OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 11 July 1996 *

1. In the present case, the High Court of Ireland has referred to the Court of Justice for a preliminary ruling two questions as to the validity of Regulation (EEC) No 816/92 [1] and Regulation (EEC) No 1560/93, [2] which reduced the reference quantities applicable to milk production, without providing for compensation for producers affected thereby.

2. Those questions were raised in the context of a dispute between four Irish milk-producers (Michael Slattery, Hugh Duffy, Bertie Roche and Eddie Twomey), supported by the Irish Farmers Association, and the Irish Ministry of Agriculture. By letter of 28 April 1993, the aforementioned producers applied to that Ministry, in its capacity as the national competent authority for the purposes of the additional levy scheme, for the return of 4.5% of their permanent reference quantities, which had been temporarily withdrawn between 1 April 1987 and 31 March 1992. In the alternative, they sought equivalent compensation for the loss and damage suffered by them as a result of the definitive reduction of their reference quantities by that percentage.

3. The Irish Ministry of Agriculture refused the application on the basis of Regulation (EEC) No 3950/92 [3] and Regulation (EEC) No 748/93. [4] The milk-producers appealed against that decision to their national courts, claiming that both Community regulations, together with Regulations No 816/92 and No 1560/93, were invalid. The High Court of Ireland considered it necessary for the purposes of the decision in the case to refer the following two questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 5c(3)(g) of Council Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products as inserted by Article 1(3) of Council Regulation (EEC) No 816/92 invalid and contrary to Community law in so far as the reference quantities allocated for 1992-1993 excluded the 4.5% of reference quantities temporarily suspended pursuant to Council Regulation (EEC) No 775/87 as amended, without the payment of compensation to producers?

* Original language: Spanish.

1 — Council Regulation (EEC) No 816/92 of 31 March 1992 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1992 L 86, p. 83).

2 — Council Regulation (EEC) No 1560/93 of 14 June 1993 amending Regulation (EEC) No 3950/92 establishing an additional levy in the milk and milk products sector (OJ 1993 L 154, p. 30).

3 — 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).

4 — Council Regulation (EEC) No 748/93 of 17 March 1993 amending Regulation (EEC) No 3950/92 establishing an additional levy in the milk and milk products sector (OJ 1993 L 77, p. 16).

(2) Is Article 3 of Council Regulation (EEC) No 3950/92 as inserted by Article 1 of Council Regulation (EEC) No 1560/93 invalid and contrary to Community law in so far as the reference quantities allocated therein exclude the 4.5% of reference quantities previously temporarily suspended pursuant to Council Regulation (EEC) No 775/87 as amended, without the payment of compensation therefor?'

4. Before the questions submitted by the national court can be answered, a description is required of the Community rules relating to the additional levy scheme introduced into the common organization of the market in milk and milk products in order to check overproduction, a body of legislation which could be manifestly improved from the point of view of legislative technique.

Community law

5. In order to reduce the imbalance between supply and demand for milk and milk products and the resulting structural surpluses, Regulation (EEC) No 856/84 [5] modified the common organization of the market in that sector by introducing an additional levy scheme, applicable from 2 April 1984. This mechanism for the control of milk production worked as follows:

— A total quantity was fixed for the whole of the Community, which constituted the guarantee threshold for milk production.

— That quantity was distributed among the Member States on the basis of the quantities of milk delivered within their territory during the 1981 calendar year plus 1%, not including the quantity intended for the Community reserve, created in order to deal with the specific needs of some Member States and a number of producers.

— Each Member State distributed its guaranteed quantity among its producers, allocating to them an individual quantity reference, commonly referred to as a 'milk quota'.

— Exceeding the reference quantity gave rise to the obligation for producers to pay an additional levy, intended to finance the expenditure incurred in marketing that surplus. The levy was payable by the producer (Formula A) or the

5 — Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1984 L 90, p. 10).

purchaser of such milk, who was entitled to pass the cost on to the producer (Formula B), the choice between them falling to the Member State. Ireland opted for Formula B.

6. The general rules for the application of the levy were established by Council Regulation (EEC) No 857/84. [6] That regulation allowed the Member States to choose 1981, 1982 or 1983 as the reference period for calculating producers' individual quantities and provided for the possibility for Member States to create national reserves of reference quantities in order take account of the special situations of some of their producers.

