JUDGMENT OF THE COURT (Second Chamber)
8 May 2003 *

In Case C-268/01,

REFERENCE to the Court under Article 234 EC by the Verwaltungsgericht Weimar (Germany) for a preliminary ruling in the proceedings pending before that court between

Agrargenossenschaft Alkersleben eG,

and

Freistaat Thüringen,

on the interpretation of Articles 3(2), 4(4), 5 and 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 (OJ 1992 L 405, p. 1), as amended by Commission Regulation (EC) No 751/1999 of 9 April 1999 (OJ 1999 L 96, p. 11),

* Language of the case: German.

THE COURT (Second Chamber),

composed of: R. Schintgen, President of the Chamber, V. Skouris (Rapporteur) and N. Colneric, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Agrargenossenschaft Alkersleben eG, by O. Reidt, Rechtsanwalt,

— Freistaat Thüringen, by M. Koloßa, acting as Agent,

— the German Government, by W.-D. Plessing and R. Stüwe, acting as Agents,

— the Commission of the European Communities, by M. Niejahr, acting as Agent, assisted by N. Núñez Müller, Rechtsanwalt,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 14 November 2002,

gives the following

Judgment

1 By order of 23 May 2001, received at the Court on 6 July 2001, the Verwaltungsgericht (Administrative Court) Weimar referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Articles 3(2), 4(4), 5 and 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 (OJ 1992 L 405, p. 1), as amended by Commission Regulation (EC) No 751/1999 of 9 April 1999 (OJ 1999 L 96, p. 11, hereinafter 'Regulation No 3950/92').

2 Those questions were raised in proceedings between Agrargenossenschaft Alkersleben eG and Freistaat Thüringen (Land Thuringia) concerning a decision of the Landesverwaltungsamt Thüringen (Administrative Office for Land Thuringia) withdrawing the reference quantity previously allocated to it.

Legal framework

Community legislation

3 In 1984, on account of a persistent imbalance between supply and demand in the milk sector, a system of additional levies on milk was introduced by Council

Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products (OJ 1984 L 90, p. 10). In accordance with Article 5c of Regulation (EEC) No 804/68 of the Council of 27 June 1968 (OJ, English Special Edition 1968 (I), p. 176), as amended by Regulation No 856/84, an additional levy is payable for quantities of milk in excess of a reference quantity to be determined.

4 The general rules for the application of this levy were laid down in 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 in the milk and milk products sector (OJ 1984 L 90, p. 13).

5 Regulation No 857/84 was amended by Council Regulation (EEC) No 3577/90 of 4 December 1990 on the transitional measures and adjustments required in the agricultural sector as a result of German unification (OJ 1990 L 353, p. 23).

6 The ninth recital in the preamble to Regulation No 3577/90 states:

'... 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;... some flexibility should be introduced into the said arrangements; whereas, however, such flexibility must apply solely to holdings in the territory of the former German Democratic Republic;... similarly, steps must be taken to ensure that the additional sugar quotas allocated to Germany apply solely to agriculture in the territory of the former German Democratic Republic.'

7 Regulation No 857/84 was repealed by Regulation No 3950/92 which extended the additional levy system in amended form until 1 April 2000, that system having been initially applicable until 1 April 1993.

8 Under the terms of the 11th recital in the preamble to Regulation No 3950/92:

'... it has 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; whereas the difficulties encountered make it necessary to extend for a further period the flexibility introduced into those arrangements for that territory, while ensuring that it remains the sole beneficiary.'

9 The first subparagraph of Article 3(2) of Regulation No 3950/92 lays down the total quantities guaranteed for each Member State with effect from 1993. With regard to the Federal Republic of Germany the quantities allocated to the new *Länder* were stated separately. Under that provision:

'The following total quantities shall be fixed without prejudice to possible review in the light of the general market situation and particular conditions existing in certain Member States.

(In tonnes)

Member States	Deliveries	Direct Sales
[...]	[...]	[...]
Germany [1]	27 767 036	97 780
[...]	[...]	[...]

[1] Of which 6 242 180 tonnes covers deliveries to purchasers established in the territory of the new *Länder* and 11 187 tonnes covers direct sales in the new *Länder*.'

10 Article 4(4) of Regulation No 3950/92 provides as follows:

'In the case of agricultural holdings situated in the territory of the former German Democratic Republic, the reference quantity may be allocated provisionally for the period from 1 April 1993 to 31 March 1994, provided that the quantity thus allocated is not modified during that period.

