JUDGMENT OF THE COURT (Sixth Chamber)
16 October 1997 *

In Case C-165/95,

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

The Queen

and

Ministry of Agriculture Fisheries and Food,

ex parte: **Benjamin Lay, Donald Gage and David Gage**

on the interpretation of Articles 1(2) and 2 of 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),

* Language of the case: English.

THE COURT (Sixth Chamber),

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

Advocate General: G. Tesauro,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Benjamin Lay, Donald Gage and David Gage, by Richard Gordon QC, and Alan MacLean, Barrister, instructed by Dawson & Co., Solicitors,

— the United Kingdom Government, by Stephen Braviner, of the Treasury Solicitor's Department, acting as Agent, and Christopher Vajda, Barrister,

— the Council of the European Union, by Arthur Brautigam, Legal Adviser, and Jan-Peter Hix, of its Legal Service, acting as Agents,

— the Commission of the European Communities, by Dierk Booß, of its Legal Service, acting as Agent, and Hans-Jürgen Rabe and Georg M. Berrisch, Rechtsanwälte, Hamburg,

having regard to the Report for the Hearing,

after hearing the oral observations of Benjamin Lay, Donald Gage and David Gage, represented by Alan MacLean, Barrister, the United Kingdom Government,

represented by Stephanie Ridley, of the Treasury Solicitor's Department, acting as Agent, and Christopher Vajda, Barrister, the Council, represented by Jan-Peter Hix, and the Commission, represented by Hans-Jürgen Rabe, at the hearing on 13 March 1997,

after hearing the Opinion of the Advocate General at the sitting on 29 April 1997,

gives the following

Judgment

1 By order of 26 April 1995, received at the Court on 30 May 1995, the High Court of Justice, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Articles 1(2) and 2 of 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).

2 Those questions were raised in proceedings between, first, Benjamin Lay, and, second, Donald Gage and David Gage, all of them milk producers ('the applicants in the main proceedings') and the Ministry of Agriculture, Fisheries and Food ('MAFF') concerning a special reference quantity which they requested after purchasing, in Mr Lay's case, or leasing, in the case of Donald and David Gage, part of a holding subject to an undertaking not to market milk under Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (OJ 1977 L 131, p. 1).

3 During 1982 Mr Lay purchased Resthill Farm which, together with another farm, constituted a single holding belonging to a Mr Holton.

4 In October 1984 Donald and David Gage obtained a tenancy of Court Farm which, with two other farms, formed a single holding owned by A. J. Combes & Son Ltd.

5 Under Regulation No 1078/77, the original owners, Mr Holton and A. J. Combes & Son Ltd, had entered into an undertaking not to market milk for a period of five years in consideration for a non-marketing premium. Whilst Mr Holton had entered into that undertaking in 1980, the undertaking of A. J. Combes & Son Ltd expired at the end of September 1985.

6 When the applicants in the main proceedings concluded their respective purchase and lease, they entered into corresponding undertakings in respect of the parts of the holdings transferred to them, without obtaining a non-marketing premium in return. Their intention at that time was to operate a herd of 50 cows once the non-marketing undertaking had come to an end.

7 In 1984, on account of a persistent imbalance between supply and demand in the milk sector, a system of additional levies was introduced by 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), and Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13). In accordance with Article 5c of Regulation (EEC) No 804/68 of the Council of 27 June 1968 (OJ, English Special Edition 1968 (I), p. 176), as amended by Regulation No 856/84, an additional levy is payable for quantities of milk in excess of a reference quantity to be determined, on the basis either of the quantity of milk or milk equivalent delivered by a producer (Formula A) or of the quantity bought by a purchaser during a reference year (Formula B).

8 Since they had entered the temporary non-marketing scheme under Regulation No 1078/77 and therefore produced no milk during the reference year, the applicants in the main proceedings — who were accordingly 'SLOM producers' — for that reason did not obtain reference quantities under the additional levy scheme.

9 In its judgments in 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 Court ruled 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.

10 Consequently, Council Regulation (EEC) No 764/89 of 20 March 1989 amending Regulation No 857/84 (OJ 1989 L 84, p. 2) inserted a new Article 3a in that regulation providing for the allocation of special reference quantities to SLOM producers on certain conditions.

