JUDGMENT OF THE COURT (Sixth Chamber)

20 June 2002 *

In Case C-313/99,

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

Gerard Mulligan,

Tim O'Sullivan,

Tom Power,

Hugh Duncan

and

Minister for Agriculture and Food,

Ireland,

Attorney General,

on the interpretation of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1), as amended by Council Regulation (EEC) No 1560/93 of 14 June 1993 (OJ 1993 L 154, p. 30),

* Language of the case: English.

THE COURT (Sixth Chamber),

composed of: N. Colneric, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann and V. Skouris (Rapporteur), Judges,

Advocate General: L.A. Geelhoed,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Messrs Mulligan, O'Sullivan, Power and Duncan, by J. O'Reilly and G. Hogan SC, and by S. Woulfe BL, instructed by O. Ryan-Purcell, Solicitor,

— the Minister for Agriculture and Food, Ireland, and the Attorney General, by M. Finlay and F. McDonagh SC, instructed by M.A. Buckley, Chief State Solicitor,

— the Commission of the European Communities, by P. Oliver and K. Fitch, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Messrs Mulligan, O'Sullivan, Power and Duncan, represented by G. Hogan and S. Woulfe, the Minister for Agriculture and Food, Ireland, and the Attorney General, represented by N. Hyland BL, and the Commission, represented by P. Oliver and K. Fitch, at the hearing on 28 March 2001,

after hearing the Opinion of the Advocate General at the sitting on 12 July 2001,

gives the following

Judgment

1 By order of 30 July 1999, received at the Court Registry on 18 August 1999, the High Court referred to the Court of Justice for a preliminary ruling under Article 234 EC three questions on the interpretation of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1), as amended by Council Regulation (EEC) No 1560/93 of 14 June 1993 (OJ 1993 L 154, p. 30).

2 Those questions were raised in proceedings between Messrs Mulligan, O'Sullivan, Power and Duncan, on the one hand, and the Minister for Agriculture and Food (hereinafter 'the Minister'), Ireland, and the Attorney General, on the other, regarding the validity of a decision of the Minister whereby, in the case of the sale or lease of a dairy holding to which a milk quota is attached, part of the milk quota is added to the national reserve by means of a 'clawback' measure.

The legal background

The Community legislation

3 In 1984, because of persistent imbalance between supply and demand in the milk sector, an additional levy scheme was introduced by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products (OJ 1984 L 90, p. 10). In accordance with Article 5c of Council Regulation (EEC) No 804/68 of 27 June 1968 (OJ, English Special Edition 1968 (I), p. 176), as amended by Regulation No 856/84, an additional levy is payable in respect of quantities of milk which exceed a reference quantity to be determined.

4 That additional levy scheme, which was originally intended to last until 1 April 1993, was extended to 1 April 2000 by Regulation No 3950/92.

5 Article 4 of Regulation No 3950/92 introduced an individual quota for each producer. Article 4(1) provides:

'The individual reference quantity available on the holding shall be equal to the quantity available on 31 March 1993 and shall be adjusted, where appropriate, for each of the periods concerned, so that the sum of the individual reference quantities of the same type does not exceed the corresponding global quantities referred to in Article 3, taking account of any reductions made for allocation to the national reserve provided for in Article 5.'

6 Regulation No 3950/92 continued the national reserve scheme, originally provided for by Article 5 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 No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13). The 13th recital in the preamble to Regulation No 3950/92 states that '... experience has shown that implementation of this scheme presupposes the existence of a national reserve to accommodate all those quantities which, for whatever reasons, are not, or are no longer, allocated individually; ... a Member State may need to have reference quantities available to cater for special situations, determined by objective criteria; ... it should be authorised, to this end, to top up its national reserve, especially following a linear reduction in all reference quantities.'

