

OPINION OF ADVOCATE GENERAL
LÉGER

delivered on 14 November 2002 ¹

1. In order to reduce milk production in the European Community, in 1984, the Community legislature established a control system under which producers are allocated a reference quantity, commonly known as the 'milk quota', and are made subject to an additional levy on the part of their production in excess of that quantity.

Ballmann case can be applied when the production units operated by the producer at the time of allocation of a reference quantity and those he has leased are situated in the territory of the former German Democratic Republic. More precisely, the national court is faced with a situation in which the lessee has transferred the production of the reference quantity he has been allocated to leased facilities situated in a commune that has been incorporated into a former *Land* (state) of the Federal Republic of Germany.

2. In its judgment of 15 January 1991 in the *Ballmann* case,² the Court held that milk production obtained by a farmer in leased facilities must be set against that farmer's reference quantity if he manages on an independent basis the production units for whose operation he has leased certain facilities and clear separation of the quantities of milk produced by the lessee and lessor respectively is ensured.

I — Legal framework

A — Community regulations

3. In the case at issue, the questions posed by the Verwaltungsgericht (Administrative Court) Weimar (Germany) are essentially intended to ascertain whether the position taken by the Court in the abovementioned

4. The additional levy on milk was introduced by Regulation (EEC) No 856/84.³ This levy was added to that introduced in

1 — Original language: French.

2 — Case C-341 *Ballmann* [1989] ECR I-25, paragraph 17.

3 — Council Regulation of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products (OJ L 90, p. 10).

1977 on all milk delivered to dairies and on certain dairy products sold direct from the farm.⁴

5. Regulation No 856/84 provided for the fixing, for the Community as a whole, of a guaranteed total quantity to be distributed among Member States on the basis of the milk quantities delivered on their territory during a particular year. Each Member State was then to be responsible for distributing its guaranteed quantity among its producers by allocating them an individual reference quantity. If the producer exceeded this individual reference quantity over a period of twelve months, running from 1 April to 31 March, he became liable to pay an additional levy intended to finance the marketing of the surplus.⁵ This levy was payable by the milk producer or the purchaser, the latter being entitled to pass on the burden to the producer.

6. The general rules for applying the additional levy system are laid down in Regulation (EEC) No 857/84.⁶ In this Regulation, the Community legislature pro-

vided, in particular, for the establishment by Member States of a national reserve within their guaranteed quantity to enable them to adapt the individual reference quantities to take into account the special situations of certain producers.⁷ In Article 7(1) it established the principle of a tie between the reference quantity and the holding.⁸ It defined the notions of producer and holding in Article 12(c) and (d) of Regulation No 857/84, respectively.⁹ It was for the purpose of interpreting these provisions that the Court delivered the aforementioned *Ballmann* judgment and took the position set out in paragraph 2 of this Opinion.

7. Regulation No 857/84 was repealed by Regulation (EEC) No 3950/92.¹⁰ This Regulation, as last amended by Regulation (EC) No 751/1999,¹¹ hereinafter referred to as 'Regulation No 3950/92', is the relevant text in the present proceedings.

7 — Third recital.

8 — According to the aforementioned Article 7(1), 'where an undertaking is sold, leased or transferred by inheritance, all or part of the corresponding reference quantity shall be transferred to the purchaser, tenant or heir according to procedures to be determined'.

9 — Article 12(c) defines a producer as 'a natural or legal person or group of natural or legal persons farming a holding located within the geographical territory of the Community: selling milk or other milk products directly to the consumer and/or supplying the purchaser'. Subparagraph (d) of the same article defines a holding as 'all the production units operated by the producer and located within the geographical territory of the Community'.

10 — Council Regulation of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ L 405, p. 1).

11 — Commission Regulation (EC) of 9 April 1999 adjusting the total quantities set in Article 3 of Regulation No 3950/92 (OJ L 96, p. 11).

4 — See Council Regulation (EEC) No 1079/77 of 17 May 1977 on a co-responsibility levy and on measures for expanding the markets in milk and milk products (OJ L 131, p. 6).

5 — Article 5c of Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products (OJ L 148, p. 13), as amended by Regulation No 856/84.

6 — Council Regulation of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation No 804/68.

