JUDGMENT OF THE COURT (First Chamber)
2 May 1985 *

In Case 109/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen [Higher Administrative Court for the *Land* of North Rhine-Westphalia] for a preliminary ruling in the proceedings pending before that court between

Klaus von Menges, residing at Mülheim,

and

Land Nordrhein-Westfalen,

on the interpretation of Article 2 (2) (a) of 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 (Official Journal 1977, L 131, p. 1),

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, T. Koopmans and R. Joliet, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

after considering the observations submitted on behalf of:

— Dr von Menges, the plaintiff in the main proceedings, by Michael Klein, Rechtsanwalt, Essen, Federal Republic of Germany,

— the Commission of the European Communities, by Bernhard Jansen, its Legal Adviser, acting as Agent,

after hearing the Opinion of the Advocate General, delivered at the sitting on 31 January 1985,

gives the following

* Language of the Case: German.

JUDGMENT

(The account of the facts and issues which is contained contained in the complete text of the judgment is not reproduced)

Decision

1 By an order of 16 March 1984, which was received at the Court on 19 April 1984, the Oberverwaltungsgericht für das Land Nordrhein-Westfalen [Higher Administrative Court for the *Land* of North Rhine-Westphalia], referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 2 (2) (a) of 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 (Official Journal 1977, L 131, p. 1).

2 The question was raised in proceedings before the Oberverwaltungsgericht between Klaus von Menges and the *Land* of Nordrhein-Westfalen [North Rhine-Westphalia].

3 In 1980 Dr von Menges, who farmed his own land at Bad Driburg in the Federal Republic of Germany on which he kept a herd of dairy cows, applied for and obtained a premium for the non-marketing of milk and milk products. In accordance with Article 2 (2) (a) of Council Regulation (EEC) No 1078/77 he undertook not to market milk or milk products for a period of five years.

4 In 1981 Dr von Menges leased his farm to a farmer who planned, *inter alia*, to use it to raise milk sheep. Dr von Menges inquired of the competent authorities whether the keeping of milk sheep and the sale of ewe's milk was compatible with the undertakings which he had given when applying for the non-marketing premium and with which his tenant had also agreed to comply. His inquiry was answered in the negative. He then applied to the German courts for a declaration that the marketing of ewe's milk and ewe's milk products was not prejudicial to the grant of the non-marketing premium.

5 Those are the circumstances in which the national court referred the following question to the Court of Justice:

'Are ewe's milk and ewe's milk products covered by the terms "milk and milk products" appearing in Article 2 (2) (a) of 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?'

6 Written observations have been submitted by Dr von Menges, the *Land* of Nordrhein-Westfalen and the Commission of the European Communities.

7 Dr von Menges suggests that the question should be answered in the negative, on the ground that, even though there is no definition of 'milk' in Community law, 'milk' and 'cow's milk' are inevitably equated owing to the very close connection which exists between the aims of the common organization of the market in milk and milk products and the aims of the common organization of the market in beef and veal. He also refers to a number of provisions of Community legislation on milk which in his view make no sense unless 'milk' is understood only as cow's milk.

8 The *Land* of Nordrhein-Westfalen argues that the Common Customs Tariff, 'basic' Regulation No 804/68 and international rules, such as the FAO Code of Principles, support a broader interpretation of the term 'milk'. It contends that none of those instruments contain provisions expressly excluding 'ewe's milk' from the definition of 'milk'.

9 The Commission contends that the object of the premium system, which is to help to reduce milk production, could not be attained if producers of cow's milk could take advantage of the restructuring promoted by Community resources to convert their farms to keeping milk sheep. It should not be overlooked that ewe's milk is widely used to make cheese which is in direct competition with cheese made from cow's milk. The Commission also argues that it is clear from several provisions of

Regulation No 1078/77 and of Commission Regulation (EEC) No 1391/78 of 23 June 1978, laying down amended rules for the application of the system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (Official Journal 1978, L 167, p. 45), that 'milk' must be understood as also meaning ewe's milk.

10 In order to answer the question referred to the Court it is necessary in the first place to consider the provisions of Regulations Nos 1078/77 and 1391/78 which mention sheep.

