OPINION OF ADVOCATE GENERAL LÉGER

delivered on 24 September 1998 *

1. The questions referred by the Bundesverwaltungsgericht (Federal Administrative Court) for a preliminary ruling relate to the Community regulations on milk quotas and in particular the provisions adopted following the Court's judgments in *Mulder* [1] and *Von Deetzen* [2] and applicable to producers of milk and milk products who were previously subject to the legislation introducing a system of premiums for the non-marketing of milk and the conversion of dairy herds.

I — The Community regulations

2. The common organisation of the market in milk and milk products was established in 1968 by Council Regulation (EEC) No 804/68. [3] As this market showed an inherent imbalance involving an excess of supply over demand from the outset, the Community regulations stress the legislature's concern to curtail the increase in production.

The system of premiums for non-marketing and conversion

3. Council Regulation (EEC) No 1078/77 [4] therefore laid down measures to reduce the supply. In particular, a system of premiums was introduced for producers who ceased marketing milk and milk products from their holdings for a period of five years or who converted their dairy herds to meat production for a period of four years.

The additional levy system

4. In 1984 it was observed that milk production continued to rise inexorably in spite of the measures adopted. As stricter measures were now necessary, the common organisation of the market in milk and milk products

* Original language: French.

1 — Case 120/86 [1988] ECR 2321.

2 — Case 170/86 [1988] ECR 2355.

3 — OJ, English Special Edition 1968 (I), p. 176.

4 — 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).

was radically changed by the introduction of the additional levy system, also called the milk quota system.

5. Article 5c of Council Regulation No 804/68, a provision inserted by Article 1 of Council Regulation (EEC) No 856/84, [5] introduced a system of additional levies payable by any producer (formula A) or purchaser (formula B) of cows' milk in quantities exceeding a special annual reference quantity known as the 'milk quota'. The Federal Republic of Germany chose formula A.

6. Under paragraph 3 of that article the sum of the reference quantities allocated to persons subject to the levy in a Member State may not exceed an overall guaranteed quantity, differing from one Member State to another, and equal to the sum of the quantities of milk delivered to undertakings processing or converting milk or milk products in each Member State during the 1981 calendar year, increased by 1%.

7. The general rules on the application of the additional levy were adopted in Council Regulation (EEC) No 857/84. [6] In Germany the reference quantity was based on the year 1983. Article 2(2) of this regulation provides that Member States may decide that in their territory the reference quantity is equal to the quantity of milk or milk equivalent delivered or purchased during the 1982 or 1983 calendar year, weighted by a percentage established so as not to exceed the guaranteed quantity defined in Article 5c of Regulation (EEC) No 804/68, as amended.

8. This system did not provide for the allocation of a quota for producers who had not delivered or sold milk during the reference year specified for the application of quotas because of their participation in the temporary non-marketing scheme introduced by Regulation No 1078/77, (these producers are known collectively as 'Slom producers'). [7]

9. In *Mulder* and *Von Deetzen* the Court held that as the regulation failed to provide for the allocation of reference quantities to Slom producers it frustrated their legitimate expectations as to the limited nature of the scheme to which they were committed, and should therefore be declared invalid.

5 — Council Regulation of 31 March 1984 amending Regulation No 804/68 (OJ 1984 L 90, p. 10).

6 — 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, 'the contested regulation').

7 — The term 'Slom' is taken from the Dutch 'slachtoffers omschakling', which means 'victims of reconversion'. The acronym SLOM was already used in the Netherlands to represent 'Stopzetting Leveranties en Omschakling Melkproduktie', meaning 'suspension of deliveries and conversion of milk production'.

10. In order to comply with those judgments the Council adopted Regulation (EEC) No 764/89 [8] which inserted into Regulation No 857/84 Article 3a, providing for the provisional grant of a special reference quantity to categories of producers who had taken part in non-marketing schemes and who fulfilled certain conditions.

