JUDGMENT OF THE COURT (Sixth Chamber)
25 March 2004 *

In Joined Cases C-231/00, C-303/00 and C-451/00,

REFERENCES to the Court under Article 234 EC by the Tribunale amministrativo regionale del Lazio (Italy) for a preliminary ruling in the proceedings pending before that court between

Cooperativa Lattepiù arl

and

Azienda di Stato per gli interventi nel mercato agricolo (AIMA) (C-231/00),

between

Azienda Agricola Marcello Balestreri e Maura Lena

and

Regione Lombardia,

* Language of the case: Italian.

Azienda di Stato per gli interventi nel mercato agricolo (AIMA) (C-303/00),

and between

Azienda Agricola Giuseppe Cantarello

and

Azienda di Stato per gli interventi nel mercato agricolo (AIMA),

Ministero delle Politiche Agricole e Forestali (C-451/00),

on the interpretation and validity of Articles 1, 4, 6 and 7 of 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), and of Articles 3 and 4 of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules for the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12),

THE COURT (Sixth Chamber),

composed of: V. Skouris (Rapporteur), acting for the President of the Sixth Chamber, C. Gulmann and J.-P. Puissochet, F. Macken and N. Colneric, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett and H.A. Rühl, Principal Administrators,

after considering the written observations submitted on behalf of:

— Azienda Agricola Marcello Balestreri e Maura Lena, by W. Viscardini Donà and M. Paolin, avvocati,

— Azienda Agricola Giuseppe Cantarello, by A. Zanichelli, L. Manzi and A. Manzi, avvocati,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by O. Fiumara and G. Aiello (C-231/00), O. Fiumara (C-303/00) and G. Aiello (C-451/00), avvocati dello Stato,

— the Greek Government, by G. Kanellopoulos and C. Tsiavou, acting as Agents,

— the Council of the European Union, by J. Carbery and F.P. Ruggeri Laderchi, acting as Agents,

— the Commission of the European Communities, by M. Niejahr and L. Visaggio, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Cooperativa Lattepiù arl, represented by A. Tonachella, avvocato; of Azienda Agricola Marcello Balestreri e Maura Lena, represented by W. Viscardini Donà; of Azienda Agricola Giuseppe Cantarello, represented by A. Zanichelli; of the Italian Government, represented by O. Fiumara; of the Greek Government, represented by G. Kanellopoulos; of the Council, represented by F.P. Ruggeri Laderchi; and of the Commission, represented by C. Cattabriga, acting as Agent, at the hearing on 12 December 2002,

after hearing the Opinion of the Advocate General at the sitting on 8 May 2003,

gives the following

Judgment

By judgments of 6 April, 28 June and 6 July 2000, received at the Court Registry on 9 June (Case C-231/00), 8 August 2000 (C-303/00) and 8 December 2000 (Case C-451/00) respectively, the Tribunale amministrativo regionale del Lazio (the Regional Administrative Court for Lazio) referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation and validity of Articles 1, 4, 6 and 7 of 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) and of Articles 3 and 4 of Commission Regulation (EEC) No 536/93 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12).

2 Those questions were raised in proceedings between various Italian milk producers and the Azienda di Stato per gli interventi nel mercato agricolo (State Agricultural Market Intervention Board, the 'AIMA') and, in two of these three cases, the Ministero delle Politiche Agricole e Forestali (Ministry of Agricultural and Forestry Policy) or the Regione Lombardia (Region of Lombardy) concerning the lawfulness of the decisions taken in 1999 by which the AIMA corrected the reference quantities allocated for the milk marketing years 1995/96 and 1996/97, to reallocate the unused reference quantities for those years and, in consequence, to recalculate the levies payable by producers for those years.

The relevant provisions

The provisions of Community law

3 In 1984, on account of a persistent imbalance between supply and demand in the milk sector, a system of additional levies was introduced by Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organisation of the market in milk and milk products (OJ, English Special Edition 1968 (I), p. 176), as amended by Council Regulation (EEC) No 856/84 of 31 March 1984 (OJ 1984 L 90, p. 10, 'Regulation No 804/68'), and by 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 No 804/68 (OJ 1984 L 90, p. 13). According to Article 5c, an additional levy is payable on quantities of milk which exceed a reference quantity to be determined.

4 That additional levy scheme, which was originally intended to last until 1 April 1993, was extended to 1 April 2000 by Regulation No 3950/92.

Article 1 of that regulation provides:

'For seven new consecutive periods of twelve months commencing on 1 April 1993, an additional levy shall be payable by producers of cow's milk on quantities of milk or milk equivalent delivered to a purchaser or sold directly for consumption during the 12-month period in question in excess of a quantity to be determined.

The levy shall be 115% of the target price for milk.'

In accordance with Article 2(1) of that regulation:

'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.

In accordance with a decision of the Member State, the contribution of producers towards the levy payable shall be established, after the unused reference quantities have been reallocated or not, either at the level of the purchaser, in the light of the overrun remaining after unused reference quantities have been allocated in proportion to the reference quantities of each producer, or at national level, in the light of the overrun in the reference quantity of each individual producer.'

