JUDGMENT OF THE COURT (Fifth Chamber)

7 June 2007 *

In Case C-278/06,

REFERENCE for a preliminary ruling under Article 234 EC, by the Bundesverwaltungsgericht (Germany), made by decision of 18 May 2006, received at the Court on 26 June 2006, in the proceedings

Manfred Otten

v

Landwirtschaftskammer Niedersachsen,

joined parties:

Jonny Kück

and

Vertreterin des Bundesinteresses beim Bundesverwaltungsgericht,

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of R. Schintgen, President of the Chamber, A. Borg Barthet and M. Ilešič (Rapporteur), Judges,

Advocate General: Y. Bot,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 29 March 2007,

after considering the observations submitted on behalf of:

— M. Otten, by G.-W. Bieniek, Rechtsanwalt,

— the Landwirtschaftskammer Niedersachsen, by H. Steggewentz, acting as Agent,

— the German Government, by M. Lumma and C. Blaschke, acting as Agents,

— the Commission of the European Communities, by J. Schieferer and F. Erlbacher, and by H. Tserepa-Lacombe, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 7(2) 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), as amended by Council Regulation (EC) No 1256/1999 of 17 May 1999 (OJ 1999 L 160, p. 73) ('Regulation No 3950/92').

2 The reference was made in the course of proceedings between Mr Otten, a former tenant of dairy farming land, and the Landwirtschaftskammer Niedersachsen (Chamber of Agriculture, Lower Saxony) concerning a transfer of a milk or milk products reference quantity to the lessor, where the latter, who is not himself a producer of milk or milk products, in turn transfers the reference quantity, as soon as possible, through a State sales office to a third party who has that status.

Legal context

Community legislation

3 In 1984, on account of a persistent imbalance between supply and demand in the milk sector, a system of additional levies on milk was introduced by Article 5c of 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). According to that provision, an additional levy is payable for quantities of milk in excess of a reference quantity to be determined.

4 The general rules for the application of the additional levy were laid down in Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13).

5 Regulation No 857/84 was repealed by Regulation No 3950/92, which extended the additional levy system until 1 April 2000 although that system was initially intended to apply only until 1 April 1993.

6 Article 7(2) of Regulation No 3950/92 provides:

'Where there is no agreement between the parties, in the case of rural leases due to expire without any possibility of renewal on similar terms, or in situations involving comparable legal effects, the reference quantities available on the holdings in question shall be transferred in whole or in part to the producers taking them over, in accordance with provisions adopted or to be adopted by the Member States, taking account of the legitimate interests of the parties.'

7 Article 8 of that Regulation specifies:

'With a view to completing restructuring of milk production or to environmental improvement, Member States may take one or more of the following actions in accordance with detailed rules which they shall lay down taking account of the legitimate interests of the parties:

...

(b) determine on the basis of objective criteria the conditions under which producers may obtain, in return for payment, at the beginning of a 12-month period, the reallocation by the competent authority or by the body designated by that authority, of reference quantities released definitively at the end of the preceding 12-month period by other producers in return for compensation in one or more annual instalments equal to the abovementioned payment;

...

(e) authorise, upon application by the producer to the competent authority or the body designated by that authority, the transfer of reference quantities without transfer of the corresponding land, or vice versa, with the aim of improving the structure of milk production at the level of the holding or to allow for extensification of production.

...'

8 Article 9 of Regulation No 3950/92 states:

'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;

...'

National legislation

9 The system for the transfer of reference quantities for milk or milk products is governed by the Regulation on the implementation of the additional levy rules (Zusatzabgabenverordnung) of 12 January 2000 (BGBl. 2000 I, p. 27), 'the ZAV', which entered into force on 1 April 2000.

10 According to the ZAV, reference quantities can be sold, in principle, on only three dates in each year, namely 1 April, 1 July, or 30 October, through State sales offices, under a regulated procedure which does not take into account the areas of land used for dairy production.

11 Since the rural lease at issue in the main proceedings was entered into before 1 April 2000, the first sentence of Paragraph 7(1) of the Guaranteed Milk Quantities Regulation (Milchgarantiemengenverordnung) of 25 May 1984 (BGBl. 1984 I, p. 720), as amended by the thirty-third amending regulation of 25 March 1996 (BGBl. 1996 I, p. 535), is applicable under the first sentence of Paragraph 12(2) of the ZAV. Under the first sentence of paragraph 7(1) of the Guaranteed Milk Quantities Regulation, when a rural lease expires, the reference quantity is to revert to the lessor.

