JUDGMENT OF THE COURT (Fourth Chamber)

11 January 2007 *

In Case C-384/05.

REFERENCE for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 14 October 2005, received at the Court on 24 October 2005, in the proceedings

Johan Piek

v

Ministerie van Landbouw, Natuurbeheer en Visserij,

THE COURT (Fourth Chamber),

composed of K. Lenaerts (Rapporteur), President of the Chamber, acting for the President of the Fourth Chamber, J.N. Cunha Rodrigues and K. Schiemann, Judges,

* Language of the case: Dutch.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 September 2006,

after considering the observations submitted on behalf of:

— Mr Piek, by A. van Beek and G. de Jager, advocaten,

— the Netherlands Government, by H.G. Sevenster, M. de Mol and P. van Ginneken, acting as Agents,

— the Commission of the European Communities, by H. Tserepa-Lacombe and M. van Heezik, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the milk quota system resulting from Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common

organisation of the market in milk and milk products (OJ, English Special Edition 1968(I), p. 176), as amended by Council Regulation (EEC) No 856/84 of 31 March 1984 (OJ 1984 L 90, p. 10; 'Regulation No 856/84') 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 (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), and more particularly the interpretation of Article 3(1) of Regulation No 857/84.

2 This reference was made in the context of an action which Mr Piek, — a milk producer who in 1979 concluded a non-marketing agreement with the Agricultural Development and Restructuring Fund (Stichting Ontwikkelings- en Saneringsfonds voor de Landbouw; '"SLOM" agreement') for a period of four years 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 (OJ 1977 L 131, p. 1), — brought against the Ministerie van Landbouw, Natuurbeheer en Visserij ('the Ministry of Agriculture') in relation to a refusal to grant a special reference quantity under the second subparagraph of Article 3(1) of Regulation No 857/84.

Legal context

Community law

3 The common organisation of the market in milk and milk products was set up by Regulation No 804/68.

4 In order to combat structural surpluses, Regulation No 1078/77 put in place a system of premiums aimed at farmers who forgo the marketing of their milk and

milk products (non-marketing premium) or who convert their dairy cattle into feeder cattle (conversion premium). The non-marketing premium is granted, on request, to any producer who undertakes, for a minimum period of four years, not to dispose of either milk or milk products from his holding, whether for a consideration or free of charge.

5 Regulation No 856/84 inserted Article 5c into Regulation No 804/68 introducing an additional levy system on collections of milk. Article 5c(1) states:

'...

The levy system shall be implemented in each region of the territory of the Member States in accordance with one of the following formulas:

Formula A

— A levy shall be payable by every milk producer on the quantities of milk and/or milk equivalent which he has delivered to a purchaser and which for the 12 months concerned exceed a reference quantity to be determined.

...'

6 The detailed rules for the application of Regulation No 856/84 are laid down in Regulation No 857/84.

7 According to Article 2(1) of Regulation No 857/84, the reference quantity of milk or milk equivalent is determined on the basis of the quantity delivered by the producer during the 1981 calendar year. Under Article 2(2) Member States may, however, choose either 1982 or 1983 as the reference year. 1983 was used as the reference year in the Netherlands.

8 Article 3 of Regulation No 857/84 provides:

'For the determination of the reference quantities referred to in Article 2 and in connection with the application of formulas A and B, certain special situations shall be taken into account as follows:

(1) Producers who have adopted milk production development plans under Directive 72/159/EEC lodged before 1 March 1984 may obtain, according to the Member State's decision:

— if the plan is still being implemented, a special reference quantity taking account of the milk and milk product quantities provided for in the development plan,

— if the plan has been implemented after 1 January 1981, a special reference quantity taking into account the milk and milk product quantities which they delivered in the year during which the plan was completed.

Investments carried out without a development plan can also be taken into account if the Member State has sufficient information;

...'

9 Council Regulation (EEC) No 764/89 of 20 March 1989 (OJ 1989 L 84, p. 2) amended Regulation No 857/84 by adding to it an Article 3a under which special reference quantities could be granted to producers who, due to an undertaking entered into under Regulation No 1078/77 (an undertaking corresponding, in the Netherlands, to a 'SLOM' agreement) and expiring, depending on the case, after 30 September 1983 or after 31 December 1983, had been unable to obtain a reference quantity under Article 2 of Regulation No 857/84. The granting of such a special reference quantity presupposed compliance with the conditions laid down in Regulation No 764/89.

