



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

13 January 2022 *

(Reference for a preliminary ruling – Milk and milk products sector – Quotas – Additional levy – Regulation (EC) No 1788/2003 – Deliveries exceeding the producer’s available reference quantity – Collection of the contribution to the excess levy by the purchaser – Refund of levies overpaid – Regulation (EC) No 595/2004 – Article 16 – Criteria for redistributing the excess levy)

In Case C-377/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 4 April 2019, received at the Court on 13 May 2019, in the proceedings

Benedetti Pietro e Angelo Ss,

Capparotto Giampaolo e Lorenzino Ss,

Gonzo Dino Ss,

Mantovani Giuseppe e Giorgio Ss,

Azienda agricola Padovani Luigi,

Azienda agricola La Pila di Mastrotto Piergiorgio e C. Ss,

Azienda agricola Mastrotto Giuseppe,

Soc. agr. semplice F.lli Isolan

v

Agenzia per le Erogazioni in Agricoltura (AGEA),

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the First Chamber, acting as President of the Second Chamber, I. Ziemele (Rapporteur), T. von Danwitz, P.G. Xuereb and A. Kumin, Judges,

Advocate General: M. Bobek,

* Language of the case: Italian.

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Benedetti Pietro e Angelo Ss, Capparotto Giampaolo e Lorenzino Ss, Gonzo Dino Ss, Mantovani Giuseppe e Giorgio Ss, Azienda agricola Padovani Luigi, Azienda agricola La Pila di Mastrotto Piergiorgio e C. Ss and Azienda agricola Mastrotto Giuseppe, by M. Aldegheri, avvocatà,
- Soc. agr. semplice F.lli Isolan, by M. Aldegheri and E. Ermondi, avvocate,
- the Italian Government, by G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato,
- the European Commission, by D. Bianchi and A. Dawes and by F. Moro, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 16 of Commission Regulation (EC) No 595/2004 of 30 March 2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector (OJ 2004 L 94, p. 22).
- 2 The request has been made in proceedings between Benedetti Pietro e Angelo Ss, Capparotto Giampaolo e Lorenzino Ss, Gonzo Dino Ss, Mantovani Giuseppe e Giorgio Ss, Azienda agricola Padovani Luigi, Azienda agricola La Pila di Mastrotto Piergiorgio e C. Ss, Azienda agricola Mastrotto Giuseppe and Soc. agr. semplice F.lli Isolan, who are Italian milk producers, and the Agenzia per le Erogazioni in Agricoltura (AGEA) (the Agricultural Payments Agency, Italy) concerning the calculation of the additional levy payable by those producers for the milk and milk products marketing period from 1 April 2005 to 31 March 2006 ('the reference period').

Legal context

European Union law

- 3 In 1984, by reason of a persisting imbalance between supply and demand in the milk sector, an additional levy system in that sector, based on the principle that a levy was due for quantities of milk and/or milk equivalent which exceeded a reference quantity to be determined, was established 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). The same day saw the adoption of 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 The additional levy scheme was extended on several occasions, in particular by 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 the detailed rules for its application were successively laid down by 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) and Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Regulation No 3950/92 (OJ 2001 L 187, p. 19).
- 5 With a view in particular to simplification and clarification, Regulation No 3950/92 was repealed and replaced by Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector (OJ 2003 L 270, p. 123) which, in turn, was repealed and replaced by Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1), with effect from 1 April 2008.
- 6 The dispute in the main proceedings is governed, *ratione temporis*, by Regulation No 1788/2003 and by Regulation No 595/2004, which repealed Regulation No 1392/2001.

Regulation No 1392/2001

- 7 Article 9 of Regulation No 1392/2001 was thus worded:

‘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:

- (a) formal acknowledgement by the competent authority of the Member State that all or part of the levy has been wrongly charged;
- (b) the geographical location of the holding, and primarily mountain areas ...
- (c) the maximum stocking density on the holding for the purposes of extensive livestock production;
- (d) the amount by which the individual reference quantity is exceeded;
- (e) the producer’s reference quantity.

2. Where the financial resources available for a given period are not used up after the criteria set out in paragraph 1 have been applied, the Member State shall adopt other objective criteria after consulting the [European] Commission.’

Regulation No 1788/2003

8 Recitals 5, 12 and 22 of Regulation No 1788/2003 state:

‘(5) The levy should be set at a dissuasive level and be payable by the Member States as soon as the national reference quantity is exceeded. The Member State should then divide the burden of payment among the producers who have contributed to the overrun. The latter must be liable vis-à-vis the Member State for payment of their contribution to the levy due for the mere fact of having overrun their available quantity.