However, in order to complete the restructuring of the said holdings, the first subparagraph shall continue to apply until the end of the period 1997/98.

With a view to the definitive solution of the difficulties stemming from restructuring as referred to above, the application of the first subparagraph shall be extended for two 12-month periods from the expiry of the period referred to in the second subparagraph.'

11 Article 5 of Regulation No 3950/92 provides:

'Within the quantities referred to in Article 3, the Member State may replenish the national reserve following an across-the-board reduction in all the individual reference quantities in order to grant additional or specific quantities to producers determined in accordance with objective criteria agreed with the Commission... .

Without prejudice to Article 6(1), 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 ... .'

12 Under Article 9(c) and (d) of Regulation No 3950/92:

'For the purposes of this Regulation:

...

(c) "producer" means a natural or legal person or a group of natural or legal persons farming a holding within the geographical territory of a Member State:

— selling milk or other milk products directly to the consumer,

— and/or supplying the purchaser;

(d) "holding" means all production units operated by the single producer and located within the geographical territory of a Member State.'

National legislation

13 The Federal Republic of Germany regulated the transfer of reference quantities by adopting the Milchgarantiemengen-Verordnung (regulation on guaranteed milk quantities) of 21 March 1994 (BGBl. 1994 I, p. 586), as last amended by the 33rd Änderungsverordnung (amending regulation) of 25 March 1996 (BGBl. 1996 I, p. 535, hereinafter the 'MGV').

14 The MGV included, for the period relevant to the main proceedings, special provisions applicable to milk producers established in the territory of the former German Democratic Republic ('the former GDR'). Under Article 16(a) of the MGV, those 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'.

15 Article 16(e)(1a) of the MGV reads:

'A provisional quantity of which less than 80% has been delivered during the preceding 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...'.

16 Under a treaty concluded on 2 and 9 March 1993 between the *Land* of Mecklenburg-Vorpommern in the former GDR and the *Land* of Lower Saxony, a pre-existing *land* of the Federal Republic of Germany, the communes of the

Neuhaus district, which had hitherto formed part of Mecklenburg-Vorpommern, were incorporated into Lower Saxony. One of those communes was that of Kaarßen.

The main proceedings and questions referred

17 It is apparent from the order for reference that Agrargenossenschaft Alkersleben eG, the plaintiff in the main proceedings, is an agricultural cooperative established in Alkersleben in the *Land* of Thuringia, situated in the territory of the former GDR. The plaintiff had a provisional reference quantity of 7 625 797 kg of milk which had been allocated to it by Thuringia. During the summer of 1998, the plaintiff leased a part of the milk-production facilities of an agricultural holding in Kaarßen. Subsequently, it transferred its dairy herd to the leased part-holding in Kaarßen and, initially, completely ceased producing milk in Alkersleben. However, in subsequent years, it recommenced milk production to a small extent in Alkersleben.

18 Pursuant to the relevant provisions of the MGV, the Landesverwaltungsamt Thuringia, by decision of 14 June 1999, withdrew the reference quantity which had been provisionally allocated to the plaintiff in the main proceedings on the ground that it had abandoned milk production in Alkersleben. The plaintiff in the main proceedings raised an objection to that decision, submitting, in particular, first, that it had not abandoned milk production but had merely located production in two sites (Alkersleben and Kaarßen) and, secondly, that under the Court's case-law there was no legal basis for attaching milk production to the main holding. By a decision of 9 February 2000 the Landesverwaltungsamt dismissed the objection by the plaintiff in the main proceedings. The plaintiff thereupon brought proceedings before the Verwaltungsgericht Weimar for the annulment of the abovementioned decisions.

19 Taking the view that resolution of the dispute before it necessitated an interpretation of Community law, the Verwaltungsgericht Weimar decided to stay the proceedings and to refer the following questions to the Court:

'(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 1-25, 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)?

(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)?

(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?'

First and second questions

20 In its first two questions referred for a preliminary ruling, which it is appropriate to examine together, the national court is essentially seeking to ascertain whether Article 9(c) and (d) of Regulation No 3950/92, read with Articles 3(2), 4(4) and 5 thereof, should be interpreted as meaning that all the milk production of a farmer established in the territory of the former GDR obtained on an independent basis in leased facilities situated in that territory but in different *länder* should be imputed to the reference quantity provisionally allocated to him.