11 The adoption of Regulation No 764/89 also entailed the adoption of Commission Regulation (EEC) No 1033/89 of 20 April 1989 amending Regulation (EEC) No 1546/88 laying down detailed rules for the application of the additional levy referred to in Article 5c of Council Regulation (EEC) No 804/68 (OJ 1989 L 110, p. 27); Commission Regulation (EEC) No 1546/88 of 3 June 1988 (OJ 1988 L 139, p. 12) had been adopted to replace Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1984 L 132, p. 11), in order to give effect to Regulation No 857/84.

12 As a result of the judgments in Case C-189/89 *Spagl* v *Hauptzollamt Rosenheim* [1990] ECR I-4539 and Case C-217/89 *Pastätter* v *Hauptzollamt Bad Reichenhall* [1990] ECR I-4585, Article 3a(2) of Regulation No 857/84 was amended by Council Regulation (EEC) No 1639/91 of 13 June 1991 (OJ 1991 L 150, p. 35) in order to allocate a special reference quantity higher than the original ceiling of 60% of the quantity of milk delivered or of the quantity of milk equivalent sold by the producer during the 12 calendar months preceding the month in which the application for the non-marketing premium was made.

13 As from 1 April 1993 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) renewed, with some amendments, the additional levy scheme introduced by Regulations No 856/84 and No 857/84, which had in the meantime reached its term.

14 In its judgment in Case C-81/91 *Twijnstra* v *Minister van Landbouw, Natuurbeheer en Visserij* [1993] ECR I-2455 the Court ruled that the third subparagraph of Article 3a(2) of Council Regulation No 857/84 of 31 March 1984, as amended by Council Regulation No 764/89 of 20 March 1989, must be interpreted as meaning that, in the event of the transfer of part of a holding where the transferee agrees to observe the non-marketing undertaking made by the transferor under Council Regulation No 1078/77, the special reference quantity may be divided between the transferor and the transferee on the basis of the proportion of the land transferred.

15 As a result of that judgment, Regulation No 2055/93, which is central to this action, introduced *inter alia* rules for calculating the special reference quantity where part of a holding is transferred.

16 Those were the relevant provisions when the applicants in the main proceedings requested, in 1993 and 1994 respectively, the grant of special reference quantities. Thus, on 24 December 1993 Mr Lay was granted a special reference quantity of 73 871 litres of milk corresponding, according to what he has said, to the milk produced by 14 cows. Similarly, on 26 May 1994, after their request had been reconsidered, Donald and David Gage were allocated a reference quantity of 14 725 litres.

17 In both cases MAFF calculated the special reference quantities according to the ratio between the area purchased or leased and the total area of each holding.

18 The applicants in the main proceedings did not dispute the accuracy of the calculation, but challenged the decisions before the High Court of Justice on the ground that MAFF had misinterpreted the term 'areas under forage' used in Articles 1(2) and 2 of Regulation No 2055/93. In their view MAFF had determined the special reference quantity without taking account of the fact that the original owners had carried on the rearing of cattle for milk production almost exclusively in the part of the holdings transferred to the applicants.

19 With regard to the apportionment of an already allocated special reference quantity where part of a holding is transferred, Article 1(2) of Regulation No 2055/93 provides:

'2. Where, in the case of a holding part of which has been taken over while the holding was subject to Regulation (EEC) No 1078/77, a reference quantity has been allocated pursuant to Article 3a of Regulation (EEC) No 857/84 on the basis of the quantity for which the premium entitlement pursuant to Regulation (EEC) No 1078/77 has been preserved or acquired, that reference quantity shall be shared between the transferor and the part transferee:

...

— in proportion to the areas under forage referred to in Article 1 (1) (d) of Regulation (EEC) No 1391/78 and transferred in accordance with the provisions of Article 7 of Regulation (EEC) No 3950/92.

...'.

20 Where a special reference quantity has not yet been allocated, such a quantity is granted to the transferee in accordance with the rules laid down in Article 1(1) and the first paragraph of Article 2 of Regulation No 2055/93.

21 Article 1(1) of Regulation No 2055/93 provides:

'1. A producer, within the meaning of Article 9(c) of Regulation (EEC) No 3950/92, who:

...

— has taken over part of a holding subject to the (...) provisions [of Regulation No 1078/77] but for which no reference quantity has been allocated pursuant to Article 3a of Regulation (EEC) No 857/84,

shall receive a special reference quantity on request, provided that:

— ...'.

