OPINION OF ADVOCATE GENERAL MAZÁK
delivered on 14 September 2010[1]

1. These references for a preliminary ruling from the Bundesfinanzhof (German Federal Finance Court) seek an interpretation of Council Regulations (EC) No 1788/2003 and (EC) No 1782/2003.[2] In the proceedings before that court, the Hauptzollamt Koblenz (Principal Customs Office, Koblenz) is in dispute with Etling & Etling and the Hauptzollamt Oldenburg (Principal Customs Office, Oldenburg) is in dispute with Mr Aissen and Mr Rohaan. Both cases essentially concern the transfer of milk reference quantities in the course of a single milk production year.

I — Legal context

2. Points (j) and (k) of Article 5 of Regulation No 1788/2003 provide respectively that, for the purposes of that regulation, 'individual reference quantity' means 'a producer's reference quantity at 1 April of any 12-month period' and 'available reference quantity' means 'the reference quantity available to producers on 31 March of the 12-month period for which the levy is calculated, taking account of all transfers, sales, conversions and temporary re-allocations provided for in this Regulation which have taken place during that 12-month period'.

3. Article 95(3) of Regulation No 1782/2003 provides inter alia that '[i]ndividual reference quantities which have been the subject of temporary transfers … on 31 March of the calendar year concerned shall be deemed to be available on the holding of the transferee for that calendar year'.

4. For the purposes of the present Opinion, there is no need at this stage to recite at length all the legislation. Rather, I shall return to the relevant provisions in the body of my analysis.

5. As regards the national legislation, Paragraph 14(1) of the Verordnung zur

1 — Original language: English.

2 — Respectively, Regulation of 29 September 2003 establishing a levy in the milk and milk products sector (OJ 2003 L 270, p. 123) and Regulation of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers … (OJ 2003 L 270, p. 1).

Durchführung der EG-Milchabgabenregelung (BGBl. I, p. 2143; the German regulation implementing the European Community (and now European Union (EU)) milk levy rules) of 9 August 2004 provides that '[t]he purchaser may allocate delivery reference quantities which have not been used during the relevant 12-month period (under-deliveries) to other milk producers whose deliveries have exceeded the delivery reference quantities which were allocated to them (deliverers of excess quantities). Allocation of unused delivery reference quantities to the deliverer of excess quantities concerned shall be effected in accordance with the following formula:

$$\frac{\text{Total of the under-deliveries x delivery reference quantity of the deliverer of excess quantities}}{\text{Total of the delivery reference quantities of all the deliverers of excess quantities}}$$

6. Paragraph 5(2) of the Betriebsprämiendurchführungsgesetz (BGBl. I, p. 1298; the German law implementing the Single Payment Scheme (SPS)) of 30 May 2006 provides essentially that the amount of a farmer's single payment, as determined under Paragraph 5(1) of that law, is to be increased, in accordance with Article 62 of Regulation No 1782/2003, by the amount corresponding to the dairy premium provided for under Article 95 of that regulation plus the additional payments under Article 96 of that regulation.

7. Paragraph 6 of the Verordnung über die Durchführung der Milchprämie und der Ergänzungszahlung zur Milchprämie (BGBl. I, p. 267; the German regulation implementing the dairy premium and additional payments) of 18 February 2004 provides essentially that the reference quantities at the disposal of the producer on 31 March of the year of the application, to be taken into account for the grant of the dairy premium, are to be attested by a certificate which must indicate the milk quantities actually delivered by the producer in the 12-month period ending on 31 March of the year of the application.

