JUDGMENT OF THE COURT (First Chamber)

14 September 2006 *

In Case C-496/04,

REFERENCE for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 26 November 2004, received at the Court on 1 December 2004, in the proceedings

J. Slob

v

Productschap Zuivel,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, N. Colneric (Rapporteur), J.N. Cunha Rodrigues, M. Ilešič and E. Levits, Judges,

Advocate General: E. Sharpston,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 January 2006,

* Language of the case: Dutch.

after considering the observations submitted on behalf of:

— Mr Slob, by G. van der Wal and H.S.J. Albers, advocaten,

— the Netherlands Government, by H.G. Sevenster and C.A.H.M. ten Dam, acting as Agents,

— the Commission of the European Communities, by T. van Rijn, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 22 June 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the first sentence of Article 7(1) and Article 7(3) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12).

2 The reference was made in proceedings between Mr Slob, a milk producer, and the Productschap Zuivel (the Dairy Products Board) ('the Productschap') concerning Mr Slob's liability for the additional levy.

Legal context

Community legislation

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) extended by seven further consecutive periods of 12 months commencing on 1 April 1993 the additional levy scheme for milk introduced by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products (OJ 1984 L 90, p. 10).

4 According to the sixth recital in the preamble to Regulation No 3950/92, if the total guaranteed quantities are overrun, the consequence for the Member State is that 'the producers who contributed to the overrun must pay the levy'.

5 Article 2(1) of Regulation No 3950/92 provides:

'The levy shall be payable on all quantities of milk or milk equivalent marketed during the 12-month period in question in excess of the relevant quantity referred to in Article 3. It shall be shared between the producers who contributed to the overrun.

...'

6 Under Article 9(c) and (h) of Regulation No 3950/92:

'(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;

...

(h) "milk or milk equivalent sold directly for consumption" means milk or milk products converted into milk equivalent, sold or transferred free without going through an undertaking treating or processing milk or other milk products.'

7 According to the second recital in the preamble to Regulation No 536/93, the provisions of the regulation concern, among other things, 'the rules on checks permitting verification of proper collection of the levy'.

8 The eighth recital in the preamble to Regulation No 536/93 states:

'... the Member States must have suitable means of conducting ex-post checks to verify whether and to what extent the levy has been collected in accordance with the provisions in force; ... such checks must involve at least a certain number of measures which should be specified'.

9 Article 1 of Regulation No 536/93 is worded as follows:

'For the purposes of calculating the additional levy introduced by Regulation (EEC) No 3950/92:

1. within the meaning of Article 2(1) of that Regulation "quantities of milk or milk equivalent marketed" in a Member State means all quantities of milk or milk equivalent which leave any holding in the territory of that Member State.

...

2. the equivalence formulae to be used shall be:

...

— 1 kg butter = 22.5 kg milk.

...'

10 Article 4(1) of Regulation No 536/93 provides:

'In the case of direct sales, at the end of each of the periods referred to in Article 1 of Regulation (EEC) No 3950/92, the producer shall make a declaration summarising by product the quantities of milk and/or other milk products sold directly for consumption and/or to wholesalers, cheese maturers and the retail trade.

...'

11 Article 7(1) and (3) of Regulation No 536/93 state:

'1. Member States shall take all the verification measures necessary to ensure payment of the levy on quantities of milk and milk equivalent marketed in excess of any of the quantities referred to in Article 3 of Regulation (EEC) No 3950/92. To that end:

...

(f) producers with reference quantities for direct sales shall keep available to the competent authority of the Member State for at least three years stock accounts by 12-month period with details of the quantities, per month and per product, of milk and/or milk products sold directly for consumption and/or to wholesalers, cheese maturers and the retail trade, together with registers of livestock held on holdings and used for milk production, in accordance with Article 4(1) of Council Directive 92/102/EEC ..., and supporting documents enabling such stock accounts to be verified.

...

3. Member States shall physically verify the accuracy of the accounting with regard to the quantities of milk and milk equivalent marketed and, to that end, shall check milk transport during collection at farms and shall, in particular, check:

...

(b) at the premises of the producers with a reference quantity for direct sales, the credibility of the declaration referred to in Article 4(1) and the stock accounts referred to in paragraph 1(f).

...'

12 Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Regulation No 3950/92 (OJ 2001 L 187, p. 19) has repealed Regulation No 536/93 with effect from 31 March 2002. The first subparagraph of Article 6(1) is identical to the first subparagraph of Article 4(1) of Regulation No 536/93.

