of the other members left the Credenhill farming partnership before the expiry of the period of the non-marketing scheme and the holding in respect of which the non-marketing undertaking was given by the partnership was thereafter farmed by H. & R. Ecroyd Ltd for its own account;

(f) Credenhill Farming, and subsequently H. & R. Ecroyd Ltd, abided by the terms of the non-marketing undertaking. In particular, following the departure of the other members of the partnership, H. & R. Ecroyd Ltd did not produce milk on the holding for the remainder of the period of the original non-marketing scheme entered into by the partnership;

(g) no written undertaking was given by H. & R. Ecroyd Ltd, following the departure of the other members of the partnership pursuant to Article 6 of Council Regulation No 1078/77 to carry out the non-marketing undertaking given by the partnership;

(h) H. & R. Ecroyd Ltd was in receipt of primary quota in respect of a separate holding;

(i) in 1987, after the expiry of the original non-marketing period, part of the land originally subject to the non-marketing undertaking given by Credenhill Farming was sub-let by H. & R. Ecroyd Ltd to the applicant and has been farmed by him ever since;

(j) in December 1989 the freehold interest in the land in question was transferred, subject to H. & R. Ecroyd Ltd's tenancy thereof, to the applicant by the trustees of the Children's Settlement in satisfaction of the applicant's beneficial entitlement under the Children's Settlement;

(k) the said transfer was subject to an equalization payment by the applicant to the trustees representing the difference between the value of the applicant's entitlement under the Children's Settlement and the value of the land transferred, taking into account the absence of special reference quantity in relation thereto.

If so, when did such power and/or duty arise?

2. If the answer to Question 1 is that the respondent Ministry has no such power or duty, is Article 3a of Council Regulation (EEC) No 857/84 as amended by Council Regulation (EEC) No 764/89 and Council Regulation (EEC) No 1639/91, valid to the extent that it excludes such a producer from an award of special reference quantity?

3. In particular, if the answer to Question 1 above is that the respondent Ministry has no such power or duty, because the applicant does not satisfy the condition contained in Regulation No 857/84 as amended by Regulation No 1639/91 which requires that the holding must be received before 29 June 1989, are the aforementioned regulations valid to the extent that they exclude producers who acquire a holding through an inheritance or similar means after 29 June 1989?

4. If the answer to the above questions is that Article 3a(1) of Council Regulation No 857/84 as amended is unlawful and invalid to the extent that it excludes the applicant from an award of milk quota, does the respondent Ministry have the power and/or duty to award milk quota to the applicant and/or to treat him as if he had been awarded special reference quantity, before the enactment of further Community legislation to cure or take account of the invalidity of the measure in question?

If so, when does or did such power and/or duty arise?

5. If the answer to the above questions is that the respondent Ministry had the power and/or duty to award a special reference quantity to the applicant and/or to treat him as if he had been awarded special reference quantity, before such time as the Council of Ministers has adopted fresh legislation and/or following the decision of the Court in Case C-264/90 *Wehrs*, is the applicant entitled in principle to damages from the respondent Ministry for having failed to grant him a special reference quantity?

6. If the answer to Question 5 is that the applicant is entitled to damages from the respondent Ministry, on what basis are such damages to be assessed?'

**Questions common to both disputes**

46. In each of these two cases, the national court requests the Court of Justice to give a preliminary ruling, in substance, on the three following points:

(1) Were the applicants entitled to Slom quotas, either on the basis of a correct interpretation of the rules in force, or because of the invalidity, in the light of the judgment in *Wehrs*, of the rules preventing such entitlement?

(2) If the first question is to be answered in the negative, were the national authorities obliged to grant the applications for quotas simply by drawing the appropriate conclusions from the judgment in *Wehrs*, without awaiting the action of the Community legislature?

(3) If the national authorities were in fact obliged to grant a milk quota following the judgment in *Wehrs*, to what extent are they liable in that respect?

47. Even though, as can be seen, the questions raised in each of these two cases are essentially the same, I will examine them separately for greater convenience.

**Replies to the questions in the Ecroyd Ltd case**

*The first question*

48. *The first part of the first question* seeks to establish whether the applicant, Ecroyd Ltd, was entitled to a Slom quota under Regulation No 857/84, as amended by Regulation No 764/89.