7 Article 4 of Regulation No 3950/92, which lays down the criteria for the calculating of the individual quota available to each producer, provides:

'(1) The individual reference quantity available on the holding shall be equal to the quantity available on 31 March 1993 and shall be adjusted, where appropriate, for each of the periods concerned, so that the sum of the individual reference quantities of the same type does not exceed the corresponding global quantities referred to in Article 3, taking account of any reductions made for allocation to the national reserve provided for in Article 5.

(2) Individual reference quantities shall be increased or established at the duly justified request of producers to take account of changes affecting their deliveries and/or direct sales. The increase or establishment of such a reference quantity shall be subject to a corresponding reduction or cancellation of the other reference quantity the producer owns. Such adjustments may not lead to an increase in the sum of the deliveries and direct sales referred to in Article 3 for the Member State concerned.

Where the individual reference quantities undergo a definitive change, the quantities referred to in Article 3 shall be adjusted in accordance with the procedure laid down in Article 11.

...'

8 Article 6 of that regulation provides:

'1. Before a date that they shall determine and by 31 December at the latest, Member States shall authorise, for the 12-month period concerned, temporary

transfers of individual reference quantities which producers who are entitled thereto do not intend to use. However, the reference quantities referred to in Article 4(3) may not be the subject of such temporary transfers until 31 March 1995.

Member States may vary transfer operations depending on the category of producers or dairy production structures, may limit them at the level of the purchaser within regions and may determine to what extent transfer operations may be renewed.

2. Any Member State may decide not to implement paragraph 1 on the basis of one or both of the following criteria:

— the need to facilitate structural developments and adjustments,

— overriding administrative needs.'

According to Article 7 of that regulation:

'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. Any part of the reference quantity which is not transferred with the holding shall be added to the national reserve.

The same provisions shall apply to other cases of transfers involving comparable legal effects for producers.

2. Where there is no agreement between the parties, in the case of rural leases due to expire without any possibility of renewal on similar terms, or in situations involving comparable legal effects, the reference quantities available on the holdings in question shall be transferred in whole or in part to the producers taking them over, in accordance with provisions adopted or to be adopted by the Member States, taking account of the legitimate interests of the parties.'

10 Last, in accordance with Article 10 of Regulation No 3950/92:

'The levy shall be considered as intervention to stabilise agricultural markets and shall be used to finance expenditure in the milk sector.'

11 The fifth recital in the preamble to Regulation No 536/93 states that 'experience gained has shown that major delays in both the transmission of figures on collections or direct sales and payment of the levy, have prevented the arrangements from being fully effective' and that, 'therefore, lessons should be learned from the past and the necessary conclusions drawn by laying down strict requirements as regards notification and payment deadlines and providing for penalties where deadlines are not met'.

Article 3 of that regulation provides:

'(1) At the end of each of the periods referred to in Article 1 of Regulation... No 3950/92, the purchaser shall establish a statement for each producer showing, opposite the producer's reference quantity and the representative fat content of his production, the quantity and fat content of the milk and/or milk equivalent which he has delivered during the period.

...

(2) Before 15 May each year, the purchasers shall forward to the competent authority of the Member State a summary of the statements drawn up for each producer or, where appropriate, by decision of the Member State, the total quantity, the quantity corrected in accordance with Article 2(2) and average fat content of the milk and/or milk equivalent delivered to it by producers and the sum of the individual reference quantities and the average representative fat content of such producers' production.

Where that time-limit is not observed, the purchaser shall be liable to a penalty equal to the amount of the levy due for a 0.1% overrun on the quantities of milk and milk equivalent delivered to them by producers. Such penalty may not exceed ECU 20 000.

(3) Member States may provide that the competent authority shall notify the purchaser of the levies payable by him after reallocating, or not, by decision of the Member State, all or part of the unused reference quantities either directly to the producers concerned or to purchasers with a view to their subsequent allocation among the producers concerned.

(4) Before 1 September each year, the purchaser liable for levies shall pay the competent body the amount due in accordance with rules laid down by the Member State.

Where the time-limit for payment is not met, the sums due shall bear interest at a rate per annum fixed by the Member State and which shall not be lower than the rate of interest which the latter applies for the recovery of wrongly paid amounts.'

13 Article 4 of that regulation provides:

'(1) 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.

...

(2) Before 15 May each year, the producer shall forward declarations to the competent authority of the Member State.

Where that time-limit is not observed, the producer shall be liable to the levy on all the quantities of milk and milk equivalent sold directly in excess of his reference quantity or, where there is no overrun, to a penalty equal to the amount

of levy due for a 0.1% overrun of his reference quantity. Such penalty may not exceed ECU 1 000.

Where a declaration is not submitted before 1 July, the second paragraph of Article 5 of Regulation... No 3950/92 shall apply 30 days after the Member State has served notice.

(3) The Member State may provide that the competent authority shall notify the producer of the levies payable by him after reallocating, or not, by decision of the Member State, all or part of the unused reference quantities to the producers concerned.

(4) Before 1 September each year, the producer shall pay the amount due to the competent body in accordance with rules laid down by the Member State.

Where the time-limit for payment is not met, the sums due shall bear interest at a rate per annum fixed by the Member State.'

14 Under Article 7 of Regulation No 536/93:

'(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... No 3950/92.

...

(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:

(a) at the premises of the purchasers, the statements referred to in Article 3(1), the credibility of stock accounts and supplies as referred to in paragraph 1(c) and (d) with regard to the commercial documents and other documents proving now the collected milk and milk equivalent have been used;

(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).