7. The additional levy scheme was established for a period of five years as from 1 April 1984. None the less, the measures initially envisaged were not sufficient to balance supply and demand for milk and milk products. The Community institutions therefore adopted further measures to reinforce the scheme, including in particular compensation for the discontinuation of milk production [7] and the reduction or temporary withdrawal of the guaranteed total quantities of milk. The last-mentioned measure, which is the subject of the present case, automatically entails a corresponding reduction or temporary withdrawal of producers' individual reference quantities.

8. Regulations (EEC) No 1335/86 and No 1343/86 [8] reduced the total guaranteed quantities by 2% for the period 1987/88 and by 1% for the period 1988/89, without providing for payment of compensation to the producers. In addition to that definitive reduction, Regulation (EEC) No 775/87 [9] temporarily withdrew a proportion of the reference quantity, the total amount of which was to be 4% of the guaranteed total quantities for the period 1987/88 and 5.5% for the period 1988/89. Compensation was granted for that temporary withdrawal of a percentage of the quotas at a rate of ECU 10 per 100 kilograms for each of those periods.

9. In 1988 it was agreed to extend the additional levy scheme until 31 March 1992. [10] At the same time, Article 1 of Regulation (EEC)

6 — 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).

7 — That measure was introduced by Council Regulation (EEC) No 1336/86 of 6 May 1986 fixing compensation for the definitive discontinuation of milk production (OJ 1986 L 119, p. 21).

8 — Council Regulation (EEC) No 1335/86 of 6 May 1986 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1986 L 119, p. 19) and Council Regulation (EEC) No 1343/86 of 6 May 1986 amending Regulation (EEC) No 857/84 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 1986 L 119, p. 34).

9 — Council Regulation (EEC) No 775/87 of 16 March 1987 temporarily withdrawing a proportion of the reference quantities mentioned in Article 5c(1) of Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1987 L 78, p. 5).

10 — That extension was provided for in Council Regulation (EEC) No 1109/88 of 25 April 1988 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1988 L 110, p. 27).

No 1111/88 [11] maintained the temporary withdrawal of 5.5% of the total quantities provided for in Regulation No 775/87, and extended it over the subsequent three 12-month periods (1989/90, 1990/91 and 1991/92). Moreover, Article 1(2) of Regulation No 1111/88 continued to provide for compensation for withdrawal, albeit by the direct payment of a degressive sum of ECU 8 per 100 kg for 1989/90, ECU 7 per 100 kg for 1990/91 and ECU 6 per 100 kg for 1991/92.

10. Regulation (EEC) No 3879/89 [12] laid down a further reduction of 1% of the guaranteed total quantities, without any compensation, with the aim of increasing the Community reserve. At the same time, Regulation (EEC) No 3882/89 [13] reduced the percentage of the total quantities temporarily withdrawn from 5.5% to 4.5% in order to keep the non-withdrawn reference quantities unaltered. Regulation No 3882/89 also increased the compensation provided for in Regulation No 1111/88 to ECU 10 per 100 kg for 1989/90, ECU 8.5 per 100 kg for 1990/91 and ECU 7 per 100 kg for 1991/92 in order to continue to pay producers the amount resulting from the rate of temporary withdrawal of 5.5%.

11. In 1991, the Community institutions adopted Regulation (EEC) No 1630/91, [14] which reduced the guaranteed total quantities by a further 2%. In this case, compensation for that reduction was provided for in Regulation (EEC) No 1637/91. [15]

12. Subsequently, the Council adopted Regulation No 816/92, whose validity is at issue in the present case, with the aim of extending the additional levy scheme for one more year (from 1 April 1992 to 31 March 1993), in anticipation of the adoption of measures reforming the Common Agricultural Policy ('CAP'). In order to continue to control production during that period Regulation No 816/92 indicated that the Commission might propose a reduction of the total guaranteed quantity, in return for compensation, so that the rationalization efforts already begun could be continued. Furthermore, that regulation fixed the guaranteed total quantities without taking account of the 4.5% of the reference quantities temporarily withdrawn by Regulation No 775/87, it being for the Council to decide definitively what was to happen with those quantities in the course of the reform of the CAP. Accordingly, Article 1 of Regulation

11 — Council Regulation (EEC) No 1111/88 of 25 April 1988 amending Regulation (EEC) No 775/87 temporarily withdrawing a proportion of the reference quantities mentioned in Article 5c(1) of Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1988 L 110, p. 30).