49. It should be borne in mind that, under those rules, in order to claim a provisional special reference quantity the producer must have taken part in a non-marketing scheme, as established by Regulation No 1078/77, and not have received a reference quantity elsewhere. It must therefore be considered whether those two conditions are satisfied in the present case.

50. First of all, is it possible to regard Ecroyd Ltd as having taken part in a non-marketing scheme? In formal terms, such an undertaking was signed with effect from 14 November 1980 not by the applicant, but by Credenhill Farming. However, regard must be had to the fact that during the currency of the scheme Ecroyd Ltd became the sole operator of the holding, but continued to comply with the undertaking previously given.

51. A misapprehension by the applicant [18] must first be disposed of. When Ecroyd Ltd absorbed the assets and business of Credenhill Farming, the 'producer', within the meaning of Article 5(a) of Regulation No 1078/77, [19] was not, on a proper view of the matter, the same, with effect from that date, as the producer who previously operated the undertaking. It is possible for a 'producer' to consist of a group of persons whose number fluctuates. [20] The composition of Credenhill Farming did moreover vary on several occasions between 1980 and 1984. However, it

18 — Paragraph 40 et seq. of its observations.

19 — Under which:
"'producer" shall mean:
— a farmer, whether a natural or legal person, whose holding is located in the territory of the Community and who raises cattle,
— a group of natural or legal persons who jointly operate means of agricultural production to raise cattle in the territory of the Community;'.

20 — See, for example, the facts in Case C-84/90 *Dent* [1992] ECR I-2009.

was not a change of that type which occurred on 30 September 1984. According to the documents before the Court, what occurred was the dissolution of Credenhill Farming, which is of a quite different nature. Although it is true that the producer who succeeded it was one of the legal persons who had previously been a partner in it, it is nevertheless the case that, following the dissolution, it was a new producer who operated the holding. The 'producer' who had signed the initial non-marketing undertaking no longer existed at the date when the application was made for a Slom quota.

52. It should also be noted that if Ecroyd Ltd and Credenhill Farming were to be regarded as one and the same 'producer', it would then be necessary to accept that the non-marketing undertaking had not been complied with on the holding, as defined in Article 5(b) of Regulation No 1078/77, [21] since production continued on five farms.

53. Although Ecroyd Ltd cannot be treated in the same way as the original 'producer' who signed the non-marketing undertaking, it should nevertheless be considered whether it may be regarded, in its capacity as 'successor' of that original producer, as being a producer who has taken part in a non-marketing scheme.

21 — '"Holding" shall mean: all the production units managed by the producer and located in the territory of the Community.'

54. As I have observed, Article 6 of Regulation No 1078/77 enables any person who takes over an agricultural holding to undertake *in writing* to continue to carry out the undertakings given by his predecessor.

55. The United Kingdom believes it can rely on the fact that Ecroyd Ltd did not give such a formal undertaking when it succeeded to Credenhill Farming.

56. In that regard, the applicant claims that each of the partners gave an individual undertaking when the undertaking was given by Credenhill Farming in 1980. It therefore considers that its own signature at that time was sufficient to formalize its undertaking.

57. It seems to me in particular that it is not possible to close one's eyes to the fact that despite its failure to renew a written undertaking, the applicant complied scrupulously with its predecessor's undertaking not to market milk or milk products during the remainder of the period outstanding.

58. Is that not what really matters, if regard is had to the aim of Regulation No 1078/77? It should be remembered that the non-marketing premiums were established in

order to put a brake on the growth of a market characterized by large and increasing surpluses. In order to do so, producers were to be encouraged to refrain from marketing their production, the grant of a premium compensating for the loss of income resulting from the marketing of the products in question. [22] The aim of the scheme applicable to transfers provided for by Regulation No 1078/77 is no different. In that case too, there is in practice a contract made between the Community and a producer. The producer, in a way, undertakes, in the general interest, to cooperate in reducing excess Community production by continuing to carry out the undertaking given by his predecessor, while the Community grants him a premium by way of compensation. In the present case, Ecroyd Ltd fulfilled its 'part of the bargain'. To refuse to admit this, merely because it did not observe the formal condition of giving a *written* undertaking, seems to me to be especially inflexible and, above all, contrary to the spirit of the scheme for cooperation between the Community and the producers which was established in order to secure adherence to the aim pursued.