...

(12) In order to ensure that the scheme runs effectively, the contribution to the levy due from the producers should be collected by the purchasers, who are in the best position to carry out the necessary transactions and who should therefore be given the means to ensure that they can collect this contribution. Conversely, any amount collected which exceeds the levy due by the Member State should be used to finance national restructuring programmes and/or reimbursed to certain categories of producers or those in an exceptional situation. However, where it is found that no levy is due by the Member State, any advances collected should be reimbursed.

...

(22) The main purpose of the levy provided for in this Regulation is to regularise and stabilise the market in milk products. The revenue accruing from this levy should therefore be used to finance expenditure in the milk sector.’

9 Article 1(1) and (2) of that regulation, entitled ‘Scope’, provides:

‘1. For 11 consecutive periods of twelve months commencing on 1 April 2004 ..., a levy is hereby introduced ... on quantities of cow’s milk and other milk products marketed during the twelve-month period concerned in excess of the national reference quantities fixed in Annex I.

2. These quantities shall be divided between producers in accordance with Article 6, distinguishing between deliveries and direct sales as defined in Article 5. Any overrun of the national reference quantity and the resulting levy shall be determined nationally in each Member State, in accordance with Chapter 3 and making a distinction between deliveries and direct sales.’

10 Under Article 4 of that regulation, entitled ‘Contribution of producers to the levy due’:

‘The levy shall be entirely allocated, in accordance with the provisions of Articles 10 and 12, among the producers who have contributed to each of the overruns of the national reference quantities referred to in Article 1(2).

Without prejudice to Article 10(3) and Article 12(1), producers shall be liable vis-à-vis the Member State for payment of their contribution to the levy due, calculated in accordance with the provisions of Chapter 3, for the mere fact of having overrun their available reference quantities.’

11 Article 5 of the same regulation, entitled ‘Definitions’, provides:

‘For the purposes of this Regulation:

...

- (i) “national reference quantity” means the reference quantity fixed in Annex I for each Member State;
- (j) “individual reference quantity” means a producer’s reference quantity at 1 April of any twelve-month period;
- (k) “available reference quantity” means the reference quantity available to producers on 31 March of the twelve-month period for which the levy is calculated, taking account of all transfers, sales, conversions and temporary re-allocations provided for in this Regulation which have taken place during that twelve-month period.’

12 Chapter 3 of that regulation, relating to the calculation of the levy, contains Articles 8 to 12 of that regulation. Article 10 of that regulation, entitled ‘Levy on deliveries’, provides in paragraph 3:

‘Each producer’s contribution to payment of the levy shall be established by decision of the Member State, after any unused part of the national reference quantity allocated to deliveries has or has not been re-allocated, in proportion to the individual reference quantities of each producer or according to objective criteria to be set by the Member States:

- (a) either at national level on the basis of the amount by which each producer’s reference quantity has been exceeded,
- (b) or firstly at the level of the purchaser and thereafter at national level where appropriate.’

13 Article 11 of Regulation No 1788/2003, entitled ‘Role of purchasers’, is worded as follows:

‘1. Purchasers shall be responsible for collecting from producers contributions due from the latter by virtue of the levy and shall pay to the competent body of the Member State, before a date and following a procedure to be laid down in accordance with Article 23(2), the amount of these contributions deducted from the price of the milk paid to the producers responsible for the overrun or, failing this, collected by any other appropriate means.

...

3. Where, during the reference period, quantities delivered by a producer exceed that producer’s available reference quantity, the relevant Member State may decide that the purchaser shall deduct part of the price of the milk in any delivery by the producer concerned in excess of the reference quantity, by way of an advance on the producer’s contribution, in accordance with detailed rules laid down by the Member State. ...’

14 Article 13 of that regulation, entitled ‘Amounts paid in excess or unpaid’, which appears in Chapter 4 on administering the levy, provides:

‘1. Where, in the case of deliveries or direct sales, the levy is found to be payable and the contribution collected from producers is greater than that levy, the Member State may:

(a) use partially or totally the excess to finance the measures referred to in Article 18(1)(a), and/or

(b) redistribute it partially or totally to producers who fall within priority categories established by the Member State on the basis of objective criteria and within the period to be laid down in accordance with the procedure laid down in Article 23(2) or who are affected by an exceptional situation resulting from a national rule unconnected with the present scheme.