7 Article 5 of Regulation No 3950/92, as amended by Regulation No 1560/93 (hereinafter 'Regulation No 3950/92'), provides:

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

Without prejudice to Article 6(1), reference quantities available to producers who have not marketed milk or other milk products for one of the twelve-month periods shall be allocated to the national reserve and may be reallocated in accordance with the first subparagraph. Where the producer resumes production of milk or other milk products within a period to be determined by the Member State, he shall be granted a reference quantity in accordance with Article 4(1) no later than 1 April following the date of his application.'

8 Article 7(1) of Regulation No 3950/92, concerning the sale of holdings to which a quota is attached, provides:

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

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

...'

The national legislation

9 The national measures for the implementation of Regulation No 3959/92 in Ireland were, at the time of the facts giving rise to the main proceedings, to be found in the European Communities (Milk Quota) Regulations 1995 (Statutory Instrument No 266 of 1995) ('the 1995 Regulations').

10 In accordance with Article 7(1) of Regulation No 3950/92, Regulation 4 of the 1995 Regulations laid down the detailed rules relating to the sale, lease or transfer by inheritance of holdings to which a milk quota is attached. According to Regulation 4:

'(1) Subject to the provisions of paragraphs (4), (5), (6), (7), (8), (9) and (19) of this regulation, where any holding, or part thereof, is transferred by sale, lease or inheritance, the milk quota attached to that holding or part thereof shall be transferred by virtue of this regulation to the producer to whom that transfer is made:

provided that the requirements of Regulation 6 of these Regulations are complied with.

...

(19) The Minister may make a determination of the cases of transfers referred to in ... Article 7(1) of Council Regulation No 3950/92 where any part of the milk quota is not transferred with the holding and is added to the national reserve.

(20) A determination under paragraph (19) of this regulation shall be made by way of a notice containing such determination published in a National newspaper.'

11 The Minister took a series of decisions in accordance with those provisions. In particular, by Notice No 266/19, published in the national press on 19 March

1998, the Minister introduced a clawback measure under which, in the case of the sale or lease of a dairy holding, 20% of the reference quantity attached thereto was not to be transferred with the holding, but added instead to the national reserve.

12 Notice No 266/19, and all the previous notices concerning clawback measures, were replaced by Notice No 266/20, which was published in the national press on 4 April 1998. While maintaining a clawback of 20%, the latter notice was adopted with a view, on the one hand, to taking account of certain queries relating to the precise application of that measure to transactions entered into close to 19 March 1998 and, on the other, to representations made concerning family transactions.

The main proceedings and the questions referred

13 Mr Mulligan, the first applicant in the main proceedings, is a former dairy farmer who had a milk quota of 50 915 gallons which was attached to a holding of approximately 115 acres in Clonin Rhode in the County of Offaly (Ireland). Rheumatoid arthritis compelled him to sell his holding in April 1998 to Mr O'Sullivan, the second applicant in the main proceedings, a neighbouring landowner. As a result of the application of the 20% clawback, Mr Mulligan's holding was sold to Mr O'Sullivan for IEP 438 000, a sum less than its real value.

14 Mr Power, the third applicant in the main proceedings, is a dairy farmer and owner of 125 acres in Garrynoe Ballingarry Thurles in the County of Tipperary (Ireland). He was the owner of a milk quota of 38 000 gallons which was attached to his holding. Owing to his ill health and increasing debts, part of his

land was advertised for sale by auction in or around March 1998. There was a number of interested purchasers. With the publication of Notice No 266/20 the interest of potential purchasers evaporated and Mr Power was obliged to dispose of his milk quota at a reduced price to the purchaser of milk from his holding, a dairy cooperative, through a restructuring scheme.

15 Mr Duncan, the fourth applicant in the main proceedings, was the owner of a holding of some 55 acres and a milk quota of 59 000 gallons at Mount Alexander Gorey in the County of Wexford (Ireland). He purchased the land towards the end of the 1980s at the market price. The milk quota attached to the holding was one of the factors which determined the market price. At the beginning of 1998 he decided to cease milk production and to lease his land and milk quota. If he had leased the land and quota for some time and then sold it, he ran the risk of incurring two 20% clawbacks of milk quota. He therefore felt that he had no choice but to sell his land and milk quota rather than to lease them. After the sale, he learnt that the application of the 20% clawback had significantly reduced the price of the holding.