59. I therefore consider that Ecroyd Ltd did take part in a non-marketing scheme which potentially gave a right to a Slom quota.

60. However, in order to be entitled to a special reference quantity under Article 3a, the producer must also satisfy another condition, namely that he has not received a reference quantity elsewhere. In the present case, the same producer who had taken part in the non-marketing scheme in respect of the holding comprising four farms, had obtained a primary quota elsewhere in respect of the five farms on which it had continued to carry out milk production. Consequently, Ecroyd Ltd did not satisfy the second condition laid down by the rules in force at the material time. Even if the anti-accumulation rule were subsequently to be declared invalid, it was of course not for the respondent Ministry to anticipate such invalidity, since the Court of Justice has held that 'every regulation which is brought into force in accordance with the Treaty must be presumed to be valid so long as a competent court has not made a finding that it is invalid'. [23]

61. Consequently, since Ecroyd Ltd did not satisfy the condition laid down by the anti-accumulation rule, as set out in the second indent of Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, it was not entitled, at the date on which it submitted its applications, to a provisional special reference quantity.

62. *The second part of the first question* seeks to establish whether the applicant was

22 — Moreover, that is the sense of the third recital in the preamble to Regulation No 1078/77, which states: 'whereas the amount of the premiums should be fixed at a level such that they may be considered as some compensation for loss of income from marketing of the products in question'.

23 — Judgment in Case 101/78 *Granaria* v *Hoofdprodukeschap voor Akkerbouwprodukten* [1979] ECR 623, paragraph 4.

entitled to a Slom quota under that same provision, Article 3a(1), after the delivery of the judgment in *Wehrs*.

63. In the case giving rise to that judgment, the applicant, Mr Wehrs, had obtained a reference quantity under Regulation No 857/84. He had applied for an increase in that quantity on the ground that, before the entry into force of Regulation No 857/84, he had purchased land in respect of which he had continued the conversion undertaking given by the former owner on the basis of Regulation No 1078/77. That application had been refused because of the anti-accumulation rule laid down in Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89.

64. The Court, which had been asked to give a preliminary ruling on the validity of that provision, held that:

'The provision at issue frustrates the legitimate expectation which the producers concerned were entitled to entertain as to the limited nature of their undertakings, which they entered into before the system of the additional levy on milk came into force. It must therefore be declared invalid for infringing the principle of protection of legitimate expectations (...).

The reply to the national court's questions should therefore be that the second indent of Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, is invalid in so far as persons taking over a premium granted pursuant to Regulation No 1078/77 are barred from allocation of a special reference quantity if they have received a reference quantity under Article 2 of Regulation No 857/84.' [24]

65. The question which arises is, in short, whether or not the national authorities were required to give full effect to that finding of invalidity *before* a new measure had been adopted in order to remedy the situation. What in fact fall to be considered are the effects *vis-à-vis* national authorities of a judgment declaring a Community measure to be invalid.

66. Since a reference for a ruling on the validity of a measure is by its nature linked to proceedings concerning the legality of Community measures, its kinship with the action for annulment has been frequently pointed out in legal literature. [25]

24 — Paragraphs 15 and 16.

25 — See, for example, Mertens de Wilmars, J., 'Annulation et appréciation de validité dans le traité CEE: convergence ou divergence?', *Mélanges H. Kutscher*, 1981, p. 283; Isaac, G., *Droit communautaire général*, p. 296; Kovar, R., in *Jurisclasseurs Europe*, fascicule 362, point 10, paragraph 7.

67. This Court has itself emphasized that link:

'Although the Treaty does not expressly lay down the consequences which flow from a declaration of invalidity within the framework of a reference to the Court for a preliminary ruling, Articles 174 and 176 contain clear rules as to the effects of the annulment of a regulation within the framework of a direct action. Thus Article 176 provides that the institution whose act has been declared void shall be required to take the necessary measures to comply with the judgment of the Court of Justice. In its judgments of 19 October 1977 in Joined Cases 117/76 and 16/77 (*Ruckdeschel and Hansa-Lagerhaus Ströh* (Quellmehl) [1977] ECR 1753) and in Joined Cases 124/76 and 20/77 (*Moulins et Huileries de Pont-à-Mousson and Providence Agricole de la Champagne* (Maize Groats and Meal) [1977] ECR 1795) the Court has already referred to that rule within the context of a reference to it for a preliminary ruling.' [26]

68. However, although the Court carries out the same kind of review on a reference for a preliminary ruling on the validity of a measure as it does in an action for annulment, the consequences of that review are different.

