OPINION OF MR ADVOCATE GENERAL JACOBS
delivered on 16 January 1992 *

My Lords,

1. In this case, the Finanzgericht Munich has referred two questions concerning the validity of Council Regulation No 775/87 of 16 March 1987 (Official Journal 1987 L 78, p. 5), temporarily withdrawing a proportion of the reference quantities mentioned in Article 5c(1) of Council Regulation No 804/68 (Official Journal, English Special Edition 1968 (I), p. 176) on the common organization of the market in milk and milk products.

2. In order to curb excess production, Article 1(1) of Regulation No 775/87 provides, in its first three subparagraphs, as follows:

'From the fourth 12-month period of application of the additional levy arrangements specified in Article 5c of Regulation (EEC) No 804/68, a uniform proportion of each reference quantity as mentioned in paragraph 1 of that Article shall be withdrawn.

This proportion shall be set to give a total withdrawn quantity of 4%, for the fourth period, and of 5.5%, for the fifth period, of the guaranteed total quantity for each Member State laid down in paragraph 3 of Article 5c of Regulation (EEC) No 804/68 for the third 12-month period.

However, Member States shall be authorized to withdraw, as from the fourth period, the quantities provided for the fifth period.'

The effect, as provided by Article 1(2), was to make any excess of milk or milk equivalent delivered or produced during each of the 12-month periods in question, over the quantities so reduced, subject to the additional levy. Article 2(1) provides for compensation, fixed at ECU 10 per 100 kilograms, to be granted in respect of the quantities withdrawn. Article 2(2) permits Member States to make a financial contribution to the measure by increasing the compensation for the quantities withdrawn in the fourth 12-month period up to ECU 12.5 per 100 kilograms.

3. Mr Hierl, who is the plaintiff in the main proceedings, farms a mixed holding, approximately one half of which consists of grazing land used mainly for dairy cattle. Mr Hierl enjoyed a reference quantity (or 'quota') of 17 000 kilograms, which on 16 June 1987 was reduced to 16 490 kilograms as from 1 April 1987. That reduction was made pursuant to Article 5c(3), second and third subparagraphs, of Regulation No 804/68, as amended by Council Regu-

* Original language: English.

lation No 1335/86 of 6 May 1986 (Official Journal 1986 L 119, p. 19). At the same time, a quantity of 935 kilograms, that is to say 5.5% of the original quota, was temporarily withdrawn, again with effect from 1 April 1987, pursuant to Regulation No 775/87; it is the withdrawal of the latter quantity which is at issue in these proceedings.

4. The Finanzgericht has doubts as to the validity of the provision upon which that withdrawal was based. In the first place, it observes that, by Article 39(2) of the Treaty, in implementing the common agricultural policy account is to be taken of 'the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions', as well as 'the need to effect the appropriate adjustments by degrees'. According to the Finanzgericht, it belongs to the particular nature of agricultural activity that, particularly in the case of dairy farming, agriculture has traditionally been carried on by family holdings, fodder from which is often used for the keeping of the cattle. It argues that such holdings require greater protection as compared with industrial-scale agricultural producers, and that the provisions on the withdrawal of reference quantities do not do justice to that need for protection. The Finanzgericht suggests, furthermore, that the uniform withdrawal of 5.5% of each quota is contrary to the principle of equal treatment.

5. The Finanzgericht has accordingly referred the following two questions to the Court:

'1. Are the first three subparagraphs of Article 1(1) of Regulation (EEC) No 775/87 of 16 March 1987 invalid as contrary to Article 39 of the EEC Treaty and the principle of equal treatment laid down in EEC law, on the ground that upon the withdrawal of reference quantities the same percentage rate of reduction is applied without distinction, irrespective of the amount of the individual reference quantity?

2. If Question 1 is answered in the affirmative:

Is the abovementioned legal provision invalid in its entirety or only in so far as milk producers having a certain reference quantity are affected thereby (and if so what quantity)?'

Conformity with the objectives of the common agricultural policy

6. I shall first consider the question whether the contested provision is consistent with the objectives of the common agricultural policy laid down in Article 39 of the Treaty. It should be emphasized at the outset, however, that it is clear from the case-law of the Court that the aim of Regulation No 775/87 as set out in its first recital, namely the attainment of a reasonable balance between supply and demand, is a legitimate one in the context of the common agricultural policy: see Case 84/87 *Erpelding* v *Secrétaire d'État à l'Agriculture et à la Viticulture* [1988] ECR 2647, at paragraph 26 of the judgment, and see also Case C-331/88 *Fedesa* [1990] ECR I-4023, paragraphs 26 to 27 of the judgment. Nor

has it been suggested that the measure in question is disproportionate to the attainment of that objective.

7. Given that the aims set out in Article 39 of the Treaty also include ensuring a fair standard of living for the agricultural community, easing the plight of the small farmer may also be a legitimate policy objective. The regulation cannot however be criticized for failing to make special provision to that end. As the Commission points out, there are in fact other provisions of the milk quota legislation which make it possible for Member States to single out small producers for more favourable treatment: see Article 2(1) of Commission Regulation No 1371/84 of 16 May 1984 (Official Journal 1984 L 132, p. 11), which enables Member States to take into account, in calculating amounts of quota, the level of deliveries of certain categories of person; and see also Article 3(b) of Council Regulation No 857/84, inserted by Article 1(2) of Council Regulation No 3880/89 of 11 December 1989 (Official Journal 1989 L 378, p. 3), which enables additional or special quotas to be granted to producers whose individual quotas do not exceed 60 000 kilograms. While all provisions of Community legislation must further some objective of the Community, it plainly cannot be required that every provision serve all of the Community's goals, some of which in any event could often not be realized simultaneously: see Joined Cases 197 to 200, 243, 245 and 247/80 *Ludwigshafener Walzmühle* v *Council and Commission* [1981] ECR 3211, at paragraph 41 of the judgment, and Case 203/86 *Spain* v *Council* [1988] ECR 4563, at paragraph 10 of the judgment.

