JUDGMENT OF THE COURT (Second Chamber)

29 April 1999 *

In Case C-288/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Bassano del Grappa (Italy) for a preliminary ruling in the proceedings pending before that court between

Consorzio fra i Caseifici dell'Altopiano di Asiago

and

Regione Veneto

on the interpretation of Articles 2 and 9 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),

* Language of the case: Italian.

THE COURT (Second Chamber),

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

Advocate General: A. La Pergola,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Consorzio fra i Caseifici dell'Altopiano di Asiago, by Otello Giandomenici, of the Vicenza Bar,

— Regione Veneto, by Antonella Cusin, of the Padua Bar, and Luisa Londei, of the Venice Bar,

— the Italian Government, by Professor Umberto Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by Oscar Fiumara, Avvocato dello Stato,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 26 November 1998,

gives the following

Judgment

1 By order of 17 July 1997, received at the Court on 29 July 1997, the Pretura Circondariale (District Magistrates' Court), Bassano del Grappa, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Articles 2 and 9 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).

2 Those questions were raised in the course of an action between the Consorzio fra i Caseifici dell'Altopiano di Asiago (hereinafter 'the Consortium') and the Regione Veneto concerning an administrative penalty imposed on the Consortium by the Regione Veneto for irregularities in the keeping of the register of suppliers and for failure to set aside the additional levy in relation to those members of the Consortium who had exceeded their milk quota.

3 The Consortium is a body comprising a number of cooperative societies the members of which are milk producers.

4 In contesting the administrative penalty at issue in the main action, the Consortium essentially argues that it cannot be regarded as a purchaser within the meaning of the Community rules.

5 Regulation No 3950/92 extended for seven years the additional levy scheme 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), 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).

6 The latter two regulations respectively introduced an additional levy charged on quantities of milk delivered in excess of an annual reference quantity fixed for every producer or purchaser and laid down detailed rules for implementing the said levy. Regulation No 3950/92 amended the scheme, in particular as regards the collection of the levy.

7 The eighth recital in the preamble to Regulation No 3950/92 thus states that '... in order to avoid, as in the past, long delays [in the] collection and payment of the levy, which are incompatible with the scheme's objective, provision should be made for the purchaser, who seems in the best position to carry out the necessary operations, to be liable for the levy, and for him to be given the means to collect the levy from the producers who owe it'.

8 Article 1 of Regulation No 3950/92 states: '... an additional levy shall be payable by producers of cow's milk on quantities of milk or milk equivalent delivered to a purchaser or sold directly for consumption ... in excess of a quantity to be determined.'

9 Article 2 of that regulation provides:

'1. The levy shall be payable on all quantities of milk or milk equivalent marketed during the 12-month period in question in excess of the relevant quantity referred to in Article 3. It shall be shared between the producers who contributed to the overrun.

...

2. As regards deliveries, before a date and in accordance with detailed rules to be laid down, the purchaser liable for the levy shall pay to the competent body of the Member State the amount payable, which he shall deduct from the price of milk paid to producers who owe the levy or, failing this, collect by any appropriate means.

...

Where quantities delivered by a producer exceed his reference quantity, the purchaser shall be authorised, by way of an advance on the levy payable, in accordance with detailed rules laid down by the Member State, to deduct an amount from the price of the milk in respect of any delivery by that producer in excess of his reference quantity.'

10 Article 9 of Regulation No 3950/92 provides:

'For the purposes of this Regulation:

...

(c) "producer" means a natural or legal person or a group of natural or legal persons farming a holding within the geographical territory of the Community:

— selling milk or other milk products directly to the consumer,

— and/or supplying the purchaser;

...

(e) "purchaser" means an undertaking or grouping which purchases milk or other milk products from a producer:

— to treat or process them,

— to sell them to one or more undertakings treating or processing milk or other milk products.

However, any group of purchasers in the same geographical area which carries out [the] administrative and accounting operations necessary for the payment of the levy on behalf of its members shall be regarded as a purchaser. ...

...

(g) "delivery" means any delivery of milk or other milk products, whether the transport is carried out by the producer, a purchaser, an undertaking processing or treating such products or a third party;

(h) "milk or milk equivalent sold directly for consumption" means milk or milk products converted into milk equivalent, sold or transferred free without going through an undertaking treating or processing milk or other milk products.'

11 The terms 'quantities of milk or milk equivalent marketed' for the purposes of Article 2(1) of Regulation No 3950/92 must, in accordance with the definition given in Article 1 of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12), be understood as meaning 'all quantities of milk or milk equivalent which leave any holding in the territory of [a] Member State.' Furthermore, under that Article, 'quantities presented by producers for treatment or processing under contract shall be deemed deliveries'.

12 Article 7 of Regulation No 536/93 provides:

'1. Member States shall take all the verification measures necessary to ensure payment of the levy .... To that end:

(a) all purchasers operating in the territory of a Member State must be approved by that Member State.

Purchasers shall be approved only where they:

...