11. Paragraphs 1 and 2 of Article 3a were invalidated by the *Spagl* [9] and *Pastätter* [10] judgments. The Court found that those provisions frustrated the legitimate expectations of producers who had taken part in the non-marketing scheme. Firstly, under the terms of paragraph 1, producers whose non-marketing period expired before 31 December 1983 were denied the allocation of a Slom quota for no valid reason. Secondly, the rule in paragraph 2 limited the provisional special reference quantity to 60% of the quantity of milk delivered or sold by the producer during the twelve month period preceding the application for the non-marketing premium; this corresponded to a 40% reduction, which was deemed excessive when compared with the rates applied to other producers.

12. Article 3a(1) of the contested regulation was amended by Article 1(II)(a) of Council Regulation (EEC) No 1639/91 [11] to take account of the judgments in *Spagl* and *Pastätter*. A second indent was thus added, extending the category of producers eligible for the special reference quantity under Article 3a to include those whose non-marketing or conversion period in performance of the undertaking entered into under Regulation No 1078/77 ended during 1983.

13. The second subparagraph of Article 3a(1) now reads as follows:

'Producers:

— whose period of non-marketing or conversion in performance of the undertaking given under Regulation (EEC) No 1078/77 expired in 1983 ...

or

— ...

8 — Council Regulation (EEC) No 764/89 of 20 March 1989 amending Regulation (EEC) No 857/84 (OJ 1989 L 84, p. 2).

9 — Case C-189/89 [1990] ECR I-4539.

10 — Case C-217/89 [1990] ECR I-4585.

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

shall receive on a provisional basis, on application submitted within a time-limit of three months from 1 July 1991, a special reference quantity on the terms laid down in (a), (b) and (d) above.'

II — The facts and the national proceedings

14. In June 1981 Mr Wilkens, the plaintiff in the main proceedings, obtained a premium for the conversion of his dairy herd to beef production.

15. In March 1983 the Bezirksregierung Hannover (Hanover local government authorities) observed irregularities in the slaughter of dairy cows during an inspection of the holding. It revoked the decision to grant a conversion premium and demanded the repayment of the first instalment, with interest.

16. Mr Wilkens' appeal was rejected by the Verwaltungsgericht Hannover (Hanover Administrative Court) on 11 September 1985, and an appeal to the Oberverwaltungsgericht (Higher Administrative Court) Lüneberg was likewise rejected on 26 April 1990. Those two judgments now have the force of *res judicata*.

17. In June 1989 Mr Wilkens applied for a provisional special reference quantity in order to resume milk production. The Landwirtschaftskammer Hannover, the defendant in the main proceedings, certified that the legal requirements for the allocation of such a special quota were fulfilled, but reserved the right to withdraw its certification if the proceedings then in progress before the Oberverwaltungsgericht resulted in a reduction of the premium or the milk quantity on which the premium calculation was based.

18. Following the judgment of the Oberverwaltungsgericht Lüneberg of 26 April 1990 confirming the withdrawal of the premium, the Landwirtschaftskammer Hannover withdrew the provisional certificate by a decision of 13 July 1992. As a result no special reference quantity could be allocated to Mr Wilkens.

19. Mr Wilkens' appeal against the withdrawal decision was rejected by the Verwaltungsgericht Hanover, as was the appeal to the Oberverwaltungsgericht Lüneberg.

20. The applicant in the main proceedings then brought an appeal on a point of law against that judgment before the Bundesverwaltungsgericht (Federal Administrative Court).

III — The questions submitted for a preliminary ruling

21. The Bundesverwaltungsgericht was of the opinion that the outcome of the proceedings depended on the interpretation and possibly the validity of the second subparagraph of Article 3a(1) of the contested regulation, from which it appeared that the provisional allocation of a special reference quantity depended on the performance of the non-marketing or conversion undertaking given under Regulation No 1078/77; it therefore stayed the main proceedings and submitted the following questions to this Court for a preliminary ruling:

'(1) Does the second subparagraph of Article 3a(1) of Regulation (EEC) No 857/84, as amended by Regulation (EEC) No 1639/91, preclude granting a provisional special reference quantity to producers who have been asked to repay a non-marketing or conversion premium on account of breach of the undertaking given by them?

(2) If so, is that rule compatible with the Community law principles of the protection of legitimate expectations and proportionality?'

