

ORDER OF THE COURT (Fourth Chamber)

18 November 2004^{*}

In Joined Cases C-261/03 and C-262/03,

REFERENCE to the Court under Article 234 EC from the Tribunale amministrativo regionale per l'Emilia-Romagna (Italy), made by decisions of 6 May 2003, received at the Court on 17 June 2003, for a preliminary ruling in the proceedings pending before that court between

Allevamenti Associati Srl

v

Regione Emilia-Romagna,

in the presence of:

Agenzia per le Erogazioni in Agricoltura (AGEA)

^{*} Language of the case: Italian.

and

Latteria Sociale Moderna Soc. coop. arl (C-261/03),

and

Latteria Sociale Moderna Soc. coop. arl

v

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

Servizio Provinciale Agricoltura di Reggio Emilia,

Regione Emilia-Romagna,

and

Agenzia per le Erogazioni in Agricoltura (AGEA),

in the presence of:

Allevamenti Associati Srl (C-262/03),

THE COURT (Fourth Chamber),

composed of N. Colneric (Rapporteur), acting as President of the Fourth Chamber,
J.N. Cunha Rodrigues and E. Juhász, Judges,

Advocate General: L.A. Geelhoed,

Registrar: M. Múgica Arzamendi, Principal Administrator,

the national court having been informed that the Court proposes to give its decision
by reasoned order in accordance with Article 104(3) of the Rules of Procedure,

the persons referred to in Article 23 of the Statute of the Court of Justice having
been invited to submit any observations in that regard,

after hearing the view of the Advocate General,

makes the following

Order

1 The request for a preliminary ruling concerns the interpretation of Articles 1, 2 and 9(g) 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

Articles 1, 2 and 3 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 That request was lodged in the course of two proceedings brought against two Italian administrative authorities by Allevamenti Associati Srl ('Allevamenti Associati') and Latteria Sociale Moderna Soc. coop. arl ('Latteria Sociale Moderna') regarding the issue whether a transaction concerning the second company's treatment and processing of a quantity of milk produced by the first should be classified as a delivery or a direct sale.

Community legislation

- 3 Regulation No 3950/92 renewed, for seven consecutive 12-month periods, from the beginning of the 1993/94 marketing year, the application of the additional levy on milk established at Community level since 1984 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), and 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 (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13).
- 4 Regarding the rules for collection of the levy, the third recital to Regulation No 3950/92 states that the method adopted in 1984, consisting of the application of a levy to quantities of milk collected or sold for direct consumption above a certain guarantee threshold, must be maintained; that that threshold is expressed for each

Member State by a guaranteed total quantity which may not be exceeded by the sum of the individually allocated quantities for both deliveries and sales for direct consumption, and that the quantities are established for the seven periods as from 1 April 1993 and take account of the various factors relating to the scheme in the past.

- 5 The eighth recital to that regulation states that in order to avoid, as in the past, long delays between collection and payment of the levy, which are incompatible with the scheme's objective, provision should be made for the purchaser, who seems in the best position to carry out the necessary operations, to be liable for the levy and for him to be given the means to collect the levy from the producers who owe it.

- 6 Under Article 1 of that regulation an additional levy is established, payable by producers of cow's milk on quantities of milk or milk equivalent delivered to a purchaser or sold directly for consumption during the 12-month period in question in excess of a quantity to be determined.

- 7 Article 2(1)(2) and (3) of that regulation provide:

'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.

...

2. As regards deliveries, before a date and in accordance with detailed rules to be laid down, the purchaser liable for the levy shall pay to the competent body of the Member State the amount payable, which he shall deduct from the price of milk paid to producers who owe the levy or, failing this, collect by any appropriate means.

...

3. As regards direct sales, the producer shall pay the levy payable to the competent body of the Member State before a date and in accordance with rules to be laid down.'

8 Under the first and second sentences of Article 4(2) of Regulation No 3950/92:

'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 ...'

9 Article 9 of the same regulation provides:

'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 the Community:

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

and/or

— supplying the purchaser;

...

(e) "purchaser" means an undertaking or grouping which purchases milk or other milk products from a producer:

— to treat or process them,

— to sell them to one or more undertakings treating or processing milk or other milk products.

...