16 The four applicants in the main proceedings brought an action before the High Court to challenge the validity of the Minister's decision published in Notice No 266/20, seeking judicial review and consequential relief, including damages.

17 Against that legal and factual background, the High Court of Ireland decided to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 7(1) of Council Regulation No 3950/92 to be interpreted as meaning that a Member State may provide that a part of the reference

quantity available on a holding shall not in the case of sale or lease be transferred with the holding to producers taking it over but shall instead be added to the national reserve by means of a "claw back" or "siphoning off" or some similar deduction mechanism?

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

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

The first question

18 By its first question the national court is asking essentially whether, when the Member States determine, pursuant to the first subparagraph of Article 7(1) of Regulation No 3950/92, the rules under which the reference quantity attached to a dairy holding is to be transferred upon the sale or lease of the holding, they may provide, pursuant to that provision, that part of the reference quantity is not to be transferred with the holding to the producer taking it over but is to be added to the national reserve by means of a 'clawback' mechanism.

19 The applicants in the main proceedings submit that Article 7(1) of Regulation No 3950/92, when read in the light of the second and third recitals, must be interpreted as not authorising a Member State to adopt a clawback or a similar deduction mechanism upon the transfer of a holding. The fundamental principle that the reference quantity is attached to the holding, as laid down in the first sentence of the first subparagraph of Article 7(1), requires that, failing an express exception to that principle in the regulation, a Member State is not to introduce such measures, which, by their very nature, separate the reference quantity from the holding.

20 The applicants in the main proceedings also observe that the words 'in accordance with the detailed rules to be determined by the Member States' in the first subparagraph of Article 7(1) of Regulation No 3950/92 cannot but refer to the detailed implementation of that fundamental principle, that is to say, the way in which the reference quantities are to be transferred with the holding. The fact that the Community institutions have granted to the Member States a discretion in relation to the rules governing transfer of the reference quantities shows that they were reluctant to intervene in the disparate land law systems of the Member States, but it does not authorise the Member States to treat the transfer of reference quantities as separate from the transfer of the holding.

21 With regard to the last sentence of the first subparagraph of Article 7(1) of Regulation No 3950/92, according to which 'any part of the reference quantity which is not transferred with a holding shall be added to the national reserve', the applicants in the main proceedings claim that it merely describes a state of affairs. They observe that, having regard to the mandatory language used in that provision ('shall be added ...'), the interpretation proposed by the Minister would imply that a clawback measure ought to be found in every Member State, which is not the case.

22 Furthermore, the applicants submit that the wording of Article 7(1) of Regulation No 3950/92 differs from that of the second subparagraph of Article 7(2) of

Regulation No 857/84 which, in its original version, expressly stated that 'Member States may provide that part of the quantities be added to the reserve referred to in Article 5'. It follows that, failing clear and express words, the rule-making power provided for in Regulation No 857/84 has not been granted to the Member States by Regulation No 3950/92.

23 The respondents in the main proceedings contend that Article 7 of Regulation No 3950/92 gives to the competent authorities of the Member States full power to introduce clawback measures as part of the detailed rules to be determined by the Member States. They rely primarily on the normal meaning of the words in that provision and, in particular, on the last sentence of the first subparagraph of Article 7(1). They contend that that sentence clearly envisages that there will be circumstances in which part of a reference quantity available on a holding will not be transferred with it. Accordingly, in order for that sentence to have any meaning, the words 'in accordance with detailed rules to be determined by the Member States', referred to in that article, must be capable of including rules under which some part of the reference quantity is not to be transferred with the holding but is instead to be added to the national reserve.

24 In support of their line of argument the respondents in the main proceedings observe that a number of Member States (Kingdom of Belgium, Kingdom of Denmark and French Republic) have interpreted Article 7(1) of Regulation No 3950/92 as authorising clawback measures and that when the 1995 Regulations were notified to the Commission by the Irish authorities the Commission raised no queries as to their content.