II — Facts and the questions referred

8. In Case C-230/09, Etling & Etling are milk producers and for the 2004/05 production year they had a reference quantity (milk quota) of 553 678 kg. Since 2000, they had leased to a third party a proportion (50 000 kg) of their original reference quantity. In February 2005 that lease was terminated and Etling & Etling were issued with a decision that the reference quantity of 50 000 kg had been transferred back to them with effect from 1 March 2005. Since that quantity of milk had already been delivered by the lessee, the dairy (the purchaser) issued a certificate to the effect that the reference quantity on 31 March

2005 for Etling & Etling was 553 678 kg. Etling & Etling challenged this before the Finanzgericht (Finance Court), which amended the certificate to the effect that, for the period from 1 March 2005 to 31 March 2005, the reference quantity 'available' to them included the reference quantity of 50 000 kg which had been transferred back to them, on the ground that entitlement to payments is unaffected by any delivery of the reference quantity by the previous lessee. The Hauptzollamt Koblenz appealed to the Bundesfinanzhof, which has referred the following question to the Court:

'Must [EU] law, in particular Article 5(k) of Regulation No 1788/2003, be interpreted as meaning that the reference quantity of a producer, in the 12-month period in which a reference quantity was transferred to that producer from another producer, does not include the quantity in respect of which, during the 12-month period in question, milk was already delivered by that other producer?'

9. In Case C-231/09, Mr Aissen and Mr Rohaan each took over an agricultural holding in the course of the 12-month period 2004/05 and delivered the milk produced on their holdings to a dairy (purchaser). This caused them to exceed the reference quantity which remained available to them for that 12-month period because, during the previous occupancy of the holdings within the same period, the milk produced there had been delivered to a purchaser. The Hauptzollamt Oldenburg accordingly assessed them as liable for payment of the milk levy; it allocated to each of them a reference quantity unused by other producers which corresponded only to the portion of the reference quantity which, following the transfer, was free for use for deliveries and it assessed the milk levy accordingly. Mr Aissen and Mr Rohaan challenged that decision before the Finanzgericht, which upheld their actions on the grounds that, under the scheme for the balancing of reference quantities, the calculation must be based on the individual reference quantity allocated to the holdings and that the quantities of milk delivered during the same 12-month period by the previous occupants were not to be taken into account. The Hauptzollamt Oldenburg appealed to the Bundesfinanzhof, which has referred the following questions to the Court:

'(1) Must [EU] law, in particular Article 5(k) of Regulation No 1788/2003, be interpreted as meaning that the reference quantity of a producer who, in the course of an ongoing 12-month period, took over an agricultural holding from another producer does not include the quantity in respect of which, during the 12-month period concerned, milk was delivered by that other producer prior to the transfer of the holding?

(2) Do provisions of [EU] law or general principles governing the common organisation of the market in milk and milk

products preclude a rule of national law which, in the framework of the scheme provided for in Article 10(3) of Regulation No 1788/2003 for offsetting excess deliveries against the unused portion of the national reference quantity, allows the producer in the situation at issue in the first question, who has taken over the agricultural holding in the course of the 12-month period, to participate in the allocation of that unused portion on the basis of a quantity which includes the portion of the reference quantity already delivered by the other producer?'

III — Analysis

A — *Main arguments of the parties*

10. In Case C-230/09, the *Hauptzollamt Koblenz* submits that a dairy premium cannot be granted to a person who has not produced milk with the quota. In a situation where an unused reference quantity is transferred to another person in the course of the 12-month period, the dairy premium for that year belongs to the transferee. *Etling & Etling* and the *Commission* contend essentially that 'available reference quantity' is the quantity which may be delivered in the course of a 12-month period without liability for the milk levy being incurred, regardless of how much milk within that quantity has actually been delivered. The term 'reference quantity' denotes an abstract right.

11. In Case C-231/09 and with regard, in particular, to the first question, the *Hauptzollamt Oldenburg* submits essentially that, in relation to liability for payment of the levy, the transferee may rely on milk quotas only to the extent that the corresponding quantities have not yet been delivered by the transferor. *Mr Rohaan* and *Mr Aissen* and the *Commission* contend in substance that the reference quantity of the transferee should not be reduced to reflect deliveries effected by the transferor.