22 The first paragraph of Article 2 of that regulation provides:

'The special reference quantity referred to in Article 1 (1) shall be established by the Member State in accordance with objective criteria in proportion to the area under forage referred to in Article 1 (1) (d) of Regulation (EEC) No 1391/78 which the producer was using on the date of his application and on the basis of the quantity in respect of which the premium was calculated, less a percentage representing all the reductions applied to the reference quantities fixed pursuant to Article 2 of Regulation (EEC) No 857/84, including in all cases a basic reduction of 4,5%, or to Article 6 of that Regulation.

...'

23 Article 1(1)(d) of Commission Regulation (EEC) No 1391/78 of 23 June 1978 laying down amended rules for the application of the system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (OJ 1978 L 167, p. 45), to which the above provisions refer, contains the following definition:

'(d) "area under forage" means the total agricultural area farmed by a producer within the meaning of Article 5 (a) of Regulation (EEC) no 1078/77'.

24 The producer mentioned in the provision cited in the foregoing paragraph is defined in Article 5(a) of Regulation No 1078/77 as follows:

'(a) "producer" shall mean:

— a farmer, whether a natural or a legal person, whose holding is located in the territory of the community and who raises cattle,

...'.

25 Article 7(1) of Regulation No 3950/92, to which Article 1(2) of Regulation No 2055/93 refers, provides:

'1. Reference quantities available on a holding shall be transferred with the holding in the case of sale, lease or transfer by inheritance to the producers taking it over in accordance with detailed rules to be determined by the Member States taking account of the areas used for dairy production or other objective criteria and, where applicable, of any agreement between the parties ...

...'.

26 Article 9(c) of the same regulation adds:

'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'.

27 Considering that the decision in the case in the main proceedings depended on interpretation of the provisions cited above and on an assessment of their validity, the High Court of Justice, Queen's Bench Division, stayed proceedings and referred the following three questions to the Court for a preliminary ruling:

'(1) In determining a part transferee's entitlement to a reference quantity under Articles 1(2) and 2 of Council Regulation (EEC) No 2055/93, must a Member State, having regard to Regulation No 2055/93 and the general principles of Community law on legitimate expectation, proportionality and respect for property, apportion the reference quantity between transferor and part transferee by ascertaining what proportion of the holding was used for milk production at the time the transferor entered into the non-marketing undertaking and then apportioning the reference quantity between the transferor and

transferee in proportion to the percentage of land used for milk production transferred to the part transferee?

(2) If the answer to Question 1 is in the negative, are Articles 1(2) and 2 of Council Regulation (EEC) No 2055/93 invalid as contravening the general principles of Community law on legitimate expectation, proportionality and respect for property?

(3) If the answers to Questions 1 and 2 are in the negative, in determining a part transferee's entitlement to a reference quantity under Articles 1(2) and 2 of Council Regulation (EEC) No 2055/93 is a Member State entitled to apportion the reference quantity between transferor and part transferee in proportion to that part of the transferor's holding transferred to the transferee?'

Interpretation of Articles 1(2) and 2 of Regulation No 2055/93 (Questions 1 and 3)

28 By its first and third questions, which it is appropriate to deal with together, the national court is in substance asking whether, on a proper construction of Articles 1(2) and 2 of Regulation No 2055/93, and in particular the term 'areas under forage' which appears in those provisions, where part of a mixed holding is transferred, the special reference quantity must be apportioned between the transferor and transferee, or allocated to the transferee, in proportion to the part of the holding directly or indirectly given over to dairy production at the time when the non-marketing undertaking was entered into pursuant to Regulation No 1078/77, or whether that quantity must be apportioned, or allocated, in proportion to the total area of the holding.

29 By virtue of Regulation No 2055/93, where part of a holding is transferred, the transferee is allocated a special reference quantity which is either shared, in accordance with Article 1(1) of the regulation, between him and the transferor in proportion to the areas under forage or allocated to him, in accordance with the first paragraph of Article 2, in conjunction with Article 1(1), again in proportion to the area under forage; in either case, the definition of area under forage is that contained in Article 1(1)(d) of Regulation No 1391/78.

