JUDGMENT OF THE COURT (Sixth Chamber)

25 March 2004 *

In Joined Cases C-480/00 to 482/00, C-484/00, C-489/00 to C-491/00 and C-497/00 to C-499/00,

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

Azienda Agricola Ettore Ribaldi

and

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

Ministero del Tesoro, del Bilancio e della Programmazione Economica,

intervener:

Caseificio Nazionale Novarese Soc. coop. arl (C-480/00),

* Language of the case: Italian.

between

Domenico Buttiglione and Others

and

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

Ministero delle Politiche Agricole e Forestali (C-481/00),

between

Azienda Agricola Ettore Raffa and Others

and

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

Ministero del Tesoro, del Bilancio e della Programmazione Economica (C-482/00),

between

Carlo Balestreri

and

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

Ministero del Tesoro, del Bilancio e della Programmazione Economica,

intervener:

Parmalat SpA (C-484/00),

between:

Azienda Agricola 'Corte delle Piacentine' and Others

and

Azienda di Stato per gli interventi nel mercato agricolo (AIMA) (C-489/00),

between

Cesare e Michele Filippi ss

and

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

Ministero del Tesoro, del Bilancio e della Programmazione Economica (C-490/00),

between

Cooperativa Produttori Latte Associati della Lessinia arl

and

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

Ministero del Tesoro, del Bilancio e della Programmazione Economica (C-491/00),

between

Azienda Agricola Simone e Stefano Gonal di Gonzato

and

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

Ministero del Tesoro, del Bilancio e della Programmazione Economica (C-497/00),

between

Azienda Agricola Gianluigi Cerati e Maria Ceriali ss

and

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

Ministero del Tesoro, del Bilancio e della Programmazione Economica (C-498/00),

between

Nicolò Musini, acting for l'Azienda Agricola Tenuta di Fassia,

and

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

Ministero del Tesoro, del Bilancio e della Programmazione Economica,

intervener:

Cooperativa Produttori Latte Soc. coop. arl (C-499/00),

on the interpretation and validity of Articles 1, 2 and 4 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 on 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, 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 Ettore Ribaldi, by E. Ermondi, avvocatessa,

— D. Buttiglione and Others, by G.R. Notarnicola and M. de Stasio, avvocati,

— Azienda Agricola Ettore Raffa and Others, by C. Verticale, M. Condinanzi and B. Nascimbene, avvocati,

— C. Balestreri, by C. Verticale, M. Condinanzi and B. Nascimbene, avvocati,

— Azienda Agricola 'Corte delle Piacentine' and Others, by R. Corradi, avvocato,

— Cesare and Michele Filippi ss, by M. Aldegheri, avvocatessa,

— Cooperativa Produttori Latte della Lessinia arl, by M. Aldegheri, avvocatessa,

— Azienda Agricola Simone e Stefano Gonal di Gonzato, by F. Gabrieli and F. Volpe, avvocati,

— Azienda Agricola Gianluigi Cerati e Maria Ceriali ss, by G. Pizzoccaro and S. Bernocchi, avvocati,

— N. Musini, acting for Azienda Agricola Tenuta di Fassia, by M. Nicolini, B. Nascimbene and M. Condinanzi, avvocati,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by O. Fiumara and G. Aiello, avvocati dello Stato,

— 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 Azienda Agricola Ettore Ribaldi, represented by E. Ermondi, of D. Buttiglione and Others, represented by G.R. Notarnicola and M. de Stasio, of Azienda Agricola Ettore Raffa and Others, C. Balestreri and N. Musini, acting for Azienda Agricola Tenuta di Fassia, represented by M. Condinanzi and B. Nascimbene, of Azienda Agricola 'Corte della Piacentine' and Others, represented by R. Corradi and M. Tomaselli, avvocato, of Cesare e Michele Filippi ss and Cooperativa Produttori Latte della Lessinia arl, represented by M. Aldegheri, of Azienda Agricola Simone e Stefano Gonal di Gonzato, represented by F. Volpe, F. Gabrieli and F. Piazza, avvocato, of Azienda Agricola Gianluigi Cerati e Maria Ceriali ss, represented by S. Bernocchi, of the Italian Government, represented by O. Fiumara, of the Greek Government, represented by G. Kanellopoulos, acting as Agent, of the Council, represented by F. 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

1 By judgments of 6 July 2000, received at the Court Registry on 29 December 2000, the Tribunale amministrativo regionale del Lazio (the Regional Administrative Court for Lazio) referred to the Court for a preliminary ruling seven questions on the interpretation and validity of Articles 1, 2 and 4 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 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, 'AIMA') and, in some of the cases, the Ministero del Tesoro, del Bilancio e della Programmazione Economica (the Ministry of the Treasury, the Budget and Economic Planning) or the Ministero delle Politiche Agricole e Forestali (Ministry of Agricultural and Forestry Policy) 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

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.