Observations submitted to the Court

21 The plaintiff in the main proceedings submits that, as is clear from the judgment in *Ballmann* cited above, under Article 9(c) and (d) of Regulation No 3950/92, the producer may produce milk on different sites within the context of the overall production units managed by him provided that the latter are within the geographic territory of the Community. In its view, Community law does not require withdrawal of a provisionally allocated reference quantity where the internal borders between different *länder* separate the part-holding in which production is effected and the holding in respect of which the reference quantity was allocated. That is so even where the latter holding is maintained only as the principal holding and produces and delivers only a percentage of the reference quantity of less than 5%. Under Community law, the only material factor is that the holding and its units of production are within the geographical territory of the Community.

22 Conversely, the defendant in the main proceedings and the German Government consider that Article 4(4) of Regulation No 3950/92 precludes the transfer of the reference quantity even for a limited period. The same is true under national law.

23 The German Government considers that, as regards regulation of milk quotas applicable to the new *länder* until 31 March 2000, that was a matter for the German legislature which established the principle that those quotas should be attached to the holding. In conformity with that principle, the provisional reference quantities allocated to holdings situated in the former GDR may be utilised only at the corresponding location of the holding and any transfer of production to another place, even under a lease, is prohibited. That Government states that, in order to ensure observance of that rule, the provisions of the MGV provided that, where production was moved, the provisional reference quantity allocated was taken back and incorporated in the national reserve. In the German Government's view, the concepts of new *länder* or old *länder*, as well as the principles laid down in the *Ballmann* judgment, cited above, are immaterial to the resolution of the dispute before the referring court. Accordingly, since the plaintiff in the main proceedings had completely ceased production in Alkersleben, at least temporarily, the conditions laid down in the MGV for withdrawal of the reference quantity allocated to it were satisfied.

24 The Commission considers that Article 9(c) and (d) of Regulation No 3590/92, read with Articles 3(2) and 4(4) thereof, must be interpreted as meaning that a milk producer established in the territory of the former GDR is authorised to produce the reference quantities allocated to him only in that territory. It therefore proposes that the reply to the national court should be that all the quantities of milk which a producer established in the territory of the former GDR has obtained from milking in production units, as defined in Article 9(d) of Regulation No 3950/92, which are also situated within that territory, must be imputed to the reference quantity provisionally allocated to that producer.

The Court's reply

25 It must be pointed out, first, that the general scheme of the provisions concerning the additional levy on milk shows that a reference quantity can be allocated to a

farmer only if he has the status of a producer (judgments in *Ballmann*, cited above, paragraph 9, and in Case C-401/99 *Thomsen* [2002] ECR I-5775, paragraph 32).

26 Similarly, a reference quantity allocated to a farmer can be withdrawn from him only if he has lost that status. Under the second paragraph of Article 5 of Regulation No 3950/92 reference quantities available to producers who have not marketed milk or other milk products for one of the 12-month periods are to be allocated to the national reserve and may be reallocated.

27 Accordingly, in order to reply to the first two questions it is necessary to examine whether, where a farmer whose holding is established in one of the new *länder* of the Federal Republic of Germany and has been allocated a reference quantity transfers the major part of his milk production to a production unit situated in another of the new *länder*, that farmer loses the status of milk producer for the purposes of Regulation No 3950/92, with the result that the competent authorities may withdraw the reference quantity which had been allocated to him.

28 In that connection Article 9(c) defines 'producer' as a natural or legal person or a group of natural or legal persons farming a holding within the geographical territory of a Member State and selling milk or other milk products directly to the consumer, and/or supplying the purchaser.

29 'Holding' is defined in Article 9(d) as all production units operated by the single producer and located within the geographical territory of a Member State.

30 It is apparent from those definitions read together that, first of all, the status of producer is accorded to any person who manages a set of production units located within the geographical territory of a Member State and sells or delivers milk or milk products, and that it is not necessary for the farmer to own the production facilities used by him. The concept of producer cannot therefore be interpreted as excluding the category of lessees of a holding (*Ballmann* judgment, cited above, paragraph 12).

31 Next, the status of producer is not subject to the condition that the holder of a reference quantity should produce it, in whole or in part, in the production units which he was operating when that quantity was allocated to him (*Ballmann* judgment, cited above, paragraph 14).

32 Finally, assessment of the status of producer must be conducted in regard to the whole of the geographical territory of a Member State.