30 The United Kingdom Government, the Council and the Commission take the term 'areas under forage', as used in that provision, to mean the total area belonging to a holding even if only part of that area is actually used for milk production. Consequently, the special reference quantity to be allocated to a transferee is calculated in terms of the ratio of the land transferred to the total area of land belonging to the holding.

31 By contrast, the applicants in the main proceedings consider that for the purposes of the provision cited above areas under forage are confined to those parts of the holding given over to dairy production, excluding areas used for other agricultural purposes.

32 It should be borne in mind that, as the fourth and sixth recitals in the preamble indicate, Regulation No 2055/93 was adopted 'in order to take fully into account the decisions of the Court of Justice', in particular the judgment in *Twijnstra*.

33 At paragraph 25 of that judgment the Court held that the entire system of reference quantities is based on the general principle, laid down in Article 7 of Regulation No 857/84 and in Article 5 of Commission Regulation (EEC) No 1371/84, that in the case of the transfer of part of a holding the reference quantity is to be granted to the transferee in proportion to the land transferred.

34 However, in *Twijnstra* the general principle that a reference quantity is attached to the land, as expressed in particular in Case C-463/93 *St. Martinus Elten* [1997] ECR I-255, paragraph 14, was formulated in relation only to the transfer of part of a holding all of which was given over to dairy production. Accordingly that judgment did not deal with the case, such as that in point in the main proceedings, where part of a mixed holding is transferred.

35 It should be noted that where part of a holding is transferred Article 7(1) of Regulation No 3950/92 and Article 7 of Regulation No 1546/88, which repeat the general principle laid down in Article 7 of Regulation No 857/84 and Article 5 of Regulation No 1371/84, provide for the transfer of part of milk quotas on the basis of or 'taking account of the areas used for dairy production or other objective criteria'.

36 It follows from the wording of those provisions that by linking the reference quantities strictly to the areas used for dairy production every producer resuming milk production in the capacity of transferee or transferor is guaranteed to be able to produce the proportion of the milk quantity corresponding to the proportion of the land originally given over to dairy production which he has acquired or retained.

37 That literal interpretation is in keeping with the purpose of the abovementioned provisions, namely to protect the legitimate expectations on which the transferee may rely. Since the transferee has acquired part of a holding previously used for milk production and has assumed the non-marketing undertaking, he may legitimately expect to be able to re-use the land transferred for the purpose of milk production (see, to that effect, *Twijnstra*, cited above, paragraph 23.

38 In consequence, where part of a mixed holding is transferred, if transferees are not, in the event of a part transfer of a mixed holding, to be denied the benefit of the general principle that the reference quantity runs with the land, a special reference quantity must be allocated on the basis of the areas used for milk production at the time when the non-marketing premium was granted.

39 In its judgment in Case C-79/91 *Knüfer* [1992] ECR I-6895, paragraph 12, the Court made it clear in that respect that the reference quantities are to be distributed strictly in proportion to the size of the respective areas of the holding which are used for milk production, without its being possible to make any distinction according to the nature of the use to which those areas are put.

40 In paragraph 13 of the same judgment the Court added that, for the purpose of distributing the reference quantities, all the surface areas of the holding which contribute directly or indirectly to the milk production thereof must be taken into consideration.

41 The wording of the first paragraph of Article 2 of Regulation No 2055/93, adopted to give effect to the judgment in *Twijnstra*, does not contradict that interpretation: indeed, it confirms it.

42 It shows that special reference quantities are to be allocated in proportion to the areas under forage referred to in Article 1(1)(d) of Regulation No 1391/78, which was adopted in order to implement the non-marketing premium scheme and defines that term as the total agricultural area farmed by a producer within the meaning of Article 5(a) of Regulation No 1078/77.

43 Thus the term 'areas under forage' merely denotes the total agricultural area which is farmed by a person having the status of producer within the meaning of Article 5(a) of Regulation No 1078/77. A farmer can have that status only if he raises cattle, as specified in that provision, and, still more specifically, in the context of the allocation of a special reference quantity, only where he sells or delivers milk as a producer within the meaning of Article 9(c) of Regulation No 3950/92, to which Article 1(1) of Regulation No 2055/93 refers.