IV — Reply to the questions

22. By the first question, the Bundesverwaltungsgericht seeks to know whether a producer who has given a non-marketing or conversion undertaking under Regulation No 1078/17 [12] but is no longer entitled to the relevant premium because he has failed to perform the obligations imposed by this undertaking may nevertheless be allocated a special reference quantity, under the second subparagraph of Article 3a(I) of the contested regulation, in order to resume marketing milk.

23. By the second question it asks whether the provisions of this text are compatible with the principles of protection of legitimate expectations and proportionality if they are interpreted to mean that the operator in question has no entitlement to a special reference quantity.

24. Since the interpretation of the relevant legislation I wish to propose will be explained primarily in the light of those principles, I shall examine the two questions put by the national court simultaneously.

12 — In order to simplify matters the term 'non-marketing' should be understood to mean 'non-marketing or conversion' in the remainder of this Opinion.

25. The questions relate to the provisions of Article 3a of the contested regulation, which were added as a result of the adoption of Regulation No 1639/91 in order to extend the additional levy scheme to producers whose non-marketing period ended in 1983. The Bundesverwaltungsgericht stated that 'the applicant's obligations arising from his participation in the non-marketing scheme came to an end on 2 March 1983, when the grant of a premium was cancelled'. [13]

26. The national court rightly points out [14] that a literal reading of the text is not very helpful, as the provisions can be construed in two ways.

27. The condition (on which allocation of a special quota depends) that the non-marketing period should end in 1983 '... in performance of the undertaking given under Regulation (EEC) No 1078/77' can be interpreted as including the requirement that the producer have already performed the obligations arising from that undertaking. Even if the nature of the obligations whose infringement prevented the grant of a special reference quantity is not specified, that interpretation would mean that entitlement under the additional levy scheme is subject to performance of the undertaking given under the non-marketing scheme, on which the decision to withdraw Mr Wilkens' premium in this case casts doubt.

28. However, the condition may also be limited to the requirement that the non-marketing period should expire in 1983, as is suggested by the object of the revision which led the Community legislature to amend Article 3a. It should be noted that Regulation No 1639/91 is intended precisely to extend the additional levy scheme to producers whose non-marketing period ended during 1983. [15] On that interpretation, the reference to '... performance of the undertaking given under Regulation (EEC) No 1078/77' would simply serve to indicate the rules on which the undertaking is based.

29. In order to reply to the questions, therefore, we must examine the object both of the applicable rules and, more specially, of Article 3a of the contested regulation.

30. I have said that the additional levy scheme, like the non-marketing scheme, is designed to remedy the situation in the Community

13 — First paragraph of section II.

14 — Ibid., second and third paragraphs.

15 — See point 12 of this Opinion.

market for milk products, where there are persistent structural surpluses arising from an imbalance between supply and demand. [16]

31. The main purpose of these successive regulations is to re-establish the balance in the milk and milk products market by reducing the supply.

32. Article 3a of the contested regulation, the purpose of which is to enable producers who have entered into undertakings under the non-marketing scheme to benefit from the additional levy scheme, lies at the intersection of the two schemes.

33. It is justified by the need to protect the legitimate expectations of that category of operators.

34. It should be borne in mind that the original additional levy scheme did not take account of producers in the non-marketing scheme who had not delivered milk during the reference year because of their undertaking not to market.

35. The Community legislature therefore amended the contested regulation by adding Article 3a, which laid down the procedures for allocating special quotas to such producers, in order to safeguard the principle of legitimate expectation.

36. In order to determine the exact scope of the second subparagraph of Article 3a(1) we must refer to the decisions of the Court which were the immediate cause of the adoption of that provision. [17]

37. In *Mulder* and *Von Deetzen* the Court ruled that '... the regulations on the additional levy on milk give rise to ... restrictions for producers who, *pursuant to an undertaking entered into under Regulation No 1078/77, did not deliver milk* during the reference year'. [18]

38. The allocation of a special reference quantity thus appears to be very clearly reserved for producers who have given an undertaking under the non-marketing scheme and *who have not in fact sold* milk or milk products at the expiry date of their undertaking.

16 — First recital of Regulation No 1078/77 and first to fourth recitals of Regulation No 856/84.

17 — First recital of Regulation No 764/89.

18 — Paragraphs 25 and 14 respectively; the italics are mine.