...'

The provisions of national law

15 The Italian additional milk levy arrangements were originally implemented by Law No 468 of 26 November 1992 (*GURI* No 286 of 4 December 1992, p. 3, 'Law No 468/92'). That Law laid down, inter alia, criteria for the allocation of individual reference quantities and detailed rules for national adjustment (reallocation of unused reference quantities). That Law was subsequently

followed by an abundance of much amended legislation. The development of the law and regulations included the adoption of, on the one hand, Decree-Law No 727 of 23 December 1994 (*GURI* No 304 of 30 December 1994, p. 5, 'Decree-Law No 727/94'), now converted as amended into Law No 46 of 24 February 1995 (*GURI* No 48 of 27 February 1995, p. 3, 'Law No 46/95'), regulating the arrangements for reducing quantities allocated and, on the other, Finance Law No 662 of 23 December 1996 (ordinary supplement to *GURI* No 303 of 28 December 1996, p. 233, 'Law No 662/96'), Article 2(168) of which defines the criteria for national adjustment.

6 By judgment No 520 of 28 December 1995 the Corte costituzionale (Constitutional Court) (Italy) declared invalid Article 2(1) of Decree-Law No 727/94, converted as amended into Law No 46/95, in that, in determining the reduction of milk producers' individual quotas, it excluded the participation, at least in the form of a reference for an opinion, of the regions concerned. In addition, by judgment No 398 of 11 December 1998 the Corte costituzionale annulled Article 2(168) of Law No 662/96 on the ground that it made no provision for seeking the opinion of the autonomous provinces and regions.

7 In the meantime, the Commission of the European Communities brought an action against the Italian Republic, under Article 169 of the EC Treaty (now Article 226 EC), concerning the method laid down in Article 5 of Law No 468/92 for the reallocation of unused individual quantities. By reasoned opinion of 20 May 1996 the Commission challenged the opportunity given, in respect of deliveries, of reallocating unused quantities to associations of producers rather than to producers or purchasers as provided for by Regulations Nos 3950/92 and 536/93. No further steps were subsequently taken in those proceedings, the Italian authorities having put an end to the infringement at issue by adopting Law No 662/96, Article 2(166) of which provides that the method in question would no longer be applicable as from the milk marketing year 1995/96.

18 In order to put an end to the uncertainty surrounding the determining of actual milk production and caused by a system which had not made it possible to produce reliable information, in particular for the milk-marketing years 1995/96 and 1996/97, the Italian legislature decided to set up a Government Commission of Inquiry, as provided for by Decree-Law No 11 of 31 January 1997 (*GURI* No 25 of 31 January 1997, p. 3), converted as amended into Law No 81 of 28 March 1997 (*GURI* No 81 of 1 April 1997, p. 4). That Commission of Inquiry was entrusted with the task of ascertaining whether there were any irregularities in the management of quantities by individuals or public or private bodies and any irregularities in the marketing of milk and milk products by producers or in their use by purchasers.

19 In that context and in the light of the conclusions reached by that Government Commission of Inquiry, the Italian legislation was again amended by the adoption of Decree-Law No 411 of 1 December 1997 (*GURI* No 208 of 1 December 1997, p. 3, 'Decree-Law No 411/97'), converted as amended into Law No 5 of 27 January 1998 (*GURI* No 22 of 28 January 1998, p. 3, 'Law No 5/98'), and by the adoption of Decree-Law No 43 of 1 March 1999 (*GURI* No 50 of 2 March 1999, p. 8, 'Decree-Law No 43/99'), converted as amended into Law No 118 of 27 April 1999 (*GURI* No 100 of 30 April 1999, p. 4, 'Law No 118/99').

20 Article 2 of Law No 5/98 makes the AIMA responsible for determining, on the basis of, inter alia, the report made by the Government Commission of Inquiry and the surveys carried out and notified by the regions, the actual quantities of milk produced and marketed during the milk marketing years 1995/96 and 1996/97. According to Article 2(5), the AIMA is to inform producers within 60 days of the Decree-Law's entering into force of the individual reference quantities allocated to them and the quantities of milk marketed. With regard to the quantities determined by the AIMA, producers may seek to have those findings re-examined before the regions and autonomous provinces which must give a decision within 80 days of the expiry of the period of 60 days prescribed for the lodging of the application. Article 2(11) provides that, at the outcome of the checks carried out and the decisions taken on the applications for re-examination,

the AIMA is to make amendments to the forms used and to individual reference quantities for the purposes of the operation of national adjustments and the payment of the additional levy.

21 Article 1(1) of Decree-Law No 43/99 provides, first, that the AIMA is to make national adjustments for the milk-marketing years 1995/96 and 1996/97 on the basis of the information concerning the milk production which it has determined and, second, that it is to calculate the additional levy payable by each producer. In accordance with that provision, the AIMA is required to communicate the results of its calculations to the producers and purchasers, and also to the regions and autonomous provinces, within 60 days of the Decree-Law's coming into force.