12. As regards the second question, the *Hauptzollamt Oldenburg* submits essentially that a reference quantity which has already been relied upon for the purposes of exemption from the milk levy is not transferable in respect of the 12-month period in which it was used. That quantity may not be transferred until the beginning of the following milk production year, at which point it may be used anew. *Mr Aissen* and *Mr Rohaan* argue in essence, as does the *Commission*, that, in the context of the balancing scheme, the

transfers are to be taken into account on the basis of the definition of 'available reference quantity', hence in accordance with Article 17 of Regulation No 1788/2003.

B — *Assessment*

1. First question

13. By its sole question in Case C-230/09 and the first question in Case C-231/09, the referring court asks essentially whether EU law and, in particular, Article 5(k) of Regulation No 1788/2003 must be interpreted as meaning that, where a producer's reference quantity has been transferred in a 12-month period, the reference quantity to be attributed to the transferee is not to include the quantity in respect of which, during the production year in question, milk has already been delivered by the transferor.

14. As regards Case C-230/09, the above question arises in the context of the dairy premium scheme, which forms part of the SPS, and it concerns the transfer (reversion) of an individual reference quantity following termination of an agricultural lease of which it was the subject. In particular, the referring court is seeking to ascertain whether, for the purposes of the grant of a dairy premium under Article 95(1) and (3) of Regulation No 1782/2003, 'reference quantity' is to be construed as meaning the total reference quantity which the producer has at his disposal at the beginning of a 12-month period or, by contrast, whether it refers to the reduced reference quantity which is at his disposal at the end of that period, in the course of which a portion of the reference quantity has already been used up by the transferor.

15. Let us consider the relevant provisions, as their interpretation in this case is straightforward. Article 95(1) of Regulation No 1782/2003 [3] states that 'from 2004 to 2007, milk producers shall qualify for a dairy premium. It shall be granted per calendar year, per holding and per tonne of individual reference quantity [in German, *einzelbetriebliche Referenzmenge*] eligible for premium and available on the holding.'

3 — Cf. case-law relating to that regulation: Case C-420/06 *Jager* [2008] ECR I-1315; Case C-428/07 *Horvath* [2009] ECR I-6355; Case C-170/08 *Nijemeisland* [2009] ECR I-5127; Case C-449/08 *Elbertsen* [2009] ECR I-10241; Case C-470/08 *van Dijk* [2010] ECR I-603; and Case C-434/08 *Harms* [2010] ECR I-4431 (in which I delivered an Opinion). See also pending cases: Case C-61/09 *Niedermair-Schiemann* (see my Opinion of 11 May 2010); Case C-133/09 *Uzonyi*; Case C-152/09 *Grootes* (see my Opinion of 8 July 2010); Case C-153/09 *Agrargut Bäbelin* (see my Opinion of 2 September 2010); and Case C-536/09 *Omejc*.

16. Article 5(j) of Regulation No 1788/2003 defines 'individual reference quantity' ('einzelbetriebliche Referenzmenge') as 'a producer's reference quantity at 1 April of any 12-month period'.

17. Although the wording of Article 95(1) of Regulation No 1782/2003 links the term 'individual reference quantity' with the phrase 'available on the holding' ('*über die der Betrieb verfügt*'), it does not use the precise term 'available reference quantity' ('*verfügbare Referenzmenge*').

18. Article 5(k) of Regulation No 1788/2003 defines 'available reference quantity' as the reference quantity available to producers on 31 March of the 12-month period for which the levy is calculated, account being taken of all transfers, sales, conversions and temporary re-allocations during that 12-month period.

19. Accordingly, the question arises as to whether, despite the fact that its wording does not include the precise term 'available reference quantity', Article 95(1) of Regulation No 1782/2003, by specifying 'available on the holding', requires calculation of the dairy premium to be based on the wording of Article 5(k) of Regulation No 1788/2003, or whether it is the wording of Article 5(j) which should apply.

20. I believe that the phrase 'available on the holding' in Article 95(1) of Regulation No 1782/2003 is a clear indication that that provision refers to the definition in Article 5(k) of Regulation No 1788/2003. Indeed, if the EU legislature had intended to refer to the 'individual reference quantity', the phrase 'available on the holding' would have been a superfluous addition. Thus, in this context, the adjective 'individual' (*einzelbetriebliche*) qualifying the reference quantity serves merely to differentiate that reference quantity from the 'national' (*einzelstaatliche*) reference quantity.