8. The scheme of the additional levy system introduced by Regulation No 3950/92 is broadly similar to that of Regulation No 856/84.¹² Thus, each Member State is allocated two total reference quantities, one for deliveries to dairies and the other for direct sales to consumers. According to Article 3 of Regulation No 3950/92, '[t]he sum of the individual reference quantities of the same type may not exceed the corresponding total quantities to be determined for each Member State'. These total quantities are fixed in a table in the first subparagraph of Article 3(2) of the Regulation.

9. Article 4(1) of Regulation No 3950/92 then provides that '[t]he 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'. According to Article 4(2), individual reference quantities for deliveries to dairies or direct sales to consumers are to be increased or established at the request of producers to take account of changes affecting their deliveries and/or direct sales. The increase or establishment is subject to a corresponding reduction or cancellation of the other reference quantity the producer owns.

10. Regulation No 3950/92 also stipulates that the national reserves are intended to accommodate all those quantities which, for whatever reason, are not, or are no longer, allocated individually.¹³ The second paragraph of Article 5 provides that '... reference quantities available to producers who have not marketed milk or other milk products for one of the twelve-month periods shall be allocated to the national reserve and may be reallocated in accordance with the first subparagraph. Where the producer resumes the production of milk or other milk products within a period to be determined by the Member State, he shall be granted a reference quantity... no later than 1 April following the date of his application'.

11. Article 7(1) of Regulation No 3950/92 also reaffirmed the principle of a tie between the reference quantity and the holding, while introducing certain derogations.¹⁴

12. The notions of producer and holding are defined in Article 9 of Regulation No 3950/92. According to this article, '[f]or the purposes of this Regulation:

...

(c) "producer" means a natural or legal person or group of natural or legal

12 — See paragraph 5 of this Opinion.

13 — Thirteenth recital.

14 — Sixteenth recital.

persons farming a holding located within the geographical territory of the Community:

— selling milk or other milk products directly to the consumer

and/or

— supplying the purchaser;

(d) “holding” means all the production units operated by the producer and located within the geographical territory of the Community.’

13. Finally, Regulation No 3950/92 contains a number of provisions that apply specifically to the territory of the former German Democratic Republic. These provisions form part of the context of the adjustments to the Community rules on agriculture introduced by Regulation (EEC) No 3577/90¹⁵ in order to take account of

the special circumstances in that territory. In Regulation No 3577/90, the Council considered that the application of the arrangements to control milk production must not jeopardise the restructuring of agricultural holdings in the territory of the former German Democratic Republic and that some flexibility, applying solely to holdings in that territory, should be introduced into those arrangements.¹⁶ Thus, Regulation No 3577/90, Annex VI, stipulates that the guaranteed total quantity allocated to the Federal Republic of Germany is to include a special allocation for the territory of the former German Democratic Republic, as well as containing a number of other provisions applicable to that territory.¹⁷

14. As its eleventh recital indicates, the purpose of Regulation No 3950/92 is to extend the flexibility introduced into the arrangements to control milk production for the territory of the former German Democratic Republic, ‘while ensuring that it remains the sole beneficiary.’

15. In the table of total quantities allocated to Member States, in the first subparagraph

15 — Council Regulation of 4 December 1990 on the transitional measures and adjustments required in the agricultural sector as a result of German unification (OJ L 353, p. 23).

16 — Ninth recital of Regulation No 3577/90.

17 — For example, the conditions under which the individual reference quantities are determined (Annex VI, IV, paragraphs 1 and 2).

of Article 3(2) of Regulation No 3950/92, with respect to the Federal Republic of Germany there is a separate reference to the share specially allocated to the territory of the former German Democratic Republic.¹⁸ This special allocation to the new *Länder* of part of the total quantities allocated to the Federal Republic of Germany lasted until 31 March 2000.¹⁹

16. Likewise, in Article 4(4) of Regulation No 3950/92 it is indicated that in the case of agricultural holdings situated in the territory of the former German Democratic Republic, the reference quantity may be allocated provisionally, provided that the quantity thus allocated is not modified during a given period. This provision, initially intended to cover the period from 1 April 1993 to 31 March 1994, was renewed for subsequent periods up to 31 March 2000.²⁰

18 — Thus, for the period from 1 April 1988 to 31 March 1999, the Federal Republic of Germany was allocated 27 767 036 tonnes for deliveries, including 6 242 180 tonnes for deliveries by producers in the new *Länder*, and 97 780 tonnes for direct sales, including 11 187 tonnes for direct sales in the new *Länder*.