10 It follows from Article 5 of Regulation No 857/84 that the additional reference quantities referred to, in particular, in Article 3 of that regulation can be granted only within the limits of the quantity guaranteed for each Member State. Those quantities must be drawn from the national reserve. That reserve is made up of reference quantities which have not been attributed to producers and reference quantities which have become free, in particular following the abandonment of an activity by a producer.

The Netherlands legislation

11 The relevant Netherlands legislation is contained in the Ministerial Decree of 18 April 1984 on the additional levy (Beschikking Superheffing; 'Decree of 18 April 1984'), which entered into force on 1 April 1984.

12 Under Article 2 of the Decree of 18 April 1984 an additional levy is payable by producers if they exceed the reference quantity granted to them.

13 The main rule concerning the granting of reference quantities is laid down in Article 5 of the Decree of 18 April 1984, which provides, in the version in force at the material time in the main proceedings or the version resulting from the Ministerial Decree amending the Decree on the additional levy (milk) of 28 March 1985 (Wijziging Beschikking Superheffing (melk)), that the levy is not due for the quantity which was delivered in 1983, reduced by 8.65%.

14 Article 3 of Regulation No 857/84 was implemented by Article 11 of the Decree of 18 April 1984, which lays down the rules for the granting of special reference quantities. In the version in force at the material time in the main proceedings, that provision stated:

'1. A person who after 1 September 1981 but before 1 March 1984 incurred investment obligations may, on the basis of the provisions of this article, claim a special quantity differing from the quantity provided for in Article 5(1) or Article 5(2) as the case may be. Such a claim may also be made where another person with a substantive entitlement incurred those obligations on the land in question.

2. Investment obligations within the meaning of paragraph 1 shall mean obligations to invest or obligations under the Decree on farms suitable for development (Besluit landbouwbedrijven met ontwikkelingsmogelijkheden, Stcrt. 1974, 83 and 89) in connection with the implementation of an approved development plan:

(a) either to the amount of at least [NLG] 50 000 for the purpose of the replacement of no more than 60 stalls or the addition of stalls so that the total number is no more than 60 stalls, provided that the number of stalls replaced or added is more than 20% and not less than five stalls;

(b) or to the amount of at least [NLG] 100 000 for the purpose of the replacement of more than 60 stalls or the addition of stalls so that the total number is more than 60, provided that the number of stalls replaced or added is more than 25%.

The term "investment obligations" shall also mean obligations incurred to the amount of at least 90% of the amounts set out in subparagraph (a) or (b) where the person concerned can show that he carried out work personally to an amount equal to at least the difference between the amount set out in paragraph (a) or (b) and the amount for which the obligations were incurred.

3. The term "stalls" in paragraph 2 shall mean stalls set up for dairy cows or cows in calf, including facilities directly connected therewith, which were actually put into use after 1 January 1982.

4. The special quantity referred to in paragraph 1 shall be equal to the quantity delivered by the person concerned on the undertaking where the investments were made during a delivery period of 52 weeks, which, in practice, corresponds to the calendar year and which precedes the incurring of the obligations referred to in paragraph 1, that quantity being increased by the number of kilograms for which entitlement is recognised. That number shall be calculated in accordance with the following formula: the total number of additional stalls or new stalls minus the number of dairy cows or cows in calf available on the undertaking during the year which preceded the incurrence of the obligations where that number is higher than the number of stalls available prior to the expansion minus 20% of that expansion, multiplied by 5 500, minus 8.65% of the total, provided that:

(a) where the actual putting into use within the meaning of paragraph 3 took place in 1983, two thirds of the quantity calculated in accordance with the formula set out above shall be taken into account, without prejudice to Article 5(1) or (2), and that

(b) where the actual putting into use within the meaning of paragraph 3 took place before 1 April 1985, half of that quantity shall be taken into account, without prejudice to Article 5(1) or (2);

(c) where the actual putting into use within the meaning of paragraph 3 took place after 31 March 1985 but before 1 January 1986, only Article 5(1) or (2) shall apply.

Where the actual putting into use within the meaning of paragraph 3 took place after 1985, no right to a specific quantity shall be recognised on the basis of the

provisions of that article. For producers who, during the year preceding that in which the obligations were entered into, did not make any direct deliveries or sales, the formula shall be calculated by application of 10% instead of 20%.