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 cows' 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.'

6 In accordance with Article 2 of that regulation:

'(1) 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.

...

(4) Where the levy is payable and the amount collected is greater than that levy, the Member State may use the excess to finance the measures referred to in the first indent of Article 8 and/or redistribute it to producers who fall within priority categories established by the Member State on the basis of objective criteria to be determined or who are affected by an exceptional situation resulting from a national provision unconnected with this scheme.'

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 Finally, in accordance with Article 10 of that regulation:

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

9 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'.

10 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.'

11 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... 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...'

2 Article 5 of Regulation No 536/93 provides:

'(1) Where appropriate, Member States shall determine the priority categories of producers as referred to in Article 2(4) of Regulation... No 3950/92 on the basis of one or more of the following objective criteria, in order of priority:

...

(b) the geographical location of the holding, and primarily mountain areas as defined in Article 3(3) of Council Directive 75/268/EEC...;

...'

13 Under Article 7 of that regulation:

'(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

14 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, 233, 'Law No 662/96'), Article 2(168) of which defines the criteria for national adjustment.

15 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 that court 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.

16 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.

17 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.

18 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').

19 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.

20 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 those 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.

21 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 autonomous provinces and regions thereof.

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

22 By actions brought before the Tribunale amministrativo regionale del Lazio, the applicants in the main proceedings have challenged the lawfulness of the AIMA's decisions to reallocate, pursuant to Article 1 of Decree-Law No 43/99, converted as amended into Law No 118/99, unused reference quantities for the milk marketing years 1995/96 and 1996/97. In support of their actions, they have claimed inter alia that those decisions are unlawful in that they were adopted on the basis of a retroactive determining of individual reference quantities.

23 The national court states that, with regard to the disputes 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 disputes in the main proceedings, inasmuch as the answer to be given to the points of law raised in the main proceedings depends on that outcome.

24 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.

25 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:

First question (C-480/00 to C-482/00, C-484/00, C-489/00 to C-491/00 and C-497/00 to C-499/00)

'May the provisions contained in Articles 1 and 4 of... Regulation... No 3950/92 ... and 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 the relevant measures, to derogate from the time-limits prescribed for the allocation of quotas and the operation of adjustments and levies?'

Second question (C-480/00 to C-482/00, C-484/00, C-489/00 to C-491/00 and C-497/00 to C-499/00)

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

Third question (C-480/00, C-482/00, C-489/00 to C-491/00 and C-497/00 to C-499/00)

'Are Regulations ... Nos 3950/92 and 536/93 to be interpreted as meaning that the application of the system introduced by that legislation excludes the allocation and official notification to producers of individual reference quantities or that it excludes the official redistribution among its producers by the Member State of the global quantity which that State is guaranteed?'

Fourth question (C-480/00, C-482/00, C-489/00 to C-491/00 and C-497/00 to C-499/00)

'May Articles 3 and 4 of Regulation... No 3950/92 be interpreted as meaning that the Member State need not necessarily give official notification of individual reference quantities to producers or that it may allocate reference quantities to those producers without notifying them individually?'

Fifth question (C-484/00)

'May Regulations... Nos 3950/92 and 536/93 be interpreted as meaning that the individual reference quantity need not necessarily be notified separately to each producer, but may be communicated in other ways such as the publication of bulletins?'

Sixth question (C-480/00, C-490/00 and C-491/00)

'May Article 2(1) of Regulation... 3950/92 and Article 3(3) of Regulation... No 536/93 be interpreted as leaving the Member States free to determine privileged categories of producers who must be compensated in priority to others?'

Seventh question (C-481/00)

'May Regulations... Nos 3950/92 and 536/93 be interpreted as permitting Member States to determine privileged categories of producers who must be compensated in priority to others, in particular by placing the "disadvantaged" areas in a secondary position in relation to mountain areas?'

Concerning the first question

By its first question, the national court seeks in essence to ascertain whether, on a proper construction of Articles 1 and 4 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

27 The applicants in the main proceedings argue 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.

28 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).

29 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.

30 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.

With regard to the principle of proportionality, the applicants in the main proceedings maintain that the penalty of the additional levy 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.

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.

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.

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.

35 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.

36 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.

37 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.

38 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.

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.

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

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.

According to the general principles on which the Community is based and which govern relations between the Community 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).

43 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).

44 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 after the event 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.

45 As regards the wording of the relevant provisions, that there is nothing in Articles 1 and 4 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.

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.

50 In those circumstances, Articles 1 and 4 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 production free from the Member State's additional levies should not exceed the guaranteed global quantity allocated to that State.