21. As the referring court noted, since Article 95(1) of Regulation No 1782/2003 offers milk producers a premium calculated on the basis of the reference quantity available on the holding, it is conceivable that, even where the reference quantity has been transferred from one producer to another during the 12-month period, its allocation must be effected in accordance with the unitary reference quantity which, at the time relevant for the grant of the premium — the end of the milk production year — was available to the party taking over the reference quantity. That applies even if the transferee has been unable to derive from it the full right — which has been partially exhausted by the transferor — to deliver milk free of the levy and *a fortiori* no longer possesses that right at the relevant time for calculating the final balance, that is to say, at the end of the 12-month period. Neither EU

law nor German law provides for or envisages a division of the reference quantity into a portion which belonged to the transferor and a portion which remains for the transferee.

22. As was pointed out by the Commission, the broad logic of the SPS would also suggest that it is the end of a production year — in this case, the milk production year — which constitutes the point of reference, account thus being taken of transfers which have taken place during that period.

23. The validity of that interpretation is also confirmed by Article 95(3) of Regulation No 1782/2003. Under that provision, where individual reference quantities have been the subject of certain temporary transfers, it is the position on 31 March of the calendar year concerned which is decisive for establishing on whose holding the reference quantity is to be deemed available: the holding of the transferor or that of the transferee. In those circumstances, in fact, the transferred reference quantity must be deemed to be available on the holding of the transferee. [4] Thus, that provision is framed in terms consistent with Article 5(k) of Regulation No 1788/2003, which refers to the final day of a milk production year.

24. It follows that, by using the phrase 'individual reference quantity … available on the holding' (*einzelbetriebliche[r] Referenzmenge, über die der Betrieb verfügt*), Article 95(1) of Regulation No 1782/2003 is referring to the definition in Article 5(k) of Regulation No 1788/2003 and, in consequence, it is the 'available reference quantity' which must form the basis for the calculation of a dairy premium.

25. Turning to Case C-231/09, the question here arises in the context of the offsetting of the unused part of the national reference quantity against deliveries of excess quantities, as envisaged under Article 10(3) of Regulation No 1788/2003, and it concerns the transfer of an individual reference quantity upon the takeover of an agricultural holding.

26. Article 10(3) of Regulation No 1788/2003 provides that each producer's contribution to payment of the levy is to be established by decision of the Member State, 'after any unused part of the national reference quantity allocated to deliveries has or has not been re-allocated', in proportion to the individual reference quantities of each producer. While in the English language version of Regulation No 1788/2003, Article 10(3)(a) uses

4 — As the referring court pointed out, that rule treats as irrelevant the extent to which the transferee or the transferor of the reference quantity delivered the reference quantity attaching to the holding and, were that circumstance to be regarded as relevant, in precisely the case which is of practical importance — that is to say, where the transferee and not the transferor has delivered the relevant volume of the reference quantity transferred — such a rule would be redundant.

somewhat equivocal terms ('each producer's reference quantity'), in German — which is the relevant version in the present case — that provision uses the express term '*verfügbaren Referenzmenge des einzelnen Erzeugers*' (as does the French version: '*quantité de référence disponible de chacun des producteurs*'), which is defined in Article 5(k) of that regulation.

27. It follows that the volume of the reference quantity available to the producer in the framework of the balancing scheme under Article 10(3) of Regulation No 1788/2003 reflects the definition provided in Article 5(k) of that regulation. Thus the transfers of reference quantities in the framework of the balancing scheme are to be taken into account by reference to the definition of the 'available reference quantity'.

28. Next, Regulation No 1788/2003 provides for transfers of reference quantities. In particular, Article 17 of that regulation governs transfers in the case of sale, lease or any other means.