...'

15 The Decree of 16 May 1989 on the application of the additional levy to participants in a scheme for the slaughter or conversion of dairy herds (Beschikking Superheffing SLOM-deelnemers; 'the Decree of 16 May 1989') concerned milk producers who were not able to deliver milk in 1983 due to an undertaking resulting from a 'SLOM' agreement. That measure enabled them to obtain a special reference quantity.

The main proceedings and the questions referred for a preliminary ruling

16 In 1979 Mr Piek, a milk producer in the Netherlands, entered into a 'SLOM' agreement with the Agricultural Development and Restructuring Fund pursuant to which he undertook, in return for a premium, to deliver no milk or milk products between 11 March 1980 and 10 March 1984. Mr Piek thus changed activity and went from dairy farming to stock-rearing.

17 Under a land consolidation scheme Mr Piek was able to acquire rights over 36 hectares of land adjoining his farm buildings which were allocated to him on the condition that he (re)commenced dairy farming on them.

18 The change of the land-use plan necessary for that purpose was itself subject to the condition that Mr Piek apply, before 1 July 1981, for permission to build a dairy unit and that the construction of that unit start in 1981. On 11 June 1981 Mr Piek signed three contracts with companies for the construction of the foundations, superstructure and fittings of a unit for dairy cows. That construction was completed in 1983.

19 On 27 June 1984 Mr Piek made, on the basis of Article 11 of the Decree of 18 April 1984, the application which is at the origin of this reference for a preliminary ruling.

20 That application was dismissed by decision of 12 October 1984 on the ground that the investment obligations in respect of the dairy farm had been contracted before 1 September 1981. Article 11(1) of the Decree of 18 April 1984 required that those investment obligations be contracted between 1 September 1981 and 1 March 1984.

21 Mr Piek lodged a complaint against that decision with the Ministry of Agriculture. That complaint was declared unfounded by a decision of 12 June 1985, confirming the decision of 12 October 1984.

22 Mr Piek then brought actions before various courts in the Netherlands. An appeal was first brought before the Hoge Raad der Nederlanden against a judgment of the Gerechtshof te 's-Gravenhage of 18 May 2000, which was quashed by judgment of 24 May 2002. After the case had been remitted to the Gerechtshof te Amsterdam, the applicant appealed to the Hoge Raad der Nederlanden against the judgment given by that court.

23 The Hoge Raad der Nederlanden explains that, as a result of the 'SLOM' agreement which he had entered into, the applicant in the main proceedings did not deliver any milk or milk products in 1983, the year chosen by the Kingdom of the Netherlands as the reference year. Nor did he qualify for a special reference quantity on the basis of the Decree of 16 May 1989.

24 It was in those circumstances that the Hoge Raad der Nederlanden decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

'(1) Does Article 3(1) of Regulation No 857/84 preclude a national rule laid down in implementation of that provision which is framed in such a way that producers who have incurred investment obligations, regardless of whether or not that occurred under a development plan, may obtain a special reference quantity only if they incurred those investment obligations after 1 September 1981 but before 1 March 1984?

(2) If Question 1 cannot be answered in general terms, which criteria determine whether the temporal limitation referred to in Question 1 is consistent with Regulation No 857/84?'

The questions

25 By its two questions, which should be considered together, the Hoge Raad der Nederlanden raises the question of a Member State's power to restrict, by means of a national measure implementing Article 3(1) of Regulation No 857/84, the category of milk producers who may obtain a special reference quantity to those producers who incurred investment obligations between 1 September 1981 and 1 March 1984, whether or not under a development plan, thereby excluding milk producers who incurred such obligations before 1 September 1981.

26 It should be recalled at the outset that by Regulation No 856/84 the Council introduced an additional levy which is imposed on quantities of milk delivered in excess of a reference quantity determined for each Member State.

27 As pointed out in paragraph 7 of this judgment, the Kingdom of the Netherlands, using the option laid down in Article 2(2) of Regulation No 857/84, provided that on its territory the reference quantity is to be equal to the quantity of milk or milk equivalent delivered or purchased during the 1983 calendar year.

