JUDGMENT OF THE COURT (Third Chamber)
19 March 1992 *

In Case C-84/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justice, Queen's Bench Division, London, for a preliminary ruling in the proceedings pending before that court between

Regina

and

Ministry of Agriculture, Fisheries and Food,

ex parte **John James Dent and Mary Astrid Dent**

on the interpretation of Article 3a(2) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (Official Journal 1984 L 90, p. 13), as amended by Council Regulation (EEC) No 764/89 of 20 March 1989 (Official Journal 1989 L 84, p. 2),

THE COURT (Third Chamber),

composed of: F. Grévisse, President of the Chamber, J. C. Moitinho de Almeida and M. Zuleeg, Judges,

Advocate General: F. G. Jacobs,
Registrar: D. Louterman, Principal Administrator,

* Language of the case: English.

after considering the written observations submitted on behalf of:

— Mr and Mrs Dent, by Richard Gordon, Barrister-at-Law, London, and Messrs Cartmell Shepherd, Solicitors, Carlisle,

— the United Kingdom, by Stephen Richards, Barrister-at-Law, London, and Rosemary Caudwell, of the Treasury Solicitor's Department, acting as Agent,

— the Commission of the European Communities, by Peter Oliver, a member of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the United Kingdom represented by John Collins, acting as Agent, of Mr and Mrs Dent, represented by Richard Gordon, Barrister-at-Law, London, and of the Commission, at the hearing on 22 October 1992,

after hearing the Opinion of the Advocate General at the sitting on 29 November 1991,

gives the following

Judgment

1 By order of 21 February 1990, which was received at the Court on 22 March 1990, the High Court of Justice, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of the second subparagraph of Article 3a(2) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (Official Journal 1984 L 90, p. 13), as amended by Council Regulation (EEC) No 764/89 of 20 March 1989 (Official Journal 1989 L 84, p. 2).

2 Those questions arose in proceedings between John James Dent and Mary Astrid Dent, who are dairy farmers, and the Ministry of Agriculture, Fisheries and Food, concerning a reference quantity under the system imposing an additional levy on milk.

3 On 31 January 1980 Mr and Mrs Dent, who were then jointly running their farm as a partnership, applied for entry into the conversion scheme set up by 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). Their application was successful and they undertook to stop deliveries of milk from their farm for a period of four years which was to expire on 30 April 1984. On 6 April 1980 their son, Michael James Dent, joined the family partnership.

4 At the end of the conversion period, the partnership, made up of Mr and Mrs Dent and their son, was awarded a milk quota of 873 600 litres on the ground of 'exceptional hardship', pursuant to a provision in the national regulations intended to implement Article 4(1)(c) of Regulation No 857/84. Under the latter provision, 'the Member States may . . . grant producers undertaking farming as their main occupation an additional reference quantity . . . '.

5 After the entry into force of the amending Regulation No 764/89, cited above, and following an application made by John James Dent on behalf of the family partnership, Mr and Mrs Dent were also awarded a special reference quantity of 965 693 litres pursuant to Article 3a of Regulation No 857/84 as amended. That quantity was, however, reduced by a quantity equal to the quota awarded on the ground of exceptional hardship, in accordance with the second subparagraph of Article 3a(2), so that the additional reference quantity actually awarded amounted to 92 093 litres. The second subparagraph of Article 3a(2) provides that, 'where

the producer has obtained a reference quantity pursuant to Article 3, points 1 and 2, and/or Article 4(1)(b) and (c), the special reference quantity referred to in the first subparagraph of the paragraph shall be reduced by such quantity'.

6 Mr and Mrs Dent are contesting the decision awarding them a special reference quantity in so far as that quantity was reduced by a quantity equal to that of their exceptional hardship quota.

7 In those circumstances the High Court of Justice, Queen's Bench Division, before which the case was brought, has stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. On the proper interpretation of the second subparagraph of Article 3a(2) of Council Regulation (EEC) No 857/84 of 31 March 1984 (as inserted by Council Regulation (EEC) No 764/89 of 20 March 1989), does the special reference quantity referred to in the first subparagraph of that paragraph fall to be reduced by the amount of a reference quantity obtained by the producer pursuant to provisions of national regulations (*in casu*, paragraph 17 of Schedule 2 to the Dairy Produce Quotas Regulations 1984) which implemented only Article 4(1)(c), and not Article 4(1)(b), of Regulation No 857/84?

