JUDGMENT OF THE COURT (Fifth Chamber)
6 June 1996 *

In Case C-127/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the High Court of Justice, Queen's Bench Division (England and Wales), for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Ministry of Agriculture, Fisheries and Food,

ex parte **H. & R. Ecroyd Holdings Limited and John Rupert Ecroyd**

on the interpretation of Article 3a(1) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), as amended by Council Regulation (EEC) No 764/89 of

* Language of the case: English.

20 March 1989 (OJ 1989 L 84, p. 2) and by Council Regulation (EEC) No 1639/91 of 13 June 1991 (OJ 1991 L 150, p. 35),

THE COURT (Fifth Chamber),

composed of: D. A. O Edward, President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann (Rapporteur), P. Jann and L. Sevón, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— H. & R. Ecroyd Holdings Limited and John Rupert Ecroyd, by N. Green and S. Lee, Barristers, instructed by W. Neville, Solicitor,

— the United Kingdom, by S. Braviner, of the Treasury Solicitor's Department, acting as Agent, and K. Parker QC, and A. McNab, Barrister,

— the Netherlands Government, by A. Bos, Principal Legal Adviser at the Ministry of Foreign Affairs, acting as Agent,

— the Council of the European Union, by A. Brautigam, Legal Adviser, and J.-P. Hix, of its Legal Service, acting as Agents,

— the Commission of the European Communities, by G. Rozet, Legal Adviser, and X. Lewis, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of H. & R. Ecroyd Holdings Limited and John Rupert Ecroyd, represented by N. Green and S. Lee, the United Kingdom, represented by S. Braviner, K. Parker and A. McNab, the Council, represented by A. Brautigam, and the Commission, represented by H.-J. Rabe, Rechtsanwalt, Hamburg, at the hearing on 12 October 1995,

after hearing the Opinion of the Advocate General at the sitting on 11 January 1996,

gives the following

Judgment

1 By order of 27 October 1993, received at the Court on 3 May 1994, the High Court of Justice, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty several questions on the interpretation of Article 3a(1) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of

Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), as amended by Council Regulation (EEC) No 764/89 of 20 March 1989 (OJ 1989 L 84, p. 2) and by Council Regulation (EEC) No 1639/91 of 13 June 1991 (OJ 1991 L 150, p. 35).

2 Those questions were raised in six separate cases brought before the High Court of Justice to contest decisions by the Ministry of Agriculture, Fisheries and Food ('the Ministry') refusing to allocate milk quotas to the applicants.

3 However, following an order by the High Court of Justice withdrawing the questions referred to the Court of Justice in four of those cases, the President of the Court of Justice, by order of 14 December 1994, ordered that the present case should be removed from the register in so far as it concerned the parties to those four cases.

4 Consequently, the Court is asked to rule only on the questions referred to it in the cases brought before the national court by H. & R. Ecroyd Holdings Limited ('Ecroyd Limited') and John Rupert Ecroyd ('Rupert Ecroyd') respectively.

Legal background

5 In the context of the common agricultural policy, Council Regulation No 804/68 of 27 June 1968 (OJ 1968 L 148, p. 13) established a common organization of the market in milk and milk products.

6 Since the situation in the milk and milk products sector was characterized by significant and increasing surpluses, the Council adopted Regulation (EEC) No 1078/77 of 17 May 1977 which introduced, *inter alia*, a system of premiums for the non-marketing of milk and milk products (OJ 1977 L 131, p. 1). Article 2(2) provided that the grant of the premium was conditional upon a written undertaking by the producer not to market milk or milk products from his holding during a period of five years.

7 Article 4(1) of that regulation laid down the following methods of calculating and paying non-marketing premiums:

'The non-marketing premium shall be calculated on the basis of the quantity of milk or its equivalent in milk products delivered by the producer during the 1976 calendar year.

...

50% of the premium shall be paid during the first three months of the non-marketing period.

The balance shall be paid in the third and fifth years in two equal instalments of 25% of the premium, provided the recipient satisfies the competent authorities that the undertakings provided for in Article 2 have been fulfilled.'

8 Article 6 of that same regulation provided that any person taking over an agricultural holding could claim the balance of the premium awarded to his predecessor, provided that he undertook in writing to continue to carry out the undertakings given by his predecessor.

9 In 1984 it became apparent that additional measures were necessary in order to restore a balance in the milk sector. Article 5c of Regulation No 804/68, as inserted by Council Regulation (EEC) No 856/84 of 31 March 1984 (OJ 1984 L 90, p. 10), instituted a system of additional levies payable by each producer or purchaser of milk or other milk products on quantities exceeding an annual individual reference quantity, the reference quantity being commonly known as 'milk quota'. Instituted initially for a period of five years, the scheme is still in force, although it has been amended in certain respects.