28 Derogations from those rules, making it possible for producers to obtain, in certain specific situations and under certain conditions, a special reference quantity, are provided for, in particular, in Article 3 of Regulation No 857/84.

The existence of a discretion under Article 3(1) of Regulation No 857/84

29 As regards the derogations set out in the first subparagraph of Article 3(1) of Regulation No 857/84, the Court has acknowledged that the Member States have a discretion to decide whether or not special reference quantities should be allocated to the producers mentioned in that provision (Case C-63/93 *Duff and Others* [1996] ECR I-569, paragraph 11) and to determine, if necessary, the size of those allocations in order to take account of a development plan in the course of implementation (Joined Cases 196/88 to 198/88 *Cornée and Others* [1989] ECR 2309, paragraph 13) or a development plan implemented after 1 January 1981 (Case C-16/89 *Spronk* [1990] ECR I-3185, paragraphs 11 and 12).

30 Unlike the applicants in the cases cited above, Mr Piek did not make his investments under a development plan within the meaning of the first subparagraph of Article 3(1) of Regulation No 857/84.

31 As stated by the Commission, it must however be admitted that the Member States have an identical discretion in the case provided for in the second subparagraph of Article 3(1) of Regulation No 857/84. Moreover, Mr Piek has not challenged the existence of that discretion as such, but the contention that that discretion enables a Member State to restrict the granting of a special reference quota to milk producers who incurred investment obligations after 1 September 1981 and, therefore, to restrict the category of producers who may obtain such a quantity.

The limits of the discretion under Article 3(1) of Regulation No 857/84

32 Where a Member State chooses to make use of its power to allocate special reference quantities pursuant to the first subparagraph of Article 3(1) of Regulation No 857/84, its margin of discretion is restricted by requirements which result from the wording of the provision in question, the objective which it is designed to attain and the principle of non-discrimination (see *Spronk*, paragraphs 13 and 17).

33 Although those requirements were formulated in the context of the power afforded to the Member States to determine the level of the individual reference quantities to be granted to the various producers who had adopted a development plan, as was the case in *Spronk*, it must be held that they apply also to conditions laid down by a Member State for the purpose of attributing special reference quantities in the case of investments made without a development plan within the meaning of the second subparagraph of Article 3(1) of Regulation No 857/84.

34 In addition, it is settled case-law that, when adopting measures to implement Community legislation, national authorities must exercise their discretion in compliance with the general principles of Community law, which include the principle of proportionality (see, inter alia, Case C-313/99 *Mulligan and Others* [2002] ECR I-5719, paragraphs 35 and 36; Joined Cases C-231/00, C-303/00 and C-451/00 *Cooperativa Lattepiú and Others* [2004] ECR I-2869, paragraph 57; and Case C-496/04 *Slob* [2006] ECR I-8257, paragraph 41).

35 It is in the light of those principles that it must be assessed whether the Member State concerned exercised its discretion in conformity with Community law in prescribing that only milk producers who incurred investment obligations between 1 September 1981 and 1 March 1984 may obtain a special reference quantity and not producers who incurred such obligations before 1 September 1981.

36 As regards the wording of Article 3(1) of Regulation No 857/84, it must be noted that, in relation to investment obligations, that provision lays down a time-limit in respect of obligations incurred with a development plan, referred to in the first subparagraph, by providing that only producers who have adopted such a plan lodged 'before 1 March 1984' may possibly obtain a special reference quantity. However, it does not lay down a date from which investment obligations have to be taken into account for the purposes of obtaining such a special reference quantity.

37 The mention of the date of 1 January 1981 in the first subparagraph of Article 3(1) of Regulation No 857/84 is in the context of a distinction drawn by that provision between plans which are 'still being implemented' (first indent) and plans implemented after that date (second indent), with regard to determining the amount of the special reference quantity which may be granted. As pointed out by the Commission, no definite conclusion can be drawn from the mention of that date as regards the delimitation of the investment obligations which may be taken into account for the granting of a special reference quantity.

38 In addition, the reference to 1 January 1981 in the first subparagraph of Article 3(1) of Regulation No 857/84 is in accordance with the fact that Article 2(1) of that regulation considers 1981 as being, in principle, the reference year. However, the

Kingdom of the Netherlands made use of the power under Article 2(2) to opt for 1983 as the reference year. Consequently, it is not necessary to transpose the date of 1 January 1981 in the context of an investment obligation incurred without a development plan within the meaning of the second subparagraph of Article 3(1) of Regulation No 857/84.