19 — See Annex I to Commission Regulation (EC) No 749/2000 of 11 April 2000 adapting the total quantities referred to in Article 3 of Regulation No 3950/92 (OJ L 90, p. 4).

20 — Firstly, up to the end of the period from 1 April 1997 to 31 March 1998, by Council Regulation (EC) No 1883/94 of 27 July 1994 amending Regulation No 3950/92 (OJ L 197, p. 25) and then by Council Regulation (EC) No 551/98 of 9 March 1998 amending Regulation No 3950/92 (OJ L 73, p. 1).

B. National legislation

17. The Federal Republic of Germany has regulated the transfer of reference quantities by adopting the *Milchgarantiemengen-Verordnung* (regulation on guaranteed milk quantities) of 21 March 1994,²¹ as last amended by the 33rd *Änderungsverordnung* of 25 March 1996,²² (hereinafter ‘MGV’).

18. The MGV included, for the period relevant to this particular case, special provisions applicable to milk producers established in the territory of the former German Democratic Republic. Under Article 16(a) of the MGV, these provisions applied ‘to milk producers whose holding is wholly or partly situated in the territory defined by Article 3 of the unification treaty, to holdings located in that territory or to parts of holdings situated therein, in accordance with the following provisions’.

19. Article 16(e)(1) of the MGV reads:

‘A provisional quantity of which less than 80% has been delivered during the preced-

21 — BGBl. 1994 I, p. 586.

22 — BGBl. 1996 I, p. 535.

ing period of twelve preceding months shall be released..., in accordance with the following provisions, in favour of the *Land* of establishment of the holding or part-holding to which the reference quantity was provisionally allocated... .'.

22. Kaarssen also lies within the territory of the former German Democratic Republic as defined at the time of German unification in 1990. However, under a treaty concluded in 1993 between the *Land* of Mecklenburg-Vorpommern and the *Land* of Lower Saxony it was incorporated into the latter, that is to say, a former *Land* of the Federal Republic of Germany.

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II — Facts in the main proceedings

20. Agrargenossenschaft Alkersleben e.G. is an agricultural cooperative established in Alkersleben in Freistaat Thüringen (*Land* of Thuringia), a new *Land* of the Federal Republic of Germany since it is situated in the territory of the former German Democratic Republic. The plaintiff had obtained a provisional reference quantity of 7 625 797 kg of milk allocated to it by the competent authorities of Thuringia.

21. During the summer of 1998, the plaintiff leased a part of the milk-production facilities of an agricultural holding in Kaarssen (Germany). The lease provided that the stalls leased were to be operated by the lessee as a self-contained unit, under the responsibility of his employees, and his production was to be stored in his own tanks.

23. The plaintiff transferred its dairy herd to the leased part-holding in Kaarssen where it carried on its milk-producing activities. Initially, it completely ceased producing milk in Alkersleben. Taking the view that the plaintiff had abandoned milk production, by decision dated 14 June 1999, the Landesverwaltungsamt (administrative office) of Thuringia (Germany) withdrew the reference quantity provisionally allocated to it, on the basis of Article 16(e) of the MGv.

24. In its decision adopted on 9 February 2000, the Thuringian Landesverwaltungsamt rejected the plaintiff's complaint. The latter then brought an action before the Verwaltungsgericht Weimar to have the decision of 14 June 1999 set aside.

III — Questions referred for a preliminary ruling

25. The Verwaltungsgericht Weimar begins by arguing that the abovementioned *Ballmann* judgment does not settle the question of whether a farmer who produces his milk in facilities leased in another *Land* of the Federal Republic of Germany without operating his production unit situated in the territory of the former German Democratic Republic to which a reference quantity has been allocated should be regarded as a producer within the meaning of Article 9(c) of Regulation No 3950/92.²³

26. It then contends that the distribution over several holdings of the production of a reference quantity allocated to a holding situated in the territory of the former German Democratic Republic would be contrary to the objectives of Regulations Nos 3577/90 and 3950/92 concerning the restructuring of the holdings in that territory, since it would enable that quantity to be produced in one of the former *Länder* of the Federal Republic of Germany. Moreover, such a distribution would be tantamount to a transfer of production quantities without the transfer of the corresponding land, in violation of Article 7(1) of Regulation No 857/84, as amended by Regulation No 3577/90.²⁴

27. Finally, it considers whether, in the context of the provisions relating to reference quantities, the former German Democratic Republic should be treated as a nation state and, if so, what treatment should be applied to a part of its territory which has been incorporated in a former *Land* of the Federal Republic of Germany.