33 It follows from the foregoing considerations that Article 9(c) and (d) of Regulation No 3950/92 preclude a milk producer who has obtained a reference quantity from being required, at the risk of losing his status as a producer, to produce that quantity in its totality, or even merely in part, in the production units which he was operating at the time when that quantity was allocated. On the contrary, a producer is free to produce the reference quantity allocated to him by a Member State in the place of production of his choice where that is situated within the territory of that state, whether he is the owner or lessee of the production facilities.

34 None the less, in the specific case of the Federal Republic of Germany it is also necessary to take into account the fact that Regulation No 3950/92 includes certain specific provisions concerning the application of the additional milk levy scheme to the territory of the former GDR.

35 In fact, as is clear from the 11th recital in the preamble to Regulation No 3950/92, the Community legislature considered that the arrangements to control milk production could jeopardise the restructuring of agricultural holdings established in the territory of the former GDR.

36 Thus, in order to facilitate restructuring of those holdings, the table appearing in Article 3(2) of Regulation No 3950/92 fixes in a footnote the share of the total guaranteed quantities for the Federal Republic of Germany which is reserved to direct deliveries and sales by producers established within the territory of the new *länder*. The competent German authorities were thus obliged to divide that share solely amongst those producers in such a way that the sum total of individual reference quantities did not exceed the limits laid down in respect of that share.

37 Accordingly, for a transitional period for the purposes of Regulation No 3950/92, the Community legislature essentially assimilated the territory of the former GDR to that of a Member state.

38 Accordingly, Article 9(c) and (d) of Regulation No 3950/92, read with the table in Article 3(2) thereof, must be interpreted as meaning that a milk producer established within the territory of the former GDR is free to produce the reference quantity allocated to him in the place of production of his choice, provided that it is situated within that territory, whether he is the owner or the lessee of the production facilities.

39 The argument relied on by the German Government and by the defendant in the main proceedings to the effect that the national legislature was entitled to provide that the reference quantities allocated to producers established within the territory of the new *länder* should be produced at the corresponding location of the holding cannot be upheld.

40 First, there is no provision in Regulation No 3950/92 indicating, even indirectly, that such an interpretation of the provisions of Article 9(c) and (d) could be accepted in regard to producers established within the territory of the former GDR.

41 Secondly, that interpretation would even run counter to the aims pursued by the scheme of derogations provisionally introduced in favour of agricultural holdings established within the territory of the former GDR. In fact such an allocation of production solely to production units on which the allocation of reference quantities had been based would freeze those units in the situation in which they were at the time when those quantities were allocated. However, the restructuring of agricultural holdings within the whole of the territory of the former GDR would be compromised if, within the confines of that territory, producers were unable to modify and improve the siting of their production units in any manner which they consider to be useful.

42 Under those circumstances, the reply to the first and second questions must be that Article 9(c) and (d) of Regulation No 3950/92, read with Articles 3(2), 4(4) and 5 thereof, must be interpreted as meaning that all the milk production of a farmer established in the territory of the former GDR obtained on an independent basis in leased facilities situated in that territory but in different *länder* must be imputed to the reference quantity provisionally allocated to him.

Third question

43 In its third question the referring court is essentially asking whether Article 9(c) and (d) of Regulation No 3950/92, read with Articles 3(2), 4(4) and 5 thereof, must be interpreted as meaning that the competent national authorities may

prohibit a producer established within the territory of the former GDR from transferring his milk production to facilities located in a commune which, although forming part of that territory at the time of reunification of Germany, is now attached to one of the pre-existing *länder* of the Federal Republic of Germany following a treaty concluded after that date.

Admissibility

44 The German Government claims that Community law does not govern the question as to the appropriate manner of classifying, in regard to the rules on milk quotas, the transfer under treaty of a part of national territory from a new *land* to a pre-existing one. That is a question of national law and the reference for a preliminary ruling is therefore inadmissible on that point.

45 In that connection it should be pointed out that, in accordance with settled case-law, 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 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 (see, *inter alia*, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59 and Case C-255/00 *Grundig Italiana* [2002] ECR I-8003, paragraph 30).

46 Admittedly, in exceptional circumstances, the Court must examine the circumstances in which the case was referred to it by the national court, in order to determine whether it has jurisdiction. 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 Community law that is sought 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-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39 and *Grundig Italiana*, cited above, paragraph 31).