2. On the proper interpretation of the said second subparagraph of Article 3a(2) of Regulation No 857/84 (as inserted by Regulation No 764/89), and having regard to the definition of "producer" in Article 12(c) of Regulation No 857/84, where a special reference quantity is awarded to two persons (*in casu*, a husband and wife) who farm their holding in partnership with a third person (*in casu*, their son), does that special reference quantity fall to be reduced by the amount of a reference quantity (or a proportion thereof) where that reference quantity was awarded in respect of the same holding and otherwise falls within the said subparagraph but was obtained by the three persons as a partnership?'

8 Reference is made to the Report for the Hearing for a fuller account of the facts in the main proceedings, the Community provisions at issue, the course of the procedure and the written observations submitted to the Court, which are mentioned or referred to hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

9 The first question asks essentially whether the second subparagraph of Article 3a(2) of Regulation No 857/84, as amended by Regulation No 764/89, must be interpreted as meaning that where a producer has obtained a reference quantity pursuant to a national provision implementing Article 4(1)(c) of the regulation but not Article 4(1)(b), that reference quantity falls to be deducted from a special reference quantity obtained pursuant to Article 3a.

10 The applicants in the main proceedings maintain in this connection that the word 'and' in the phrase 'Article 4(1)(b) and (c)' in the second subparagraph of Article 3a(2) of Regulation No 857/84, as amended, must be understood conjunctively, not disjunctively. In their view it follows that the reduction in question can be made only when the reference quantity in question has been awarded pursuant to both Article 4(1)(b) and Article 4(1)(c).

11 That view cannot be accepted. As the Commission has rightly pointed out, the purpose of the rule against overlapping in the second subparagraph of Article 3a(2) is to prevent the unjust enrichment of producers who could otherwise be granted two reference quantities for the same production. That purpose would not be fully achieved if application of the rule against overlapping was precluded in a case such as that before the national court. If that were the case, a producer could obtain a reference quantity under either Article 4(1)(b) or Article 4(1)(c) and at the same time a special reference quantity, without any reduction, under Article 3a, thus gaining an undue advantage contrary to the purpose of the rules.

12 It follows that in order to give full effect to the second subparagraph of Article 3a(2) that provision must be interpreted as referring both to producers who have received a reference quantity under Article 4(1)(b) and to those who have received a reference quantity under Article 4(1)(c). That conclusion is borne out by the fact that implementation of Article 4(1)(b) and (c) is optional for Member States and the interpretation put forward by the applicants in the main proceedings would amount to making the rule against overlapping inapplicable with regard to a Member State, such as the United Kingdom, which has implemented only one of the said options, in this case that under Article 4(1)(c).

13 For those reasons the reply to the first question must be that the second subparagraph of Article 3a(2) of Regulation No 857/84, as amended by Regulation No 764/89, must be interpreted as meaning that where a producer has obtained a reference quantity pursuant to a national provision implementing Article 4(1)(c) of that regulation but not Article 4(1)(b), that reference quantity falls to be deducted from a special reference quantity obtained under the said Article 3a.

The second question

14 In view of the reply to the first question, the second question asks in substance whether the second subparagraph of Article 3a(2) of Regulation No 857/84, as amended by Regulation No 764/89, must be interpreted as meaning that where a reference quantity has been granted under Article 4(1)(c) of Regulation No 857/84 to a partnership of several persons and a special reference quantity is awarded under Article 3a in respect of the same holding, but only to certain members of the partnership, which has the status of producer within the meaning of Article 12(c) of Regulation No 857/84, the first reference quantity falls to be deducted in full from the second reference quantity.