13 The second subparagraph of Article 6(2) of Regulation No 1392/2001 provides:

'The Member State may require producers with reference quantities for direct sales to declare that they have not sold any milk during the period concerned, where such is the case.'

National legislation

14 The Regeling superheffing 1993 (Regulation of 1993 on additional levies; 'the Regeling superheffing', *Nederlandse Staatscourant* 1993, No 60, p. 18) introduced the additional levy scheme for milk in the Netherlands.

15 Article 4 of the Regeling superheffing provides:

'1. The producer shall be liable to pay a levy in respect of the direct sale for consumption of a quantity of milk or milk equivalent that exceeds his reference quantity.

...'

16 Article 29 of the Regeling superheffing states:

'1. The producer referred to in Article 4 shall provide particulars to the Productschap, in accordance with the provisions of Article 4 of Regulation (EEC) No 536/93 and in accordance with the rules adopted by the Productschap in this regard, of the quantity of milk or other milk products that he has delivered directly to the consumer ... in the previous levy period, specified per product.

...'

17 Article 31 of the Regeling superheffing states:

'1. The ... producer who either is or may be liable to pay a levy pursuant to Articles ... 4 shall be obliged to keep records in accordance with the provisions of Article 7 of Regulation (EEC) No 536/93 and in accordance with the rules adopted by the Productschap.

2. The Productschap may, acting on its own initiative, determine the quantity delivered if the obligations laid down in the first paragraph and in Article 27(2) and Article 29(1) are either not or, in the opinion of the Productschap, incompletely performed.'

18 Article 11(1) of the Zuivelverordening 1994, Uitvoering regeling superheffing (Order of 1994 implementing the regulation on additional levies; 'the Zuivelverordening') (PBO-blad 1994, p. 26) reads as follows:

'The producer shall be obliged to keep records of everything regarding his business or holding in such a manner as to enable the production, stock and the quantities received or delivered of processed or manufactured milk, together with the financial data relating thereto, to be ascertained at all times, and to keep such records and data for a period of at least three years.'

The main proceedings and the questions referred for a preliminary ruling

19 Mr Slob is a milk producer. On an inspection of his holding in December 1997, for the 1996/97 levy period there was found to be a difference of approximately 250 000 kilograms of milk between production capacity, calculated on the basis of the size of the dairy herd kept by Mr Slob, on the one hand, and direct sales, as declared by Mr Slob to the Productschap, on the other.

20 Mr Slob asserted that he had processed the 250 000 kilograms of milk in question into butter in order to obtain buttermilk used to manufacture cheese and had destroyed the butter produced in this way immediately after production. He did not keep any stock accounts in relation to that production and destruction, such accounts being kept only in relation to the cheese obtained at the end of the process.

21 After determining on its own initiative, pursuant to Article 31(2) of the Regeling superheffing, the quantities of milk and other milk products which Mr Slob delivered directly for consumption during the 1996/97 levy period, the Productschap declared that he was liable for a sum of NLG 180 976.77 by way of additional levy in accordance with Article 4(2) of Regulation No 536/93.

22 Following an objection by Mr Slob, by decision of 4 April 2000 the Productschap reduced the amount of his liability in respect of the additional levy. However, it stated that Mr Slob's grounds of challenge were unfounded in so far as the abovementioned difference was concerned. In that decision it determined that no accounts had been kept for approximately 250 000 kilograms of milk. The Productschap concluded that Mr Slob had not kept a correct and complete record in the 1996/97 levy period of the production, stock and delivery of milk and milk products.

23 Mr Slob lodged an appeal against the decision of 4 April 2000 with the referring court.

24 When the matter was referred to it for a preliminary ruling by that national court, the Court of Justice held in Case C-236/02 *Slob* [2004] ECR I-1861 that the first sentence of Article 7(1) and Article 7(1)(f) of Regulation No 536/93 should be

interpreted as meaning that the stock accounts which producers are required to keep need state only the quantities, per month and per product, of milk and/or milk products sold.

25 The Court did not give a ruling on whether the Member States are competent to enact legislation imposing reporting obligations on milk producers established within their territory that go beyond those in the provision to be interpreted since that issue was not the subject-matter of the question referred (*Slob*, paragraph 30).