- (f) “undertaking treating or processing milk or other milk products” means an undertaking or grouping which is involved in collection, packaging, storage, chilling and processing operations or whose dairying activities are restricted to one of those operations;
- (g) “delivery” means any delivery of milk or other milk products, whether the transport is carried out by the producer, a purchaser, an undertaking processing or treating such products or a third party;
- (h) “milk or milk equivalent sold directly for consumption” means milk or milk products converted into milk equivalent, sold or transferred free without going through an undertaking treating or processing milk or other milk products.’

10 Article 1 of Regulation No 536/93 states:

‘For the purposes of calculating the additional levy introduced by Regulation (EEC) No 3950/92:

1. Within the meaning of Article 2(1) of that Regulation “quantities of milk or milk equivalent marketed” in a Member State means all quantities of milk or milk equivalent which leave any holding in the territory of that Member State.

Quantities presented by producers for treatment or processing under contract shall be deemed deliveries;

...'

The main proceedings and the question referred for a preliminary ruling

- 11 During the milk marketing years 1998/99 and 1999/2000, Latteria Sociale Moderna was obliged, as a result of a contract signed between it and Allevamenti Associati, to process a certain quantity of milk produced by the latter company, in order to obtain cheese, butter and whey. That contract provided that, once manufactured, the cheese, butter and whey was to be returned to Allevamenti Associati for marketing.

- 12 Allevamenti Associati considered that, for the purposes of the application of the additional levy on milk during the two marketing years in question, the amounts sent to Latteria Sociale Moderna were 'direct sales'. It declared them as such to the relevant Italian authorities.

- 13 However, the Servizio Provinciale Agricoltura di Reggio Emilia considered that the amounts in question were 'deliveries' of milk. It reclassified the production for the years 1998/99 and 1999/2000 of 'direct sales in deliveries' and, consequently, found that there was an additional levy payable by Latteria Sociale Moderna, which was considered to be the 'purchaser' of the milk delivered.

- 14 Allevamenti Associati and Latteria Sociale Moderna each brought an action, in relation to the aspects that concerned them, against those decisions before the Tribunale amministrativo regionale per l'Emilia-Romagna, on the ground, in particular, that those decisions are contrary to Regulations Nos 3950/92 and 536/93.
- 15 During the course of those actions, the national court is considering the interpretation of Article 9(g) of Regulation No 3950/92. It wonders whether that provision could be interpreted in such a way that the notion of 'delivery' applies to the transfer of property or, in any event, the grant of a legal title enabling the party acquiring it to perform acts of disposal for his own account in regard to the milk rather than simply making the milk available for the purpose of allowing it to be processed while the milk remains the exclusive property of the producer who receives it after processing.
- 16 Considering that the Court of Justice should rule on that issue, the Tribunale amministrativo regionale per l'Emilia-Romagna decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'On a proper construction of Regulation (EEC) No 3950/92 of 28 December 1992 (in particular Articles 1, 2 and 9(g) thereof) and Regulation (EEC) No 536/93 of 9 March 1993 (in particular Articles 1, 2 and 3 thereof), for the purposes of determining milk quotas and the application of the additional levy, is the transfer of a quantity of milk by the producer to a third party without the passing of title in it, in performance of a contract for the treatment and processing of the milk in order to manufacture cheese, butter and whey for consideration, to be classified as "delivery" or "direct sale"?'

The question referred for a preliminary ruling

- 17 The Court considered that the answer to that question can be clearly deduced from its case-law and, in particular, from the judgment in Case C-288/97 *Consorzio Caseifici dell'Altopiano di Asiago* [1999] ECR I-2575 and from the order in Case C-69/03 *Caseificio Cooperativo di Cornedo* [2004] ECR I-773. In accordance with Article 104(3) of its Rules of Procedure it informed the referring court of its intention to give its decision by reasoned order and requested the persons referred to in Article 23 of the Statute of the Court of Justice to submit any observations in that connection.
- 18 The Italian Government, the Regione Emilia-Romagna and the Commission of the European Communities, which had replied to the Court's invitation to submit observations, had no objections to the Court's intention to rule by reasoned order. However, Allevamenti Associati and Latteria Sociale Moderna submitted that the answer to the question referred for a preliminary ruling could not be deduced either from the judgment in *Consorzio Caseifici dell'Altopiano di Asiago* or the order in *Caseificio Cooperativo di Cornedo*. They observed, in particular, that in the proceedings giving rise to the first judgment, the producers had transferred the title in the milk to the dairy-processing cooperative, whereas, in the main proceedings in the present case, the processing of milk by Latteria Sociale Moderna was carried out under a contract for services. However, those observations do not lead the Court of Justice to refrain from following the proposed procedure.
- 19 By its question, the Tribunale amministrativo regionale per l'Emilia-Romagna seeks to ascertain, in substance, whether the processing of milk by a dairy under a contract for services concluded with the milk producer should be classified as delivery or as a direct sale in circumstances where the milk producer retains the title in that milk.