10 Under Article 5c(3) the sum of the reference quantities allocated in each State to the operators concerned may not exceed a guaranteed total quantity equal to the sum of quantities of milk delivered to undertakings treating or processing milk or other milk products in each Member State during a reference year.

11 The general rules concerning the application of the additional levy were laid down by Regulation No 857/84.

12 As to producers, Article 2 of that regulation provided that the reference quantity was equal to the quantity of milk or milk equivalent delivered by the producer during the 1981 calendar year, plus 1%. However, the Member States could provide that on their territory the reference quantity was to be equal to the quantity of milk or milk equivalent delivered during the 1982 or the 1983 calendar years,

weighted by a percentage established so as not to exceed the guaranteed quantity for each Member State. The United Kingdom fixed the reference quantity on the basis of the 1983 calendar year.

13 Regulation No 857/84 did not provide for the possibility of allocating a quota to producers, commonly called 'Slom producers', who, because of their participation in the temporary non-marketing system established by Regulation No 1078/77, had not delivered or sold milk during the reference year adopted for the allocation of quotas.

14 Following the judgments in which the Court of Justice held that Regulation No 857/84 was invalid in so far as it did not provide for the allocation of a reference quantity to Slom producers (Case 120/86 *Mulder* v *Minister van Landbouw en Visserij* [1988] ECR 2321, and Case 170/86 *von Deetzen* v *Hauptzollamt Hamburg-Jonas* [1988] ECR 2355), the Council adopted Regulation No 764/89, cited above, amending Regulation No 857/84 and providing for the provisional grant of a special reference quantity (or 'Slom quota') to producers who satisfied certain conditions.

15 Under Article 3a(1) of Regulation No 857/84, as inserted by Regulation No 764/89, an allocation had to be requested by the producer within three months from 29 March 1989.

16 Article 3a(2) fixed the amount of the special reference quantity at a particular percentage of the quantity of milk delivered by the producer during the 12 calendar months preceding the month in which the application for the non-marketing

premium was made, provided that the producer had not lost his entitlement to the premium.

17 However, under Article 3a(1), producers who had already obtained a primary quota elsewhere in accordance with the conditions laid down in Article 2 of that same regulation were not entitled to a Slom quota ('the anti-accumulation rule').

18 Following various judgments, and in particular the judgment in Case C-314/89 *Rauh* v *Hauptzollamt Nürnberg-Fürth* [1991] ECR I-1647 ('the judgment in *Rauh*') concerning the interpretation and validity of Article 3a, the Council adopted Regulation No 1639/91 of 13 June 1991, cited above, which once again amended the milk quota rules.

19 There was thus added to Article 3a(1) of Regulation No 857/84 a second subparagraph whose second indent stated: 'Producers ... who have received the holding through an inheritance or similar means following expiry of the undertaking entered into under Regulation (EEC) No 1078/77 by the originator of the inheritance, albeit before 29 June 1989, shall receive on a provisional basis, on application submitted within a time-limit of three months from 1 July 1991, a special reference quantity ...'. That category of producers is commonly known as 'Slom II'.

20 In Case C-264/90 *Wehrs* v *Hauptzollamt Lüneburg* [1992] ECR I-6285 ('the judgment in *Wehrs*') the Court held that the second indent of Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, was invalid in so far as producers who had taken over a holding participating in the non-marketing system

under Regulation No 1078/77 and who were accordingly transferees of non-marketing premiums were barred from the allocation of Slom quotas, if they had already obtained a primary quota under Article 2 of Regulation No 857/84 ('Slom III' producers).

21 Council Regulation (EEC) No 2055/93 of 19 July 1993 allocating a special reference quantity to certain producers of milk and milk products (OJ 1993 L 187, p. 8) was intended to remedy that invalidity by providing that a transferee of a non-marketing premium who had been ineligible under Article 3a of Regulation No 857/84 as a consequence of having received a reference quantity under Article 2 of that regulation was entitled to receive a special reference quantity, on request made to the competent authority of the Member State concerned before 1 November 1993, provided that he satisfied certain conditions.

Facts

Ecroyd Limited

22 Ecroyd Limited is a company which was acquired in 1966 by Richard Ecroyd and various family interests, including the trustees of a children's settlement trust (hereinafter 'the Children's Settlement') set up in 1965 by Richard Ecroyd for his children.

23 Ecroyd Limited was the tenant of nine farms owned by the Ecroyd family and the Children's Settlement.

24 In 1976 Ecroyd Limited and a partner, Fountain Farming, formed a partnership known as Credenhill Farming. Four of the nine abovementioned farms, including one known as Lyvers Ocle, were sub-let to Credenhill Farming by Ecroyd Limited.