12 — Council Regulation (EEC) No 3879/89 of 11 December 1989 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1989 L 378, p. 1).

13 — Council Regulation (EEC) No 3882/89 of 11 December 1989 amending Regulation (EEC) No 775/87 temporarily withdrawing a proportion of the reference quantities mentioned in Article 5c(1) of Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1989 L 378, p. 6).

14 — Council Regulation (EEC) No 1630/91 of 13 June 1991 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1991 L 150, p. 19).

15 — Council Regulation (EEC) No 1637/91 of 13 June 1991 fixing compensation with regard to the reduction of the reference quantities referred to in Article 5c of Regulation (EEC) No 804/68 and compensation for the definitive discontinuation of milk production (OJ 1991 L 150, p. 30).

No 816/92 amended Article 5c(3) of Regulation (EEC) No 804/68 by adding the following point:

'(g) for the 12-month period from 1 April 1992 to 31 March 1993, and without prejudice during that period, taking account of the Commission proposals in connection with the reform of the CAP, to a 1% reduction calculated on the basis of the quantity referred to in the second subparagraph of this paragraph, the total quantity, expressed in thousands of tonnes, shall be:

...

Ireland 4 725.600

...

The quantities referred to in Regulation (EEC) No 775/87 which are not included in the first subparagraph are as follows in thousands of tonnes:

...

Ireland 237.600

...

The Council shall take a final decision on the future of these quantities in the context of the reform of the CAP'.

13. The transitional situation in 1992 ended with the adoption of Regulation No 3950/92, which continues the additional levy scheme for a further seven years and codifies the existing provisions with the aim of simplifying and clarifying them. Article 4 of that regulation provided that individual reference quantities were to be equal to those available on 31 March 1993, without prejudice to adjustments made at national level within the limits of the total quantity allocated to each Member State. As may be seen, Regulation No 3950/92 did not resolve the problem of the 4.5% of the individual reference quantities which had been temporarily withdrawn. The total quantities allocated to the Member States for 1993/94 was definitively fixed, albeit subject to subsequent adjustment, by Regulation No 748/93, which opted to maintain the quantities in force on 31 March 1993, increased by the amounts from the Community reserve as on that date. Thus, Regulation No 748/93 excluded from the total guaranteed quantities for 1993/94 the reference quantities which had been temporarily withdrawn and which had not been maintained by Regulation No 816/92 for 1992/93.

14. The total quantities for each Member State for the period 1993/94 were adjusted by means of Regulation No 1560/93, whose

validity is also at issue in the present case. Article 1 of that regulation alters the wording of Article 3 of Regulation No 3950/92, fixing the total quantities for each Member State, which in the case of Ireland were 5 230 554 tonnes (deliveries) and 15 210 tonnes (direct sales). That total quantity allocated to Ireland included a 0.6% increase to permit the allocation of additional reference quantities to certain categories of producers. Finally, the second recital in the preamble to Regulation No 1560/93 specifies that the temporary withdrawal in 1987 of 4.5% of the individual reference quantities is to become a definitive reduction, for which no compensation is provided.

The questions submitted for a preliminary ruling

15. The two questions referred by the High Court of Ireland challenge the validity of the provisions contained in Regulations No 816/92 and No 1560/93, by means of which the 4.5% of the individual reference quantities temporarily withdrawn by Regulation No 775/87 is no longer included in the total quantities of the States. This has meant in practice a definitive reduction of the producers' quotas for which no compensation was paid.

16. The possible grounds of annulment in respect of both regulations set forth in the order for reference and in the observations of the parties are the infringement of the right to property and of the freedom to pursue a trade or profession, breach of the principles of the protection of legitimate expectations, proportionality and non-discrimination, infringement of Article 190 of the EC Treaty and misuse of powers. I will next consider each of those grounds.