22 According to Article 1(12), the results of national adjustments made in accordance with the new legislation are definitive for the purposes of payment of the additional levy, related settlements and the release of securities. According to Article 1(15), once purchasers have been notified by the AIMA of the levies for the milk-marketing years 1995/96 and 1996/97 they must pay the sums in question within 30 days and pay back any surpluses, informing the regions and autonomous provinces thereof.

23 With regard to the detailed rules governing the sale of reference quantities where there is no transfer of land, Article 18(9) and (10) of Presidential Decree No 569 of 23 December 1993 (ordinary supplement to *GURI* No 306 of 31 December 1993, 'Decree No 569/93') provides that '[t]he regions, once they have checked the correction of the documents referred to above and in accordance with the law applicable, shall forward to the AIMA before 15 January every year the list of sales effected up to 30 November ... Within the period prescribed in the previous paragraph, the AIMA shall carry out the checks necessary in order to ascertain whether the reference quantities sold actually correspond to those to which the transferor is entitled on the basis of [Law No 468/92]'. Finally, Article 18(12) of

that Decree provides that '[t]he validity of the transfer of milk quotas is conditional upon the outcome of the checks referred to in the paragraphs above'. Article 20 of that decree makes similarly-worded provision with regard to the lease of milk quotas.

The cases in the main proceedings and the questions referred for a preliminary ruling

Case C-231/00

24 By an action brought before the Tribunale amministrativo regionale del Lazio, Cooperativa Lattepiù arl, the applicant in those main proceedings, challenged the lawfulness of the AIMA's decisions to implement Article 1 of Decree-Law No 43/99, converted as amended into Law No 118/99, which made adjustments for the milk-marketing years 1995/96 and 1996/97. In support of its action, it has claimed inter alia that those decisions were unlawful in that they were adopted on the basis of a retroactive determining of individual reference quantities.

25 The national court states that, with regard to the dispute in the main proceedings, it must be ascertained generally whether national legislation providing for retroactive allocation of individual reference quantities or, in any case, for retroactive allocation under an administrative procedure is compatible with the general principles of the Community legal system. It is necessary to ascertain that before settling the dispute in the main proceedings, inasmuch as the answer to be given to the point of law raised in the main proceedings depends on that outcome.

26 Against that background, the national court considers that the Member States must be in a position to pursue, even if belatedly, the objectives set out in Article 33 EC, which would be irreparably compromised by a rigid interpretation of a rule of Community law which did not make it possible to reconcile the principle of the protection of legitimate expectations with those objectives. The fact that Community law itself in essence forbids the Member States to take upon themselves the burden of the levies militates in favour of an interpretation which, in cases of dispute, permits the operations required in respect of the levies to be performed even outside the periods prescribed by Regulations Nos 3950/92 and 536/93.

27 Those are the legal and factual circumstances in which the Tribunale amministrativo regionale del Lazio decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) May the provisions contained in Articles 1 and 4 of... Regulation... No 3950/92 ... and in Articles 3 and 4 of... Regulation... No 536/93... be interpreted as meaning that it is possible, in cases of administrative or judicial challenge, to derogate from the time-limits prescribed for the allocation of quotas and the operation of adjustments and levies?

(2) If not, are the provisions contained in Articles 1 and 4 of... Regulation... No 3950/92... and in Articles 3 and 4 of... Regulation... No 536/93...valid in the light of Article 33 EC (formerly Article 39 of the Treaty) in so far as they do not provide that derogations may be made from the periods prescribed by those provisions for the allocation of individual reference quantities and for the operation of adjustments and levies in cases of administrative or judicial challenge to those provisions?'

Case C-303/00

28 The applicant in this case, the Azienda Agricola Marcello Balestreri e Maura Lena, produces milk in the municipality of Stagno Lombardo (Italy). It was the holder of an individual reference quantity which it first leased, then bought, from another producer, the Maini Lino undertaking. Following checks made in respect of the transferor producer, the Italian authorities reduced the quantity allocated to the latter. Inasmuch as that quantity had been transferred, the competent authorities corrected the reference quantity held by the transferee.

29 That correction was challenged by the applicant in the main proceedings, in first administrative and then legal proceedings.

30 The court making the reference notes, first, that the power to make corrections is expressly provided for by Articles 18 and 20 of Decree No 569/93 with regard to sales and leases respectively of milk quotas. Second, it remarks that it is clear from the documents before it that the contracts of sale or lease at issue formally stipulated that their validity was conditional upon a favourable outcome of the checks made.

31 The national court makes reference to the facts of Case C-231/00, but states that, while the question whether or not retroactive allocation is indeed at issue in the case in point, a different situation is concerned, namely, that in which the AIMA, making *a posteriori* checks in order to determine whether the contracts for the transfer of milk quotas were correct, has established that the quotas originally mentioned in the notices do not correspond to those to which the holder was actually entitled.

32 Those were the circumstances in which the Tribunale amministrativo regionale del Lazio decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Do the provisions contained in Articles 1, 4, 6 and 7 of... Regulation... No 3950/92... and in Articles 3 and 4 of... Regulation... No 536/93... permit derogation from the time-limits for the allocation of quotas, and thus for adjustments and levies, where it is found, when ascertaining whether or not the contracts for the lease or sale of those quotas are lawful, that those originally allocated to the transferor were determined incorrectly, for reasons for which the authorities are not responsible?