25 Credenhill Farming was authorized to participate in a non-marketing scheme for a period of five years from 14 November 1980 to 13 November 1985.

26 Ecroyd Limited continued to produce milk on the five farms which it operated as tenant and in respect of which it applied for, and in 1984 obtained, primary quota under Article 2 of Regulation No 857/84.

27 Between 1980 and 1984 the partners in Credenhill Farming changed on several occasions. On 30 September 1984, when the two remaining partners were Ecroyd Limited and Richard Ecroyd, Credenhill Farming was finally dissolved following the retirement of Richard Ecroyd. The assets and business of Credenhill Farming were taken over by Ecroyd Limited.

28 Since it considered itself to be bound by the non-marketing undertaking given by Credenhill Farming, Ecroyd Limited did not, during the remainder of the five-year period covered by that undertaking, produce milk on the land previously farmed by Credenhill Farming, although it gave no written undertaking to that effect.

29 Ecroyd Limited made two applications for the award of a special reference quantity for the land previously farmed by Credenhill Farming. The first application was made in August 1989 following the adoption of Regulation No 764/89 granting a right to Slom quota and the second in September 1991 following the judg-

ments in Case C-189/89 *Spagl* v *Hauptzollamt Rosenheim* [1990] ECR I-4539, Case C-217/89 *Pastätter* v *Hauptzollamt Bad Reichenhall* [1990] ECR I-4585, and *Rauh*. The Ministry rejected both applications. Ecroyd Limited then initiated proceedings against the Ministry, claiming that it was entitled to Slom quota.

30 In the main proceedings, Ecroyd Limited claimed that, notwithstanding the fact that the other partners in Credenhill Farming had left the partnership during the period covered by the non-marketing scheme, so that Ecroyd Limited had then farmed the holding for its own account, there had been no transfer of the holding from Credenhill Farming to Ecroyd Limited within the meaning of Article 6 of Regulation No 1078/77. Consequently, it was not necessary for it to enter into a further non-marketing undertaking, and all the more so because it was in any event bound for the whole of the period at issue by the undertaking given by Credenhill Farming. Ecroyd Limited added that it had abided in full by the terms of the non-marketing undertaking. Finally, as regards the anti-accumulation rule, it stated that the fact that it had received primary quota for a different holding could not, in the light of the judgment in *Wehrs*, operate as a bar to the grant of Slom quota in respect of the holding previously farmed by Credenhill Farming.

31 According to the Ministry, on 30 September 1984 there was a transfer from one producer to another, namely from Credenhill Farming to Ecroyd Limited. Since Ecroyd Limited had not signed a non-marketing undertaking when it took over Credenhill Farming's holding, it followed that it was not entitled to a special reference quantity. However, if Credenhill Farming and Ecroyd Limited were in fact to be regarded as the same 'producer', Ecroyd Limited would then have been in breach of its undertaking not to produce milk on its holding and would therefore have lost its entitlement to the non-marketing premium, since, during the period of the non-marketing premium scheme, it had continued milk production on the five farms which had not been sub-let to Credenhill Farming. The reasoning of the Court of Justice in the *Wehrs* case did not apply to the applicant because that judgment concerned only the situation of an assignee of a non-marketing premium, which was not the situation in which Ecroyd Limited found itself.

32 The Ministry added that, even if it were accepted that Regulation No 857/84, as amended by Regulation No 764/89, was invalid in so far as it excluded a producer in the applicant's situation from the grant of a special reference quantity, the Ministry did not, on any view, have the power to award a quota to the applicant before the Council had adopted the necessary measures.

33 Those are the circumstances in which the High Court of Justice, Queen's Bench Division, stayed proceedings and referred the following questions to the Court for a preliminary ruling:

'1. Does the respondent Ministry have a power and/or duty to award a provisional special reference quantity to the applicant and/or to treat it as if it had been awarded special reference quantity:

(i) pursuant to Council Regulation (EEC) No 857/84 as amended by Council Regulation (EEC) No 764/89; and/or

(ii) following the decision of the Court in Case C-264/90 *Wehrs*,

where:

(a) the applicant was a member of a partnership which farmed the holding and which gave an undertaking pursuant to a non-marketing scheme;

(b) all of the other members left the partnership before the expiry of the period of the non-marketing scheme and the holding in respect of which the non-marketing undertaking was given by the partnership was thereafter farmed by the applicant for its own account;

(c) following the departure of the other members of the partnership, the applicant did not produce milk on the holding for the remainder of the period of the original non-marketing scheme entered into by the partnership;

(d) no fresh written undertaking was given by the applicant, following the departure of the other members of the partnership, pursuant to Article 6 of Council Regulation No 1078/77 to carry out the non-marketing undertaking given by the partnership;

(e) the applicant had received primary quota in respect of a separate holding.