2. Where it is established that no levy is payable, any advances collected by purchasers or the Member State shall be reimbursed no later than the end of the following twelve-month period.

3. Where a purchaser does not meet the obligation to collect the producers’ contribution to the levy in accordance with Article 11, the Member State may collect unpaid amounts directly from the producer, without prejudice to any penalties it may impose upon the defaulting purchaser.

4. Where a producer or a purchaser fails to comply with the time limit for payment, interest on arrears to be fixed in accordance with the procedure laid down in Article 23(2) shall be paid to the Member State.’

Regulation No 595/2004

15 Recital 1 of Regulation No 595/2004 states:

‘The scheme for a levy in the milk and milk products sector has been extended in accordance with Regulation [No 1788/2003] for a further 11 consecutive 12-month periods from 1 April 2004. Detailed rules should be laid down to take account of the new provisions of that Regulation. Those detailed rules should also incorporate, to a great extent, provisions of Regulation [No 1392/2001]. Regulation [No 1392/2001] should therefore be repealed.’

16 Article 13 of that regulation, entitled ‘Notification of the levy’, provides in paragraph 1:

‘In the case of deliveries, the competent authority shall notify or confirm to purchasers the contributions to the levy payable by them 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, as the case may be, to purchasers with a view to their subsequent allocation among the producers concerned.’

17 Article 15 of that regulation, entitled ‘Time limit for payment’, provides in paragraph 1:

‘Before 1 September each year, purchasers and, in the case of direct sales, producers liable for the levy shall pay the competent authority the amount due in accordance with rules laid down by the Member State.’

- 18 Under Article 16 of Regulation No 595/2004, entitled ‘Criteria for redistributing the excess levy’:
- ‘1. Where appropriate, Member States shall determine the priority categories of producers referred to in Article 13(1)(b) of Regulation [No 1788/2003], on the basis of one or more of the following objective criteria, in order of priority:
- (a) formal acknowledgement by the competent authority of Member State that all or part of the levy has been wrongly charged;
 - (b) the geographical location of the holding, and primarily mountain areas ...;
 - (c) the maximum stocking density on the holding for the purposes of extensive livestock production;
 - (d) the percentage by which the individual reference quantity is exceeded;
 - (e) the producer’s reference quantity.
2. Where the excess levy, referred to in Article 13(1) of Regulation [No 1788/2003], available for a given period, is not used up after redistribution in accordance with the criteria set out in paragraph 1 of this Article, the Member State shall adopt other objective criteria after consulting the Commission.

The redistribution of the excess levy shall be completed 15 months after the end of the 12-month period in question at the latest.’

- 19 Article 17 of that regulation provides:
- ‘Member States shall take all the measures necessary to ensure that the levy is correctly charged and that it falls on the producers who contributed to the overrun.’

Regulation (EC) No 1468/2006

- 20 Commission Regulation (EC) No 1468/2006 of 4 October 2006 amending Regulation No 595/2004 (OJ 2006 L 274, p. 6), which entered into force on 12 October 2006, states in recital 5:

‘In accordance with Article 16(1) of Regulation (EC) No 595/2004, Member States determine priority categories of producers for redistributing the excess levy on the basis of one or more objective criteria. Experience has shown that Member States need more clarity and more flexibility for the definition of priority categories.’

- 21 Article 16 of Regulation No 595/2004, as amended by Regulation No 1468/2006 (‘Regulation No 595/2004 as amended’), is worded as follows:

‘1. Where appropriate, Member States shall determine the priority categories of producers referred to in Article 13(1)(b) of Regulation (EC) No 1788/2003, on the basis of one or more of the following objective criteria:

- (a) formal acknowledgement by the competent authority of Member State that all or part of the levy has been wrongly charged;

- (b) the geographical location of the holding, and primarily mountain areas ...
 - (c) the maximum stocking density on the holding for the purpose of extensive livestock production;
 - (d) the individual reference quantity is exceeded by less than 5% or less than 15 000 [kilograms], whichever is the lowest;
 - (e) the level of individual reference quantity is less than 50% of the national average individual reference quantity;
 - (f) other objective criteria adopted by the Member State after consulting the Commission.
2. The redistribution of the excess levy shall be completed 15 months after the end of the 12 month period in question at the latest.'