25 The Commission acknowledges that Article 7(1) of Regulation No 3950/92 lays down the general principle that quota must follow the holding when the holding is transferred to a new producer. However, it observes that it also provides that the detailed rules concerning the transfer are to be determined by the Member States 'taking account of the areas used for dairy production or other objective

criteria ...'. Article 7(1) also provides that quota which is not transferred with the holding must be added to the national reserve. It necessarily follows, according to the Commission, that a Member State may, in accordance with Article 7(1) of Regulation No 3950/92, establish a clawback system.

26 In order to interpret Article 7(1) of Regulation No 3950/92 and, more specifically, to ascertain whether clawback measures such as those at issue in the main proceedings may be included amongst the 'detailed rules to be determined by the Member States', it is first necessary to recall the Court's settled case-law to the effect that the entire system of reference quantities is based on the general principle laid down initially by Article 7 of Regulation No 857/84 and Article 7 of Commission Regulation (EEC) No 1546/88 of 3 June 1988 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation No 804/68 (OJ 1988 L 139, p. 12) and then by the first subparagraph of Article 7(1) of Regulation No 3950/92. According to that principle, the reference quantity is allocated in relation to land and must therefore be transferred with that land (see, to that effect, Case C-98/91 *Herbrink* [1994] ECR I-223, paragraph 13, Case C-189/92 *Le Nan* [1994] ECR I-261, paragraph 12, Case C-463/93 *St. Martinus Elten* [1997] ECR I-255, paragraph 24; and Case C-15/95 *EARL de Kerlast* [1997] ECR I-1961, paragraphs 17 and 18).

27 In principle, therefore, a reference quantity is transferred only by transfer of the land of the holding to which it attaches, provided that the transfer complies with the formal requirements and other conditions laid down by Article 7 of Regulation No 3950/92. In other words, the system of reference quantities precludes the bare transfer of reference quantities alone, except where Community law provides otherwise (see, to that effect, *EARL de Kerlast*, paragraph 19).

28 However, that principle cannot be interpreted as prohibiting the competent authorities of the Member States from adopting laws, regulations or administrative provisions under which, in the event of the transfer of a holding by sale or

by lease, part of the reference quantity attached to that holding is to be transferred to the national reserve.

29 It must be observed in that regard, first, that the first subparagraph of Article 7(1) of Regulation No 3950/92 itself provides that the detailed rules relating to the transfer of the reference quantity with the holding to which it is attached are to be determined by the Member States and that any part of the reference quantity which is not transferred with the holding is to be added to the national reserve. It follows that the Community legislature at least envisaged the possibility that, in the event of the sale or lease of a holding, part of the reference quantity attached to it would not be transferred with it.

30 Next, it must be observed that such an interpretation is not contrary to the specific objective pursued by the Community legislature in laying down the principle that the reference quantity attached to a holding is transferred only with that holding. That principle is merely the necessary corollary of the fundamental principle which follows from the general scheme of the provisions concerning the additional levy on milk, namely that a reference quantity can be allocated to a farmer only if he has the status of milk producer (see, to that effect, Case C-341/89 *Ballmann* [1991] ECR I-25, paragraph 9). In other words, the aim of the principle that the reference quantity is transferred only with the holding to which it is attached is to prevent reference quantities being used not in order to produce or market milk but in order to derive purely financial benefits by taking advantage of their market value.

31 Lastly, it is apparent from the 13th recital in the preamble to Regulation No 3950/92, first, that the existence of a national reserve is necessary for the operation of the additional levy on milk scheme and, second, that the Community legislature, by indicating that the Member States may do so 'especially' by means of a linear reduction in all reference quantities, has given them quite wide

discretion when they determine the detailed rules under which they may top up their national reserve. If the competent authorities of the Member States are authorised to top up their national reserve in such a way, the presence of the word 'especially' in that recital cannot but indicate that they may also do so by other more restricted means, such as a clawback measure.