If so, when did such power and/or duty arise?

2. If the answer to Question 1 above is that the respondent Ministry has no power and/or duty is Article 3a(1) of Council Regulation No 857/84 as amended by Council Regulation No 764/89 unlawful and invalid in so far as it excludes an applicant from an award of a special reference quantity in the circumstances set out above?

3. If the answer to Question 2 is that Article 3a(1) of Regulation No 857/84 is unlawful and invalid to the extent that it excludes the applicant from an award of milk quota, does the respondent Ministry have the power and/or duty to award milk quota to the applicant and/or to treat it as if it had been awarded special reference quantity, before the enactment of further Community legislation to cure or take account of the invalidity of the measure in question?

If so, when does or did such power and/or duty arise?

4. If the answer to the above questions is that the respondent Ministry had the power and/or duty to award a special reference quantity to the applicant

and/or to treat it as if it had been awarded special reference quantity, before such time as the Council of Ministers has adopted fresh legislation and/or following the decision of the Court in Case C-264/90 *Wehrs*, is the applicant entitled in principle to damages from the respondent Ministry for having failed to grant him a special reference quantity?

5. If the answer to Question 4 is that the applicant is entitled to damages from the Ministry, on what basis are such damages to be assessed?'

Rupert Ecroyd

34 Lyvers Ocle was one of the nine farms belonging to the Ecroyd family and to the Children's Settlement, its ownership being held in trust by the trustees of the settlement. It should be recalled that those nine farms had been let to Ecroyd Limited.

35 Lyvers Ocle was also one of the four farms sub-let by Ecroyd Limited to Credenhill Farming, the latter having operated it under a non-marketing scheme from 14 November 1980 to 30 September 1984. From that date, that farm, like the three others, was operated by Ecroyd Limited, which complied with the non-marketing undertaking until its expiry on 13 November 1985.

36 Under the terms of the Children's Settlement, Rupert Ecroyd, as one of Richard Ecroyd's four children, was entitled to receive a quarter share of the trust fund on his twenty-fifth birthday, namely 22 June 1983.

37 The trustees and the beneficiaries subsequently decided to distribute the farms between the children rather than to sell them and distribute the proceeds of sale. As part of that arrangement, Rupert Ecroyd wished to obtain Lyvers Ocle in satisfaction of his interest in the trust fund.

38 In April 1987 Rupert Ecroyd became sub-tenant of Ecroyd Limited with respect to Lyvers Ocle and began milk production using the primary quota transferred to him by Ecroyd Limited.

39 On 22 December 1989 Lyvers Ocle was transferred to Rupert Ecroyd by the trustees of the Children's Settlement. As a result, Rupert Ecroyd was therefore, at the same time, both the freehold owner and sub-tenant of the land in question. He had to pay UKL 40 877 in order to compensate for the difference between the value of the share of the trust fund to which he was entitled under the Children's Settlement and the value of the property transferred.

40 On 25 September 1991 Rupert Ecroyd applied for a special reference quantity in respect of Lyvers Ocle, describing himself as the successor to Credenhill Farming. The Ministry rejected that application.

41 In the main proceedings Rupert Ecroyd claimed that, having received Lyvers Ocle through an inheritance or similar means following the expiry of the non-marketing undertaking entered into by Credenhill Farming, but before 29 June 1989, and having lodged his application for Slom quota within three months from 1 July 1991, he was entitled under Regulation No 1639/91 to obtain a quota for Lyvers Ocle. He argued that, even if the transfer of the freehold had taken place only on 22 December 1989, he had, in reality, already received the holding before the date fixed by the regulation.

42 The Ministry contended that the applicant did not satisfy the requirements for the award of a special reference quantity laid down by Regulation No 1639/91. It observed that the applicant had acquired the holding only on 22 December 1989 and did not therefore satisfy the condition under Regulation No 1639/91 requiring the holding to have been acquired through an inheritance before 29 June 1989. Moreover, the Ministry observed that the applicant's predecessors in title were the trustees of the Children's Settlement, who had not participated in a non-marketing scheme. Finally, the applicant had not received Lyvers Ocle through an inheritance but, rather, in satisfaction of the interests he had in the trust fund.