Infringement of the right to property and of the freedom to pursue a trade or profession

17. The Court of Justice has consistently held that the right to property and the freedom to pursue a trade or profession form part of the general principles of Community law. None the less, those rights do not appear to be absolute but must be considered in relation to their social function. Consequently, restrictions may be imposed on the exercise of those rights, in particular in the context of a common organization of the markets, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim

pursued, a disproportionate and intolerable interference, impairing the very substance of those rights. [16]

18. In the present case it must be ascertained whether the definitive withdrawal of 4.5% of the producers' quotas without compensation constitutes an infringement of the right to property and the freedom to pursue a trade or profession. In this context, the Court of Justice has held that 'the right to property safeguarded by the community legal order does not include the right to dispose, for profit, of an advantage, such as the reference quantities allocated in the context of the common organization of a market, which does not derive from the assets or occupational activity of the person concerned'. [17] This does not mean that the reference quantity, which constitutes an asset linked to a holding, does not possess a significant economic value. In other words, the linking of the quota to the holding as regards its ability to be transferred (a rule which admits of several exceptions, provided for in Community legislation) does not mean that the reference quantity has no economic value in itself. [18] That quantity forms part of the farmer's property rights, the value of which increases or decreases according to the size of the quotas allocated to him. Thus, I am of the view that the definitive withdrawal of a producer's reference quantity affects his right to property and his freedom to pursue his occupation as a farmer.

19. Nevertheless, I consider that the definitive withdrawal of 4.5% of the reference quantities without compensation effected by Regulations No 816/92 and No 1560/93 constitutes a justified restriction of the farmers' right to property and freedom to pursue a trade or profession on the grounds I will set out below.

20. First, the definitive withdrawal of those reference quantities serves the aims pursued by the Community institutions in the general interest within the framework of the common organization of the market in milk and milk products, in particular those of stabilizing the market and reducing structural surpluses.

21. Secondly, the conversion of a temporary withdrawal into a definitive reduction without compensation does not constitute a disproportionate and unacceptable measure affecting the substance of the right to property and freedom to pursue a trade or

16 — Judgments in Cases 265/87 *Schräder* [1989] ECR 2237, paragraph 15; 5/88 *Wachauf* [1989] ECR 2609, paragraph 18; C-177/90 *Kühn* [1992] ECR I-35, paragraphs 16 and 17; and C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 78.

17 — Judgments in Cases C-44/89 *Von Deetzen* [1991] ECR I-5119, paragraph 27, and C-2/92 *Bostock* [1994] ECR I-955, paragraph 19.

18 — In this regard, I share the views expressed by Advocate General Jacobs in the Opinion delivered in *Wachauf*, referred to above, paragraphs 24 and 25, who considers milk quotas to be intangible assets having an independent economic value and which may therefore be the subject of expropriating measures.

profession where, as in the present case, it is limited to a small percentage of producers' quotas (4.5%), which does not threaten the profitability of the holdings. The national court itself points out that the Irish producers have not and will not suffer any loss of income as a result of the permanent withdrawal of 4.5% of their quota since it will lead to an increase in the price of milk. It also notes that there will probably be no reduction in the repayment capacity of the plaintiffs or the capital value of the remaining quota after the definitive withdrawal. If the value of the producers' assets does not decrease as a result of that withdrawal, I consider that it cannot constitute a disproportionate interference likely to impair the substance of the right to property.

22. Thirdly, it must be emphasized that milk producers received a degressive indemnity in compensation for the temporary withdrawal of 4.5% of their reference quotas between 1987 and 1995. Such compensation, which in the case of Irish producers amounted to ECU 45.5 per 100 kg (the sum of the annual indemnity received from 1987 to 1992), is comparable to that obtained by producers covered by the Community programmes for the discontinuation of milk production and precludes the possibility of obtaining additional compensation upon the temporary withdrawal becoming definitive.

23. I therefore consider that the definitive 4.5% reduction of the quotas of the producers, without compensation, does not constitute an infringement of the right to property or of the freedom to pursue a trade or profession.