39. The sale of milk or milk products by a producer in breach of his undertaking under Regulation No 1078/77 gives rise to two consequences.

40. Firstly, pursuant to that regulation the non-marketing premium is obviously no longer justified because the terms of the regulation have not been complied with.

41. In *Jensen* [19] the Court emphasised that '... the essential reason in law for the granting and definitive acquisition of the non-marketing premium is the actual cessation of all marketing of the said products during the entire five-year period provided for ...'.

42. Secondly, pursuant to the contested regulation the producer in question cannot be regarded as being among those entitled to allocation of a special reference quantity.

43. The personal scope of Article 3a obviously does not include producers who have not performed their non-marketing undertaking. Conversely, the provision is designed to protect the legitimate expectations of economic operators who have not sold milk, in accordance with Regulation No 1078/77, but who nevertheless have not waived the right to resume production and marketing when the legal term of their undertaking expires.

44. Such a producer cannot be permitted *to rely on the principle of legitimate expectations* when he is refused the allocation of a special quota.

45. Where the loss of entitlement to the premium arises from a breach of the non-marketing obligation, the claimant's reliance on the limited nature of the effects of the scheme to which he originally agreed, which are the prohibition on the marketing of milk and milk products for a predetermined period only and the subsequent option to resume marketing, is no longer valid: the marketing ban has been disregarded and the question of resumption is no longer relevant, as it has already occurred.

46. It should be stressed that the refusal to allocate a special quota in this case does not constitute a penalty. The Commission pointed out, correctly, that the withdrawal of the premium and the refusal to allocate a special quota were merely the legal consequences of the application of a legal regime. By the same token I think that if the conditions governing

19 — Case 199/87 [1988] ECR 5045, paragraph 30. See more recently Case C-127/94 *Ecroyd* [1996] ECR I-2731, paragraph 48.

the allocation of a right are not fulfilled, its refusal cannot be construed as a penalty, but must simply be regarded as the consequence of the limits of the scope of the regime in question. [20]

47. The producer in this case is in the same position as one who, having chosen not to enjoy the premiums allocated under Regulation No 1078/77, has never stopped producing or marketing milk or milk products.

48. As the Commission pointed out at the hearing, such a producer is subject as a result to the ordinary rules regarding the additional levy set out in Article 5c(1) of Regulation No 804/68 and Article 2 of the contested regulation, which provide for the allocation of a reference quantity calculated on the basis of the quantity of milk or milk equivalent delivered during the reference year, weighted by a percentage not exceeding the fixed guaranteed quantity in each Member State.

49. I also support the Commission's argument that the defaulting producer forfeits the allocation of a special reference quantity only as regards the quantities of milk he has marketed.

50. The resulting need, to which the Commission alluded, for the competent authorities in the Member States to be able to determine the exact quantities of milk thus marketed in each case appears to me to be one entailed by the requirement that the common agricultural policy be implemented effectively and on the basis of real data.

51. It is also justified by the application of the *principle of proportionality*, which requires provisions of Community law to be appropriate to their object without exceeding the means necessary to attain it.

52. It cannot be denied that although Article 3a does not authorise the allocation of a special reference quantity to producers who have marketed milk in breach of their undertaking, it nevertheless achieves its original purpose, which is to enable operators who have ceased marketing under such an undertaking to resume production.

20 — See the discussion by Advocate General Jacobs of the notion of penalty in Community law, and in particular the excessively broad interpretation which the term is sometimes given, in his Opinion in Case C-240/90 *Germany* v *Commission* [1992] ECR 5383, in particular paragraph 30.

53. The interpretation I suggest does not appear to infringe the principle of proportionality, as the calculation, and possible refusal, of the special quota is wholly dependent on the quantity of milk marketed by the producer in breach of his undertaking.

54. In my view an interpretation of the text such as that suggested by the Council which denies any special quota to a producer who is only partially in breach of his undertaking would not thereby infringe the principle of proportionality. It would simply be motivated by another consideration, based on the dissuasive value of the refusal. However, in that case the second subparagraph of Article 3a(1) takes on a different nature and becomes a genuine penalty. Such an interpretation does not appear to be compatible, however, with either the requirement of legal certainty or the dissuasive purpose of the provision, as the provision does not specify the extent of the consequences of breach of it.