39 It follows that, contrary to Mr Piek's submission, nothing in the wording of Article 3(1) of Regulation No 857/84 prevents a Member State from limiting the category of producers who may obtain a special reference quota to producers who incurred investment obligations after 1 September 1981.

40 As regards the objective of Article 3(1) of Regulation No 857/84, it is to enable the Member States to adapt the reference quantities in order to take into account the special situations of certain producers (see *Duff and Others*, paragraph 13). However, as is apparent from Article 5 of that regulation, that objective must be pursued within the limits of the reserve constituted by the Member State concerned within the guaranteed quantity.

41 It therefore follows from reading Article 3(1) in conjunction with Article 5 of Regulation No 857/84 that, although the Community legislature intended to grant the Member States the power to enable producers who have incurred investment obligations to enjoy the fruits of their investments (see, to that effect, *Cornée and Others*, paragraph 12, and *Spronk*, paragraph 15), the power of the Member States to

grant special reference quantities for that purpose can be exercised only within the limits of the guaranteed quantity and those quantities are met from the national reserve. Contrary to Mr Piek's submission, such a constraint may be capable of justifying a temporal limitation of the investment obligations that may be taken into account in that regard.

42 In this case, even supposing that, as submitted by Mr Piek at the hearing, the exhaustion of the national reserve cannot be established before the national court, which is responsible for examining that question, a temporal limitation such as that at issue in the main proceedings is nevertheless necessary where the Member State which has a discretion in that regard may validly claim that there is a real risk of exhaustion of that national reserve. It must be pointed out in that regard that in the Netherlands all the reference quantities were reduced, at that time, by 8.65% (see paragraphs 13 and 14 of this judgment).

43 That temporal limitation cannot, moreover, be regarded as excessive in light of that risk of exhaustion. In its balancing of the disadvantages incurred by milk producers in Mr Piek's situation and the obligation on the Member State concerned to comply with the requirements laid down in Article 5 of Regulation No 857/84, the temporal limitation of the investment obligations to be taken into account for the grant of a special reference quantity to those incurred after 1 September 1981 is based on the idea that any producer who incurred such obligations prior to that date had at least 16 months to comply with them before 1 January 1983, namely the beginning of the reference year chosen by the Netherlands authorities. That time-limit must be considered to be sufficiently long to enable such a producer to achieve, during the

reference year 1983, the additional milk production resulting from his investment obligations in new stalls for dairy cows and cows in calf.

44 However, Mr Piek has not put forward any arguments to cast doubt on the fact that it is, generally speaking, possible to achieve that objective within such a deadline.

45 It also follows that producers who incurred investment obligations before 1 September 1981 are not discriminated against in comparison with those who incurred such obligations after that date. The former, unlike the latter, are in principle in a position to obtain, without the need for a derogating measure granting a special reference quantity under Article 3 of Regulation No 857/84, a reference quantity within the meaning of Article 2 of that regulation which reflects the increase in their production resulting from earlier agreed investments.

46 As pointed out by the Netherlands Government, it must also be added that the taking into account of investment obligations incurred before 1 September 1981 could have given rise to the risk of misuse of the rules on milk quotas. It would have enabled producers to rely on old investment obligations, prior to that date, in order to gain special reference quantities, not with the aim of producing or marketing milk but with that of obtaining a purely financial advantage from their market value (see, to that effect, Case C-44/89 *von Deetzen* [1991] ECR I-5119, paragraph 24, and Case C-401/99 *Thomsen* [2002] ECR I-5775, paragraphs 39 and 45).

47 It follows from the above considerations that the answer to the questions referred by the Hoge Raad der Nederlanden must be that the second subparagraph of Article 3(1) of Regulation No 857/84 must be interpreted as not precluding a national rule such as that at issue in the main proceedings which restricts the category of milk producers who may obtain a special reference quantity to those who incurred investment obligations after 1 September 1981 but before 1 March 1984.

Costs

48 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

The second subparagraph of Article 3(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 must be interpreted as not precluding a national rule such as that at issue in the main proceedings which restricts the category of milk producers who may obtain a special reference quantity to those who incurred investment obligations after 1 September 1981 but before 1 March 1984.

[Signatures]