69. An act which is annulled following an action brought under Article 173 is declared 'void' and is annulled with retroactive effect — unless the Court limits the temporal effects of its judgment pursuant to the second paragraph of Article 174 of the EC Treaty. On the other hand, in proceedings under Article 177 of the EC Treaty, where the Court concludes that the measure in question is vitiated by a defect, it merely 'rules' that the measure is 'invalid'. [27]

70. It is true that a declaration of invalidity gives rise to certain effects which are comparable to those flowing from a judgment annulling a measure.

71. Thus the national courts are obliged to uphold the objection of illegality which led to the reference for a preliminary ruling and to disapply the measure contested in the main proceedings.

72. Similarly, the invalidity established is binding on any other national court adjudicating on the same dispute as a result of an appeal or other domestic legal remedy. [28] As regards national courts, such decisions invalidating a measure also have a retroactive effect — but their retroactive nature does not mean that they are in the nature of decisions annulling measures: 'quite simply, the national court is empowered to give retroactive effect to the invalidity of the measure

26 — Judgments in Case 4/79 *Providence Agricole de la Champagne* v *ONIC* [1980] ECR 2823, paragraph 44, Case 109/79 *Maiseries de Beauce* v *ONIC* [1980] ECR 2883, paragraph 44, and Case 145/79 *Roquette Frères* v *French Customs Administration* [1980] ECR 2917, paragraph 51.

27 — To that effect, see *Isaac G.*, cited above, and *Kovar R.*, cited above.

28 — Settled case-law since the judgment in Case 66/80 *International Chemical Corporation* v *Amministrazione delle Finanze dello Stato* [1981] ECR 1191, paragraph 13.

which becomes inapplicable, with retroactive effect, to the legal situation forming the subject-matter of the dispute' [29] — save, again, where the Court of Justice decides that the invalidity is to apply only *ex nunc*. [30]

73. Finally, the national authorities which adopted national measures on the basis of, or in order to apply, the measure declared invalid must revoke them. [31]

74. Nevertheless, with the exception of the last case, the effects of a judgment invalidating a measure must, *as regards the national authorities*, be distinguished from those of a judgment annulling a measure: whereas a judgment annulling a regulation extends its effects to *the annulled regulation itself* by rendering it void, that is to say by eliminating it from the legal system, a judgment declaring a regulation invalid is intended to produce effects principally *vis-à-vis* the courts, should they be called on to apply that regulation.

75. It is quite conceivable that the declaration of invalidity made by the Court is sufficient in itself, because it simply removes the legal basis for the imposition of certain obligations, such as the payment of a duty. [32] In such a case, the national authorities have a power and duty to give full effect to the preliminary ruling and, just as after a judgment annulling a Community measure, to regard that measure as 'void' and, in consequence, to reimburse the duties levied.

76. However, the mere finding that a Community measure is invalid is not always sufficient to eliminate the illegality of the legal rule at issue. In order to remove the illegality which has been shown to exist, complex adjustments may be necessary or there may be a need for a choice between different options to be made by the Member States acting together, which cannot be left to the discretion of each national authority without creating a risk of upsetting the coherence of the Community system established. It seems to me that the declaration of the invalidity of the anti-accumulation rule in the judgment in *Wehrs* ought to be viewed in such a context. To be persuaded of this one has merely to bear in mind the full complexity and the imbrications of the whole corpus of Community legislation on the common market in milk and milk products, and the adjustments made necessary, at the level of the Council, by the invalidation of the anti-accumulation rule and brought about through the adoption of Regulation No 2055/93.

77. If the national authorities had been under an obligation to anticipate such measures following the judgment in *Wehrs*, they would have had to disregard the anti-accumulation rule and, consequently, allocate quotas to the producers concerned.

29 — *Isaac G.*, cited above, p. 300, paragraph 2.