55. That serves to emphasise the need to accept the notion of reducing the special quota in proportion to the failure to perform the non-marketing obligation.

56. The rules applicable to producers who fail to fulfil their undertakings is not always easy to determine; this is evident from the formulation of the question referred. It mentions the consequences for the producers of the obligation to repay the premium following a failure to perform their undertaking, *without giving further details of the nature of the alleged infringement.*

57. That raises the question whether a failure other than the infringement of the non-marketing obligation as such could preclude the allocation of a special reference quantity in the same way. [21]

58. In *Drewes* [22] the Court ruled that as a consequence of various provisions of Regulation (EEC) No 1307/77 [23] entitlement to the premium was lost if cattle marking and registration formalities were omitted, making it impossible to prove that the animals were used for the specified purposes.

59. However, that judgment, given when Regulation No 1078/77 was solely applicable, does not enable us to determine how the allo-

21 — An undertaking given under Regulation No 1078/77 does not only include the producer's obligation not to dispose of milk or milk products from his holding during the non-marketing period; it also covers, for example, the obligation not to lease his dairy cattle or entrust them to others, whether for consideration or free of charge, or to dispose of his dairy cattle except for slaughter or export.

22 — Case 358/97 [1989] ECR 891, paragraph 23 et seq.

23 — Commission Regulation of 15 June 1977 laying down rules for the application of the system of premiums for the non-marketing of milk and milk products and the conversion of dairy herds (OJ 1977 L 150, p. 24).

cation of a special reference quantity would be affected by the loss of the right to the premium for reasons other than the non-marketing itself.

60. In *Ecroyd*, on the contrary, one of the questions related precisely to the allocation of a special reference quantity in the event of such a failure to perform.

61. The operator's effective performance of the obligation entered into by his predecessor not to market milk or milk products during the non-marketing period wa not contested. [24] What was in dispute was the failure of the successor to an agricultural holding to endorse an undertaking to continue to perform his predecessor's obligations. The Court held that '... the failure to perform a mere formality such as ... (this) cannot be regarded as causing ... (the operator) to be excluded from the non-marketing scheme, as would be the case if he had not in fact observed the non-marketing undertaking.' [25]

62. It added that '(the producer's) application for a special reference quantity could not ... be rejected on the ground that it had not undertaken in writing to perform the obligations entered into by its predecessor.' [26]

63. In my opinion *Ecroyd* confirms the notion that proof of non-marketing is sufficient to justify the allocation of a special reference quantity even if other requirements have not been fulfilled.

64. The fact that the relevant rights and obligations under the contested regulation are those of the successor to an operator taking part in the non-marketing scheme is no obstacle to the applicability of the Court's decision in a case where the interested party was the holder or claimant of these rights and obligations from the outset.

65. In both cases the non-marketing obligation is incumbent on the current operator and in *Ecroyd* the special circumstance of the transfer of the operation, involving an obligation on the successor to give a written undertaking to comply with his predecessor's obligations, was not regarded as significant enough to justify the withdrawal of the premium and

24 — Paragraph 49.

25 — Ibid., paragraph 50.

26 — Ibid., paragraph 26.

the refusal of a special reference quantity because it was not performed.

66. It could be certainly be argued, therefore, that the infringement of another obligation, for example the disposal of the dairy herd for purposes other than slaughter or export, [27] could justify the refusal of a special quota, as well as the loss of the premium.

67. However, the infringement of that type of obligation is already covered by the system established by Regulation No 1078/77, which allows for the repayment of premiums in such cases; in my opinion that is not comparable with the breach of the non-marketing obligation. Proof of infringement of those obligations is not sufficient to establish that milk or milk products have been disposed of, which is the sole justification for a refusal to allocate a special reference quantity, for the reasons already given.

68. I would also dismiss the notion, apparently supplied by *Ecroyd*, that there is a necessary connection between the grant or retention of a non-marketing premium and the allocation of a special reference quantity.

69. The retention of the premium automatically removes the grounds for refusing an application for a quota; conversely, the withdrawal of the premium is a ground for denying allocation of the special reference quantity.