15 The applicants in the main proceedings maintain that since the special reference quantity in question was granted to them alone, that is to say, to two persons, whereas the exceptional hardship quota was awarded to the partnership of three persons, the two quantities in question were granted to different producers. It follows, they say, that the exceptional hardship quota should not be deducted from the special reference quantity. In the alternative, Mr and Mrs Dent claim that a deduction of only two-thirds of the exceptional hardship quota should be made, since only that fraction of the quota can be imputed to the persons who have received the special reference quantity.

16 The United Kingdom, on the other hand, contends that although it was nominally granted solely to the applicants in the main proceedings, the special reference quantity must in law be regarded as belonging to the partnership of three persons which was farming the holding at the time of the award. In any event, even if the two quantities in question were allocated to different producers, the United Kingdom states that since the holding in question was farmed by the same group of persons at the time of the award of both the exceptional hardship quota and the special reference quantity, the first quantity must be deducted in full from the second.

17 The United Kingdom's view must, in substance, be accepted. The additional levy system is based on the principle that reference quantities are allocated to producers, that is to say, having regard to the definitions given in Article 12(c) and (d) of Regulation No 857/84, to the person or group of persons farming a holding at a particular time.

18 That principle, which is reflected *inter alia* in the rule set out in Article 7 of Regulation No 857/84 according to which, if there is a change of producer, the reference quantity corresponding to the holding is transferred to the person or

group of persons who takes over the holding, implies that the rule against overlapping in the second subparagraph of Article 3a(2) is applicable in all cases where the producer farming the holding at the time when a special reference quantity is awarded under Article 3a is at the same time in receipt of a reference quantity previously allocated in respect of the holding, pursuant to Article 4(1)(c).

19 It follows that the abovementioned rule against overlapping is applicable *inter alia* in a case where there has been a change in the composition of a partnership and the holding in question is farmed by that partnership, which has the status of producer within the meaning of Article 12(c) of Regulation No 857/84, at the time of both the award of the reference quantity under Article 4(1)(c) and the award of the special reference quantity under Article 3a.

20 *A fortiori* it follows from the foregoing that the applicability of the rule against overlapping in the second subparagraph of Article 3a(2) is not affected by the fact that a special reference quantity has been mistakenly granted to only certain members of a partnership which is the producer within the meaning of Article 12(c) of Regulation No 857/84, whereas by virtue of the criteria set out above that quantity should have been allocated to the said partnership as such.

21 For those reasons the reply to the second question must be that the second subparagraph of Article 3a(2) of Regulation No 857/84, as amended by Regulation No 764/89, must be interpreted as meaning that where a reference quantity has been awarded under Article 4(1)(c) of Regulation No 857/84 to a partnership of several persons and in addition a special reference quantity is awarded under Article 3a in respect of the same holding but to only certain members of the partnership, which has the status of producer within the meaning of Article 12(c) of Regulation No 857/64, the first reference quantity falls to be deducted in full from the second reference quantity.

Costs

22 The costs incurred by the United Kingdom Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action/proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the High Court of Justice, Queen's Bench Division by order of 21 February 1990, hereby rules:

1. **The second subparagraph of Article 3a(2) of Council Regulation (EEC) No 857/84 of 31 March 1984, as amended by Council Regulation (EEC) No 764/89 of 20 March 1989, must be interpreted as meaning that where a producer has obtained a reference quantity pursuant to a national provision implementing Article 4(1)(c) of that regulation but not Article 4(1)(b), that reference quantity falls to be deducted from a special reference quantity obtained under the said Article 3a;**

2. **The second subparagraph of Article 3a(2) of Council Regulation (EEC) No 857/84 of 31 March 1984, as amended by Council Regulation (EEC) No 764/89 of 20 March 1989, must be interpreted as meaning that where a reference quantity has been awarded under Article 4(1)(c) of Regulation No 857/84 to a partnership of several persons and in addition a special reference quantity is awarded under Article 3a in respect of the same holding but to only certain members of the partnership, which has the status of producer within the meaning**

of Article 12(c) of Regulation No 857/84, the first reference quantity falls to be deducted in full from the second reference quantity.

Grévisse Moitinho de Almeida Zuleeg

Delivered in open court in Luxembourg on 19 March 1992.

J.-G. Giraud
Registrar

F. Grévisse
President of the Third Chamber