12 When a reference quantity is transferred to a lessor who does not himself produce milk, the first sentence of Paragraph 12(2) of the ZAV provides that 33% of that quantity is to be withdrawn for the benefit of the Land's reserve.

The dispute in the main proceedings and the question referred for a preliminary ruling

13 In 1974 Mr Otten's predecessor entered into a rural lease of an area of 4.1862 ha with Mr Kück, for an indefinite period, for the purposes of milk production.

14 In 1984, when the additional levy system for milk producers who exceeded the reference quantities allocated to them was introduced, Mr Otten's predecessor was allocated a specific reference quantity in respect of that area leased for milk production.

15 In the course of the year 2000 Mr Otten and Mr Kück terminated the rural lease which bound them, with effect from 1 January 2001. The holding therefore reverted to Mr Kück as of that date.

16 At Mr Kück's request, the Landwirtschaftskammer Hannover (Hanover Chamber of Agriculture) (Germany), by decision of 14 February 2001, amended on 27 April 2001, confirmed that a reference quantity of 9 315 kg had been transferred to him. It also decided that a reference quantity of 4 588 kg should be withdrawn for the benefit of the Land's reserve on the ground that Mr Kück was not a producer.

17 Mr Otten lodged an objection against that decision, which was rejected by the Landwirtschaftskammer Hannover.

18 Mr Otten then appealed to the Verwaltungsgericht Stade (Stade Administrative Court) which quashed those administrative decisions.

19 By judgment of 16 March 2005 the Niedersächsisches Oberverwaltungsgericht (Lower Saxony Higher Administrative Court) dismissed the appeal lodged by the Landwirtschaftskammer Niedersachsen. The Niedersächsisches Oberverwaltungsgericht considered that, on the expiry of a rural lease of a dairy holding, the

corresponding reference quantity reverts to the lessor only if the latter himself is a milk producer or the land is transferred to another milk producer without delay.

20 The Landwirtschaftskammer Niedersachsen lodged an appeal on a point of law before the Bundesverwaltungsgericht (Federal Administrative Court).

21 The Bundesverwaltungsgericht considers that, according to the Court's interpretation in Case C-401/99 *Thomsen* [2002] ECR I-5775, a provisional acquisition by a lessor who is not a producer is always possible in so far as, firstly, the acquisition is temporary and is made necessary by national legislation, and, secondly, it leads to the grant of a new lease to a lessee who has the status of a producer. The ultimate result of those two transfers is — according to the referring court's interpretation of that judgment — regarded as a single operation transferring the reference quantity from one producer to another producer (*Thomsen*, paragraph 43).

22 That approach should also be applied in the matter in dispute in the main proceedings, where the land transfer is, in the context of the second transfer operation and under the new national rules, separate from the transfer of the reference quantities.

23 Moreover, according to that interpretation, reference quantities are to be used for the purposes of the production and marketing of milk so that a lessor who is not a producer may not derive purely financial advantages by relying on the market value of those reference quantities (Case C-313/99 *Mulligan and Others* [2002] ECR I-5719, paragraph 30; *Thomsen*, paragraph 39, and, to the same effect, Case C-292/97 *Karlsson and Others* [2000] ECR I-2737, paragraph 57).

24 In those circumstances the Bundesverwaltungsgericht decided to stay proceedings and to refer to the Court of Justice the following question for a preliminary ruling:

'Is Article 7(2) of Regulation No 3950/92, ..., to be interpreted as meaning that, on expiry of rural leases on a milk-production holding or a milk-production area, the attached reference quantities can revert to the lessor even if that lessor is not, or is not about to become, a producer himself, in so far as he transfers the reference quantity as soon as possible through a State sales office to a third party who has that status?'

The question referred for a preliminary ruling

25 By its question, the referring court wishes to ascertain whether Article 7(2) of Regulation No 3950/92 should be interpreted as meaning that, on the expiry of a rural lease on a milk production holding, the attached reference quantity can revert to the lessor in so far as that lessor, not being a producer himself and having no intention to become one, transfers the reference quantity as soon as possible through a State sales office to a third party who has that status.

26 At the outset it should be pointed out that it is apparent from the general scheme of the Community rules concerning the additional levy on milk that, in principle, a reference quantity can be allocated to a farmer only if he has the status of a producer (see, to that effect, Case C-275/05 *Kibler* [2006] ECR I-10569, paragraph 21 and the case-law cited).