32 It must therefore be held that pursuant to the first subparagraph of Article 7(1) of Regulation No 3950/92 the Member States may, in principle, introduce into their national rules clawback measures such as those at issue in the main proceedings.

33 However, in order to provide a full answer to the national court, it is necessary to point out that this finding cannot lead to the conclusion that the Member States are authorised to introduce any type of clawback measure in any circumstances whatsoever. It must be observed, first, that, having regard to the fact that the adoption of a national measure such as that at issue in the main proceedings falls within the scope of the common agricultural policy, such a measure cannot be established or applied in such a way as to compromise the objectives of that policy and, more particularly, those of the common organisation of the markets in the milk sector.

34 Second, as the first subparagraph of Article 7(1) of Regulation No 3950/92 itself provides, where the competent authorities of the Member States lay down or apply such measures they must do so on the basis of objective criteria.

35 Third, it is settled case-law that where Community rules leave Member States to choose between various methods of implementation, the Member States must exercise their discretion in compliance with the general principles of Community

law (Joined Cases 201/85 and 202/85 *Klensch and Others* [1986] ECR 3477, paragraph 10).

36 Consequently, a clawback measure such as that at issue in the main proceedings must be established and applied in compliance with the principles of legal certainty and protection of legitimate expectations (see, to that effect, in particular Case C-63/93 *Duff and Others* [1996] ECR I-569, paragraph 34). Moreover, it must be proportionate to the aim pursued (see, to that effect, in particular Case C-22/94 *Irish Farmers Association and Others* [1997] ECR I-1809, paragraphs 30 and 31) and applied without discrimination (see, to that effect, in particular *Klensch and Others,* paragraph 8). Similarly, such a measure must respect fundamental rights, such as the right to property (see, to that effect, in particular Case C-2/92 *Bostock* [1994] ECR I-955, paragraphs 16 and 20) and the freedom to pursue a trade or profession (see, to that effect, in particular Joined Cases C-90/90 and C-91/90 *Neu and Others* [1991] ECR I-3617, paragraph 13).

37 Consequently, in light of all the above considerations, the answer to the first question must be that when the Member States determine, pursuant to the first subparagraph of Article 7(1) of Regulation No 3950/92, the detailed rules under which the reference quantity attached to a holding is to be transferred upon the sale or lease of the holding, they may provide, pursuant to that provision, that part of the reference quantity is not to be transferred with the holding to the producer taking it over but is to be added to the national reserve by means of a 'clawback' mechanism. Such a measure must be adopted and applied:

— in a way which does not compromise the objectives of the common agricultural policy and in particular those of the common organisation of the markets in the milk sector;

— on the basis of objective criteria, and

— in accordance with the general principles of Community law such as, in particular, the principles of legal certainty and protection of legitimate expectations, proportionality, non-discrimination and respect for fundamental rights.

The second and third questions

38 By its second and third questions, which should be considered together, the national court is asking essentially whether the principle of legal certainty precludes, as a general principle of Community law, a Member State from choosing, for the purpose of adopting national clawback measures taken pursuant to Article 7(1) of Regulation No 3950/92, a procedure whereby a legislative instrument authorises the competent authority to adopt those measures by means of an administrative notice published in a national newspaper.

39 The applicants in the main proceedings submit that if a Member State is authorised to provide for a clawback mechanism or similar deduction, the procedure or rules chosen by it in order to adopt such a decision are subject to the fundamental principles of Community law.

40 According to the applicants in the main proceedings, in the present case the national measures implementing Regulation No 3950/92 set out in Notice No 266/20 have not complied with the principle of legal certainty, since they are not sufficiently clear and do not enable the national authorities, acting in accordance with the provisions of Community law, to know precisely the limits of their competence or individuals to act in full knowledge of the extent of their rights and obligations in the Community legal order. Still less do they make it possible to predict with reasonable certainty the precise legal implications of such a notice published in a newspaper.