29. It is important to note that each of the four paragraphs of Article 17 of Regulation No 1788/2003 expressly emphasises that transfer of 'individual reference quantities' is to be carried out in accordance with detailed rules to be determined by the Member States. That provision applies, under Article 17(4) of that regulation, to tenancies due to expire (the situation underlying Case C-230/09), and, under Article 17(1) of that regulation, to sales or any other means involving comparable legal effects (the situation underlying Case C-231/09). In my view, Article 17(1) and (4) are relevant for the present cases, by analogy if nothing else.

30. The Commission raises the question of the consequences to be inferred for the purposes of the present case from the fact that Article 17 of Regulation No 1788/2003 deals with the transfer of 'individual reference quantities'.

31. By stating that 'individual reference quantities' are the subject of transfers, Article 17 of Regulation No 1788/2003 refers in no uncertain terms to the definition in Article 5(j) of that regulation, that is to say, to a producer's quantity at 1 April of any 12-month period. Thus the EU legislature took the view that the (subsequent) deliveries should not have consequences for the subject of transfers and that reference quantities should be transferred irrespective of the extent to which they had been used. Indeed, it is rather a question of an absolute figure which corresponds to the reference quantity allocated to a producer at the beginning of a milk production year (or, as the referring court calls it, 'an abstract right'

established on the first day, which is thus immutable, irrespective of the quantity delivered thereafter). As Mr Rohaan noted, Article 17 of Regulation No 1788/2003 does not provide that, in the case of transfers during the 12-month period in the course of which the transferor already delivered milk, the reference quantity is to be transferred only in part. On the contrary, it can be inferred from the wording of that provision that it is the total reference quantity which is transferred.

32. Regulation No 1788/2003 contains no specific provision relating to the legal effects which are to apply to the milk production year in which the transfer of a reference quantity has taken place. In this connection, it should be pointed out, however, that Article 17 does provide that transfers are to be carried out in accordance with detailed rules to be determined by the Member States.

33. Thus I agree with the Commission that the wording of Article 17 of Regulation No 1788/2003 clearly shows that — without prejudice to the discretion of the Member States to determine the detailed rules applicable to transfers of reference quantities — that provision does not preclude the total reference quantity allocated to a producer at the beginning of the milk production year (including the part which has already been delivered) from being transferred. [5]

34. I believe (as do Mr Rohaan and Etling & Etling) that the above interpretation is confirmed by the wording of the first sentence of Article 11(2) of Regulation No 1788/2003. Indeed, in that provision the EU legislature expressly provided that, where a purchaser fully or partially replaces one or more other purchasers, the individual reference quantities available to the producers are to be taken into account for the remainder of the 12-month period in progress, 'after deduction of quantities already delivered …'.

35. I shall now deal with four different concerns raised by the referring court, which it considers may nonetheless require deliveries which have already been effected to be excluded from transfers.

36. First, the Commission is right in pointing out that (as follows from point 34 above), if the EU legislature had wished deliveries to be relevant also in connection with transfers of reference quantities, it would have made express provision to that effect, just as it did in Article 11(2) of Regulation No 1788/2003.

5 — Indeed, Germany laid down such rules in 2006 (they essentially reflect the line of argument defended by the Hauptzollamt Koblenz and the Hauptzollamt Oldenburg). However, those national provisions are not relevant here on the facts and they form no part of the subject-matter of the present proceedings.

Moreover, if the concept of reference quantity already implied a reduction to reflect quantities delivered, the phrase 'after deduction of quantities already delivered' would be redundant and meaningless.

37. It follows that, while, strictly speaking, Article 11(2) of Regulation No 1788/2003 relates to a different issue from the one that concerns us here (it deals with changes of purchasers, not of producers), the fact remains that it enables us to draw certain inferences which are relevant for the present analysis. Indeed, it shows that the concept of 'individual reference quantity' and 'the quantity already delivered' are mutually opposed: there is a certain antinomy between the two. It may be inferred, therefore, that the quantity delivered within the meaning of Regulation No 1788/2003 forms no part of the concept of 'individual reference quantity'. As the Commission put it, the quantity delivered represents a notion extraneous to the definition of an individual reference quantity, which operates independently of that definition and, where appropriate, needs to be expressly mentioned.