51 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.

52 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.

53 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.

54 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.

55 Furthermore, that interpretation of Articles 1 and 4 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.

56 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.

57 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).

58 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).

59 Then, 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.

60 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.

61 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.

62 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.

63 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.

64 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.

65 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.

66 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.

67 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.

68 Having regard to all the foregoing considerations, the answer to be given to the first question must be 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, 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

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

Concerning the third, fourth and fifth questions

By its third, fourth and fifth questions, which it is appropriate to consider together, the national court seeks in essence to ascertain whether Regulations Nos 3950/92 and 536/93 are to be interpreted as requiring that individual reference quantities should be notified to the producers and, if so, whether every producer must be individually notified or whether notification may take other forms, such as the publication of bulletins.

Admissibility

The Commission throws doubt on the admissibility of those questions, in that the national court has not explained either what place they have in the legal and factual context of the cases in the main proceedings or why a response to those questions is relevant to the outcome of the cases before it.

On this point it must be borne in mind that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of, or assessment of the validity of, a provision of Community law that is sought by the court making the reference bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or

where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraphs 59 to 61, Case C-36/99 *Idéal tourisme* [2000] ECR I-6049, paragraph 20, and Case C-137/00 *Milk Marque and National Farmers' Union* [2003] ECR I-7975, paragraph 37).

73 So far as the requirement that the national court's decision should contain a sufficient description of the facts and law involved in the case is concerned, it is to be noted that its purpose is, first, to enable the Court to arrive at an interpretation of Community law which may be of use to the national court (see, inter alia, Joined Cases C-320/90, C-321/90 and C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 6) and, second, to give the governments of the Member States and other interested parties the opportunity to submit observations pursuant to Article 20 of the EC Statute of the Court of Justice (see, in particular, Case C-67/96 *Albany* [1999] ECR I-5751, paragraph 40).

74 In this case, although the factual matters presented by the national court are extremely brief, it appears from the references for a preliminary ruling that the Italian legislation adopted in 1992 provided that bulletins compiled province by province should give the list of producers and of milk quotas. It is also stated that those quotas are divided into two parts and allocated on the basis of production during the marketing years 1988/89 or 1991/92. It follows that milk quotas allocated for the first time to producers in Italy after 1992 were published in bulletins. Moreover, the hearing confirmed that the main proceedings also concerned the point whether such notification was in accordance with the requirements of the Community law applicable, the applicants maintaining, first, that those bulletins were not accessible and, second, that they had not been able to learn what milk quotas had been allocated to them. In addition, both the Italian Government and the Commission were able to submit written and oral observations on this point.

75 In those circumstances, the third, fourth and fifth questions must be declared to be admissible.

The substance

Observations submitted to the Court

76 The applicants in the main proceedings, the Italian Government and the Commission are *ad idem* in recognising that individual reference quantities must be notified to producers.

77 With regard to the forms taken by that notification, the applicants maintain that milk quotas must be notified individually to the producers concerned. Failure to notify is, they claim, a breach of the principle of legal certainty and of the fundamental right to property.

78 The Italian Government argues that there is no specific requirement on this point in Regulations Nos 3950/92 and 536/93 and that dissemination by means, in this instance, of bulletins is compatible with Community law. It stated at the hearing that the bulletins had been sent to the competent provincial offices, where each producer might consult them, and that they were also published in the *Gazzetta ufficiale della Repubblica italiana.*

79 The Commission maintains that, if there are no specific provisions of Community law, individual reference quantities must be notified in accordance with the rules of national law, it being understood that those rules must be applied in such a way

as to attain the objectives of the arrangements for the additional levy on milk. That means that the communication must be such as to ensure that producers have actual knowledge of the milk quota allocated to them. The Commission notes that it was satisfied with the form of communication adopted by the Italian authorities for the initial allocation of individual reference quantities under the legislation adopted in 1992, namely, notification by registered letter with acknowledgement of receipt.

The Court's answer

80 First, although no obligation to communicate individual reference quantities to producers is laid down in Regulation No 3950/92 or Regulation No 536/93, that communication must, both when a reference quantity is originally allocated and whenever that quantity is later altered, be regarded as mandatory in the light of the main objective and broad logic of the arrangements for the additional levy on milk, on the one hand, and the principle of legal certainty, on the other.

81 It is not in dispute that those arrangements are intended to ensure that production of milk in the Community should not exceed a guaranteed global quantity fixed at Community level and divided among producers by the Member States. Attainment of that objective necessarily and logically means that producers must be informed of the share of the guaranteed global quantity which has been allocated to them and which they must not exceed.