(2) Are the abovementioned provisions of Community law valid, in the light of Article 33 EC (formerly Article 39 of the Treaty), in so far as they do not provide, in the case of subsequent verification of the individual reference quantities leased or sold, that the quota may be allocated retroactively, correcting the quantities incorrectly stated in the bulletins for reasons for which the administration is not responsible?'

Case C-451/00

33 By action brought before the Tribunale amministrativo regionale del Lazio, the applicant in the main proceedings, the Azienda Agricola Giuseppe Cantarello, challenged the lawfulness of the AIMA's decisions to implement Article 1 of Decree-Law No 43/99, converted as amended into Law No 118/99, which made adjustments for the milk marketing years 1995/96 and 1996/97.

34 That court refers to its judgment making a reference in Case C-231/00, and points out the need to clarify the questions already referred to the Court, taking into consideration the fact that Law 468/92 was also amended following a reasoned opinion of 20 May 1996 addressed by the Commission to the Italian Republic finding that the arrangements for adjustment at the level of associations of producers was not compatible with Regulation No 3950/92.

35 Those were the circumstances in which the Tribunale amministrativo regionale del Lazio decided therefore to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) May the provisions contained in Articles 1 and 4 of... Regulation... No 3950/92... and in Articles 3 and 4 of... Regulation... No 536/93... be interpreted as meaning that it is possible, in the case of Community law proceedings and the subsequent compliance of the Member State in question, to derogate from the time-limits prescribed for the allocation of quotas and the operation of adjustments and levies?

(2) If not, are those provisions of Community law valid, in the light of Article 33 EC (formerly Article 39 of the Treaty), in so far as they do not provide for derogation from the periods prescribed for allocation and adjustments in the abovementioned case of Community law proceedings?'

Concerning the first question

36 By its first question in these joined cases, the national court seeks in essence to ascertain whether, on a proper construction of Articles 1, 4, 6 and 7 of Regulation No 3950/92 and Articles 3 and 4 of Regulation No 536/93, a Member State is precluded, after checks have been carried out, from correcting the individual reference quantities allocated to each producer and, after the unused reference quantities have been reallocated, from recalculating in consequence the additional levies payable, after the final date for payment of those levies for the production period concerned.

Observations submitted to the Court

37 The applicants in the main proceedings claim that Articles 3 and 4 of Regulation No 536/93 laid down very precise time-limits for the operations that must be carried out by purchasers, producers and the Member State in connection with national adjustments and the collection of additional levies. It is, therefore, obvious that if it is to be possible to observe those time-limits prescribed by Community law, the allocation of, and indeed any alterations to, the individual reference quantities must be made before the beginning of the marketing year in order to enable producers to plan their undertaking's activities.

38 According to the applicants in the main proceedings, the mandatory nature of those time-limits is also confirmed by the Court's case-law in relation both to the additional levy on milk (Case C-292/97 *Karlsson* [2000] ECR I-2737, paragraph 32, and Case C-356/97 *Molkereigenossenscahft Wiedergelingen* [2000] ECR I-5461, paragraphs 38, 40 and 41) and to sugar (Case C-1/94 *Cavarzere Produzioni Industriali and Others* [1995] ECR I-2363).

39 In addition, the applicants in the main proceedings maintain that if the time-limits laid down by Regulations Nos 3950/92 and 536/93 were not strictly and absolutely required to be observed, the Community legislation in that field could attain neither its specific objectives nor the general objectives of the common agricultural policy.

40 Finally, they argue that an interpretation according to which it was permitted to derogate from those time-limits, so authorising retroactive allocation of reference quantities, even after the end of the milk marketing year concerned and, therefore, retroactive collection of the additional levies payable, is contrary both to the principle of proportionality and to the principles of legal certainty and of the protection of legitimate expectations.

41 With regard to the principle of proportionality, the applicants maintain, first of all, that the additional levy is tantamount to a penalty which is acceptable only if it does not exceed what is appropriate and necessary in order to attain the end sought by the legislation in question. In their view, it is irrational to make a request for payment of an additional levy after the final date for payment of that sum for the milk-marketing year concerned if the reference quantity, on the basis of which the levy is calculated, does not reflect actual production during that marketing year.

42 They claim that the principle of protection of legitimate expectations has been infringed because producers could expect to be notified in good time of measures affecting investment in the production and marketing of milk. At the hearing, the applicants stressed the point that they were unable to discover the individual reference quantities allocated to them for the milk-marketing years concerned, with the result that the corrections made by the Italian authorities in 1999 amounted in fact to retroactive allocation of quotas.

43 The Italian Government argues that if divergences, errors and disputes appear in the determining of reference quantities the entire mechanism is affected, with more or less significant alterations to the permissible reference quantities which can be determined only after the event.

44 According to the Italian Government, rational interpretation of the Community regulations gives rise to the consideration that retroactive determining of quotas is compatible with the system adopted, since the quotas originally defined have been corrected, following amendment of the rules implementing those regulations.

45 In addition, the Italian Government maintains that corrections caused by application of national provisions adopted purely in order to make the additional levy payable must by definition have retroactive effect, given that their purpose is to define the quantities to be allocated to each producer and, in consequence, the amount of milk in fact produced and marketed. Likewise, the Italian Government's action, intended to place the burden of the additional levy upon the producers responsible for the surpluses, as required by the Commission when initiating infringement proceedings in 1997, must *ex hypothesi* be founded on retroactive determining of reference quantities.