41 Moreover, they submit that this type of administrative notice has no legal foundation or basis in Irish law. Since there is no legal basis for such a notice, it cannot have any greater authority than an announcement or statement published by the Minister in the national press.

42 In those circumstances, the applicants in the main proceedings submit that the Irish system of administrative notices does not comply with the principle of legal certainty, since the rights and obligations of individuals are liable to be varied by what amounts to an executive decree rather than a parliamentary act or resolution.

43 The respondents in the main proceedings contend that it is clear from paragraph 34 of Case 230/78 *Eridania and Società italiana per l'industria degli zuccheri* [1979] ECR 2749 that, where a regulation such as Regulation No 3950/92 empowers a Member State to take implementing measures, it is only the content of such national implementing measures which must be in accordance with the content of the Community regulation and the general principles of Community

law. The validity of the national procedure chosen to introduce such measures, whether they be legislative, regulatory or administrative, must be determined according to the public law of the Member State in question, including, where appropriate, its constitutional law.

44 In any event, the respondents in the main proceedings submit that in the present case the procedure followed by the Minister in adopting the clawback measure at issue in the main proceedings is not contrary to the principle of legal certainty. First, apart from the fact that the Minister's decision is an administrative measure expressly authorised by a regulation having statutory effect in Ireland, there can be no objection to the form of public announcement, since that method of proceeding benefits persons potentially affected by the measure. A decision adopted by way of statutory instrument is published in the *Iris Oifigiúil*, which is not widely read. Moreover, that practice has been expressly recognised by the High Court as consistent with the requirements of Irish law. Lastly, decisions such as those at issue in the main proceedings are often urgent and in any event would be rendered ineffective if producers were informed in advance of the imminent introduction of such measures.

45 While the Commission accepts that when the Member States implement Article 7(1) of Regulation No 3950/92 they must choose procedures which are in accordance with the general principles of Community law and, in particular, the principle of legal certainty, it contends that the Member States are entitled to adopt measures by means of a notice published in a national newspaper where their national law permits them to do so and provided, first, that the notice is binding and satisfies the requirements of clarity and certainty and, second, that in view, in particular, of the circulation and number of readers of the newspaper concerned the persons affected by that notice may reasonably be expected to be aware of its contents. However, it is for the national court to determine whether those conditions are satisfied in the main proceedings.

46 It must be observed in that regard that, as has been pointed out in paragraphs 35 and 36 above, where a Community regulation allows the Member States a choice between various methods of implementation, they must exercise their discretion in accordance with the general principles of Community law, including the principle of legal certainty.

47 According to the case-law on this principle, the Member States must implement their obligations under Community law with unquestionable binding force and with the specificity, precision and clarity necessary to satisfy the requirements flowing from that principle (see, to that effect, in particular Case C-159/99 *Commission* v *Italy* [2001] ECR I-4007, paragraph 32). Mere administrative practices, which by their nature are alterable at will by the authorities and are not given appropriate publicity, cannot be regarded as constituting the proper fulfilment of a Member State's obligations under Community law, since they maintain, for the persons concerned, a state of uncertainty as regards the extent of their rights in an area governed by Community law (see, to that effect, in particular Case C-80/92 *Commission* v *Belgium* [1994] ECR I-1019, paragraph 20 and Case C-151/94 *Commission* v *Luxembourg* [1995] ECR I-3685, paragraph 18).

48 It is indeed true that the detailed rules for the exercise of a discretion given to the Member States by a Community regulation are governed by the public law of the Member States (*Eridania and Società italiana per l'industria degli zuccheri*, paragraph 34). However, it is apparent from the case-law set out in the previous paragraph that there may be an infringement of the principle of legal certainty, as a general principle of Community law, not merely on account of the content of the measures adopted by a Member State but also on account of the procedure or very nature of the legislative instrument chosen by that State in order to implement its obligations under the Community regulation. The requirements relating to the binding nature of the measures adopted by the Member States and appropriate publicity for those measures, which are recognised by that case-law, concern precisely the nature of the legislative instrument chosen and the procedure followed in order to adopt it.