38. It follows that transfers concern an absolute and autonomous figure corresponding to the reference quantity of a producer at the beginning of a milk production year, irrespective of any subsequent deliveries. That figure is relevant for subsequent milk production years in so far as the transferee of the reference quantities clearly needs to have at his disposal the totality of the individual reference quantity, including the quantity which has already been delivered.

39. Secondly, the referring court considers it conceivable that no distinction can be drawn between, on the one hand, the right to effect deliveries of milk exempt from any duties and, on the other, the reference quantity on the basis of which a producer's premium entitlement is calculated. However, the Commission is correct in arguing that that analysis implies that Article 17 of Regulation No 1788/2003 is predicated on the idea that transfers concern, in principle, 'individual reference quantities' and not the right to effect deliveries of levy-free milk. This applies to the concept of 'available reference quantity', in accordance with Article 5(k) of that regulation. Regulation No 1788/2003 clearly distinguishes between the right to effect deliveries of levy-free milk and the 'individual reference quantity'. As the Commission also explained, that distinction is logical in so far as the right to effect deliveries of levy-free milk merely constitutes one of the legal effects of various regulatory mechanisms which are based on the concept of an 'available reference quantity'. Other such mechanisms, such as the balancing scheme under Article 10(3) of that regulation or the

dairy premium, are not necessarily intended to produce the legal effect of being able to effect deliveries of levy-free milk.

40. With regard to the balancing scheme, the extent to which a reference quantity has already been used is indeed pertinent, as a first step. However, the use already made of the reference quantity merely serves to determine 'the unused part of the national reference quantity allocated to deliveries' (under-deliveries). As a second step, the way in which to divide the under-deliveries between the 'producers who delivered in excess' of their reference quantity is determined. Accordingly, as the Commission argued, it would not make sense to exclude categorically, as a basis for calculation, those quantities which had already been delivered from the reference quantities of 'producers who delivered in excess'. By definition, all those producers effected deliveries in excess of their reference quantity. If, at the heart of the balancing scheme, there were a requirement of correspondence between the right to effect levy-free deliveries of milk and the volume of reference quantity of a producer who delivered in excess, that balancing would not be practicable. Indeed, the balancing scheme proceeds on the assumption that, for the purposes of distributing under-deliveries between the various 'producers who delivered in excess', there is a difference between the right to effect levy-free deliveries of milk, on the one hand, and the reference quantity, on the other. It can be safely said that the balancing scheme does not give rise to repercussions for the levy, because that scheme is relevant only to producers who have delivered to excess. If a transferee participates in the balancing scheme with the reference quantity intact, the other producers will be attributed lower quantities, but the objectives of the regulation will not be at stake. The danger that the national quota might be exceeded and that the EU regime as a whole might be called in question simply does not arise.

41. Nor is the dairy premium scheme under Regulation No 1782/2003 necessarily aligned with the right to effect levy-free deliveries of milk. As Etling & Etling pointed out, the dairy premium scheme forms part of the SPS, which seeks to decouple completely income support for farmers from production (see recital 24 in the preamble to the regulation). As a consequence, the dairy premium scheme is also meant to be decoupled from effective production. Indeed, contrary to the system in existence before Regulation No 1782/2003, the relevant criterion for the award of the dairy premium as income support is not the production of a given amount of agricultural products, but the volume of available reference quantity. As the Commission noted, decoupling — in accordance with which, in the context of the dairy premium scheme, a reference quantity not linked to deliveries can be transferred — leads, regardless of which producer delivered on the basis of

that reference quantity, to the transferee of the reference quantity becoming the holder of a right to a dairy premium and to the transferor of that quantity ceasing to qualify for the dairy premium scheme. It follows, in particular from Article 95(3) of Regulation No 1782/2003, that that was the intention of the EU legislature.

42. Thus, there may well be a difference between, on the one hand, the right to effect levy-free deliveries of milk and, on the other, the reference quantity on the basis of which a producer's right to dairy premium is calculated or on the basis of which the balancing is carried out.