30 — See, for example, the judgments in Case 4/79, Case 109/79 and Case 145/79, cited above, footnote 26.

31 — Judgment in Case 23/75 *Rey Soda* [1975] ECR 1279.

32 — See, for example, the judgments in Case 130/79 *Express Dairy Foods* v *Intervention Board for Agricultural Produce* [1980] ECR 1887, paragraph 14 and in Case C-228/92 *Roquette Frères* [1994] ECR I-1445, paragraph 18.

78. However, it should be borne in mind that, with a view to putting a brake on the increase in production, the Community rules introduced fix the amount of the global guaranteed quantity *at Community level*, that amount being then allocated between the various Member States, which in turn allocate the amount thus received amongst their national producers. The global quantity is therefore different for each Member State and it constitutes the absolute limit below which the Member State must remain when allocating reference quantities.

79. It follows that the national authorities could evidently not have arbitrarily decided to allocate a reference quantity fixed by themselves.

80. In those circumstances there were several options open to them. Among them I might mention the following: to deprive all or some of the producers already benefiting from a quota of part of the reference quantities allocated to them in order to redistribute it to producers excluded as a result of the anti-accumulation rule; to use Article 4a of Regulation No 857/84 [33] which authorizes the Member States during a limited period to allocate the non-utilized reference quantities of producers or purchasers to producers or purchasers in the same region and, if necessary, in other regions; or to make a 'levy' on the national reserve...

81. But even if those authorities had used one or other option, on what basis could they have assessed the quantity to be allocated? And if they had nevertheless been able to overcome all those obstacles, how could they be sure of acting in a manner which was consistent with the rules which would subsequently be adopted, while also observing the essential aim pursued, namely, to limit surplus production? The difficulties resulting from the different solutions which might be adopted from one State to another can also be imagined...

82. I could give more examples, but I do not consider it necessary to labour the point so obvious does it seem to me that the national authorities were unable on their own to draw the appropriate conclusions from the invalidity of the anti-accumulation rule as declared in the judgment in *Wehrs*.

83. However, I am not unaware of the unsatisfactory nature of such a conclusion. Even though the Court finds that a provision is invalid, the national authorities cannot draw appropriate conclusions from this and, accordingly, the economic operators to whose detriment such a provision operates cannot invoke its invalidity. The effects and the fate of the rules held to be invalid are left uncertain in all cases in which the application of those rules has not given rise to legal proceedings.

33 — Inserted by Council Regulation (EEC) No 590/85 of 26 February 1985 amending Regulation (EEC) No 857/84 laying down 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 1985 L 68, p. 1).

84. However, palliatives do exist. Thus recourse could be had to putting the Community's liability in issue. Similarly, if the Community institutions were to refrain from adopting measures to put an end to the invalidity declared by the Court, they would run the risk of their conduct being penalized by the bringing of an action for a declaration of their failure to act.

85. In that regard, the Court provides an answer to the above objection by indicating that the author of the invalid regulation, be it the Council or the Commission, is required to draw, on its own responsibility, the appropriate conclusions from the Court's judgment in accordance with Article 176 of the EC Treaty.

86. Thus the Court has held that:

'[...] it is for the competent institutions of the Community to adopt the necessary measures. The need for a reply to this effect [...] is borne out by the existence of several courses of action which would enable [the invalidity established to be cured] and by the fact that it is for the institutions responsible for the common agricultural policy to assess the economic and political considerations on which this choice of action depends;' [34]

and also that:

'however, the above answer [finding the regulation to be invalid] will leave the Council free to take any necessary measures compatible with Community law for ensuring the proper functioning of the market [...]'. [35]

87. In conformity with that line of decisions, the Council, after the judgment in *Wehrs*, and, moreover, without the Court having had to make the point, had no alternative but to adopt a new Community measure in order to cure the invalidity declared by the Court. Prior to the adoption of Regulation No 2055/93, the national authorities could not anticipate the precise limits and conditions for the grant of quotas for which it provided.

88. To conclude on the first question, the reply should therefore be that in neither of the two situations referred to by the High Court of Justice did the respondent Ministry, the competent national authority, have a power or a duty to award a provisional special reference quantity to the applicant, or to treat it as if it had been awarded such a quantity.