Breach of the principle of the protection of legitimate expectations

24. It is settled case-law that, 'whilst the principle of the protection of legitimate expectations is one of the fundamental principles of the Community, traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained ... This is particularly true in an area such as the common organization of the markets whose purpose involves constant adjustments to meet changes in the economic situation ...'. [19] In a similar context '... the field of application of the principle of legitimate expectations cannot be extended to the point of generally preventing new rules from applying to the future effects of situations which arose under the earlier rules ...'. [20]

19 — Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 33.

20 — Case 203/86 *Spain* v *Council* [1988] ECR 4563, paragraph 19.

25. In the light of that case-law, it must be ascertained whether producers affected by the temporary withdrawal of 4.5% of their quotas could have a legitimate expectation that those reference quantities would be restored after the end of the suspension period initially provided for (from 1 April 1987 to 31 March 1992) or that they would obtain compensation in the event that the temporary withdrawal became definitive.

26. As regards the legitimate expectation that the quotas which had been temporarily withdrawn would be restored, it must be borne in mind that, according to the above-mentioned case-law of the Court, the fixing of the guaranteed total quantities under the additional levy scheme established by Regulation No 856/84 falls within the Council's broad power of appreciation to adjust the organization of the common market in milk and milk products to meet changes in the economic situation. It follows that in principle no economic operator may legitimately expect that the Council, in its administration of the CAP, will maintain the guaranteed total quantities and, accordingly, that the individual reference quantities will not change. If the principle of the protection of legitimate expectations does not prevent the Council from reducing the individual quotas, a temporary withdrawal in respect of which degressive compensation is paid, and which then becomes definitive, certainly cannot be contrary to that principle.

27. With regard to compensation, the Community rules relating to the additional levy scheme, set forth above, established various measures to stabilize the markets which, in some cases, were coupled with payments to producers in order to compensate them for the reduction of their quota, while in other cases, producers have absorbed the decrease in their quota without receiving any compensation whatever. Therefore, in the context of that legislation, milk producers cannot legitimately expect that any reduction in or temporary withdrawal of their individual reference quantities will be accompanied by compensation. [21]

28. Finally, it must be considered whether in the case of the definitive withdrawal of 4.5% of the reference quantities, laid down in Regulations No 816/92 and No 1560/93, there exists some additional element on which producers might be able to base a legitimate expectation that those reference quantities would be restored and they would obtain compensation. The Court has held that where a prudent and discriminating trader could have foreseen the adoption of a Community measure likely to affect his interests, he cannot plead that his legitimate

21 — Joined Cases T-466/93, T-469/93, T-473/93, T-474/93 and T-477/93 *O'Dwyer and Others* v *Council* [1995] ECR II-2071, paragraph 50.

expectations have been infringed if the measure is adopted. [22]

29. In the present case, I consider that the reduction of the reference quantities, without compensation, for the period 1992/93 and the permanent withdrawal effected by Regulation No 1560/93 were foreseeable by a prudent and discriminating trader. At the end of the five-year period of the temporary withdrawal prescribed by Regulation No 775/87, the Council followed the Commission's proposal and adopted Regulation No 816/92, which did not continue the degressive compensation. The suspended reference quantities were deducted from the guaranteed total quantities, giving rise to a reduction in individual quotas, and the Council reserved the right to reconsider their future in the light of market developments. Consequently, the only promise made to producers was that the future of that 4.5% of the reference quantities would be reconsidered, as was subsequently the case when Regulation No 1560/93, which chose to suspend them definitively without compensation, was adopted.

30. I believe that a prudent and discriminating milk producer could have foreseen sufficiently in advance that the reference quantities would be reduced without compensation, [23] given the existence of the following factors:

— equivalent reference quantities had been withdrawn for the previous five years;

— producers had benefitted from degressive compensation amounting in total to ECU 45.5 per 100 kg;

— milk production surpluses continued to exist in the Community;

— the Commission's proposal, set out in Document COM(91) 409 final of 31 October 1991, [24] advocated the solution adopted by the Council.

31. In view of those considerations, I take the view that Regulations No 816/92 and No 1560/93 do not infringe the principle of the

22 — Case 265/85 *Van den Bergh en Jurgens* v *Commission* [1987] ECR 1155, paragraph 44, and *Delacre and Others* v *Commission*, referred to above, paragraph 37.

23 — The same argument is contained in the judgment in *O'Dwyer and Others* v *Council*, referred to above, paragraph 54.