43. Thirdly, the referring court also considers that the grant of a premium on the basis of the total reference quantity of the holding — irrespective of the milk deliveries already effected on that basis by the former holder of the reference quantity — may amount to an impermissible 'double use' of the reference quantity, incompatible with the general principles governing the common organisation of the market in milk and milk products and irreconcilable, in particular, with the principle that the obligation to pay milk levy must be of a 'strictly personal nature'. [6]

44. As was unanimously submitted by all the parties save the Hauptzollamt Koblenz and the Hauptzollamt Oldenburg, there is no such risk of an impermissible double use. It is clear from the above that there is a distinction between the right to effect levy-free deliveries of milk, on the one hand, and the basis for making calculations in the context of the balancing scheme or the dairy premium scheme, on the other. There is no impermissible double use because the transferee takes the place of the transferor (who sheds the status of debtor) in relation to the reference quantity and the quantity delivered by the transferor is clearly attributed to the transferee and accounted for in the reference quantity. In other words, there is no impermissible double use even if the reference quantity is used in part by the transferor, in so far as the allocation of the total reference quantity to the transferee is neutral vis-à-vis the levy and appropriate for the premium. Since the transferor is not using any of the reference quantity, there is manifestly no double use. As was pointed out

6 — Cf. Case C-341/89 *Ballmann* [1991] ECR I-25, paragraph 9 et seq., and Case C-352/92 *Milchwerke Köln* [1994] ECR I-3385, paragraph 21.

by the Commission at the hearing, *Ballmann* and *Milchwerke Köln* [7] do not contradict that interpretation. Those cases dealt with the definition of a 'producer' and not with the question of the application of the regulation.

45. I believe (as does the Commission) that the different regulatory mechanisms seek different objectives. The various concepts relating to the reference quantity, as described in Article 5 of Regulation No 1788/2003, are merely definitions and do not entail any legal effects. The legal effects are to be found in the various regulatory mechanisms and the obligation to pay the milk levy is only one of those mechanisms. If other regulatory mechanisms, such as the balancing scheme or the dairy premium scheme, also draw on the definition given in Article 5 of Regulation No 1788/2003 in order to regulate their own legal effects, that cannot be regarded as leading to an impermissible double use of the reference quantity, but rather as constituting a common point of departure which may, none the less, entail different rights in the context of the different mechanisms.

46. Fourthly and lastly, the referring court asks whether it would not more accurately reflect the purpose of the dairy premium — which is to compensate for a shortfall in earnings as a result of reductions in the milk price — to grant the premium to the party who on 31 March farms the holding on the basis simply of the reference quantity that that party has itself delivered (or, at least, the quantity that it could have delivered exempt from any levies). Accordingly, in cases where, during the relevant period, a reference quantity was delivered by different producers, the premium would have to be split and granted to those milk producers on a *pro rata* basis: an approach, however, which would require acceptance of the resulting difficulties in the enforcement of the premium system.

47. Suffice it to state, as the referring court recognised itself, that Regulation No 1782/2003 makes no such provision and such an approach does not appear to be envisaged.

48. In any event, as was pointed out above and as was essentially recognised by all the parties save the Hauptzollamt Koblenz and the Hauptzollamt Oldenburg, it should be noted that income support under Regulation No 1782/2003 — such as the dairy premium — is to be decoupled from actual production. Thus it is difficult to see why the dairy premium scheme provided for in that regulation should be limited to the quantity delivered by the producer himself.

7 — Ibid.

49. Lastly, however, as was noted in point 29 et seq. above, Article 17 of Regulation No 1788/2003 states in no uncertain terms that the transfer is to be carried out 'in accordance with detailed rules to be determined by the Member States'. It may be observed in passing that the wording of that provision broadly corresponds to that of Article 7 of Council Regulation (EEC) No 3950/92. [8]

50. In that regard, on a par with the Court's statement in *Mulligan and Others*, [9] those detailed rules cannot be established or applied by the Member States in such a way as to compromise the objectives of Regulation No 1788/2003 and, where the competent authorities of the Member States lay down or apply such rules, they must do so on the basis of objective criteria.