28. In the light of these considerations, the Verwaltungsgericht Weimar decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) Is Article 9(c) of Regulation (EEC) No 3950/92 (amended by Regulation (EC) No 1256/1999), or other provisions concerning guaranteed quantities of milk, to be interpreted, by reference to Case C-341/89 *Ballmann* [1991] ECR I-25, as meaning that in the case of a holding or part of a holding in the territory of the former German Democratic Republic a milk quantity is also to be imputed to the reference quantity provisionally allocated to it in the accession territory (Thuringia) which, under the direction of the manager of the holding, has been produced from its cows installed in leased facilities in the accession territory (Mecklenburg-Vorpommern)?’

²³ — Order for reference (p. 9).

²⁴ — Order for reference (p. 10).

- (2) Or is the milk quantity thus acquired to be imputed to the provisionally allocated reference quantity of the lessor farmer who is himself partly producing and the provisionally allocated milk reference quantity withdrawn in favour of Thuringia where, as in this case, federal *Land* borders divide the part of the holding to which the reference quantity was allocated from the part of the holding in which the milk is produced and, in contradistinction to the situation in the *Ballmann* case, cited above, the holding or part of the holding to which the milk reference quantity was provisionally allocated is maintained only, as it were, as the holding's head office and produces and delivers only a proportion of less than 5% of the milk reference quantity (dairy herd/milk production)?

IV — Opinion

A — *First two questions referred for a preliminary ruling*

29. In posing the first two questions referred for a preliminary ruling, which need to be examined together, the national court is essentially seeking to ascertain whether Article 9(c) and (d) of Regulation No 3950/92 should be interpreted as meaning that all the milk production of a farmer established in the territory of the former German Democratic Republic obtained on an independent basis in leased facilities situated in that territory should be imputed to the reference quantity provisionally allocated to him.

30. Thus, the national court is seeking to determine whether, in these circumstances, the plaintiff should be regarded as a producer within the meaning of Article 9(c) and (d) of Regulation No 3950/92.

- (3) Is it material to the reply to these questions that the holding producing the milk was formerly in the territory of the German Democratic Republic but that this territory was transferred to Niedersachsen (Lower Saxony) by state treaty between the two *Länder* of the Federal Republic of Germany known as Niedersachsen and Mecklenburg-Vorpommern?

31. First of all, it should be borne in mind that, in accordance with the general scheme of the provisions concerning the additional levy on milk and the judgment in the aforementioned *Ballmann* case,²⁵ a reference quantity can only be allocated to a

²⁵ — Paragraph 9.

farmer, not a holding, and then only if he has the status of producer.²⁶

32. Similarly, an allocated reference quantity cannot be regarded as available and be withdrawn, under Article 5 of Regulation No 3950/92, if its owner has retained his status of producer.

33. Accordingly, in order to answer the questions raised by the national court it is necessary to determine whether a farmer who has obtained a provisional reference quantity in connection with the operation of production units situated in the territory of the former German Democratic Republic and who has produced that quantity on an independent basis in other, leased facilities in the same territory should be regarded as a producer within the meaning of Article 9(c) and (d) of Regulation No 3950/92.

34. I believe that the interpretation of the provision justifies an affirmative reply to this question.

35. It should be recalled that the Court has consistently held that, in interpreting a provision of Community law, it is necessary to consider not only its wording but also the context in which it occurs and the objects of the rules of which it forms part.²⁷

36. In the text of Article 9(c) and (d) of Regulation No 3950/92 there is no special provision for farmers who operate a set of production units on the territory of the former German Democratic Republic.

37. As we have seen, Article 9(c) of Regulation No 3950/92 defines a 'producer' as a person farming a holding located within the geographical territory of the Community selling milk or other milk products directly to the consumer and/or supplying the purchaser. As for Article 9(d) of the same Regulation, it states that 'holding' means all the production units operated by the producer and located within the geographical territory of the Community.²⁸

26 — See also the judgments in Cases C-401/99 *Thomsen and Others* [2002] ECR I-5775, paragraph 32, and C-313/99 *Mulligan and Others* [2002] ECR I-5719, paragraph 30.