47 In the main proceedings the third question undeniably relates to the interpretation of the relevant provisions of Regulation No 3950/92, as specified in response to the first two questions. In fact the Court is asked whether a specific factual circumstance, namely the incorporation of the commune in which the leased milk -production holding is situated into one of the pre-existing *länder* of the Federal Republic of Germany, may affect that interpretation.

48 It follows that the third question relates to the interpretation of provisions of Community law with the result that it may be regarded as admissible.

Substance

Observations submitted to the Court

49 The plaintiff in the main proceedings considers that, in regard to Regulation No 3950/92, the question whether land leased is within the territory of the former GDR is immaterial. In its view the principal holding in Alkersleben and the place

of production in Kaarßen must be attached to the territory of the former GDR since the incorporation of the commune of Kaarßen into the *land* of Lower Saxony occurred after the reunification of Germany.

50 The defendant in the main proceedings considers that the incorporation of the commune of Kaarßen into one of the pre-existing *länder* must be taken into consideration. It contends that since the German legislature had provided for two strictly different sets of rules, the one applicable in the pre-existing *länder* and the other in the new *länder*, the transfer of the reference quantity to a holding not forming part of the territory of the former GDR was not authorised, whatever may have been the terms of the contract.

51 The Commission, referring to Article 3(2) and 4(4) of Regulation No 3950/92, and to the 11th recital in the preamble thereto, submits that the distinction between the pre-existing and the new *länder* must be borne in mind. None the less, it considers that it is necessary to impute to the reference quantity allocated to a producer established within the territory of the former GDR all the quantities of milk obtained by him within that territory even where, on the date when it is decided to do so, the commune within which the production units are situated thenceforth forms part of one of the pre-existing *länder* of the Federal Republic of Germany.

The Court's reply

52 In that connection it should be pointed out, first, that the provisions of Regulation No 3950/92 which specifically refer to the territory of the former GDR were introduced by the Community legislature in order not to jeopardise the restructuring of agricultural holdings situated within that territory.

53 Secondly, it cannot but be noted that that restructuring was necessary owing to the economic system prevailing within the territory of the former GDR before the reunification of Germany and in order to allow the GDR to be incorporated within the market economy system.

54 It follows that the specific regime provisionally provided for in the case of the former GDR in regard to the additional milk levy is applicable to the whole of its territory, as delineated on the date of the reunification of Germany.

55 Accordingly, the subsequent incorporation of a part of that territory within a pre-existing *land* of the Federal Republic of Germany cannot prejudice the possibility afforded to a producer established in the former GDR to transfer his milk production to that area provided that the quantities of milk thus produced are included in the total guaranteed quantity for the former GDR (see, to that effect, in connection with a dairy holding situated in another Member State, judgment in Case C-463/93 *St. Martinus Elten* [1997] ECR I-255, paragraphs 27 and 28).

56 In light of those considerations the reply to the third question must be that Article 9(c) and (d) of Regulation No 3950/92, read with Articles 3(2), 4(4) and 5 thereof, must be interpreted as precluding the competent national authorities from prohibiting a producer established in the former GDR from transferring his milk production to facilities in a commune which, although forming part of that territory on the date of reunification of Germany, is henceforth incorporated in

one of the pre-existing *länder* of the Federal Republic of Germany under a treaty concluded after that date.

Costs

57 The costs incurred by the German Government and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Verwaltungsgericht Weimar by order of 23 May 2001, hereby rules:

1. Article 9(c) and (d) of Council Regulation No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector, as

amended by Commission Regulation (EC) No 751/1999 of 9 April 1999 and read with Articles 3(2), 4(4) and 5 of the former regulation, must 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 but in different *länder* must be imputed to the reference quantity provisionally allocated to him.

2. Article 9(c) and (d) of Regulation No 3950/92, as amended by Regulation No 751/1999, and read with Articles 3(2), 4(4) and 5 of the former regulation, must be interpreted as precluding the competent national authorities from prohibiting a producer established in the former German Democratic Republic from transferring his milk production to facilities in a commune which, although forming part of that territory on the date of reunification of Germany, is henceforth incorporated in one of the pre-existing *länder* of the Federal Republic of Germany under a treaty concluded after that date.

Schintgen Skouris Colneric

Delivered in open court in Luxembourg on 8 May 2003.

R. Grass

Registrar

R. Schintgen

President of the Second Chamber