

Case C-285/93

Dominikanerinnen-Kloster Altenhohenau

v

Hauptzollamt Rosenheim

(Reference for a preliminary ruling
from the Finanzgericht München)

(Additional levy on milk — Reference quantity for direct sales)

Opinion of Advocate General Cosmas delivered on 15 June 1995 I - 4072
Judgment of the Court (Second Chamber), 23 November 1995 I - 4086

Summary of the Judgment

1. *Agriculture — Common organization of the markets — Milk and milk products — Additional levy on milk — Direct sale to consumption — Definition — Delivery of milk against indirect payment to the pupils of a boarding school run by the same institution as the agricultural holding producing the milk — Included*
(Council Regulation No 857/84, Art. 12(b))

2. *Agriculture — Common organization of the markets — Milk and milk products — Additional levy on milk — Allocation of reference quantities exempt from the levy — Not possible to accept an application for registration for the purpose of obtaining a reference quantity for direct sale submitted after the prescribed period has expired — Principle of proportionality — Breach — None*

(Council Regulation No 857/84, Art. 6(2) and Annex; Commission Regulations No 1371/84, Arts 4(1), second para., and 4(a), and No 1546/88)

3. *Agriculture — Common organization of the markets — Milk and milk products — Additional levy on milk — Allocation of reference quantities exempt from the levy — Grant of a reference quantity for direct sale despite the belatedness of the application for registration, in application of the principle of restoration to the status quo ante in a case of excusable error — Application of national law — Conditions and limits*

(Commission Regulation No 1371/84, Art. 4(1))

1. Article 12(h) of Regulation No 857/84 must, in view of both its wording, read in conjunction with Article 12(c), and the purpose of the additional milk levy scheme, which requires all production entering the commercial circuit in one way or another and thus influencing supply and demand to be taken into account, be interpreted as meaning that milk deliveries made by an agricultural holding to the pupils and boarders of a school against payment of the price of the milk indirectly by inclusion in the boarding fees must be described as direct sale within the meaning of that provision, and not own consumption, even where the agricultural holding, the school and the boarding facilities are run by the same institution.

allow for account to be taken of changes in the financial needs of the producer which are linked to the holding after expiry of that time-limit.

The requirement that the application be lodged within the time-limit allowed, which is intended to ensure rational and effective management of the additional levy scheme, is in conformity with the general principles of Community law, in particular the principle of proportionality, since it is appropriate and could reasonably be judged necessary in order to ensure that the total reference quantity requirements might be anticipated and that the quantities so defined were not exceeded.

2. The validity of Article 4(1) of Regulation No 1371/84 laying down detailed rules for the application of the additional levy on milk, which prescribes a time-limit for registration for the purpose of obtaining a reference quantity for direct sales of milk, is not affected by the fact that it does not

3. Article 4(1) of Regulation No 1371/84 laying down detailed rules for

the application of the additional levy on milk must be interpreted as meaning that a producer who, as a consequence of an excusable error, has not complied with the time-limit laid down by that provision for lodging an application for registration for the purpose of obtaining a reference quantity for direct sales may be allocated a reference quantity in applica-

tion of the principle of restoration to the *status quo ante* under the rules of national law, provided, however, that there is no discrimination in applying the national rule in comparison with the way in which cases of non-compliance with national time-limits are treated and that it is not applied in a way that would undermine the purposes of the milk quota scheme.