JUDGMENT OF THE COURT (Second Chamber)
16 December 1998 *

In Case C-374/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Finanzgericht Düsseldorf (Germany) for a preliminary ruling in the proceedings pending before that court between

Florian Vorderbrüggen

and

Hauptzollamt Bielefeld

on the validity of the first subparagraph of Article 3a(3) of Commission Regulation (EEC) No 1546/88 of 3 June 1988 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1988 L 139, p. 12), as amended by Commission Regulation (EEC) No 1033/89 of 20 April 1989 (OJ 1989 L 110, p. 27),

THE COURT (Second Chamber),

composed of: G. Hirsch (Rapporteur), President of the Chamber, G. F. Mancini and R. Schintgen, Judges,

* Language of the case: German.

Advocate General: P. Léger,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— the Commission of the European Communities, represented by Dierk Booß, Principal Legal Adviser, acting as Agent, and Hans-Jürgen Rabe, Georg M. Berrisch and Marco Núñez Müller, Rechtsanwälte, of the Brussels Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Vorderbrüggen, represented by Mechtild Düsing, Rechtsanwalt, Münster, and the Commission, represented by Marco Núñez Müller, at the hearing on 11 June 1998,

after hearing the Opinion of the Advocate General at the sitting on 17 September 1998,

gives the following

Judgment

1 By order of 13 November 1996, received at the Court on 26 November 1996, the Finanzgericht (Finance Court) Düsseldorf referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the validity of the first subparagraph of Article 3a(3) of Commission Regulation (EEC) No 1546/88 of 3 June 1988 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1988 L 139, p. 12), as amended by Commission Regulation (EEC) No 1033/89 of 20 April 1989 (OJ 1989 L 110, p. 27).

2 That question was raised in proceedings between Mr Vorderbrüggen, a dairy farmer, and the Hauptzollamt (Principal Customs Office) Bielefeld ('HZA Bielefeld') concerning the refusal by the latter to grant him a definitive special reference quantity, on the ground that he had not resumed milk production in due time.

The relevant provisions

3 Because of over-production in the milk and milk products sector, which is governed by Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products (OJ, English Special Edition 1968 (I), p. 176), Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (OJ 1977 L 131, p. 1) provided, *inter alia*, in order to reduce supply, for a system of premiums for farmers who cease to market milk and milk products from their holdings or who convert their dairy herds to meat production.

4 Having regard to the persistent imbalance between supply and demand in the dairy sector, an additional levy scheme was introduced by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation No 804/68 (OJ 1984 L 90, p. 10) and 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 (OJ 1984 L 90, p. 13). In accordance with Article 5c of Regulation No 804/68, as amended by Regulation No 856/84, an additional levy is payable on quantities of milk beyond a reference quantity to be determined, on the basis either of the quantity of milk and/or milk equivalent delivered by a producer or of the same quantity bought by a purchaser during a reference year. Under the formula adopted by Germany, it is the producer who is liable to pay the levy.

5 A producer who has given an undertaking pursuant to Regulation No 1078/77 for a period including the reference year had no production during the reference year, and so was unable to obtain a reference quantity under the original rules.

6 In judgments given on 28 April 1988 in Case 120/86 *Mulder* v *Minister van Landbouw en Visserij* [1988] ECR 2321 (*'Mulder I'*) and Case 170/86 *Von Deetzen* v *Hauptzollamt Hamburg-Jonas* [1988] ECR 2355, the Court ruled that Regulation No 857/84, as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation No 804/68 (OJ 1984 L 132, p. 11), was invalid in so far as it did not provide for the allocation of a reference quantity to producers who did not deliver milk during the reference year adopted by the Member State concerned.

7 In order to give effect to those two judgments, Council Regulation (EEC) No 764/89 of 20 March 1989 amending Regulation No 857/84 (OJ 1989 L 84, p. 2) added a new Article 3a to Regulation No 857/84 providing, subject to certain conditions, for a special reference quantity to be allocated to the category of producers commonly known as 'SLOM producers'.

8 With regard to definitive allocation of a special reference quantity, Article 3a(3) of Regulation No 857/84, as amended by Regulation No 764/89, originally provided:

'If, within two years from 29 March 1989, producers can prove to the satisfaction of the competent authority that they have actually resumed direct sales and/or deliveries, and that such direct sales and/or deliveries have attained during the previous 12 months a level equal to or greater than 80% of the provisional reference quantity, the special reference quantity shall be definitively allocated to the producers...'.