34 — Judgments in Joined Cases 117/76 and 16/77 *Ruckdeschel and Hansa-Lagerhaus Ströh* ('*Quellmehl*') [1977] ECR 1753, paragraph 13, and in Joined Cases 124/76 and 20/77 *Moulins et Huileries de Pont-à-Mousson* v *Office Interprofessionel des Céreales* [1977] ECR 1795, paragraphs 28 and 29.

35 — Judgment in Joined Cases 103/77 and 145/77 *Royal Scholten-Honig and Tunnel Refineries* v *Intervention Board for Agricultural Produce* [1978] ECR 2037, paragraph 86. See, in addition to the judgments partially reproduced, also to that effect the judgments in Case 4/79, Case 109/79 and Case 145/79, cited above (footnote 26) and the judgment in Case 66/80 *International Chemical Corporation*, paragraph 16, cited above (footnote 28).

*Question 2*

89. This question, to be answered in the event of a negative reply to the first question, concerns the validity of Article 3a(1) of Council Regulation No 857/84, as amended by Regulation No 764/89.

90. The answer to this question has already been given by the Court in its judgment in *Wehrs*, which declared invalid the anti-accumulation rule laid down in the second indent of Article 3a(1) of Regulation No 857/84; in that regard, it is sufficient for me to refer to the conclusion the Court reached in that case, which I have noted at point 64 of this Opinion.

*Question 3*

91. The third question seeks to establish whether the national authorities were under a duty to draw the appropriate conclusions from the invalidity of Article 3a(1) before the adoption of further Community legislation.

92. That aspect has been examined in the context of the second part of the first question and I would refer to what I have said in that respect. [36]

*Questions 4 and 5*

93. It is not necessary to answer these questions, which seek to determine whether the national authorities may be liable in damages and, if so, the basis for assessing such damages, since I consider that Question 3 must be answered in the negative.

94. I would merely observe that, if it were necessary to consider any liability in damages, it would be the liability of the Community which would fall to be considered. What is more, may I add, the applicant in this case brought an action in 1992 for damages against the Community, which is at present pending before the Court of First Instance. [37]

36 — Point 62 et seq. above.

37 — See paragraph 56 of the Commission's observations.

**Replies to the questions in the John Ecroyd case**

*Question 1*

95. *In the first part of the first question* the High Court seeks to ascertain whether the applicant, John Ecroyd, was entitled to a Slom II quota under Regulation No 857/84, as amended by Regulation No 764/89 and Regulation No 1639/91.

96. Let me point out at once that under Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89 alone, the applicant could lay no claim to the award of a special reference quantity. That provision envisaged that only two categories of producers could claim it: those who had given a non-marketing undertaking and those who had taken over the holding of persons originally entitled during the non-marketing period and who had also taken over that obligation on their behalf. The applicant began production in 1987 on Lyvers Ocle, merely as subtenant of Ecroyd Ltd, after the expiry of the non-marketing period. He did not therefore fall *ratione personae* within the scope of the provisions then in force.

97. Could the applicant nevertheless regard his situation as being different after the amendment of Regulation No 857/84 by Regulation No 1639/91, which was adopted in particular as a result of the judgment in *Rauh*?

98. The second indent of the last paragraph of Article 3a(1) of Regulation No 857/84, as amended by Regulation No 1639/91, provides that a producer who has received a holding *through an inheritance or similar means* following the expiry of the undertaking entered into under Regulation No 1078/77 by the originator of the inheritance, but *before 29 June 1989*, is to receive on a provisional basis, on application submitted within a time-limit of three months from 1 July 1991, a special reference quantity.

99. In the present case, the applicant did indeed submit his application within the period prescribed (25 September 1991). However, may he be regarded as having received, before 29 June 1989, through an inheritance or similar means, the holding of a person who had entered into and observed a non-marketing undertaking?