43 The High Court of Justice, Queen's Bench Division, therefore stayed proceedings and referred to the Court the following questions for a preliminary ruling:

'1. Does the respondent Ministry have a power and/or duty to award the applicant a special reference quantity and/or to treat him as if he had been awarded special reference quantity:

(i) pursuant to Council Regulation (EEC) No 857/84 as amended by Council Regulation (EEC) No 764/89 and Council Regulation (EEC) No 1639/91; and/or

(ii) following the decision of the Court in Case C-264/90 *Wehrs*,

where:

(a) the applicant was the beneficiary of the Children's Settlement comprising *inter alia* land and became beneficially entitled to his share of that settlement on his twenty-fifth birthday in 1983;

(b) the land in question was let by the trustees of the Children's Settlement to, and farmed by, H. & R. Ecroyd Ltd;

(c) part of the land was in turn sub-let to and farmed by a partnership, Credenhill Farming, comprising *inter alia* H. & R. Ecroyd Ltd;

(d) Credenhill Farming entered into a non-marketing undertaking pursuant to Council Regulation No 1078/77 in respect of its holding, i. e. the land sub-let as aforesaid;

(e) all of the other members left the Credenhill farming partnership before the expiry of the period of the non-marketing scheme and the holding in respect of which the non-marketing undertaking was given by the partnership was thereafter farmed by H. & R. Ecroyd Ltd for its own account;

(f) Credenhill Farming, and subsequently H. & R. Ecroyd Ltd, abided by the terms of the non-marketing undertaking. In particular, following the departure of the other members of the partnership, H. & R. Ecroyd Ltd did not produce milk on the holding for the remainder of the period of the original non-marketing scheme entered into by the partnership;

(g) no written undertaking was given by H. & R. Ecroyd Ltd, following the departure of the other members of the partnership, pursuant to Article 6 of Council Regulation No 1078/77 to carry out the non-marketing undertaking given by the partnership;

(h) H. & R. Ecroyd Ltd was in receipt of primary quota in respect of a separate holding;

(i) in 1987, after the expiry of the original non-marketing period, part of the land originally subject to the non-marketing undertaking given by Credenhill Farming was sub-let by H. & R. Ecroyd Ltd to the applicant and has been farmed by him ever since;

(j) in December 1989 the freehold interest in the land in question was transferred, subject to H. & R. Ecroyd Ltd's tenancy thereof, to the applicant by the trustees of the Children's Settlement in satisfaction of the applicant's beneficial entitlement under the Children's Settlement;

(k) the said transfer was subject to an equalization payment by the applicant to the trustees representing the difference between the value of the applicant's entitlement under the Children's Settlement and the value of the land transferred, taking into account the absence of special reference quantity in relation thereto.

If so, when did such power and/or duty arise?

2. If the answer to Question 1 is that the respondent Ministry has no such power or duty, is Article 3a of Council Regulation (EEC) No 857/84, as amended by Council Regulation (EEC) No 764/89 and Council Regulation (EEC) No 1639/91, valid to the extent that it excludes such a producer from an award of special reference quantity?

3. In particular, if the answer to Question 1 above is that the respondent Ministry has no such power or duty, because the applicant does not satisfy the condition contained in Regulation No 857/84 as amended by Regulation No 1639/91 which requires that the holding must be received before 29 June 1989, are the aforementioned regulations valid to the extent that they exclude producers who acquire a holding through an inheritance or similar means after 29 June 1989?

4. If the answer to the above questions is that Article 3a(1) of Council Regulation No 857/84 as amended is unlawful and invalid to the extent that it excludes the applicant from an award of milk quota, does the respondent Ministry have the power and/or duty to award milk quota to the applicant and/or to treat him as if he had been awarded special reference quantity, before the enactment of further Community legislation to cure or take account of the invalidity of the measure in question?

   If so, when does or did such power and/or duty arise?

5. If the answer to the above questions is that the respondent Ministry had the power and/or duty to award a special reference quantity to the applicant and/or to treat him as if he had been awarded special reference quantity, before such time as the Council of Ministers has adopted fresh legislation and/or following the decision of the Court in Case C-264/90 *Wehrs*, is the applicant entitled in principle to damages from the respondent Ministry for having failed to grant him a special reference quantity?

6. If the answer to Question 5 is that the applicant is entitled to damages from the respondent Ministry, on what basis are such damages to be assessed?'

The questions in the Ecroyd Limited case

Question 1

44 The national court's first question seeks to ascertain whether the competent national authority had a duty pursuant to Regulation No 857/84, as amended by

Regulation No 764/89, and in particular under Article 3a(1) thereof, to award a provisional special reference quantity to producers finding themselves in the circumstances described under points (a) to (e) of that question, or whether it had the power to do so. It also asks whether, following the judgment in *Wehrs*, the competent national authority had a duty to award a provisional special reference quantity to such producers or whether it had the power to do so.