9 Since Article 3a(1) and (2) of Regulation No 857/84, as amended by Regulation No 764/89, was declared invalid by judgments handed down on 11 December 1990 in Case C-189/89 *Spagl* v *Hauptzollamt Rosenheim* [1990] ECR I-4539 and Case C-217/89 *Pastätter* v *Hauptzollamt Bad Reichenhall* [1990] ECR I-4585, Regulation No 857/84 was amended by Council Regulation (EEC) No 1639/91 of 13 June 1991 (OJ 1991 L 150, p. 35). In those circumstances, Article 1 II(c) of the latter regulation also amended Article 3a(3) as follows:

'If, within two years of 29 March 1989 or, in the case referred to in the last subparagraph of paragraph 1, from 1 July 1991 provided that the additional levy scheme is extended, the producer can prove, to the satisfaction of the competent authority, that he has actually resumed direct sales and/or deliveries and that the direct sales and/or deliveries reached a level greater than or equal to 80% of the provisional reference quantity during the last 12 months, the special reference quantity shall be definitively allocated to him...'.

10 Regulation No 1546/88, adopted in replacement of Regulation No 1371/84, was itself amended by Regulation No 1033/89 in response to the *Mulder I* and *Von Deetzen* judgments.

11 Article 3a(3) of Regulation No 1546/88, as amended by Regulation No 1033/89, provides in relation to SLOM producers:

'In accordance with rules to be laid down by the Member State, the producer shall supply evidence to the competent authority, before 29 March 1991, that he has resumed direct sales and/or deliveries of milk for at least 12 months.

The level of direct sales of milk or milk products and/or the level of milk deliveries during the 12 months preceding the supply of evidence shall be determined by the competent authority taking into consideration the trend in the rate of production on the producer's holding, seasonal conditions and any exceptional circumstances...'.

The case in the main proceedings

12 As a milk producer, Mr Vorderbrüggen gave an undertaking pursuant to Regulation No 1078/77 not to market milk for a period expiring on 25 September 1985.

13 At his request of 28 June 1989, the competent authority issued a certificate on 1 August 1989 that he satisfied the conditions for the allocation of the provisional special reference quantity requested.

14 After he resumed milk production on 23 August 1990, the competent cooperative dairy informed him, by letter of 29 August 1990, of the amount of his provisional special reference quantity.

15 On 12 July 1991 the HZA Bielefeld informed him that, in accordance with the first subparagraph of Article 3a(3) of Regulation No 1546/88, as amended by Regulation No 1033/89, a definitive special reference quantity could only be fixed if milk production had been resumed by 29 March 1990.

16 In those circumstances, by decision of 25 September 1991 the HZA Bielefeld rejected the application for allocation of a definitive special reference quantity submitted by Mr Vorderbrüggen on 27 August 1991 on the ground that he had not resumed milk production in due time.

17 The applicant's complaint against that decision was rejected, whereupon he brought an action on 5 March 1992 before the Finanzgericht Düsseldorf.

18 In support of his action, he maintains in substance that Article 3a(3) of Regulation No 857/84, as amended by Regulation No 1639/91, does not set a deadline for the first delivery. Since that provision does not lay down any additional condition for the grant of a definitive special reference quantity, Article 3a(3) of Regulation No 1546/88, as amended by Regulation No 1033/89, has no legal basis.

19 Second, the applicant in the main proceedings claims that Article 155 of the EC Treaty does not confer any power on the Commission to adopt the first subparagraph of Article 3a(3) of Regulation No 1546/88, as amended by Regulation No 1033/89.

20 Finally, the applicant considers that it follows from Article 1 II(c) of Regulation No 1639/91, applicable to him by the fact of its entry into force on 28 March 1991, that he is entitled to a definitive reference quantity.

21 By contrast, the HZA Bielefeld maintains that the first subparagraph of Article 3a(3) of Regulation No 1546/88, as amended by Regulation No 1033/89, is valid since Article 189 of the EC Treaty authorises the Commission to make the necessary regulations in order to carry out its task and, in performing that task, it must ensure, on the basis of Article 155 of the Treaty, that the measures taken by the institutions pursuant to the Treaty are applied.