82 In addition, having regard to the fact that, under those arrangements, a producer whose production exceeds his individual reference quantity is obliged to pay an additional levy of 115% of the target price for milk, failure to inform the producer concerned of that reference quantity would plainly run counter to the principle of legal certainty.

83 As regards the manner in which that communication is to be made, it is common ground that that principle requires appropriate publicity to be given to the national measures adopted pursuant to a Community regulation (*Mulligan and Others*, paragraph 51). The communication to the producers concerned of the individual reference quantities being a measure which is taken in connection with the application by the competent national authorities of the Community legislation on the additional levy on milk, it must be made in compliance with the requirement of adequate publicity.

84 Nevertheless, according to the case-law, the principle of legal certainty does not prescribe any specific form of publicity, such as publication of the measures in the official journal of the Member State concerned, communication by means of publication in bulletins or individual notification of each producer (see *Mulligan and Others*, paragraph 51).

85 The reason why the principle of legal certainty, as a general principle of Community law, requires appropriate publicity for measures adopted by the Member States in implementation of an obligation under Community law is the obvious need to ensure that persons concerned by such measures should be able to ascertain the scope of their rights and obligations in the particular area governed by Community law (*Mulligan and Others*, paragraph 52).

86 It follows that adequate publicity must be of such a nature as to inform the natural or legal persons concerned of their individual reference quantity. It is not therefore ruled out that communication of individual reference quantities by means of publication in bulletins, as in the cases in the main proceedings, may satisfy that condition, having regard to the fact that, as the Italian Government has stated, those bulletins were published in the *Gazzetta ufficiale della Repubblica italiana*. It is, however, for the national court to determine, on the basis of the foregoing considerations and of the facts before it, whether that is so in the cases in the main proceedings.

87 In the light of the foregoing considerations, the answer to be given to the third, fourth and fifth questions must therefore be that Regulations Nos 3950/92 and 536/92 are to be interpreted as requiring that the original allocation of individual reference quantities and any later alteration to them should be notified to the producers concerned by the competent national authorities.

The principle of legal certainty demands that that communication should be of such a nature as to give the natural or legal persons concerned all information relating to the original allocation of their individual reference quantity or later alteration to it. It is for the national court to determine, on the basis of the facts before it, whether that is so in the cases in the main proceedings.

Concerning the sixth and seventh questions

88 By its sixth and seventh questions the national court asks whether Regulations Nos 3950/92 and 536/93, or certain of their provisions, are to be interpreted as leaving it open to the Member States to determine the categories of producers who must have priority in the reallocation of unused individual reference quantities and whether, in particular, mountain areas come before 'less-favoured' areas.

89 The Commission casts doubt on the admissibility of these questions too, in that the national court has not explained either what place they have in the legal and factual context of the cases in the main proceedings or why a response to those questions is relevant to the outcome of the cases before it.

90 It ought here to be borne in mind that, in accordance with the case-law referred to in paragraphs 72 and 73 above, the Court may refuse to give a preliminary ruling on a question submitted by a national court where, inter alia, it does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. The purpose of the requirement that the national court's decision should contain a sufficient description of the facts and law involved in the case in the main proceedings is, first, to enable the Court to arrive at an interpretation of Community law which may be of use to the national court and, second, to give the governments of the Member States and other interested parties the opportunity to submit observations pursuant to Article 23 of the Statute of the Court of Justice.

91 In the circumstances of this case, the national court has supplied no information which might make it possible to understand the legal and factual context of the sixth and seventh questions. After repeating word for word the grounds of the judgments making the references in each case, the national court contents itself, in the four judgments in which those questions are asked, with adding that, of all the other questions which the applicants in the main proceedings had proposed that it should submit to the Court of Justice, it had considered it expedient to refer the two questions concerned.

92 Clearly, therefore, the national court has not supplied the factual and legal material necessary for a useful answer to be given to those questions.

93 It follows that the sixth and seventh questions must be regarded as inadmissible.

Costs

94 The costs incurred by the Italian Government 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 actions 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 July 2000, hereby rules:

1. **On a proper construction of Articles 1 and 4 of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector, and Articles 3 and 4 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, 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 production period concerned.

2. Regulations Nos 3950/92 and 536/93 are to be interpreted as requiring that the original allocation of individual reference quantities and any later alteration to them should be notified to the producers concerned by the competent national authorities.

3. The principle of legal certainty demands that that communication should be of such a nature as to give the natural or legal persons concerned all information relating to the original allocation of their individual reference quantity or later alteration to it. It is for the national court to determine, on the basis of the facts before it, whether that is so in the cases in the main proceedings.

Skouris Gulmann Puissochet

Macken Colneric

Delivered in open court in Luxembourg on 25 March 2004.

R. Grass V. Skouris

Registrar President