24 — OJ 1991 C 337, p. 35.

protection of legitimate expectations by reason of their making definitive the temporary withdrawal of 4.5% of the individual reference quantities, without compensation.

The principle of proportionality

32. The Court of Justice has consistently held that the principle of proportionality is one of the general principles of Community law. By virtue of that principle, 'the legality of measures imposing financial burdens on economic operators is conditional upon those measures being appropriate to and necessary for the attainment of objectives legitimately pursued by the rules in question, provided however that, where there is a choice between several appropriate measures, the least onerous measure must be used and care must be taken to ensure that the charges imposed are not disproportionate to the aims pursued'. [25]

33. The conversion of the temporary withdrawal of 4.5% of the individual reference quantities into a definitive reduction, without compensation, constitutes a measure adopted in the context of the additional levy scheme, pursuant to the common organization of the market in milk and milk products, with the purpose of establishing a balance between supply and demand and reducing structural surpluses. That measure, together with the others adopted as part of the additional levy scheme, is intended to limit milk production in keeping with the objective of stabilizing markets, expressly provided for in Article 39(1)(c) of the Treaty. Furthermore, as the Court stated in *Erpelding*, [26] such a measure contributes to the rational development of milk production within the meaning of Article 39(1)(a) of the Treaty and to ensuring a fair standard of living for the agricultural community within the meaning of Article 39(1)(b), since it secures their income.

34. The measure would be justified by virtue of the Treaty even if the permanent withdrawal of the reference quantities had caused the farmers economic loss in the absence of compensation, a circumstance not demonstrated by the documents before the Court. In the context of the measures to limit production adopted by the Council, faced with a market long characterized by large structural surpluses, a loss of income temporarily lowering the farmers' standard of living must be accepted. [27] Moreover, the Court of Justice has held that 'in pursuing the objectives of the common agricultural policy the Community institutions must secure the permanent

25 — Case C-8/89 *Zardi* [1990] ECR I-2515, paragraph 10, and *Schräder*, referred to above, paragraph 21.

26 — Case 84/87 *Erpelding* [1988] ECR 2647, paragraph 26.

27 — Case C-311/90 *Hierl* v *Hauptzollamt Regensburg* [1992] ECR I-2061, paragraph 14.

harmonization made necessary by any conflicts between those objectives taken individually and, where necessary, give any one of them temporary priority in order to satisfy the demands of the economic factors or conditions in view of which their decisions are made ... The Court has also held that, in matters concerning the common agricultural policy, the Community legislature has a broad discretion which corresponds to the political responsibilities imposed on it by Articles 40 and 43 ...'. [28]

35. Finally, the permanent withdrawal without compensation of 4.5% of the reference quantities constitutes, in my view, the least onerous measure for stabilizing the Community milk production, since the alternative would have been to reduce the intervention prices for milk products, which would have had more negative effects on producers' incomes. [29] Furthermore, such definitive withdrawal does not impose on producers a disproportionate burden, since they received degressive compensation from 1987 to 1992 for the reference quantities in question and because the reduction in their quotas has given rise to a price increase which makes good any losses, as the national court points out.

36. On the basis of those considerations I am of the opinion that the definitive withdrawal without compensation of 4.5% of the reference quantities is not a manifestly inappropriate measure for achieving the stabilization of milk production and is therefore not contrary to the principle of proportionality.

Infringement of the principle of non-discrimination

37. The Court has consistently held that the principle of non-discrimination between producers or consumers within the Community, laid down in the second subparagraph of Article 40(3) of the Treaty, is only a specific expression of the general principle of equal treatment in Community law, which 'means that comparable situations are not to be treated differently and that different situations are not to be treated alike unless such treatment is objectively justified. It follows that the measures taken under the common organization of the market, and in particular its intervention mechanisms, must not be differentiated according to regions and other conditions relating to production or consumption, except on the basis of objective criteria which ensure that the advantages and disadvantages are distributed proportionately among those concerned, without any distinction being made between the territories of the Member States.' [30]

38. The permanent withdrawal without compensation of 4.5% of the reference quantities by Regulations No 816/92 and

28 — See *Hierl*, referred to above, paragraph 13, and *Germany* v *Council*, referred to above, paragraph 47.