— have premises in the Member State concerned where the stock accounts, registers and other documents referred to in (c) may be consulted by the competent authority,

— undertake to keep up to date the stock accounts, registers and other documents referred to in (c),

— undertake to forward the declarations provided for in Article 3 (2) to the competent authority of the Member State concerned.'

13 Article 1(3) of Presidential Decree No 569/93, which is based on the above provisions, provides that 'every reference to purchasers is to be understood as including cooperatives that use or process cow's milk, regardless of the legal nature of the

relationship on the basis of which producers deliver milk and milk products to that cooperative.'

14 Although it contested the administrative penalty at issue in the main action on the ground that it is not a purchaser within the meaning of the Community regulations, the Consortium had previously requested and obtained recognition of its status as a purchaser under the relevant Italian law, that is to say Decree No 569/93.

15 It was in those circumstances that the referring court took the view that an interpretation of Articles 2 and 9 of Regulation No 3950/92 was necessary to enable it to give judgment, and accordingly stayed the proceedings and referred the following two questions to the Court of Justice for a preliminary ruling:

'(1) Are Articles 2 and 9 of Regulation (EEC) No 3950/92 of 28 December 1992 to be interpreted as meaning that any recipient of a delivery of milk may be regarded as a "purchaser" liable to pay the additional levy, regardless of the legal nature of the relationship on the basis of which the delivery is made and, in particular, as meaning that a group of cooperative societies may be regarded as a purchaser of the milk delivered to it (but not sold to it) by the members of that cooperative?

(2) Is Article 2(2) of Regulation (EEC) No 3950/92 of 28 December 1992 to be interpreted as meaning that purchasers are actually required to withhold from sums paid to producers any amount due by way of additional levy, or that they are simply entitled to do so and that that option is provided in their own interests so that failure to exercise it may not attract a penalty?'

First question

16 By its first question, the referring court is essentially asking what criteria the recipient of a delivery of milk must satisfy in order to be a purchaser within the meaning of Article 2(2) and Article 9(e) of Regulation No 3950/92, in particular where the recipient is a *consorzio* established under Italian law, comprised of cooperatives of milk producers.

17 The Consortium argues, essentially on the basis of the wording of Articles 2 and 9 of Regulation No 3950/92, that only a party who purchases cow's milk from a producer under a contract of sale as defined in civil law may be regarded as a purchaser within the meaning of those provisions. The Regione Veneto and the Italian Government adopt the contrary position that a cooperative such as the plaintiff in the main action may be a purchaser irrespective of the legal form of the transfer of the milk, simply by virtue of the fact that milk is delivered to it. They argue that there is a delivery whenever there is no direct sale from the producer to the consumer.

18 It is appropriate to say something at the outset about the general structure of the additional levy scheme, which — initially by virtue of Article 5c(1) and (2) of 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), inserted by Regulation No 856/84 and, since 1993, under Article 1 of Regulation No 3950/92 — distinguishes between reference quantities for milk sold directly for consumption and those for milk delivered to purchasers (Case C-196/94 *Schiltz-Thilmann* v *Ministre de l'Agriculture* [1995] ECR I-3991, paragraph 6).

19 Furthermore, pursuant to Article 2(1) of Regulation No 3950/92, read in conjunction with the eighth recital in the preamble to that regulation, it is the producer who owes any additional levy due on all milk that is marketed, that is to say, in accordance with Article 1 of Regulation No 536/93, on quantities of milk which leave any holding and which exceed the reference quantity for direct sales or deliveries. That distinction is taken up again in Article 9(c) of Regulation No 3950/92 where it is used in the definition of a producer as a party selling milk or milk products directly to the consumer or supplying a purchaser or doing both together (Case C-341/89 *Ballmann* v *Hauptzollamt Osnabrück* [1991] ECR I-25, paragraph 12).

20 As to the first hypothesis, direct sales to consumers, the Court held at paragraph 13 of its judgment in Case C-285/93 *Dominikanerinnen-Kloster Altenhohenau* v *Hauptzollamt Rosenheim* [1995] ECR I-4069, which concerned Article 12(h) in conjunction with Article 12(c) of Regulation No 857/84, which has since been repealed but the wording of which was identical, in so far as is relevant here, to that of Article 9(h) and (c) of Regulation No 3950/92, that there is a direct sale to consumers whenever milk is sold by a producer to a third party without going through an undertaking treating or processing it.

21 The additional levy scheme, which allows only the two alternatives mentioned above for the marketing of milk and milk products, and the decision in *Dominikanerinnen-Kloster Altenhohenau* make it quite plain that, if there is no direct sale, there must be a delivery of milk within the meaning of Article 2(2) of Regulation No 3950/92 whenever a quantity of milk leaves a producer's holding to be delivered to an intermediary for treatment or processing or is sold or transferred by an intermediary to an undertaking which treats or processes it.