100. The concept 'inheritance or similar means' fell within the contemplation of the

Court in its judgment in Case C-44/89 *Von Deetzen II* [1991] ECR I-5119:

'The term "similar transaction" must be interpreted as referring to any transaction, whatever its legal basis, which produces effects comparable to those of inheritance. It thus 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 realized by the person from whom he stands to inherit.*

It follows that neither the contribution of a holding to a private company in which the producer to whom the special reference quantity was granted has a share nor the fact that, under German law, the latter's share in the company accrues to the other members following his death or withdrawal from the company nor the leasing of the holding to the potential beneficiary of the estate of the producer to whom the special reference quantity was granted can be excluded from the definition of "any similar transaction", *provided that the 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 arms-length basis.*

In the context of the cooperation provided for by Article 177 of the EEC Treaty between the national court and the Court of Justice, it is for the national court to establish whether the criteria expounded above are satisfied in the factual circumstances described in the order for reference, having regard to all the factual and legal aspects of the transactions concerned.' [38]

101. In light of that judgment, and in particular the last paragraph reproduced above, and despite the arguments to which this issue gave rise during the hearing, I consider that it is not a matter for the Court of Justice to rule on the question whether or not the transaction following which the applicant found himself to be the owner of the holding at issue constitutes an inheritance or similar transaction. It is for the court making the reference to decide that question by reference to the criteria laid down in the *Von Deetzen* judgment, cited above.

102. In that regard, let me merely point out, first of all, that the fact that in 1983 John Ecroyd acquired, at the age of 25, the right to a share in the Children's Settlement cannot be regarded as an inheritance or similar transaction. At that date, the applicant was merely the holder of a right to obtain a certain proportion of the trust property, but not yet a separate or specific part. When the property was divided between him and the other beneficiaries, several possibilities were

38 — Paragraphs 38 to 40, emphasis added.

conceivable. [39] In 1987 he then began production on Lyvers Ocle, but solely as subtenant of Ecroyd Ltd, which was itself the tenant of the Children's Settlement. Nor can his then status be treated as equivalent to that of an heir.

103. Only in 1989 did the applicant actually become owner of the freehold of Lyvers Ocle.

104. The transaction as a result of which John Ecroyd became owner cannot be regarded as an ordinary commercial transaction, since the sum he paid for that farm was merely equivalent to 15% of its value, which represented the difference between the value of his rights under the Children's Settlement and the value of the property transferred. In that regard, an inheritance cannot be ruled out, since it is true that, as the Court has pointed out in clear terms: '[...] the 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 arms-length basis'.

105. However, the argument which took place on that issue seems to me to be in reality, if not hypothetical, then at least irrelevant. Either John Ecroyd is regarded as not having acquired Lyvers Ocle through an inheritance or similar means, and therefore as not being entitled to a Slom II quota, or the transfer of the land to him is regarded as indeed constituting an inheritance or similar means, but in that case as taking place on 22 December 1989, that is to say, after the time-limit of 29 June 1989 laid down in the relevant regulations; after that date the right of an heir to a holding previously subject to a non-marketing undertaking to apply for a provisional allocation no longer existed.

106. I do not therefore consider that the applicant was entitled to a special reference quantity under the provisions of Article 3a(1) of Regulation No 857/84, as amended by Regulation No 1639/91.

107. *In the second part of the first question* the national court asks the Court whether such a right to a special reference quantity could be inferred from the judgment in *Wehrs*.

108. Even though the invalidation of the anti-accumulation rule as a result of that judgment might in some way affect the situation of the applicant in this case, it could not, in my view, have imposed any obliga-

39 — It was accepted at the hearing that the trustees might, for example, have sold the trust property in order to divide the proceeds of sale. The trustees might not have granted John Ecroyd's request to acquire Lyvers Ocle. As his representative accepted at the hearing, at that date he only had a 'putative right'.

tion whatsoever on the part of the national authorities, for the reasons set out in the Ecroyd Ltd case. I therefore refer, in so far as is necessary, to my conclusions regarding the second part of the first question in that case. [40]

*Questions 2 and 3*

109. By these questions, the High Court seeks to ascertain whether Article 3a(1) of Regulation No 857/84, as amended by Regulations Nos 764/89 and 1639/91, is valid to the extent that it does not permit the allocation of a special reference quantity to producers who received a holding through an inheritance or similar means after 29 June 1989. I should point out that those questions are relevant only if the national court were to reach the conclusion, applying the criteria laid down in the judgment in Case C-44/89 *Von Deetzen II*, that the applicant received Lyvers Ocle through an inheritance or similar means.