46 That Government proposes, therefore, that on a proper construction of Articles 1 and 4 of Regulation No 3950/92 and Articles 3 and 4 of Regulation No 536/93 the time-limits fixed for allocation of quotas and for making adjustments are quite ordinary time-limits and it is in consequence possible to derogate from them, where there are disputes, in legal or administrative proceedings.

47 As regards the supposed breach of the principle of protection of legitimate expectations, the Italian Government maintains that the various traders knew, or ought to have known, the provisions of Community law applicable and the production ceilings they set at national level and, consequently, for individuals also, by prohibiting the exceeding, in any circumstances, of production for the reference year. It adds that the determining of individual quantities after the event was done, so far as possible, during discussions with the producers in which their views were heard and in which, consequently, they participated.

48 So far as the sale or lease of individual quantities is specifically concerned, the Italian Government states that the purpose of carrying out checks is to ensure that the quantities individually allocated coincide with the global quantity attributed to Italy and that the global quantities sold or leased are those to which the transferees were entitled. If the quantity allocated to the transferor was not correctly calculated, it would be necessary to recalculate those quantities.

49 Next, making reference to Articles 18(12) and 20(13) of Decree No 569/93, the Italian Government argues that the parties to the contracts may not plead the protection of legitimate expectations because those articles provide that the validity of the contract depends upon the outcome of the checks made.

50 The Italian Government notes, lastly, the importance attached by the Community legislation applicable in this area to the checks made in order to ensure the proper payment of the additional levy by those traders who have contributed to the production surpluses. The additional levy can be set for the various producers concerned only if the quantities have been correctly allocated.

51 The Greek Government, which has submitted observations in Case C-303/00 alone, follows much the same line of reasoning as the Italian.

52 The Commission states that Regulations Nos 3950/92 and 536/93 brought about no new allocation of individual reference quantities as compared with the previous arrangements and prescribed no time-limits for making such allocation. Likewise, the reallocation of unused individual quantities provided for in Articles 3(3) and 4(3) of Regulation No 536/93 does not amount to a new allocation of individual reference quantities to producers.

53 Following its preliminary remarks, the Commission refers to the principle of the Member States' procedural autonomy. In its view, the fact that neither Regulation No 3950/92 nor Regulation No 536/93 expressly takes into consideration the hypothesis of making corrections after checks have been carried out shows that it is for the Member State to take the necessary measures in accordance with the criteria drawn up under its own domestic law.

54 It argues that it follows that, in order to guarantee that the Community legislation is correctly and efficiently implemented, the outcome of checks carried out by the Member States might, but also must, give rise to a measure correcting the reference quantity in question and, consequently, the amount of the levies payable, even after the end of the production period to which they refer. The fact that measures correcting the individual reference quantities and recalculating the levies were taken after the production periods concerned had come to an end does not relieve either the Member State or the traders concerned of the obligation to observe, even in the medium term, the provisions of the relevant regulations.

The Court's answer

55 It must at the outset be remarked that no provision in Regulation No 3950/92 or Regulation No 536/93 provides for the correction *a posteriori* of individual reference quantities allocated to milk producers or the consequential correction of the additional levies payable by them.

56 According to the general principles on which the Community is based and which govern relations between it and the Member States, it is for the latter, under Article 5 of the EC Treaty (now Article 10 EC), to ensure that Community rules are implemented within their territories. In so far as Community law, including its general principles, does not include common rules to that effect then, when the national authorities implement Community rules, they are to act in accordance with the procedural and substantive rules of their own national law (see, in particular, Case C-285/93 *Dominikanerinnen-Kloster Altenhohenau* [1995] ECR I-4069, paragraph 26, and *Karlsson and Others*, cited above, paragraph 27).

57 Nevertheless, when adopting measures to implement Community legislation, national authorities must exercise their discretion in compliance with the general rules of Community law, which include the principles of proportionality, legal certainty and the protection of legitimate expectations (see, to that effect, Case C-313/99 *Mulligan and Others* [2002] ECR I-5719, paragraphs 35 and 36).

58 It follows that, in order to provide a helpful reply to the first question and, more specifically, to ascertain whether or not it is contrary to the relevant provisions of Regulations Nos 3950/92 and 536/93 for corrections to be made *a posteriori* to reference quantities allocated to producers and for the amounts of the additional

levies payable by them to be altered as a result, it is necessary to examine whether such measures are compatible with the wording and purpose of those provisions, with the objectives and general scheme of the legislation concerning the arrangements for the additional levy on milk and with the general principles of Community law.

As regards the wording of the relevant provisions, that there is nothing in Articles 1, 4, 6 and 7 of Regulation No 3950/92 and Articles 3 and 4 of Regulation No 536/93 expressly precluding the adoption by national authorities of measures such as those at issue in the main proceedings. The same is true of the provisions of those regulations in their entirety.

As to the purpose of those provisions, Articles 1 and 4 of Regulation No 3950/92 cannot be regarded as providing for a fresh allocation of individual reference quantities or, still less, as setting a specific time-limit for such allocation.

Regulation No 3950/92 is intended to extend the additional milk levy scheme introduced by earlier legislation and is based on the premiss that milk quotas have already been allocated in all the Member States respectively (see *Karlsson and Others*, paragraph 32).