22 In so far as the intermediary, that is to say the undertaking treating or processing the milk delivered to it by the producer, must, in accordance with Article 5c(1) of Regulation No 804/68 as amended by Regulation No 856/84, and Article 2(2) of Regulation No 3950/92, be a purchaser within the meaning of Article 9(e) of Regulation No 3950/92, that concept must be given a broad interpretation.

23 It is clear from the first recital in the preamble to the latter regulation that the purpose of the additional levy scheme, which is to reduce the imbalance between supply and demand in the milk and milk-products sector and the resulting structural surpluses, merely requires that a levy be imposed on quantities in excess of the quantities of milk sold directly or collected. Whether an intermediary is a purchaser or not is immaterial, initially, to achieving that objective.

24 A broad interpretation of the concept of purchaser is further justified by Article 9(h) of Regulation No 3950/92, which defines the concept of direct sales to consumers. That concept includes not only transfers for valuable consideration, which are recognised under civil law as sales, but also transfers made free of charge.

25 For the purposes of Articles 2(2) and 9(e) of Regulation No 3950/92, the term purchaser applies to any undertaking which acquires milk from a producer under a contract, irrespective of the manner of payment of the producer, for the purpose either of treating or processing the milk itself or of transferring it to an undertaking which treats or processes it.

26 To deal more specifically with the point that the Consortium is a group of cooperative societies, it is appropriate to observe that, even if those societies were to be regarded as purchasers within the meaning ascribed to that term in paragraphs 22 to 25 of this judgment, the Consortium itself must also be regarded as a purchaser for the purposes of the additional levy scheme, since, as provided by the second subparagraph of Article 9(e) of Regulation No 3950/92, it carries out on behalf of its cooperative members the administrative and accounting operations necessary for the payment of the levy.

27 As for the fact that the Italian authorities approved the Consortium as a purchaser within the meaning of Article 7(1)(a) of Regulation No 536/93, it is established case-law that it is for the national court to ascertain the facts which have given rise to the dispute and to establish the consequences which they have for the judgment which it is required to deliver on the basis of the facts which this Court puts before it concerning the meaning of purchaser (Case C-181/96 *Wilkens* [1999] ECR I-399, paragraphs 33 and 34).

28 It is clear from all the considerations set out above that, for the purposes of Articles 2(2) and (9)(e) of Regulation No 3950/92, the term purchaser is to be interpreted as including any intermediary undertaking which acquires milk from a producer under a contract, irrespective of the manner in which the latter is paid, for the purpose either of treating or processing the milk itself or of transferring it to another undertaking for treatment or processing and which, in the event that the undertaking in question is a collection of cooperatives which are themselves purchasers, carries out on behalf of those cooperatives the administrative and accounting operations necessary for the payment of the levy, and in particular the operations referred to in Article 7 of Regulation No 536/93.

Second question

29 In answer to the second question, which is intended to establish whether a purchaser is under an obligation to withhold sums due by way of additional levy, it should be noted that, whilst the wording of the first paragraph of Article 2(2) of Regulation No 3950/92 suggests that deducting such sums is the usual method whereby a purchaser may collect a levy which it is liable to pay to the competent body, its meaning is not clear and unambiguous.

30 However, the fact that the provision allows the purchaser to use any appropriate means to collect sums due as an additional levy if he does not deduct such sums from the price of milk paid to a producer militates in favour of interpreting the provision as conferring an option, rather than an inescapable obligation, on the party liable to pay the levy.

31 The view that withholding the levy is an option is corroborated by the last paragraph of Article 2(2) of Regulation No 3950/92, which authorises purchasers to deduct, by way of an advance on the levy owed by a producer, an amount from the price of the milk in respect of any delivery by the producer in excess of his reference quantity.

32 The answer to the second question is therefore that Article 2(2) of Regulation No 3950/92 is to be understood as meaning that, whilst purchasers are entitled to deduct from the price of milk paid to a producer the amount owed by that producer by way of additional levy, the provision does not impose on them any obligation in that regard.

Costs

33 The costs incurred by the Italian Government, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, 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 (Second Chamber),

in answer to the questions referred to it by the Pretura Circondariale, Bassano del Grappa, by order of 17 July 1997, hereby rules:

1. **For the purposes of Articles 2(2) and 9(e) of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector, the term purchaser is to be interpreted as including any intermediary undertaking which acquires milk from a producer under a contract, irrespective of the manner in which the latter is paid, for the purpose either of treating or processing the milk itself or of transferring it to another undertaking for treatment or processing and which, in the event that the undertaking in question is a collection of cooperatives which are themselves purchasers, carries out on behalf of those cooperatives the administrative and accounting operations necessary for the payment of the levy, and in particular the operations referred to in Article 7 of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products.**

2. **Article 2(2) of Regulation No 3950/92 is to be understood as meaning that, whilst purchasers are entitled to deduct from the price of milk paid to a producer the amount owed by that producer by way of additional levy, the provision does not impose on them any obligation in that regard.**

Hirsch Mancini Schintgen

Delivered in open court in Luxembourg on 29 April 1999.

R. Grass G. Hirsch

Registrar President of the Second Chamber