The first part of Question 1

45 To claim entitlement to a provisional special reference quantity under the relevant rules in this case, a producer must not only have participated, either in that capacity or as successor to an agricultural holding, in a non-marketing scheme such as that established by Regulation No 1078/77, but must also not have obtained a reference quantity under the conditions laid down, *inter alia*, by Article 2 of Regulation No 857/84.

46 As to the first condition, it is not disputed that, following the dissolution of Credenhill Farming, Ecroyd Limited took over its assets and business and became the sole operator of the holding, while still observing the non-marketing undertaking previously given by Credenhill Farming, although not having formally undertaken to do so.

47 Further, the principal aim of Regulation No 1078/77 was to re-establish equilibrium in the market for milk and milk products, on which there was a substantial surplus, by introducing a system of premiums for the non-marketing of milk and milk products.

48 Under the system established by that regulation, non-marketing for a period of five years was the essential condition for the grant of the premium.

49 The actual observance by a successor to an agricultural holding, such as Ecroyd Limited, of the undertaking given by its predecessor not to market milk or milk products during the non-marketing period fulfils both the condition and the aim referred to above.

50 Consequently, the failure to perform a mere formality, such as the giving of an undertaking to continue to perform the obligation entered into by his predecessor, cannot be regarded as causing the successor to an agricultural holding to be excluded from the non-marketing scheme, as would be the case if he had not in fact observed the non-marketing undertaking.

51 Ecroyd Limited's application for a special reference quantity could not, therefore, be rejected on the ground that it had not undertaken in writing to perform the obligations entered into by its predecessor.

52 As to the second condition, which made the producer's eligibility for a special reference quantity subject to the requirement that he had not obtained a reference quantity under the conditions laid down, *inter alia*, by Article 2 of Regulation No 857/84, it should be noted that Ecroyd Limited had already obtained primary quota under that provision in respect of the five farms on which it had continued milk production (see paragraph 26 of this judgment).

53 Ecroyd Limited did not, therefore, satisfy that second condition laid down by the rules then in force.

54 It follows that the competent national authority had no duty under Regulation No 857/84, as amended by Regulation No 764/89, and in particular under Article 3a(1) thereof, to award a provisional special reference quantity to producers finding themselves in the circumstances described under points (a) to (e) of the national court's first question, and that, furthermore, it did not have the power to do so.

The second part of Question 1

55 In its judgment in *Wehrs* the Court held that the second indent of Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, was invalid in so far as persons taking over a premium granted pursuant to Regulation No 1078/77 were barred from allocation of a special reference quantity if they had received a reference quantity under Article 2 of Regulation No 857/84.

56 In its observations Ecroyd Limited claimed essentially that, since its situation was comparable to that of Mr Wehrs, the Ministry should, following the judgment in *Wehrs*, have recognized its right *ex tunc* to a special reference quantity without waiting for the Council to adopt new rules, as it did in Regulation No 2055/93, because in the present case the illegality left in place a valid and applicable system.

57 That argument cannot be accepted.

58 As to that, it is not necessary to enlarge upon the consequences for the national administrative authorities required to act in the area concerned of a ruling by the Court under Article 177 of the Treaty that a measure adopted by an institution is

wholly or partially invalid. The conclusions which may be drawn in the national legal systems from such a ruling of invalidity depend, on any view, directly on Community law as it stands in the light of that ruling.

59 Following the ruling in *Wehrs* that the anti-accumulation rule was invalid but before adoption of Regulation No 2055/93 and in the presence of a complex system such as that of milk quotas, the state of the law relevant to the present case did not (as is shown, in substance, in points 76 to 87 of the Advocate General's Opinion, and as is confirmed by the recitals in the preamble to Regulation No 2055/93) of itself, that is to say without readjustment of that system, permit the allocation of a special reference quantity to a producer in the situation of Ecroyd Limited.

60 The answer to the second part of the Question 1 must therefore be that the competent national authority had no duty, following the judgment in *Wehrs*, to award a provisional special reference quantity to producers finding themselves in the circumstances described above, and that, furthermore, it did not have the power to do so.

Question 2

61 The second question asks essentially whether Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, is invalid in so far as it excludes producers finding themselves in the circumstances described under points (a) to (e) of Question 1 from the award of a special reference quantity.

62 It follows from paragraphs 45 to 52 of this judgment that Ecroyd Limited's situation can be compared to that of a transferee of a premium granted under Regulation No 1078/77 who has obtained a reference quantity under Article 2 of Regulation No 857/84.

63 Consequently, having regard to the judgment in *Wehrs*, the answer to this question must be that Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, is invalid in so far as it excludes producers finding themselves in the circumstances described above from the award of a special reference quantity.