27 — Judgment in Case C-191/99 *Kvaerner* [2001] ECR I-4447, paragraph 30, and the case-law cited.

28 — See paragraph 12 of this Opinion.

38. It therefore follows from the concepts 'producer' and 'holding', taken together, that any person who operates a set of production units located within the geographical territory of the Community and sells or delivers milk or milk products must be accorded the status of producer.

39. From this, within the context of the present proceedings, it is possible to draw the following two conclusions.

40. The first conclusion is that the status of producer is not subject to the condition that the owner of a reference quantity must produce it, wholly or partly, in the production units he operated when that quantity was allocated to him.

41. This interpretation is confirmed by the aforementioned judgment in the *Ballmann* case.²⁹ In ruling that the milk production

achieved by a farmer on leased premises must, in principle, be set against his own reference quantity,³⁰ the Court acknowledged that the reference quantity allocated to a producer could be produced by the latter on premises that he had leased after the quantity had been allocated. In so doing, the Court concurred with the opinion of the Advocate General according to which the principle of a link between the reference quantity and the land does not imply that that quantity must be produced using the same production units as those previously used for the milk production taken as the basis for determining it.³¹

42. The second conclusion that can be drawn from the wording of Article 9(c) and (d) of Regulation No 3950/92 is that producer status should not be assessed in relation to the production units operated by the person concerned in a region or limited part of the territory of a Member State. On the contrary, it clearly follows from the wording of the provision that the assessment must be made in relation to the whole of the geographical territory of a Member State. As the Commission points out,³² a producer is therefore free to produce the milk quota allocated to him by a Member State in the production unit of his choice on the territory of that State.

29 — In that case, the Court was faced with the following situation. A milk producer was operating a dairy farm with 60 stalls, including 20 in a new cowshed. He was granted a reference quantity corresponding to the milk production of about 40 cows. He leased the 20 stalls in the new cowshed to another milk producer who, in his turn, had a milk quota corresponding to the milk production of about 20 cows. This quota had been allocated on the basis of the production achieved on his own holding. The administrative authority gave notice that the lessee farmer could not be regarded as a milk producer within the meaning of the Community provisions and that, consequently, the milk production obtained by him using the leased facilities would be set against the reference quantity of the lessor.

30 — Paragraph 14.

31 — See Opinion of Advocate General Tesouro in the aforementioned *Ballmann* case (paragraph 4).

32 — Paragraph 29 of the written observations.

43. Thus, the wording of Article 9(c) and (d) precludes the possibility of a milk producer who has obtained a reference quantity in a *Land* located on the territory of the former German Democratic Republic being obliged, on pain of losing his producer status, to produce that quantity, in whole or even only in part, in the production units he was operating at the time the quantity was allocated or on premises located exclusively in that *Land*.

during the relevant period it was allocated these two guaranteed total quantities. However, as mentioned above, up to 31 March 2000, the shares of these two total quantities specially allocated 'for deliveries in the new *Länder*' and 'for direct sales in the new *Länder*'³³ were specified in the table contained in the first subparagraph of Article 3(2) of Regulation No 3950/92.

44. This analysis is confirmed by the legislative context of the provision in question.

47. It was therefore the responsibility of the competent German authorities to divide these shares among the producers established in the territory of the new *Länder* in such a way that the sum of the individual reference quantities did not exceed the amount of the shares.

45. In considering the legislative context of Article 9(c) and (d) of Regulation No 3950/92, it is necessary to bear in mind the general scheme of the additional levy system. It consists, first of all, in the allocation of two guaranteed total quantities to the various Member States, one for supplies to dairies and the other for direct sales to consumers. The Member States are then responsible for distributing these quantities among the producers established in their territory in such a way that the sum of the individual reference quantities does not exceed the corresponding total quantities.

48. It should be noted, first of all, that the first subparagraph of Article 3(2) of Regulation No 3950/92 does not impose any restrictions on the rule of freedom of choice, for producers, of their place of production in the territory of a Member State, in accordance with Article 9(c) and (d) of the Regulation. It may therefore be concluded from these two provisions combined that the producers were free to choose their place of production anywhere in the territory of the new *Länder*.