The first recital in the preamble to that regulation thus states that the scheme introduced by Regulation No 856/84 is to 'continue' and Article 1 provides that the additional levy on milk is payable for seven 'new' consecutive periods of 12 months. Along the same lines Article 4(1) of Regulation No 3950/92 provides that the individual reference quantities allocated for future production periods are to be determined on the basis of the reference quantities held by the producers on the last day on which the previously applicable legislation was in force, namely, 31 March 1993.

63 However, having regard to the fact that it was not the Community legislature's intention to fix those reference quantities definitively for the whole duration of the extension of the additional-milk-levy arrangements, Article 4(2) of Regulation No 3950/92 provides, in essence, that those quantities may be adjusted for each of the milk-marketing years concerned, provided that the sum of the individual reference quantities for sales to dairies and direct sales does not exceed the guaranteed global quantity allocated to the Member State, taking account of any reductions made by the latter in order to supplement its national reserve.

64 In addition, Article 6 of Regulation No 3950/92, which provides that Member States are to authorise temporary transfers of milk quotas for a period of 12 months, before a date that they are to determine and by 31 December, is not to be interpreted as meaning that, after that date, the quantity transferred for one milk marketing year may not be subject to checking and correction. Indeed, that date is simply the point in time beyond which producers are no longer authorised to agree a transfer of milk quotas for the current marketing year.

65 As regards Article 7 of Regulation No 3950/92, it must be borne in mind that it expressly provides that the detailed rules in accordance with which, in the case of sale, lease or transfer by inheritance of a dairy farm, the reference quantity available on that holding is to be transferred with the holding to the producers taking it over, are to be determined by the Member States. Clearly, therefore, that article is not to be regarded as prohibiting the competent authorities of the Member States from carrying out *a posteriori* checks in order to determine whether the reference quantity transferred is correct.

66 In those circumstances, Articles 1, 4, 6 and 7 of Regulation No 3950/92 cannot be interpreted as precluding national authorities from correcting inaccurate reference

quantities after the end of the marketing year concerned, when the particular purpose of those corrections is that a Member State's production free from additional levies should not exceed the guaranteed global quantity allocated to that State.

67 The same is true so far as Articles 3 and 4 of Regulation No 536/93 are concerned. In this regard it must be borne in mind that it is clear from reading Article 3(2) in conjunction with Article 4(2) that purchasers, on the one hand, and producers selling their own output directly, on the other, must send to the competent national authority before 15 May the statement of collections or the declaration of production sold during the previous financial year. It is equally clear from reading the third paragraphs of those articles that the Member States may provide that the competent authority is to notify the purchasers, or the producers, as the case may be, of the amount of the levy payable by them after reallocating, or not, all or part of the unused reference quantities. Finally, in accordance with the fourth paragraphs of those articles, purchasers or producers, as the case may be, must pay the amounts due before the following 1 September.

68 Although the time-limits prescribed by those articles are mandatory (see, to that effect, *Molkereigenossenschaft Wiedergeltingen*, paragraphs 38 to 40), the fact remains that they do not preclude the competent authorities of a Member State from making after-the-event checks and corrections for the purpose of ensuring that that Member State's production does not exceed the guaranteed global quantity allocated to it.

69 On the contrary, the aim both of the time-limits laid down in Articles 3 and 4 of Regulation No 536/93 and of checks and corrections made after the event, such as those carried out by the AIMA, is to ensure that the additional milk levy system is operated efficiently and the relevant legislation applied correctly.

70 It ought also at this point to be recalled that, in accordance with 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. It is clear, first, that such checks can be made only after the milk-marketing year concerned has ended and, second, that they may result in the correcting of the reference quantities allocated and, in consequence, in the recalculating of the levies payable.

71 Furthermore, that interpretation of Articles 1, 4, 6 and 7 of Regulation No 3950/92 and of Articles 3 and 4 of Regulation No 536/93 is also supported by the objective pursued by the legislation establishing the additional levy on milk. As the Advocate General made clear in paragraph 66 of his Opinion, the objectives of that legislation would be compromised if, as a result of miscalculation of individual reference quantities, a Member State's milk production were to exceed the guaranteed global quantity allocated to that State but that overrun did not give rise to payment of the additional levy due. In such a case, there would be a breach of the joint responsibility on which the arrangements for the additional levy on milk are based, in that producers would enjoy the benefits afforded by the setting of a target price for milk without bearing the restrictions by means of which such a target price can be maintained. Producers whose excess production was thus unduly exempted from the additional levy would gain an unjustified competitive advantage over the producers of Member States which apply the Community legislation correctly.

72 Finally, so far as concerns the compatibility with the general principles of proportionality and the protection of legitimate expectations of checking and correcting measures such as those adopted by AIMA in the cases in the main proceedings, the arguments of the applicants in those cases cannot be accepted.

73 As regards the principle of proportionality, it must first be noted that the purpose of the additional levy system is to re-establish, by limiting milk production, the balance between supply and demand in the milk market, which is characterised by structural surpluses. This measure, therefore, is within the ambit of the objectives of rational development of milk production and, by contributing to a stabilisation of the income of the agricultural community affected, that of ensuring a fair standard of living for the agricultural community (Case 84/87 *Erpelding* [1988] ECR 2647, paragraph 26).