Question 3

64 The national court's third question seeks to ascertain whether, in the event that Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, is invalid in so far as it excludes producers finding themselves in the circumstances described above from the award of a special reference quantity, the competent national authority has a duty to award a special reference quantity to the producers before the enactment of further Community legislation intended to cure the invalidity found or whether, at least, it has the power to do so.

65 In view of the answers given to the second part of Question 1 and to Question 2, the answer must be that, before the adoption of further Community legislation intended to cure the invalidity found, the competent national authority has no duty to award a special reference quantity to producers finding themselves in the circumstances described above, nor does it have the power to do so.

Questions 4 and 5

66 Having regard to the answers to the previous questions, it is not necessary to answer Questions 4 and 5.

The questions concerning the Rupert Ecroyd case

Question 1

67 As in the Ecroyd Limited case, this question should be divided into two separate parts, namely, first, whether the competent national authority had a duty under Regulation No 857/84, as amended by Regulation No 764/89 and Regulation No 1639/91, and in particular under the second indent of the final subparagraph of Article 3a(1) thereof, to award a special reference quantity to producers finding themselves in the circumstances described under points (a) to (k) of that question, or whether it had the power to do so, and, secondly, whether following the judgment in *Wehrs* the competent national authority had a duty to award a special reference quantity to such producers, or whether it had the power to do so.

The first part of Question 1

68 Regulation No 857/84 (as amended by Regulation No 764/89), and in particular Article 3a thereof, provided for the award of a provisional special reference

quantity to two categories of producers, namely, producers who had given and complied with a non-marketing undertaking under Regulation No 1078/77 and producers who had taken over a holding in the course of the non-marketing period and complied with the undertaking given by their predecessors, provided that, in both cases, they had not already received a reference quantity under the conditions laid down by other provisions of the additional levy system.

69 In its judgment in *Rauh* the Court held that Article 3a had to be interpreted as permitting a producer, who had taken over a holding through an inheritance or similar means after the expiry of a non-marketing undertaking, to obtain, on the same basis as the originator of the inheritance himself, the award of a special reference quantity under the conditions laid down in Article 3a (paragraphs 19 and 25).

70 Following that judgment, Article 3a was amended by Regulation No 1639/91 so as to enable producers in the situation described in the previous paragraph who had not made an application within the prescribed period or whose application had been rejected, to make an application or repeat one already made.

71 As regards Lyvers Ocle, Rupert Ecroyd maintains that he is entitled to Slom II quota because he received the holding through an inheritance or similar means after the expiry of the undertaking by Credenhill Farming and Ecroyd Limited, albeit before 29 June 1989. In support of his contention Rupert Ecroyd maintains, first, that under the terms of the trust he became entitled to one-quarter of the trust fund in 1983, which included, *inter alia,* Lyvers Ocle; second, that Lyvers Ocle was transferred to him by the trustees so that he could continue to operate

the holding; and, finally, that the arrangement which enabled him to start operating Lyvers Ocle in 1987, whether characterized as a sub-tenancy or merely a family arrangement, was an integral part of the inheritance scheme.

72 That view cannot be accepted.

73 Even if it were to be assumed that Lyvers Ocle was transferred to Rupert Ecroyd through an inheritance or similar means within the period laid down, the fact remains that, as pointed out in paragraph 69 of this judgment, the applicant was entitled to receive a quota only 'on the same basis as the originator of the inheritance himself'. None of those who might have been originators, in a situation such as that in point in this case, was entitled to a special reference quantity under Article 3a, in particular under the second indent of the last subparagraph of Article 3a(1), of Regulation No 857/84 as amended by Regulation No 764/89 and Regulation No 1639/91. Neither the trustees and, more generally, the owners of Lyvers Ocle, nor Ecroyd Limited were entitled to such a quota, because the former had never participated in a non-marketing scheme and the latter had already received primary quota under Article 2 of Regulation No 857/84 and was therefore caught by the anti-accumulation rule in force at the time of the contested decision.

74 The answer to the first part of Question 1 must therefore be that the competent national authority had no duty under Regulation No 857/84, as amended by Regulation No 764/89 and Regulation No 1639/91, and in particular under the second indent of the last subparagraph of Article 3a(1) thereof, to award a special reference quantity to producers finding themselves in the circumstances described in points (a) to (k) of Question 1, nor did it have the power to do so.

The second part of Question 1

75 In the light of the reasoning set out in paragraph 73 of this judgment, it follows that the invalidation of the anti-accumulation rule by the judgment in *Wehrs* cannot affect Rupert Ecroyd, even indirectly, unless he is to be regarded as having received the holding from Ecroyd Limited through an inheritance or similar means within the period laid down.