26 The College van Beroep voor het bedrijfsleven (Administrative court for trade and industry) has referred the matter to the Court once again. It notes that in its judgment in *Slob* the Court did not answer the question as to whether, on the basis of the first sentence of Article 7(1) and Article 7(3) of Regulation No 536/93, a Member State is entitled to impose on a producer, in addition to the obligation to maintain stock accounts in accordance with the first sentence of Article 7(1) and Article 7(1)(f) of that regulation, an obligation such as that laid down in Article 11(1) of the Zuivelverordening because that question, which arose in the course of proceedings, had not been referred by the national court.

27 The College van Beroep voor het bedrijfsleven has therefore decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 7(1) [first sentence] and (3) of Regulation No 536/93 to be interpreted as conferring on a Member State discretion as to whether to lay down a rule imposing on producers of milk products established in its territory an obligation to keep records which is more extensive than the obligation under Article 7(1)(f)?

(2) If the answer to that question is in the affirmative, must it then be held that a rule requiring the producer to account to the administration for the quantity of butter produced and for its use, even where the butter has been destroyed or used as feeding stuff, is within the Member State's discretion?'

The requests made by Mr Slob after the closure of the oral procedure

28 By application dated 14 July 2006, received by the Court Registry on 20 July 2006, Mr Slob sought leave from the Court to submit written observations following the Opinion of the Advocate General delivered at the sitting on 22 June 2006 and, in the alternative, requested the Court to order the reopening of the oral procedure pursuant to Article 61 of the Rules of Procedure or, in the further alternative, to respond in such a manner as to enable him to respond to the Opinion of the Advocate General in order to guarantee his fundamental right to an adversarial procedure.

29 Mr Slob submitted that that Opinion contains arguments that are erroneous both as to the facts and the law, which he did not, however, set out at that stage of the procedure in the interest of the efficacious conduct of the proceedings. He maintained that, whilst the Rules of Procedure do not provide the parties with the possibility of making written submissions following the delivery of the Opinion, they do not expressly rule out that possibility.

30 For the reasons set out at paragraphs 3 to 16 of the order in Case C-17/98 *Emesa Sugar* [2000] ECR I-665, the fact that the Statute of the Court of Justice and the Court's Rules of Procedure do not provide the parties with the possibility of

submitting observations in response to the Opinion delivered by the Advocate General cannot prejudice an individual's right to an adversarial procedure, as embodied in Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and as interpreted by the European Court of Human Rights.

31 The request seeking leave for Mr Slob to submit written observations in response to the Opinion of the Advocate General must therefore be rejected.

32 Bearing in mind the very purpose of an adversarial procedure, which is to prevent the Court from being influenced in its decision by an argument which the parties have been unable to discuss, the Court may of its own motion, on a proposal from the Advocate General, or at the request of the parties, order that the oral procedure be reopened, in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information or that the case must be decided on the basis of an argument which has not been debated between the parties (see the order of 28 April 2004 in Case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging*, not published in the ECR, paragraph 8; Case C-470/00 P *Parliament* v *Ripa di Meana and Others* [2004] ECR I-4167, paragraph 33; and Case C-432/04 *Commission* v *Cresson* [2006] ECR I-6387, paragraph 50).

33 In the present case, those conditions are not met.

34 It should further be noted that Article 234 EC establishes direct cooperation between the Court and the courts and tribunals of the Member States by way of a non-contentious procedure excluding any initiative of the parties, who are merely invited to be heard in the course of that procedure (see, to that effect, Case C-364/92 *SAT Fluggesellschaft* [1994] ECR I-43, paragraph 9).

35 Accordingly, the Advocate General having been heard, the request that the oral procedure be reopened must be rejected.

36 If follows from the above that the request made in the further alternative must also be rejected.

The questions

Question 1

37 The purpose of Regulation No 536/93 is to lay down detailed rules on the application of the additional levy on milk and milk products in order to ensure that the levy is applied effectively and to prevent fraud.

38 According to the eighth recital in the preamble to Regulation No 536/93, the Member States must have suitable means of conducting ex-post checks to verify whether, and if so to what extent, the levy has been collected in accordance with the provisions in force. Such checks are provided for by Article 7 of that regulation in order to ensure the accuracy of the statements of collection and declarations of direct sales drawn up by purchasers and producers (Joined Cases C-231/00, C-303/00 and C-451/00 *Cooperativa Lattepiù and Others* [2004] ECR I-2869, paragraph 70).