Italian law

Decree-Law No 49/2003

- 22 Decreto-legge n. 49 – Riforma della normativa in tema di applicazione del prelievo supplementare nel settore del latte e dei prodotti lattiero-caseari (Decree-Law No 49 reforming the rules on the application of the additional levy in the milk and milk products sector) of 28 March 2003 (GURI No 75 of 31 March 2003), converted into law, with amendments, by Law No 119 of 30 May 2003 (GURI No 124 of 30 May 2003) ('Decree-Law No 49/2003'), provides in Article 5(1) and (2):

'1. In the month following the reference month, purchasers shall forward to the regions and the autonomous provinces that have recognised them the data deriving from updates to the monthly register maintained pursuant to Article 14(2) of Regulation No 1392/2001 even when they have not taken delivery of milk. Purchasers shall deduct the additional levy, calculated on the basis of Article 1 of [Regulation No 3950/92], as amended, in relation to milk delivered in excess of the individual reference quantity allocated to each individual transferring producer, taking into account variations during the period. ...

2. Within 30 days of the expiry of the period referred to in paragraph 1, ... purchasers shall pay the amounts deducted into the bank account of the AGEA and send a copy of the payment receipts or guarantees referred to in paragraph 6 to the regions and autonomous provinces.'

- 23 Article 9 of Decree-Law No 49/2003, entitled 'Reimbursement of the excess levy', provides:

'1. At the end of every period, the AGEA:

- (a) shall draw up a statement of the deliveries of milk made and the total levy paid by the purchasers in accordance with the performance of the obligations set out in Article 5;
- (b) shall calculate the total national levy payable to the European Union for excess production in the deliveries;
- (c) shall calculate the amount of the excess levy.

...

3. The amount referred to in paragraph 1(c), less the provision referred to in paragraph 2, shall be shared among producers holding a quota that have paid the levy, in accordance with the following criteria and in order:

(a) producers who have been wrongly charged all or part of the levy applied to them or from whom it is no longer due;

(b) producers owning holdings situated in mountain areas

(c) producers owning holdings situated in less-favoured areas ...

(c bis) producers who, pursuant to a decision by the competent health authority and for at least 90 days during a marketing period, have been subject to a prohibition on the movement of animals in areas affected by extensive infectious diseases, and who have therefore been required to produce a quantity higher

4. If the sum of those reimbursements is less than the amount referred to in paragraph 3, the remainder shall be shared among producers holding a quota who have paid the levy, except for those who have exceeded their own individual reference quantity by more than 100 per cent, in accordance with the following criteria and in order ...'

Decree-Law No 157/2004

24 In the version applicable to the dispute in the main proceedings, decreto-legge n. 157 – Disposizioni urgenti per l'etichettatura di alcuni prodotti agroalimentari, nonché in materia di agricoltura e pesca (Decree-Law No 157 on urgent provisions on the labelling of some agri-food products, and on agriculture and fisheries) of 24 June 2004 (GURI No 147 of 25 June 2004), converted into law, with amendments, by Law No 204 of 3 August 2004 (GURI No 186 of 10 August 2004) ('Decree-Law No 157/2004'), provides in Article 2(3):

'Pursuant to Article 9 of [Decree-Law No 49/2003], overpaid amounts of the levy paid monthly by producers that are up to date with their payments shall be refunded to the producers. If, at the end of that operation, the remaining total of the levy allocations to be made is greater than the levy payable to the European Union, plus 5%, the AGEA shall cancel the levy overcharged for producers that have not yet made the monthly payments, applying the priority criteria laid down by Article 9(3) and (4), without prejudice to the penalties referred to in Article 5(5) of that same Decree-Law.'

The dispute in the main proceedings and the question referred for a preliminary ruling

25 On 2 October 2006, AGEA sent to the purchaser Latte Più Srl, a company incorporated under Italian law, a communication concerning, for the reference period, the additional levies payable by the appellants in the main proceedings.

26 It is apparent from that communication that, pursuant to Article 9 and Article 10(27) and (28) of Decree-Law No 49/2003, calculations had been made with a view to reimbursing, for the benefit of producers, the excess levy in relation to deliveries of cow's milk during the milk year 2005/2006, on the basis of the individual reference quantities and the monthly declarations of delivery and

payment submitted by the purchasing undertakings. In accordance with that communication, producers who had complied in full with the obligation to pay the additional levy would receive that reimbursement, on the basis of the payment declarations submitted by the purchasers and after they were verified.