22 The respondent contends that the Council has transferred power to the Commission, in accordance with the spirit and purpose of the first clause of the second subparagraph of Article 3a(4) of Regulation No 857/84, as amended by Regulation No 1639/91. Even if Article 3a(3) of Regulation No 1546/88, as amended by Regulation No 1033/89, were to be held to be invalid, the last sentence of Article 3a(3) of Regulation No 857/84, as amended, would still require the producer concerned to have produced milk during a period of 12 months in order to prevent any abuse.

The question referred

23 Taking the view that a definitive special reference quantity could be allocated only if Article 3a(3) of Regulation No 1546/88, as amended by Regulation No 1033/89, was invalid, the Finanzgericht Düsseldorf decided to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Is the first subparagraph of Article 3a(3) of Regulation (EEC) No 1546/88, as amended by Regulation (EEC) No 1033/89, valid in so far as it requires, over and above the requirements laid down in the first sentence of Article 3a(3) of Regulation (EEC) No 857/84, as amended by Regulation (EEC) No 764/89 and by Regulation (EEC) No 1639/91, that the producer must actually have resumed direct sales and/or deliveries of milk for at least 12 months?'

24 By its question, the national court seeks to ascertain whether the first subparagraph of Article 3a(3) of Regulation No 1546/88, as amended by Regulation No 1033/89, is valid, being doubtful as to the power of the Commission to make the definitive allocation of a special reference quantity subject to the condition that the producer should actually have resumed direct sales and/or deliveries of milk for at least 12 months.

The interpretation of Article 3a(3) of Regulation No 857/84, as amended by Regulation No 1639/91

25 Before a ruling can be given on the question of whether the first subparagraph of Article 3a(3) of Regulation No 1546/88, as amended by Regulation No 1033/89, is invalid for lack of power on the part of the Commission, it must be established whether that provision may be given an interpretation consistent with the first sentence of Article 3a(3) of Regulation No 857/84, as amended by Regulation No 1639/91 (Case C-98/91 *Herbrink* v *Minister van Landbouw, Natuurbeheer en Visserij* [1994] ECR I-223, paragraph 9).

26 The Commission has argued, in particular, that the first subparagraph of Article 3a(3) of Regulation No 1546/88, as amended, adds nothing to the material provisions of the first sentence of Article 3a(3) of Regulation No 857/84, as amended, and that the two provisions have the same legislative content with regard to the setting of a deadline for the first delivery.

27 For the purpose of the definitive allocation of a special reference quantity, the first sentence of Article 3a(3) of Regulation No 857/84, as amended by Regulation No 1639/91, lays down two conditions. First, the producer must prove that he resumed deliveries between 29 March 1989 and 29 March 1991; second, the deliveries must have reached a level greater than or equal to 80% of the provisional reference quantity during the last 12 months.

28 As the Advocate General has observed in point 41 of his Opinion, that second condition requiring a certain level of sales to have been reached during the previous twelve months in no way imposes any obligation to resume deliveries by the beginning of that period, that is to say by 29 March 1990 at the latest. The object of the 12-month period is to make it possible, for the purpose of allocating a definitive special reference quantity, to determine the level of milk production achieved by the producer applying for it, in relation to authorised production.

29 Accordingly, the first sentence of Article 3a(3) of Regulation No 857/84, as amended by Regulation No 1639/91, does not refer to the starting date of deliveries in connection with the allocation of a special reference quantity and cannot be interpreted as precluding resumption of deliveries after that date.

30 While that interpretation of Article 3a(3) of Regulation No 857/84, as amended by Regulation No 1639/91, thus does not indicate that that provision requires producers to comply with a deadline for resuming sales after which they will no longer be entitled to receive a definitive special reference quantity, it also does not support the view that the provision can be regarded as authorisation for the Commission to set such a date for resumption in the first subparagraph of Article 3a(3) of Regulation No 1546/88, as amended by Regulation No 1033/89.

The powers of the Commission

31 It must here be borne in mind that if Article 43(3) of the EC Treaty confers on the Council the power to establish a common organisation of the market in a particular sector, under Article 145 of the EC Treaty the Council may either confer on the Commission powers for the implementation of the rules which it lays down or reserve the right to exercise directly implementing powers itself.

32 Thus Article 145 of the Treaty authorises the Council and, by delegation, the Commission to adopt measures of the same kind in order to ensure that particular legislation is applied.