76 Since an heir or comparable successor is in any event to be treated on the same basis as the originator of the inheritance, and having regard to the fact that Ecroyd Limited had no right, following the judgment in *Wehrs*, to require the national authorities to award it a Slom quota before the adoption of Regulation No 2055/93 (see paragraph 59 of this judgment), it must be held that Rupert Ecroyd likewise was not entitled to receive such a quota following that judgment.

77 The answer to be given to the national court must therefore be that, following the judgment in *Wehrs*, the competent national authority had no duty to award a special reference quantity to producers finding themselves in the circumstances described above, nor did it have the power to do so.

Question 2

78 The national court's second question asks essentially whether Article 3a, and in particular the second indent of the final subparagraph of Article 3a(1), of Regulation No 857/84, as amended by Regulation No 764/89 and Regulation

No 1639/91, is invalid in the light of the principle of the protection of legitimate expectations in so far as it excludes producers finding themselves in the circumstances described in points (a) to (k) of Question 1 from an award of a special reference quantity.

79 It follows from the reasoning underlying the answer to the first part of Question 1 that Article 3a, as amended by Regulation No 1639/91, was designed to permit producers who had 'inherited' a dairy holding after the expiry of a non-marketing undertaking given by the originator of the inheritance to obtain an award of quota on the same basis as the originator himself.

80 Consequently, even if Rupert Ecroyd did receive Lyvers Ocle through an inheritance or similar means, he could not legitimately expect to receive a quota except on the same basis as the originator of the inheritance.

81 However, in the situation under consideration, the originator of the inheritance, whether Ecroyd Limited or the owners of the freehold in Lyvers Ocle, was on any view excluded from the award of Slom quota, as has been pointed out in paragraph 73 of this judgment.

82 Consequently, the answer to Question 2 must be that consideration of Article 3a, and in particular the second indent of the last subparagraph of paragraph (1), of Regulation No 857/84, as amended by Regulation No 764/89 and Regulation No 1639/91, in so far as it excludes producers finding themselves in the circumstances described under points (a) to (k) of Question 1 from the award of a special reference quantity, has not revealed any factor of such a kind as to affect its validity in the light of the principle of the protection of legitimate expectations.

Questions 3, 4, 5 and 6

83 In view of the answers given to the previous questions, it is not necessary to answer the third, fourth, fifth and sixth questions.

Costs

84 The costs incurred by the United Kingdom, the Netherlands Government, the Council of the European Union and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the High Court of Justice, Queen's Bench Division, by order of 27 October 1993, hereby rules:

As regards Ecroyd Limited

1. The competent national authority had no duty under Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector, as amended by Council Regulation (EEC) No 764/89 of 20 March 1989, and in particular under Article 3a(1) thereof, to award a provisional special reference quantity to producers finding themselves in the circumstances described under points (a) to (e) of Question 1, nor did it have the power to do so.

2. The competent national authority had no duty, following the judgment of 3 December 1992 in Case C-264/90 *Wehrs* v *Hauptzollamt Lüneburg*, to award a provisional special reference quantity to producers finding themselves in the abovementioned circumstances, nor did it have the power to do so.

3. Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, is invalid in so far as it excludes producers finding themselves in the abovementioned circumstances from the award of a special reference quantity.

4. Before the adoption of further Community legislation intended to cure the invalidity found, the competent national authority has no duty to award a special reference quantity to producers finding themselves in the abovementioned circumstances, nor does it have the power to do so.

As regards Rupert Ecroyd

1. The competent national authority had no duty under Regulation No 857/84, as amended by Regulation No 764/89 and by Council Regulation (EEC) No 1639/91 of 13 June 1991, and in particular by the second indent of the last subparagraph of Article 3a(1) thereof, to award a special reference

quantity to producers finding themselves in the circumstances described under points (a) to (k) of Question 1, nor did it have the power to do so.

2. **The competent national authority had no duty, following the judgment in *Wehrs*, cited above, to award a special reference quantity to producers finding themselves in the abovementioned circumstances, nor did it have the power to do so.**

3. **Consideration of Article 3a, and in particular the second indent of the last subparagraph of paragraph (1), of Regulation No 857/84, as amended by Regulation No 764/89 and Regulation No 1639/91, in so far as that provision excludes producers finding themselves in the abovementioned circumstances from the award of a special reference quantity, has not revealed any factor of such a kind as to affect its validity in the light of the principle of the protection of legitimate expectations.**

Edward Moitinho de Almeida Gulmann

Jann Sevón

Delivered in open court in Luxembourg on 6 June 1996.

R. Grass D. A. O. Edward

Registrar President of the Fifth Chamber