29 — Thus held by the Court in *Spain* v *Council*, referred to above, paragraph 14.

30 — *Spain* v *Council*, referred to above, paragraph 25.

No 1560/93 might infringe the principle of non-discrimination in two respects by not treating Irish producers more favourably, given their specific situation, and by the withdrawal being applied uniformly without differentiating between small and large producers.

39. According to the case-law, it would only be feasible to treat Irish producers more favourably with respect to the permanent withdrawal of their quotas if it could be objectively justified. The contribution of milk production to the Irish gross national product is greater than in other Member States and this is compounded by the difficulty of developing in that country agricultural alternatives to milk production. Ireland's particular situation was taken into account by the Community institutions, however, when total reference quantities were allocated on the introduction of the additional levy system, so that the basis for the calculation of its quota was more favourable. As a result of this, Irish producers have suffered less than those of the other Member States from the measures for stabilizing milk production. The Commission is right when it points out that the specific situation of the Irish producers was duly taken account of and it is not acceptable that, because of their current situation, they should be excluded either totally or partially from the measures to control milk production, such as the definitive withdrawal of reference quantities at issue in the present case.

40. The fact that the additional levy scheme is not applied in some Member States, in particular in Italy, does not mean that the principle of non-discrimination has been infringed since the failure of a Member State to implement Community rules does not justify the failure of the other Member States to do so.

41. I do not believe that the definitive withdrawal of the reference quantities without any distinction between small and large producers infringes the principle of non-discrimination. The Court has held that 'the fact that a measure adopted within the framework of the common organization of the market may affect producers in different ways, depending upon the particular nature of their production, does not constitute discrimination if that measure is determined on the basis of objective rules, which are formulated to meet the needs of the general common organization of the market'. [31] The permanent withdrawal from all holders of reference quantities is amply justified: since they all benefit from the advantages of the additional levy scheme, it is logical that they should also likewise accept measures to

31 — *Hierl*, referred to above, paragraph 19.

control milk production which are necessary in order to reduce the surpluses to which they have all contributed. Furthermore, the permanent withdrawal of 4.5% of the reference quantities is a wholly proportionate measure, affecting producers according to the volume of their quota.

42. On the basis of the above arguments I conclude that the permanent withdrawal of the reference quantities at issue in the present case is not contrary to the principle of non-discrimination.

Infringement of Article 190 of the Treaty

43. It is settled case-law that 'the statement of grounds required by Article 190 of the EEC Treaty must disclose in a clear and unequivocal fashion the reasoning followed by the Community authority which adopted the measure in question in such a way as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights and the Court to exercise its supervisory jurisdiction ...

It is not necessary, however, for details of all relevant factual and legal aspects to be given. The Court has consistently held that the question whether the statement of the grounds for a decision meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question ...'. [32]

44. The two Community regulations at issue in the present case are markedly different with respect to their statements of reasons. There is no doubt that Regulation No 1560/93 contains an adequate statement of reasons for the conversion of the temporary withdrawal of 4.5% of the reference quantities into a permanent reduction. The second recital in the preamble to that regulation sets out the situation and origin of that withdrawal and mentions as reasons for its conversion into a definitive reduction the continuing milk production surpluses and the payment for five years of degressive compensation to producers. [33] A sufficient statement of reasons for the definitive reduction of the quotas and the non-payment of compensation was thereby given.

45. As I said, Regulation No 816/92 did not include the reference quantities withdrawn

32 — *Delacre and Others* v *Commission*, referred to above, paragraphs 15 and 16.

33 — The actual wording of the second recital in the preamble to Regulation No 1560/93 is as follows: 'Whereas the temporary suspension of a part of the reference quantities as from the fourth period of twelve months, under Regulation (EEC) No 775/87, was dictated by the market situation; whereas a downward sliding indemnity was granted to producers for five years for the quantities thus suspended; whereas Regulation (EEC) No 816/92, which extended the additional levy scheme established by Article 5c of Regulation (EEC) No 804/68, pending a decision in the context of the reform of the common agricultural policy, did not adopt, in the guaranteed total quantities for the ninth period, the quantities previously suspended on account of the continuing surplus situation which called for the 4.5% suspension of the deliveries reference quantities to be consolidated into a definitive reduction of the guaranteed total quantities ...'.

from 1987 in the calculation of the guaranteed total quantities and postponed the decision on their future until the CAP was reformed on the ground that surpluses continued to exist. The reason for such postponement, set out in the first recital in the preamble to the regulation, is thus quite brief and, moreover, does not justify the abolition of the compensation.