70. In fact the Court appears to have regarded the failure to comply with the legal formality which was at the origin of the *Ecroyd* case, as likewise insufficient to justify either the withdrawal of the premium or the refusal of the special quota, which explains the validation of the two measures.

71. I think that that will not necessarily be so in all circumstances precisely because of the purpose of Article 3a.

72. Loss of entitlement to the non-marketing premium does not necessarily entail refusal of a special quota, unless the operator's failure to perform his undertaking under Regulation No 1078/77 consists in breach of the non-marketing obligation.

73. It should be noted that this loss is the clear legal consequence of the possible infringement of one of a number of obliga-

27 — In this case it seems that this type of claim is at least partly at the origin of the decisions which Mr Wilkens is contesting in law. Furthermore, it should be noted that, as in the others, the success of the submission relied on by the Landwirtschaftskammer Hannover, based on the breach of this obligation, seems to have depended on the application of the rules regarding the burden of proof.

tions provided for by the scheme established by Regulation No 1078/77, [28] among them the non-marketing obligation.

74. The system established by Article 3a has a purpose other than that of guaranteeing the effective implementation of the scheme. It could only have been intended to enable producers who have ceased marketing to resume at the end of the legal period, in application of the contested regulation. To add the refusal of a special quota to the refusal of a premium where marketing has not been proved amounts to an attempt to supply what is absent from the second indent of Article 3a(1), contrary to that purpose. As a result the producer who has fulfilled his non-marketing obligation is deprived of the right to resume production for reasons which are not directly connected with the reduction of surpluses.

75. It seems reasonable, therefore, to argue that the refusal to allocate a special reference quantity can only be based on the loss of entitlement to the non-marketing premium if this loss follows from a clearly established breach of the non-marketing obligation.

76. With particular reference to the main action, it should be noted that there is nothing in the file which enables us to identify with certainty the national authorities' complaints against Mr Wilkens which were the basis for the withdrawal of the non-marketing premium and thus the refusal of a special quota.

77. The national court states that the judgment under appeal does not state that the applicant failed to observe the prohibition on milk production, and the Landwirtschaftskammer Hannover does not claim that he did. [29] Mr Wilkens claims that he was not alleged to have continued milk production during the conversion period. [30] However, the Council claims that Mr Wilkens has not produced proof of performance of the obligation not to dispose of milk products during that period. [31]

78. The national court states that the Landwirtschaftskammer Hannover justified the retraction of the provisional declaration that the conditions for the allocation of a special quota were fulfilled on the basis of the withdrawal of the non-marketing premium. [32]

28 — *Jensen*, quoted earlier, states that '... the terms of the provisions under consideration [particularly of Regulation No 1078/77] show clearly *that where the obligations flowing from the premium scheme are not complied with*, the entire amount of the premium paid must be refunded ...' (paragraph 27; the emphasis is mine).

29 — Section II, third paragraph, of the referral decision.

30 — Point 1, paragraph 1, of his written observations.

31 — Point 6, paragraph 2, of his written observations.

32 — Section I, fourth paragraph, of the referral decision.

79. In my opinion it is not for the Court to examine the evidence which was the basis for the withdrawal of the premium or the refusal to allocate a special quota to the applicant.

80. It is for the court seised of the main action, using the powers conferred on it under national law, to ascertain the circumstances in which the hypothesis of Mr Wilkens' infringement of his non-marketing obligations can be established or rejected, or which define the exact extent of that infringement, in order to draw conclusions as to the validity of the refusal to grant a special reference quantity, in the light the guidelines suggested by the Court.

Conclusion

81. I propose that the Court should reply to the questions referred by the Bundesverwaltungsgericht as follows:

(1) The second indent of Article 3a(1) 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, as amended by Council Regulation (EEC) 1639/91 of 13 June 1991, is to be interpreted as precluding the provisional allocation of a special reference quantity to a producer who has had entitlement to the payment of a non-marketing or conversion premium withdrawn or from whom repayment of the premium is sought if that was the result of the producer's non-performance of the non-marketing obligation given under 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.

(2) Examination of the second question has revealed nothing capable of affecting the validity of the second indent of Article 3a(1) of Regulation No 857/84.