33 Accordingly, it is the Council, pursuant to Article 5c(6) of Regulation No 804/68 as amended by Regulation No 856/84, which lays down 'the general rules for the

application of this article, and in particular those relating to the determination of the reference quantities and the amount of the levies', while the Commission, by virtue of Article 5c(7) of the same regulation, adopts 'detailed rules for [its] application ... in accordance with the procedure laid down in Article 30'.

34 Under that division of powers, once the Council had laid down the general rules for application of Regulation No 857/84, the Commission adopted the detailed rules for the application of Regulation No 1546/88, and those regulations were most recently amended as a result of the *Mulder I* and *Von Deetzen* judgments, in order to bring SLOM producers within the additional levy system.

35 On the basis of the distinction drawn in Article 5c(6) and (7) of Regulation No 804/68, as amended, between the general rules for application, including in particular those relating to the determination of the reference quantities and the special reference quantities referred to in Regulation No 857/84 and the detailed rules of application for which the Commission is responsible, it must be noted that, according to the Court's case-law, the Commission is authorised, in the exercise of the powers conferred on it by the Council with a view to implementing a common organisation of the markets in the agricultural sector, to adopt all the detailed rules of application necessary for the proper functioning of the system provided for, so long as they are not contrary to the basic regulation or the implementing rules of the Council (Case C-358/88 *Hopermann* [1990] ECR I-1687, paragraph 8).

36 Within those limits, once the Council has laid down in its basic regulation the essential rules governing the matter in question, it may delegate to the Commission general implementing power without having to specify the essential components of the delegated power; for that purpose, a provision drafted in general terms provides a sufficient basis for the authority to act (Case C-240/90 *Germany* v *Commission* [1992] ECR I-5383, paragraph 41).

37 In consequence, Article 5c(7) of Regulation No 804/68, as amended by Regulation No 856/84, authorises the Commission to lay down additional conditions provided that they both comply with the implementing rules provided for by the Council itself in Regulation No 857/84 and serve to ensure the proper functioning of the reference quantity system.

38 Inasmuch as there is nothing to indicate that the conditions laid down by the Council in the first sentence of Article 3a(3) of Regulation No 857/84, as amended by Regulation No 1639/91, are exhaustive, that provision does not preclude the Commission from adding to them by providing for other requirements compatible with them. The deadline of 29 March 1991 set in the first subparagraph of Article 3a(3) of Regulation No 1546/88, as amended by Regulation No 1033/89, satisfies the latter criterion of compatibility, as the Advocate General stated in paragraph 71 of his Opinion.

39 That additional requirement of a minimum period during which deliveries have been resumed is also necessary to ensure the proper functioning of the milk quota system.

40 The fourth recital in the preamble to Regulation No 1033/89 states that rules of procedure, including time-limits, must be laid down so that Article 3a of Regulation No 857/84 can be implemented in circumstances that guarantee compliance with the rights and obligations of all the parties concerned.

41 The imposition of a deadline makes it possible to reconcile the inevitable increase in milk production caused by including SLOM producers in the additional levy scheme with the need, mentioned in the fifth recital in the preamble to Regulation No 764/89, not to jeopardise the fragile stability obtaining in the milk products sector.

42 In order to avoid speculative manoeuvres consisting of a resumption of production in order to obtain a definitive special reference quantity for the sole purpose of selling it to someone else, the existence of a deadline such as that in issue in the present case provides a certain guarantee that the recipient under the SLOM system seriously intends and is in fact able to resume production.

43 In the light of the foregoing, the reply must be that consideration of the question referred has not revealed any factor of such a kind as to affect the validity of the first subparagraph of Article 3a(3) of Regulation No 1546/88, as amended by Regulation No 1033/89, in so far as that provision requires milk deliveries actually to be resumed before 29 March 1990.

Costs

44 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Finanzgericht Düsseldorf by order of 13 November 1996, hereby rules:

Consideration of the question referred has not revealed any factor of such a kind as to affect the validity of the first subparagraph of Article 3a(3) of Com-

mission Regulation (EEC) No 1546/88 of 3 June 1988 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68, as amended by Commission Regulation (EEC) No 1033/89 of 20 April 1989, in so far as that provision requires milk deliveries actually to be resumed before 29 March 1990.

Hirsch Mancini Schintgen

Delivered in open court in Luxembourg on 16 December 1998.

R. Grass G. Hirsch

Registrar President of the Second Chamber