Nonetheless, I believe that the terseness of the statement of reasons does not constitute an infringement of Article 190 of the Treaty because the set of measures adopted for the additional levy scheme contains sufficient indication of the reasons for that postponement and the withdrawal of compensation. Those concerned were aware that the degressive compensation provided for in Regulation No 775/87, as amended by Regulation No 1111/88 and Regulation No 3882/89, was due to expire on 31 March 1992 and that its renewal was not provided for in any legislation. Furthermore, the reduction of the quantities at issue without compensation for the 1992/93 milk year was foreseeable in the terms of the measures adopted in the context of the additional levy scheme and the degressive compensation received by producers. Consequently, the lack of a specific statement of the reasons for the absence of compensation in respect of the period 1992/93 was not such as to deprive the applicants of an effective opportunity to defend their rights or to prevent the Court from exercising its power of review.

46. Regulations No 816/92 and No 1560/93 contain an adequate statement of reasons with respect to the conversion of the temporary withdrawal of 4.5% of the quotas into a permanent reduction and they do not, therefore, infringe Article 190 of the Treaty.

Misuse of powers

47. The scope of the concept of misuse of power as a ground affecting the validity of a Community act has been precisely defined in the case-law of the Court as referring to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it. [34] Furthermore, 'a decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken with the exclusive purpose, or at any rate the main purpose, of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case'. [35]

48. In my view, by adopting Regulations No 816/92 and No 1560/93, which convert the temporary withdrawal of 4.5% of the quotas into a permanent reduction, the Community

34 — Case 817/79 *Buyl and Others* v *Commission* [1982] ECR 245, paragraph 28, and Case T-46/89 *Pitrone* v *Commission* [1990] ECR II-577, paragraph 70.

35 — Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 24.

institutions have not misused their powers. By adopting those two regulations the Council has exercised the legislative power conferred on it by Article 40(3) of the Treaty in the field of agricultural policy in order to adopt a measure intended to achieve the objective of stabilizing the markets, expressly mentioned in Article 39(1)(c) of the Treaty. As I have said, the Court held in *Hierl* that the temporary withdrawal of reference quantities constituted an appropriate measure to achieve that aim and there is no doubt that the definitive withdrawal of reference quantities is also appropriate.

49. The absence of compensation for such permanent withdrawal could entail a reduction in producers' earnings, contrary to the aim set out in Article 39(1)(b) of the Treaty, but in the present case there has been no such loss, due to the increase in the milk price and the value of the reference quantities retained by producers. Even if such losses had been incurred, there would have been no misuse of powers since the Community institutions may give the achievement of any one of the aims set out in Article 39(1) temporary priority, to the detriment of the others.

50. Accordingly, the Council has not misused its powers in any way such as to affect the validity of Regulations No 816/92 and No 1560/93.

Conclusion

51. On the grounds set out above, I therefore propose that the Court give the following reply to the questions submitted by the High Court of Ireland:

(1) In the context of the present proceedings no factor has been disclosed of such a kind as to affect the validity of Article 5c(3)(g) of Council Regulation (EEC) No 804/68 as inserted by Article 1(3) of Council Regulation (EEC) No 816/92, despite the fact that that provision excluded from the reference quantities allocated for the 1992/93 milk year the 4.5% of the reference quantities temporarily suspended pursuant to Council Regulation (EEC) No 775/87 as amended, and did not provide for producers to be paid compensation.

(2) Likewise, the present proceedings have disclosed no factor capable of affecting the validity of Article 3 of Council Regulation (EEC) No 3950/92 as inserted by Article 1 of Council Regulation (EEC) No 1560/93, despite the fact that that provision excluded from the reference quantities allocated pursuant to that Article the 4.5% of the reference quantities temporarily suspended pursuant to Council Regulation (EEC) No 775/87 as amended, and did not provide for the payment of compensation therefor.