8. Finally the Finanzgericht refers to Case 139/77 *Denkavit* v *Finanzamt Warendorf* [1978] ECR 1317, in support of the proposition that holdings which produce their own fodder are particularly worthy of protection, but it is clear that no such general proposition can be derived from that case. As the Danish Government observes, in Case 139/77 *Denkavit* the national measures at issue were designed to compensate German farmers for the revaluation of the German mark. Accordingly, the distinction between farmers who produced their own fodder, and those industrial producers who could import it from abroad, was relevant to the question whether a measure which gave more favourable treatment to the former category could be classified as discriminatory: see paragraph 17 of the judgment. I conclude that the contested provision is consistent with the objectives of the common agricultural policy laid down in Article 39 of the Treaty.

Equal treatment

9. It must next be considered whether the contested provision is contrary to the principle of equal treatment. That principle is not only a general principle of law, but is

also laid down, for the common organization of agricultural markets, by the second paragraph of Article 40(3) of the Treaty, which provides as follows:

'The common organization shall be limited to pursuit of the objectives set out in Article 39 and shall exclude any discrimination between producers or consumers within the Community.'

According to the case-law of the Court, discrimination can consist in treating different situations identically as much as in treating similar situations differently: see for example Case 13/63 *Italy* v *Commission* [1963] ECR 165 at 178, and Case 8/82 *Wagner* v *BALM* [1983] ECR 371, paragraph 18 of the judgment. The Finanzgericht suggests that the uniform withdrawal of 5.5% of every quota discriminates against small producers by treating them identically to large producers. The Finanzgericht argues, in particular, that smaller producers have greater difficulty than larger ones in adapting to the need to reduce production. For instance, a large producer can cut costs by buying in less imported fodder, whereas a small producer is more likely to produce his own feedingstuffs. Similarly, a large farmer is more likely to be able to compensate for reduced milk production by stepping up production of other products. That point of view is supported by the Greek Government which suggested, in its written observations and at the hearing, that the contested provision ignores the particularly difficult situation of small farmers.

10. It is to be noted that no concrete evidence is produced in support of the thesis that the contested measure has a relatively greater effect on small producers, and the proposition was disputed by both the Commission and the Danish Government in their written observations, and by the Commission at the hearing. As the Commission and the Danish Government point out, that proposition is by no means self-evident, given that large producers may bear a larger burden of fixed costs, and thus find it more difficult to scale down their production. Moreover, as the Council suggested in its own written observations, it is not inconceivable that the compensation provided for in Article 2 of Regulation No 775/87 would fully compensate for any loss of profits.

11. In any case, however, a measure which affects producers in different ways, depending upon the particular nature of their production or on local conditions, need not be regarded as discriminatory for the purposes of Article 40(3), if the measure is based on objective criteria and is designed to meet the needs of the common organization of the market: see Case 179/84 *Bozzetti* v *Invernizzi* [1985] ECR 2301, paragraph 34 of the judgment. There may in fact be no way of ensuring that the effects of a general measure are absolutely identical for all categories of producer; in such circumstances, it will be sufficient if the means chosen are objectively justified and appropriate to their purpose, as long as that purpose itself comes within the scope of the common agricultural policy: see Case 84/87 *Erpelding*, cited above in paragraph 6, at paragraph 30 of the judgment.

12. Thus, on the face of it, a uniform percentage withdrawal treats producers equally. In order to establish discrimination contrary to Article 40(3) of the Treaty, it would be necessary to show, not only that such a measure had disparate effects on different categories of producer, but also that the same objective could be achieved in a less discriminatory manner. The Greek Government suggests that it would have been possible to exempt small producers from the suspension of quota, or at least to provide for a smaller proportionate reduction in their case. It is clear, however, that such alternatives would have increased the proportion of the burden borne by larger producers. It is by no means obvious that either of those alternatives would have been a satisfactory means of achieving the necessary global reduction, or indeed would not have amounted to discrimination against large producers.

13. It is to be noted, finally, that the Community legislature enjoys a certain margin of discretion in enacting measures in the agricultural sector, which corresponds to its political responsibilities in that domain: see *Bozzetti* v *Invernizzi*, cited above in paragraph 11, at paragraph 30 of the judgment, and see Joined Cases C-267/88 to C-285/88 *Wuidart* [1990] ECR I-435, at paragraph 14 of the judgment. It is true that the latter judgment should not, in my opinion, be taken to suggest that measures which were *prima facie* discriminatory could be justified by the legislature's broad discretion; and it is to be noted that the passage from Case 265/87 *Schräder* [1989] ECR 2237 cited in that judgment was concerned with proportionality, not with discrimination. However, it is unnecessary to rely on the legislature's broad discretion to justify the measure in issue in the present case, which is not *prima facie* discriminatory, and where, in any event, it has not been shown that the measure lacks objective justification.

14. In my view, therefore, the first question referred by the Finanzgericht is to be answered in the negative. There is therefore no need to answer the second question.

Conclusion

15. I am accordingly of the opinion that the Court should answer the questions referred by the Finanzgericht as follows:

Examination of the questions referred has not revealed any factor of such a kind as to affect the validity of Article 1(1) of Regulation No 775/87 of 16 March 1987.