51. In particular, recital 19 in the preamble to Regulation No 1788/2003 states that, in line with the various types of transfer of reference quantities and using objective criteria, Member States should be authorised to place part of the transferred quantities in the national reserve.

52. Accordingly, as the Commission pointed out, the EU legislature expressly provided that Member States may also limit the volume of those transfers. The fact remains that such limitation must not jeopardise the aim of Regulation No 1788/2003 or run counter to the principle laid down in Article 1(2) of that regulation, to the effect that the national reference quantity is to be entirely allocated among the producers and the national reserve. A regime which limits the volume of the transfer during the 12-month period must therefore establish in an unequivocal manner which part of the reference quantity is to be allocated to which producer or to the national reserve. In particular, that regime should not result in the disappearance or loss of reference quantities from the system.

53. It follows that the Member States are empowered to limit the volume of the transfer to the extent which corresponds to the quantity already delivered by the transferor, in so far as such a rule does not result in the disappearance of reference quantities from the system. [10]

8 — Regulation of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1), repealed by Regulation No 1788/2003. See case-law relating to Regulation No 3950/92: Case C-401/99 *Thomsen* [2002] ECR I-5775; Case C-313/99 *Mulligan and Others* [2002] ECR I-5719; Joined Cases C-480/00 to C-482/00, C-484/00, C-489/00 to C-491/00, and C-497/00 to C-499/00 *Azienda Agricola Ettore Ribaldi and Others* [2004] ECR I-2943; and Case C-278/06 *Otten* [2007] ECR I-4513. As regards the validity of Regulation No 1788/2003, see Case C-34/08 *Azienda Agricola Disarò Antonio and Others* [2009] ECR I-4023.

9 — Ibid., paragraph 26 et seq.

10 — In that regard, it may be interesting to observe that, as opposed to the case of Germany, other Member States have found other solutions for this problem. For instance, France distributes the reference quantity for the milk production year in question in accordance with the principle *pro rata temporis*. At the hearing, the Commission stated that, in its view, the ideal solution would be for the premium to be given to the transferee.

2. Second question

54. By its second question, the referring court essentially asks whether EU law precludes a provision of national law which, in the context of the balancing scheme provided for in Article 10(3) of Regulation No 1788/2003, allocates to the transferee the quantity which has already been delivered before the transfer.

55. As follows from the considerations relating to the first question, in the context of the balancing scheme, the transfers are to be taken into account in accordance with the definition of the concept of 'available reference quantity', hence in accordance with Article 17 of Regulation No 1788/2003. In addition, it was also observed above that EU law does not preclude the transfer from also covering the part of the individual reference quantity which corresponds to the volume of the quantity already delivered by the transferor. Moreover, the purpose of the regulatory mechanism of balancing does not militate against such an interpretation.

IV — Conclusion

56. I suggest that the Court give the following answers to the questions referred by the Bundesfinanzhof:

1. In situations where the reference quantity of a producer is transferred in the course of a 12-month period, European Union law and, in particular, Article 5(k) of Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector, do not preclude that reference quantity from also covering the quantity in respect of which, during that 12-month period, milk has already been delivered by that producer. However, the Member States may, in the context of the discretion which they enjoy for the purposes of determining the detailed rules applicable to transfers, limit the transfer of

reference quantities which have already been delivered in the ongoing 12-month period, in so far as that limitation does not result in the disappearance of those reference quantities from the system set up under Regulation No 1788/2003.

2. Neither EU law nor, more specifically, any of the general principles governing the common organisation of the market in milk and milk products precludes a rule of national law which, in the framework of the scheme provided for in Article 10(3) of Regulation No 1788/2003 for offsetting excess deliveries against the unused portion of the national reference quantity, allows a producer who has taken over an agricultural holding in the course of the 12-month period to participate in the allocation of that unused portion on the basis of a quantity which includes the portion of the reference quantity already delivered by the other producer.