110. As Advocate General Mischo observed in his Opinion in the *Rauh* case, in the context of an inheritance or similar transaction, it is necessary to consider the general principle that the heir steps into the shoes of the originator of the inheritance and takes over all the latter's assets. [41] But that heir can take no more than the entirety of those assets, and cannot claim more rights than those to which the Slom I producer, the originator of the inheritance, was entitled.

111. As is known, Article 3a(1), in the version resulting from Regulation No 764/89, also laid down a period within which Slom I producers were allowed applications for provisional special reference quantities. Those applications had to be made between 29 March 1989 and 29 June 1989.

112. It is therefore entirely logical that Regulation No 1639/91 envisaged only the situation of Slom II producers who, before 29 June 1989, had received a holding from an originator who was a Slom I producer. In that context, they have the same potential right to a reference quantity as the originator of the inheritance would have had. As is pointed out in the last sentence of the first recital in the preamble to Regulation No 1639/91 '[...] 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 reapply'. On the other hand, if a right to a reference quantity had been granted to producers who had inherited after 29 June 1989, they would have obtained a right which the originator of the inheritance

40 — Point 62 et seq.

41 — Points 30 to 33.

had not had and which could not therefore have been transferred to them. Slom II producers who inherit after 29 June 1989 cannot therefore have a right to a reference quantity except in so far as that reference quantity is part of the inheritance, that is to say, solely if the originator, a Slom I producer, made an application in good time, that is to say, between 29 March 1989 and 29 June 1989.

113. I would observe, furthermore, that the new wording of Article 3a(1) which results from Regulation No 1639/91 is in conformity with the judgment in *Rauh*, to which, in particular, the origin of that regulation is to be traced. The Court held that that article, in the version resulting from Regulation No 857/84, should not be interpreted as '[...] not permitting such an heir or successor to have granted to himself, *in the same way as the producer himself*, a special reference quantity under the conditions laid down in Article 3a', [42] and it went on to conclude that 'on the other hand [...] that article [must be] interpreted as meaning that for the purposes of that provision "producers" includes not just farmers who themselves entered into an undertaking pursuant to Regulation No 1078/77 but also those who, after the expiry of the undertaking entered into by the farmer, have taken over the holding in question by succession or by a similar transaction.' [43]

114. I therefore consider that Article 3a(1) of Regulation No 857/84, as amended by Regulations Nos 764/89 and 1639/91, has not revealed any factor of such a kind as to affect its validity in so far as it excludes producers who acquired a holding through an inheritance or similar means after 29 June 1989.

*Questions 4, 5 and 6*

115. In view of the answers which I have proposed to the first three questions, it is not necessary to answer the fourth, fifth and sixth questions.

## Conclusion

116. For the reasons set out above, I propose that the Court should reply as follows to the questions submitted for a preliminary ruling.

42 — Point 19.

43 — Point 23.

*In the case of Ecroyd Ltd*

(1) In a situation such as that in point in the main proceedings, the competent national authority has neither a power nor a duty to award a provisional special reference quantity to the applicant or to treat it as if it had been awarded a special reference quantity either pursuant to 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 764/89, or following the judgment of the Court in Case C-264/90 *Wehrs*.

(2) Article 3a(1) of Regulation No 857/84 as amended by Council Regulation No 764/89 is invalid to the extent held in the judgment in *Wehrs*, cited above.

(3) The competent national authority could not on its own draw the appropriate conclusions from the judgment in *Wehrs*, before the adoption of fresh Community legislation designed to cure the invalidity found to exist.

(4) In view of the answer to the third question, it is not necessary to answer the fourth and fifth questions.

*In the case of John Ecroyd*

(1) In a situation such as that in point in the main proceedings, the competent national authority has neither a power nor a duty to award the applicant a provisional special reference quantity or to treat him as if he had been awarded a special reference quantity, either pursuant to 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 764/89 and Council Regulation (EEC) No 1639/91, or following the judgment of the Court of Justice in Case C-264/90 *Wehrs*.

(2) Article 3a(1) of Regulation No 857/84, as amended by Regulations Nos 764/89 and 1639/91, has not revealed any factor of such a kind as to affect its validity in so far as it excludes producers who have acquired a holding through an inheritance or similar means after 29 June 1989.

(3) In view of the answers given, it is not necessary to answer the fourth, fifth and sixth questions.