46. In the case of the Federal Republic of Germany, like all other Member States,

33 — Paragraph 15 of this Opinion.

49. Then, from the general scheme of Regulation No 3950/92 it follows that the territory of the new *Länder* mentioned in the first subparagraph of Article 3(2) of Regulation No 3950/92 should be understood as meaning the territory of the former German Democratic Republic.

owned by the producer concerned was correspondingly reduced or cancelled.³⁴

51. The analysis is further confirmed by the fact that the provisions of Regulation No 3950/92 specifically relating to the Federal Republic of Germany followed in the train of those of Regulation No 3577/90 and that Regulation contained a number of provisions specially applicable to the territory of the former German Democratic Republic.³⁵

50. This analysis is confirmed by Article 4(4) of Regulation No 3950/92. According to this provision, 'in the case of agricultural holdings situated in the territory of the former German Democratic Republic', the reference quantity may be allocated provisionally, provided that the quantity thus allocated is not modified during the same period. Thus, this provision allowed the competent German authorities to grant a derogation, in favour of the producers established in the territory of the former German Democratic Republic, from the regime laid down in Article 4(1) and (2) of Regulation No 3950/92. It should be recalled that, under these provisions, the individual reference quantities for deliveries to dairies or direct sales to consumers were allocated to producers on the basis of the quantities available on 31 March 1993. Moreover, a reference quantity could only be established or increased if the other reference quantity

52. It therefore follows from this legislative context that producer status should be accorded to anyone operating a set of production units situated anywhere in the territory of the former German Democratic

34 — In its written observations (paragraphs 17 and 18), the German Government contends that Article 4(4) of Regulation No 3950/92 authorised it to tie the reference quantity to the holding in relation to which it had been allocated. In support of its argument, it argues that this provision expressly provides for the reference quantities to be allocated to the holding and that the same provision also authorised it to determine the arrangements for the provisional allocation of the reference quantity and to stipulate that moving production to another site, for example by taking out a lease, was prohibited. I cannot accept this argument. The expression 'in the case of agricultural holdings situated in the territory of the former German Democratic Republic' should, in my opinion, be compared with the reference, in Articles 4(1) and 7(1) of Regulation No 3950/92, to the reference quantity available on the holding. It cannot affect the general scheme of the additional levy regime according to which a reference quantity can only be allocated to a producer. The possibility, accorded to the German authorities, of allocating a reference quantity provisionally was merely intended to allow them to establish or increase individual reference quantities more flexibly than under the regime provided for in Articles 4(1) and (2) of Regulation No 3950/92.

35 — Paragraph 13 of this Opinion.

Republic, irrespective of the internal borders between the new *Länder*, and making sales or deliveries of milk or milk products.

cratic Republic had already been proclaimed by the Community legislature in Regulation No 3577/90.³⁶ The same objective, with an explicit reference to the territory of the former German Democratic Republic, can also be found in the regulations that extended the flexibility accorded to that territory by Regulation No 3950/92 up to 31 March 2000.³⁷

53. Support for this analysis can also be derived from the objective of the provisions of Regulation No 3950/92 applicable to the territory of the former German Democratic Republic.

56. It follows that the Community legislature's objective was to facilitate the restructuring of holdings throughout the territory of the former German Democratic Republic.

54. The eleventh recital of the Regulation throws light on its objective as far as these provisions are concerned. In that recital the Community legislature notes that it had been agreed that application of the arrangements to control milk production must not jeopardise the restructuring of agricultural holdings in the territory of the former German Democratic Republic. Moreover, the difficulties encountered made it necessary to extend the flexibility introduced into those arrangements for that territory, while ensuring that it remained the sole beneficiary.

57. As the national court points out,³⁸ this objective would have been jeopardised if the reference quantities allocated to producers in this territory had been produced outside it. I believe that this objective equally precluded the possibility of the production of these reference quantities being confined to the facilities that the producers were operating when they were allocated. After all, such a restriction would have frozen the production units operated by the producers in the state they were in at that particular point, whereas, in my opinion, the restructuring of agricul-

55. This objective and the consequent intention to have the flexibility introduced into the arrangements for controlling milk production strictly limited to holdings in the territory of the former German Demo-

36 — Ninth recital.