74 It follows that, contrary to the arguments of the applicants in the main proceedings, the additional levy is not to be regarded as a penalty analogous to those provided for under Articles 3 and 4 of Regulation No 536/93. The additional levy on milk amounts to a restriction arising from market policy rules or structural policy (see, to that effect, Case C-177/90 *Kühn* [1992] ECR I-35, paragraph 13).

75 Next, as Article 10 of Regulation No 3950/92 clearly shows, the additional levy is to be considered to be intervention to stabilise agricultural markets and is to be used to finance expenditure in the milk sector. It follows that, apart from its obvious aim of requiring milk producers to observe the reference quantities allocated to them, the additional levy has an economic objective too, in that it is intended to bring to the Community the funds necessary for disposal of milk produced by producers in excess of their quotas.

76 It must be added here that, as the Commission said at the hearing, the overrun of production remains long after the milk-marketing year in question has ended, in the form inter alia of stocks of milk products.

77 Consequently, with regard to measures such as those taken by the AIMA in the cases in the main proceedings, the question of the compatibility of retroactive application of sanctions is not relevant.

78 What is more, it is not disputed that measures such as those at issue in the main proceedings are appropriate for the purpose of attaining the objective pursued.

79 As to the question whether such measures do not go beyond what is necessary in order to achieve their aim, account must be taken of the fact that, as shown in the judgments making the references, the individual reference quantities originally allocated by the Italian authorities contained a great number of errors, due in particular to the circumstance that the actual production on the basis of which those quantities were allocated had been certified by the producers themselves. Among the errors so identified, the Government Commission of Inquiry found, in particular, that more than 2 000 farms which reported milk production did not possess any cows.

80 That being so, measures such as those taken by the AIMA in the circumstances of the cases in the main proceedings are not to be considered disproportionate to the objective pursued.

81 As regards, last, the principle of the protection of legitimate expectations, the applicants in the main proceedings take the view that, in adopting the measures at issue, the Italian authorities have disregarded their legitimate expectations in that, on the one hand, the corrections to the individual reference quantities and the recalculation of the additional levies payable took place two and three years respectively after the marketing years concerned and in that, on the other hand, it was not until 1999 that the applicants in the main proceedings learned of the reference quantities allocated to them.

82 With regard to the first argument, it must be stated that in so far as a producer's individual reference quantity actually corresponds to the quantity of milk marketed by that producer during the reference year, that producer, who is as a rule aware of how much milk he has produced, can have no legitimate expectation that an inaccurate reference quantity will be continued.

83 As to the second argument, it is to be noted that, as is clear from the documents before the Court, it was only in 1992 that the first legislative provisions designed to implement the system of the additional levy on milk were adopted in Italy. Furthermore, Italian milk producers were not required to pay that levy until the milk-marketing year 1995/96. No legitimate expectation can be entertained as to the continuation of a situation which is plainly unlawful in the light of Community law, namely, the failure to apply the arrangements for the additional levy on milk. Indeed, regardless of the specific circumstances of the case in point, milk producers in the Member States cannot legitimately expect, 11 years after the system was introduced, to be able to go on producing milk without limit.

84 Moreover, it must be added that the situations described by the national court as being at the source of the checks and corrections made by the Italian authorities are not capable of affecting the interpretation of the relevant provisions of Regulations Nos 3950/92 and 536/93. It is immaterial that the errors in determining the reference quantities were discovered after the national measures taken to implement the arrangements for the additional levy had become the subject-matter of an administrative or judicial challenge, or in the course of checking that transfer of a milk quota was proper, or even after the national legislation was amended to make it compatible with Community law. In other words, none of those situations can affect the Italian authorities' duty to correct the erroneous individual reference quantities in order to ensure that the Community arrangements for the additional levy on milk are properly implemented.

85 Having regard to all the foregoing considerations, the answer to be given to the first question must therefore be that on a proper construction of Articles 1, 4, 6 and 7 of Regulation No 3950/92 and Articles 3 and 4 of Regulation No 536/93, it is not contrary to those provisions for a Member State, after checks have been carried out, to correct the individual reference quantities allocated to each producer and, after the unused reference quantities have been reallocated, to recalculate in consequence the additional levies payable, after the final date for payment of those levies for the milk marketing year concerned.

Concerning the second question

86 Having regard to the answer given to the first question, there is no need to reply to the second.

Costs

87 The costs incurred by the Italian and Greek Governments and by the Council and the Commission, 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 Tribunale amministrativo regionale del Lazio by judgments of 6 April, 28 June and 6 July 2000, hereby rules:

On a proper construction of Articles 1, 4, 6 and 7 of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector and of Articles 3 and 4 of Commission Regulation (EEC) No 536/93 laying down detailed rules on the application of the additional levy on milk and milk products, it is not contrary to those provisions for a Member State, after checks have been carried out, to correct the individual reference quantities allocated to each producer and, after the unused reference quantities have been reallocated, to recalculate in consequence the additional levies payable, after the final date for payment of those levies for the milk marketing year concerned.

Skouris Gulmann Puissochet

Macken Colneric

Delivered in open court in Luxembourg on 25 March 2004.

R. Grass V. Skouris

Registrar President