39 There is nothing to prevent a Member State from adopting measures beyond those set out in the second sentence of Article 7(1) and Article 7(3) of Regulation No 536/93 where it may deem them necessary. It is, in fact, clear from the wording

of the first sentence of Article 7(1) of that regulation that Member States are indeed required to take all the verification measures necessary to ensure payment of the levy. Whilst Article 7(1) and (3) go on to specify certain obligatory measures, they in no way prevent such measures from being supplemented by other measures which prove necessary in that Member State. As is apparent from the eighth recital in the preamble to Regulation No 536/93, the measures set out in the regulation are merely minimum requirements.

40 Contrary to what Mr Slob asserts, such latitude does not require any measures the Member States may adopt to be specified in the regulation itself.

41 Nevertheless, when adopting measures to implement Community legislation, national authorities must exercise their discretion in compliance with the general principles of Community law, which include the principles of proportionality, legal certainty and the protection of legitimate expectations (*Cooperativa Lattepiù and Others*, paragraph 57).

42 The answer to the first question must therefore be that the first sentence of Article 7(1) of Regulation No 536/93 must be interpreted as conferring discretion on a Member State to lay down rules, in so far as is necessary, imposing on producers of milk established in its territory supplementary obligations to keep records which are more extensive than the obligations under Article 7(1)(f). In exercising that discretion, the Member State must comply with the general principles of Community law.

Second question

43 By its second question, the national court asks, in essence, whether Community law precludes national legislation which requires milk producers to keep records of the quantity of butter produced and the use that it has been put to, even where the butter has been destroyed or used as feeding stuff.

44 It is to be noted that where a measure is adopted pursuant to the first sentence of Article 7(1) of Regulation No 536/93, it must be on the basis that such a measure is necessary.

45 The Netherlands Government has, in a convincing manner, justified the need for the measure at issue in the main proceedings on the basis of the structure of its milk sector and, in particular, the fact that there are a number of large dairy farms engaging in the direct sale of their produce, which are difficult to monitor on the basis of the Community requirements alone.

46 The principle of proportionality cannot preclude the monitoring in the Netherlands of quantities produced but not marketed. Nor does that measure go beyond what is necessary, in view of the structure of the Netherlands milk sector, to ensure effective supervision designed to prevent quantities produced but marketed outside the additional levy scheme for milk from entering the economy.

47 Nor can the principles of legal certainty and protection of legitimate expectations preclude supervisory measures such as those at issue in the main proceedings. The first sentence of Article 7(1) of Regulation No 536/93 read in conjunction with the eighth recital in the preamble to that regulation shows in a clear and precise manner that the list of measures set out in Article 7 is not exhaustive and that the Member States are indeed required, where necessary, to take additional measures (see, with regard to the criteria governing the principle of legal certainty, Case C-94/05 *Emsland-Stärke* [2006] ECR I-2619, paragraph 43). Moreover, the Court has held that the principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of Community law or the conduct of a national authority which is consistent with such a provision (see in this regard *Emsland-Stärke,* paragraph 31). A trader cannot therefore legitimately expect not to be subject to supplementary supervisory measures.

48 Contrary to Mr Slob's submission, a regulation such as that laid down by Article 11 of the Zuivelverordening does not change the basis of the additional levy. It is merely an additional means of ensuring supervision and must be applied in the light of the objective set out in Article 7(1) of Regulation No 536/93, which is to ensure that the additional levy is collected in compliance with the Community provisions in force.

49 In the light of the foregoing, the answer to the second question must be that Community law does not preclude legislation which requires milk producers to keep records of the quantity of butter produced and the use that it has been put to, even where the butter has been destroyed or used as feeding stuff, where, in the Member State concerned, it is found to be difficult to monitor effectively, on the basis of the Community requirements alone, the accuracy of statements of direct sales drawn up by producers.

Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **The first sentence of Article 7(1) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products must be interpreted as conferring discretion on a Member State to lay down rules, in so far as is necessary, imposing on producers of milk established in its territory supplementary obligations to keep records which are more extensive than the obligations under Article 7(1)(f). In exercising that discretion, the Member State must comply with the general principles of Community law.**

2. **Community law does not preclude legislation which requires milk producers to keep records of the quantity of butter produced and the use that it has been put to, even where the butter has been destroyed or used as feeding stuff, where, in the Member State concerned, it is found to be difficult to monitor effectively, on the basis of the Community requirements alone, the accuracy of statements of direct sales drawn up by producers.**

[Signatures]