49 In the present case, the questions referred by the national court, as reformulated in paragraph 38 of this judgment, concern two specific aspects of the legislative procedure followed for the adoption of the clawback measure at issue in the main proceedings, namely the fact that the 1995 Regulations, first, gave the Minister a discretion to adopt decisions for that purpose and, second, permitted the adoption of those measures by means of a notice published in the national press.

50 With regard to the first aspect of that procedure, the mere fact that a national legislative instrument has delegated to an authority of a Member State, such as a minister, authority to adopt measures pursuant to Article 7(1) of Regulation No 3950/92 is not in itself of such a nature as to infringe the principle of legal certainty, since the adoption of a measure following such a procedure does not necessarily mean that that measure is not binding or does not satisfy the requirement of that principle that it be specific, precise and clear.

51 With regard to the second aspect of that procedure, it suffices to observe that, although the principle of legal certainty requires appropriate publicity of the national measures adopted pursuant to a Community regulation, it is nevertheless the case that the principle does not prescribe any specific form of publicity, such as publication of the measures in the Official Journal of the Member State concerned.

52 As is clear from the case-law cited in paragraph 47 above, the reason why the principle of legal certainty, as a general principle of Community law, requires appropriate publicity of measures adopted by the Member States in implementation of an obligation under Community law is the obvious need to ensure that

persons concerned by such measures are able to ascertain the scope of their rights and obligations in the particular area governed by Community law.

53 It follows that to be appropriate publicity must be of such a nature as to inform the natural or legal persons concerned by the measure of their rights and obligations under it. It is not therefore ruled out that publication of that measure in the national press may satisfy that condition. However, it is for the national court to determine, on the basis of the facts before it, whether that is the case in the main proceedings.

54 Consequently, the answer to the second and third questions must be that the principle of legal certainty does not preclude, as a general principle of Community law, a Member State from choosing, for the purpose of adopting national measures pursuant to Article 7(1) of Regulation No 3950/92, a procedure whereby a legislative instrument authorises the competent authority, such as a minister, to adopt those measures by means of a decision. That principle requires that the publicity for such measures be of such a nature as to inform the natural or legal persons concerned by the measures of their rights and obligations under them. It is for the national court to determine, on the basis of the facts before it, whether that is the case in the main proceedings.

Costs

55 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the High Court of 30 July 1999, hereby rules:

(1) When Member States determine, pursuant to the first subparagraph of Article 7(1) of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector, as amended by Council Regulation (EEC) No 1506/93 of 14 June 1993, the detailed rules under which the reference quantity attached to a holding is to be transferred upon the sale or lease of the holding, they may provide, pursuant to that provision, that part of the reference quantity is not to be transferred with the holding to the producer taking it over but is to be added to the national reserve by means of a 'clawback' mechanism. Such a measure must be adopted and applied:

— in a way which does not compromise the objectives of the common agricultural policy and in particular those of the common organisation of the markets in the milk sector;

— on the basis of objective criteria, and

— in accordance with the general principles of Community law such as, in particular, the principles of legal certainty and protection of legitimate expectations, proportionality, non-discrimination and respect for fundamental rights.

(2) The principle of legal certainty does not preclude, as a general principle of Community law, a Member State from choosing, for the purpose of adopting national measures pursuant to Article 7(1) of Regulation No 3950/92, a procedure whereby a legislative instrument authorises the competent authority, such as a minister, to adopt those measures by means of a decision. That principle requires that the publicity for such measures be of such a nature as to inform the natural or legal persons concerned by the measures of their rights and obligations under them. It is for the national court to determine, on the basis of the facts before it, whether that is the case in the main proceedings.

Colneric Gulmann Skouris

Delivered in open court in Luxembourg on 20 June 2002.

R. Grass

Registrar

F. Macken

President of the Sixth Chamber