- 20 In so far as the referring court asks that question also in order to be able to determine milk quotas, the Commission is in doubt as to the relevance of the answer to that question. In that regard, it is clear from the observations of *Allevamenti Associati* that the competent national administrative authority had at first granted its request to change delivery reference quantities into direct sales reference quantities, but that the *Servizio Provinciale Agricoltura di Reggio Emilia* subsequently classified them as deliveries of milk.
- 21 Therefore, it is not manifestly clear that the interpretation of Community law sought in order to determine those reference quantities is unrelated to the facts or subject-matter of the main action and the question submitted regarding the determination of the milk quotas does not appear to be irrelevant.
- 22 Regarding the substance, it must be noted that the additional levy scheme is based on the distinction between reference quantities for milk sold directly for consumption and those for milk delivered to a purchaser (see Case C-196/94 *Schiltz-Thilmann* [1995] ECR I-3991, paragraph 16, and *Consorzio Caseifici dell'Altopiano di Asiago*, paragraph 18).
- 23 At paragraph 25 of its judgment in *Consorzio Caseifici dell'Altopiano di Asiago* the Court of Justice ruled that the term 'purchaser' applies to any undertaking which acquires milk from a producer under a contract, irrespective of the manner in which the latter is paid, for the purpose either of treating or processing the milk itself or of transferring it to an undertaking which treats or processes it (see also the order in *Caseificio Cooperativo di Cornedo*, paragraph 20).

- 24 It follows that deliveries made to a purchaser within the meaning of Regulation No 3950/92 need not necessarily involve the acquisition of title in order to give rise to additional levies (see the order in *Caseificio Cooperativo di Cornedo*, paragraph 21).
- 25 Contrary to what Allevamenti Associati alleges in its observations, it is clear from that case-law that the marketing and delivery of milk under the additional levy scheme for milk are independent of the question whether or not title in the milk is transferred to the dairy.
- 26 In relation more particularly to the treatment or the processing of quantities of milk under a contract which excludes, by its nature, the transfer of title, such as a processing contract, it is clear, in particular, from the second paragraph of Article 1 (1) of Regulation No 536/93 that such quantities should be deemed to be deliveries.
- 27 The fact that the milk treated or processed by a third party is subsequently sold directly to consumers by the milk producer does not justify the classification of that transaction as a direct sale within the meaning of Regulation No 3950/92. It is clear from paragraph 21 of the judgment in *Consorzio Caseifici dell' Altopiano di Asiago* that there is a delivery of milk within the meaning of Article 2(2) of Regulation No 3950/92 whenever a quantity of milk leaves a producer's holding to be delivered to an intermediary for treatment or processing.
- 28 It follows from all of the above considerations that Articles 1, 2 and 9(g) of Regulation No 3950/92 and Article 1 of Regulation No 536/93 are to be interpreted as meaning that, for the purposes of determining milk quotas and the application of the additional levy, the transfer of a quantity of milk by the producer to a third party

without the passing of title in it, in performance of a contract for the treatment and processing of the milk into cheese, butter and whey for consideration, must be classified as a delivery.

Costs

- ²⁹ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of these parties, are not recoverable.

On those grounds, the Court of Justice (Fourth Chamber) orders:

Articles 1, 2 and 9(g) of Council Regulation (EEC) No 3950/92 of 28 December 1992, establishing an additional levy in the milk and milk products sector, and Article 1 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 are to be interpreted as meaning that, for the purposes of determining milk quotas and the application of the additional levy, the transfer of a quantity of milk by the producer to a third party without the passing of title in it, in performance of a contract for the treatment and processing of the milk into cheese, butter and whey for consideration, should be classified as a delivery.

Signatures.