37 — See the fourth recital of Regulation No 1883/94 and the recital of Regulation No 551/98 extending the effects of Article 4(4) of Regulation No 3950/92.

38 — Paragraph 26 of this Opinion.

tural holdings in the territory of the former German Democratic Republic meant that the producers should have been able to make any desirable modification or improvement in the siting of their production units within the limits of that territory.

58. In the light of all these considerations, it is proposed that the Court rule that Article 9(c) and (d) of Regulation No 3950/92 is to be interpreted as meaning that all the milk production produced on an independent basis by a farmer established in the territory of the former German Democratic Republic in leased facilities situated in that territory is to be imputed to the reference quantity provisionally allocated to him.

B. — Third question referred for a preliminary ruling

59. In posing the third question referred for a preliminary ruling, the national court is essentially seeking to ascertain whether the fact that the commune in which the leased facilities are located was incorporated into a former *Land* of the Federal Republic of Germany has any effect on the interpretation of Article 9(c) and (d) of Regulation No 3950/92.

60. The German Government disputes the admissibility of this question on the grounds that Community law does not specify how a part-territory incorporated on the basis of an agreement concluded between two *Länder* should be characterised, in relation to the rules on milk quotas.³⁹

61. I do not agree with this analysis. The Court has consistently held that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, 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 it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court is, in principle, bound to give a ruling.⁴⁰

62. In the present case, the point at issue does in fact concern the interpretation of a provision of Community law. It is a matter of determining whether the interpretation of Article 9(c) and (d) of Regulation No 3950/92 that follows from the examination of the first two questions referred for a preliminary ruling should be different because the commune in which the facilities leased by the plaintiff are located was

39 — Paragraph 34 of its written observations.

40 — Judgments in Cases C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59, and C-255/00 *Grundig Italiana* [2002] ECR I-8003, paragraph 30.

incorporated into a former *Land* of the Federal Republic of Germany.

of the economic system that previously existed there, that is to say, the territory of the former German Democratic Republic as geographically defined at the time of German unification.

63. I believe that this question should be answered in the negative.

64. I have pointed out that the reference to the new *Länder* in the first subparagraph of Article 3(2) of Regulation No 3950/92 should be understood as meaning the territory of the former German Democratic Republic.⁴¹

67. It is also clear that, in Regulation No 3950/92, the legislature intended to extend the flexibility introduced into the arrangements for controlling milk production for the benefit of the territory of the former German Democratic Republic. This concept therefore encompasses the same territorial reality as at the time of unification.

65. Moreover, it should be recalled that, following German unification and because it was intended that Community law should apply to the whole of the territory of the former German Democratic Republic, the legislature made certain adjustments to the Community rules on agriculture, in particular in the area of milk production, in order to take account of the special circumstances prevailing in that territory.⁴²

68. It follows that the post-unification incorporation of part of that territory into a former *Land* of the Federal Republic of Germany had no effect on the application to the sector concerned of the provisions introduced into Regulation No 3950/92 for the benefit of the territory of the former German Democratic Republic.

66. As the Commission suggests,⁴³ the expression 'territory of the former German Democratic Republic' therefore means the territory in which the restructuring of agricultural holdings was necessary because

69. In the light of these considerations, it is proposed that the Court rule that the incorporation of the commune in which the leased facilities are located into a former *Land* of the Federal Republic of Germany has no effect on the interpretation of Article 9(c) and (d) of Regulation No 3950/92.

41 — Paragraph 49 of this Opinion.

42 — See paragraph 13 of this Opinion.

43 — Paragraph 33 of its written observations.

V — Conclusion

70. In the light of the above considerations, it is proposed that the Court answer the questions posed by the Verwaltungsgericht Weimar as follows:

- (1) Article 9(c) and (d) of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector, as last amended by Commission Regulation (EC) No 751/1999 of 9 April 1999 adjusting the total quantities set in Article 3 of Regulation No 3950/92, is to be interpreted as meaning that all the milk production produced on an independent basis by a farmer established in the territory of the former German Democratic Republic in leased facilities situated in that territory is to be imputed to the reference quantity provisionally allocated to him.
- (2) The incorporation of the commune in which the leased facilities are located into a former *Land* of the Federal Republic of Germany has no effect on the interpretation of Article 9(c) and (d) of Regulation No 3950/92, as amended.