44 That interpretation is further borne out by the fact that Article 1(2) of Regulation No 2055/93 refers to Article 7 of Regulation No 3950/92 which provides that when a holding is transferred, the reference quantity is to be transferred taking account of the areas used for dairy production or other objective criteria and, where applicable, of any agreement between the parties. Thus, as the Advocate General points out in section 11 of his Opinion, so far as concerns the requirement to take account of the areas used for dairy production, the transfer of a reference quantity where a holding is transferred and the transfer of part of a special reference quantity where part of a holding is transferred are treated on the same footing.

45 The first objection raised by the United Kingdom Government, the Council and the Commission is that it is impossible to apply such an interpretation on the ground that MAFF has no information enabling it to determine which parts of a holding were used for dairy production.

46 In that regard, it must be stressed that, as the Advocate General rightly observed in section 15 of his Opinion, any administrative and verification problems, where they exist, cannot as a matter of principle be an obstacle to the sole interpretation compatible with the general principles governing Community law, in particular the principle of the protection of legitimate expectations.

47 Furthermore, by virtue of Articles 4(2)(d) and 5(1)(d) of Regulation No 1391/78, 'the area under forage farmed by the producer at the time of lodging of the application' for grant of the non-marketing premium must be both stated in the application and registered by the competent authority. Moreover, the use of the various areas of land as areas under forage given over to dairy production may be established by any means of proof.

48 Second, the United Kingdom Government, the Council and the Commission maintain that a restrictive interpretation of the concept of areas under forage as confined to those areas used for dairy production, offends against the principle of legal certainty.

49 It is true that, where part of a mixed holding is transferred, the interpretation suggested by the United Kingdom Government, the Council and the Commission enables the special reference quantities to which the transferee is entitled to be fixed unequivocally, thus precluding in advance, so far as is possible, any dispute as to the use of the agricultural areas farmed at the beginning of the non-marketing period.

50 None the less, in the light of the foregoing considerations, the mere possibility that the parties might disagree as to the areas to be taken into account when calculating the special reference quantities cannot justify an interpretation which is contrary to the principle of the protection of legitimate expectations.

51 Third, the Council and the Commission submit that the interpretation adopted is not capable of reconciling the interests of the transferor and transferee, on the one hand, and the objectives pursued by the additional levy system, on the other.

52 In response to that argument, it must be observed that the method of allocation or apportionment resulting from this judgment enables those who, in their capacity as transferors and transferees, hold lands of a farm which were originally given over to dairy production to resume milk production to the extent to which those lands contributed to dairy production. In contrast, the holder of the lands, whether transferor or transferee, is barred from entitlement to a reference quantity in so far as they were not originally used for dairy production.

53 Accordingly, the interpretation adopted by the Court does not create the risk either of causing the total quantity to be exceeded to which the owner would have been entitled if he had not transferred part of his holding or of undermining the objectives of the levy system, whether by allowing, following the transfer of part

of such a quantity, land which has never been used for milk production to be turned into areas under forage used for milk production, or encouraging the separate marketing of individual special reference quantities.

54 In the light of the foregoing considerations, the answer to be given to the first and third questions must be that, on a proper construction of Articles 1(2) and 2 of Regulation No 2055/93, where part of a mixed holding is transferred, the reference quantity must be apportioned between the transferor and transferee, or allocated to the transferee, in proportion to the part of the holding directly or indirectly given over to dairy production at the time when the non-marketing undertaking was entered into pursuant to Regulation No 1078/77.

The validity of Articles 1(2) and 2 of Regulation No 2055/93 (Question 2)

55 Having regard to the answer given to the first and third questions, there is no need to reply to the second question.

Costs

56 The costs incurred by the United Kingdom Government, by the Council of the European Union and by 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the High Court of Justice, Queen's Bench Division, by order of 26 April 1995, hereby rules:

On a proper construction of Articles 1(2) and 2 of Council Regulation (EEC) No 2055/93 of 19 July 1993 allocating a special reference quantity to certain producers of milk and milk products, where part of a mixed holding is transferred, the reference quantity must be apportioned between the transferor and transferee, or allocated to the transferee, in proportion to the part of the holding directly or indirectly given over to dairy production at the time when the non-marketing undertaking was entered into pursuant to Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds.

Ragnemalm Mancini Hirsch

Delivered in open court in Luxembourg on 16 October 1997.

R. Grass

Registrar

H. Ragnemalm

President of the Sixth Chamber