27 Thus, in accordance with Article 7(2) of Regulation No 3950/92, on expiry of a rural lease of a milk production holding, the reference quantity attached thereto in principle reverts, in whole or part, to the lessor only where he has the status of a producer within the meaning of Article 9(c) of that regulation (*Thomsen*, paragraph 41).

28 In those circumstances, a provisional acquisition of reference quantities by a lessor who does not have the status of a producer is permissible under Community law only in so far as it is necessary and for as short a time as possible (see, to that effect, *Thomsen*, paragraph 43).

29 That interpretation can be transposed to the dispute in the main proceedings. Firstly, it is apparent from recital 6 in the preamble to Regulation No 1256/1999 that Member States have the right to organise the transfer of reference quantities other than by means of individual transactions between producers. Secondly, it follows from paragraph 43 of the *Thomsen* judgment that a provisional allocation of reference quantities for a long period to lessors who do not intend to produce milk is contrary, first, to the general scheme of the Community rules concerning the additional levy on milk and, second, to the principle that a reference quantity cannot be allocated to a farmer who does not have the status of a milk producer.

30 The fact that, in the dispute in the main proceedings, the transfer of the reference quantity is separate from the transfer of the holding is not such as to affect that interpretation.

31 According to the settled case-law of the Court, even though a reference quantity is, in principle, transferred only by transfer of the holding to which it attaches, provided that that transfer complies with the formal requirements and other conditions laid

down by Article 7 of Regulation No 3950/92, a reference quantity may nevertheless be transferred without the holding where Community law provides otherwise (see, to that effect, *Mulligan*, paragraph 27, and the case-law cited).

32 It is worth recalling in that regard that Article 8(b) and (e) of Regulation No 3950/92 enable the Member States to adopt singly or in combination any or all of the measures listed, but do not authorise them to provide for new types of actions in that field (Case C-173/02 *Spain* v *Commission* [2004] ECR I-9735, paragraph 26).

33 Member States may, in accordance with Article 8(b) of Regulation No 3950/92, and with a view to completing restructuring of milk production or to environmental improvement, determine on the basis of objective criteria the conditions under which producers may obtain, in return for payment, at the beginning of a 12-month period, the reallocation by the competent authority or by the body designated by that authority, of reference quantities released definitively at the end of the preceding 12-month period by other producers.

34 Pursuant to Article 8(e) Member States may also authorise, upon application by the producer to the competent authority or the body designated by that authority, the transfer of reference quantities without the corresponding holding.

35 It follows that the Community legislature envisaged the possibility of the transfer of a reference quantity, through a State sales office, to a producer without the holding to which it attaches being transferred.

36 The above interpretation is not called into question by paragraphs 42 and 43 of the *Thomsen* judgment, concerning a transfer of reference quantities with account being taken of the areas of land used for dairy production, since it does not follow from that judgment that the lessor could not have transferred the reference quantity to another producer, without the holding to which it was attached, through a State sales office, as soon as possible after the expiry of the lease.

37 The fact that, in the dispute in the main proceedings, the reference quantity attached to a dairy holding temporarily reverts to the lessor, who does not have the status of a producer, is not decisive, provided the situation does not last long and that the reference quantity in question is transferred to a third party who does have the status of a producer as soon as possible.

38 Consequently, a provisional acquisition of a reference quantity attached to a holding by a lessor who does not have the status of a producer, in order for it to be transferred to a State sales office for reference quantities so that that office can sell it as soon as possible, cannot be regarded as contrary to Article 7(2) of Regulation No 3950/92.

39 That interpretation is, moreover, compatible with the principal objective of Article 7(2) of Regulation No 3950/92, pursuant to which reference quantities cannot be allocated to persons wishing to obtain a purely financial advantage therefrom (see, to that effect, *Thomsen*, paragraph 45).

40 Having regard to the above, the reply to the question referred must be that Article 7(2) of Regulation No 3950/92 is to be interpreted as meaning that, on the expiry of a rural lease on a milk production holding, the attached reference quantity can

revert to the lessor in so far as that lessor, not being a producer himself and having no intention to become one, transfers the reference quantity as soon as possible through a State sales office to a third party who has that status.

Costs

41 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 (Fifth Chamber) hereby rules:

Article 7(2) of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector, as amended by Council Regulation (EC) No 1256/1999 of 17 May 1999, is to be interpreted as meaning that, on the expiry of a rural lease on a milk production holding, the attached reference quantity can revert to the lessor in so far as that lessor, not being a producer himself and having no intention to become one, transfers the reference quantity as soon as possible through a State sales office to a third party who has that status.

[Signatures]