11 According to Article 3 (2) (c) of Regulation No 1078/77, the grant of the conversion premium is conditional *inter alia* upon the producer's giving an undertaking that during the conversion period he will keep on his holding an average number of bovine or ovine units equal to or greater than the number kept on the same holding on the reference date. However, as is clear from Article 1 (1) of that regulation, the premium is granted 'for the conversion of dairy herds to meat production' so that a herd of dairy cows may not be replaced by a herd of milk sheep. Since the aim being pursued by means of the conversion premium is not meat production but, as the preamble to the regulation expressly states, the reduction of milk surpluses, the fact that conversion to sheep is permitted only if the sheep are kept for meat production shows that the aim of the conversion premium may be jeopardized by the production of ewe's milk. But if the production of ewe's milk and, therefore, the marketing of ewe's milk, is not permitted for the purposes of the conversion premium, it cannot be permitted for the purposes of the non-marketing premium, which clearly has the same aim.

12 As far as Regulation No 1391/78 is concerned, Article 4 (2) (b) provides that applications for non-marketing or conversion premiums must include particulars of, *inter alia*, the 'total number of bovine animals and sheep kept on the holding . . . at the time of lodging the application'. The fact that the number of sheep must be stated is explicable only if the obligation to refrain from marketing milk also applies to ewe's milk. Otherwise there would be no reason for mentioning them, any more than the other livestock that applicants for premiums may keep on their farms without being covered in any way by the regulations in question. It is also wrong to assume that the number of sheep must be stated only

in connection with the conversion premium: Article 4 (2) (b) (cc), which states that in the case of the conversion premium the application must include particulars of 'the numbers of other animals classified in accordance with Article 2 (1) (b)', which include sheep, is in fact an additional requirement in relation to Article 4 (2) (b) in so far as its aim is to make it possible to check whether the recipient of a conversion premium has complied with the obligation laid down in Article 3 (2) (c) of Regulation No 1078/77 to 'keep on his holding during the conversion period an average number of bovine or ovine units equal to or greater than the number kept on the same holding on the reference date'.

13 Those conclusions are also borne out by another finding based on the aim of the premium system.

14 As appears from the first recital in the preamble to Regulation No 1078/77, the aim of the premium system is to deal with a situation in which milk and milk products are 'substantially and increasingly in surplus'. In order to attain that aim, the regulation makes provision — as the second recital in its preamble indicates — for the grant of 'non-marketing premiums' to farmers who cease to market milk and milk products and of 'conversion premiums' to farmers who convert their dairy herds to meat production.

15 The aim of reducing milk surpluses or at least of preventing their increase requires the obligations imposed on the recipients of the premiums to be interpreted in the sense which is the most conducive to its achievement.

16 It is therefore necessary to consider whether for those purposes the undertaking given by the recipients of a non-marketing premium also applies to ewe's milk.

17 It must be borne in mind that one of the major uses of cow's milk is the making of cheese with which, to some extent at least, cheese made from ewe's milk competes. An increase in the production of ewe's milk cheese would lead to a fall in the sales of cow's milk cheese and therefore to new surpluses since less cow's milk would be used for this purpose.

18 The Commission observes in this regard that considerable quantities of cow's milk are used in the production of certain types of cheese which were originally ewe's milk cheese but for which demand has increased so much that it can no longer be satisfied only by products made from ewe's milk.

19 It must therefore be concluded that although the preamble to Regulation No 1078/77, quoted above, mentions only cow's milk in particular, an increase in the production of ewe's milk may also contribute to milk surpluses. It follows that an interpretation whereby ewe's milk is not covered by the 'milk' that the recipient of a non-marketing premium undertakes not to market would be incompatible with the objectives of the premium system, especially since such an interpretation would result in the premium system itself encouraging replacement of dairy cows by milk sheep and would therefore tend to create new surpluses.

20 In view of the above considerations, the answer to the question submitted by the national court must be that the terms 'milk and milk products' in Article 2 (2) (a) of Regulation No 1078/77 also cover ewe's milk and ewe's milk products.

Costs

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

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen, hereby rules:

The terms 'milk and milk products' in Article 2 (2) (a) of Regulation No 1078/77 also cover ewe's milk and ewe's milk products.

Bosco Koopmans Joliet

Delivered in open court in Luxembourg on 2 May 1985.

P. Heim
Registrar

G. Bosco
President of the First Chamber