- 27 As an annex to the communication referred to in paragraph 25 of this judgment, the AGEA had attached a form entitled ‘List of levies per purchaser – Period 2005/2006’ indicating, for each producer, the amounts of the levies already paid and thus confirmed the amounts to be reimbursed, calculated in accordance with Article 9(3) and (4) of Decree-Law No 49/2003. In that regard, the AGEA stated that the purchasing undertaking was required to pay the refunded sums to the producers who had made the deliveries and, in place of the producers, to pay the AGEA the sums demanded in that list, in order to enable the AGEA to comply with the Italian Republic’s obligation to repay those sums to the European Agricultural Guidance and Guarantee Fund (EAGGF).
- 28 By an action brought before the Tribunale amministrativo regionale del Lazio – sede di Roma (Regional Administrative Court for Lazio, Rome, Italy), the appellants in the main proceedings sought annulment of that communication, arguing, inter alia, that, by introducing the refund system provided for in Article 2(3) of Decree-Law No 157/2004, the Italian legislature had infringed Article 13 of Regulation No 1788/2003 and Article 16 of Regulation No 595/2004.
- 29 Following the dismissal of that action, the appellants in the main proceedings brought an action before the Consiglio di Stato (Council of State, Italy), the referring court.
- 30 As regards the redistribution of the excess levy, the referring court states in particular that, although the Italian legislature provided for a priority category of producers on the basis of the objective criterion laid down in Article 9(3)(a) of Decree-Law No 49/2003, namely ‘producers who have been wrongly charged all or part of the levy applied to them or from whom it is no longer due’, it also seems to have provided, in Article 2(3) of Decree-Law No 157/2004, for a priority category of producers who not only fulfil that objective criterion but in respect of whom the levy was paid regularly on a monthly basis.
- 31 The referring court also states that, under Decree-Law No 157/2004, the stage of payment of the levy to AGEA, which is the responsibility of and is to be made by the purchaser, is linked to that of the refund to the producer of the wrongly charged levy, in so far as, in the context of refunds, that decree-law confers a priority ‘right’ on producers in respect of whom the purchaser has not only collected but also paid the levy on a regular monthly basis to the AGEA.
- 32 The referring court also takes the view that, unlike the legislative framework at issue in the case which gave rise to the judgment of 11 September 2019, *Caseificio Sociale San Rocco and Others* (C-46/18, EU:C:2019:706), the entry into force of Regulations No 1788/2003 and No 595/2004 triggered the obligation, and not the mere option, for the purchaser to withhold at source, by way of the additional levy, the sums owed by producers who had made deliveries of surplus milk, which, in the present case, justifies the reference to the Court of Justice of a question that is different and separate from those raised in the case which gave rise to that judgment.

33 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘In circumstances such as those [at issue in the main proceedings], does Article 16 of Regulation [No 595/2004] preclude a national provision, such as that laid down in Article 9 of Decree-Law No 49/2003 in conjunction with Article 2(3) of Decree-Law [No 157/2004], which lays down the criterion for identifying the priority category [of producers] to which a levy unduly charged is to be refunded as whether or not the purchaser has made a regular monthly payment [of the levy]?’

Procedure before the Court

34 By decision of the President of the Court of 4 July 2019, the proceedings in the present case were stayed pending final judgment in Case C-46/18, *Caseificio Sociale San Rocco and Others*.

35 Following the delivery of the judgment of 11 September 2019, *Caseificio Sociale San Rocco and Others* (C-46/18, EU:C:2019:706), the Court asked the referring court whether it wished to maintain or withdraw its request for a preliminary ruling, and did not receive a reply.

36 The proceedings in the present case were resumed on 1 July 2020.

Consideration of the question referred

37 At the outset, it should be noted that, in the context of the procedure provided for in Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, only the national courts may establish and assess the facts of the dispute in the main proceedings and determine the exact scope of national laws, regulations or administrative provisions (judgment of 3 October 2019, *Fonds du Logement de la Région de Bruxelles-Capitale*, C-632/18, EU:C:2019:833, paragraph 48 and the case-law cited). The Court is only empowered to rule on the interpretation or validity of EU law in the light of the factual and legal situation as described by the referring court, in order to provide that court with such guidance as will assist it in resolving the dispute before it (judgment of 17 December 2020, *Onofrei*, C-218/19, EU:C:2020:1034, paragraph 18 and the case-law cited).

38 Consequently, even though the Italian Government challenges the referring court’s interpretation of national law, according to which Article 2(3) of Decree-Law No 157/2004 establishes a priority category of producers in respect of whom not only must the levy be wrongly charged, as provided for in Article 9(3)(a) of Decree-Law No 49/2003, but in respect of whom the purchaser must have collected and paid, on a monthly and regular basis, the levy to the competent authority of the Member State, it is necessary to answer the question referred on the basis of the premiss, set out in the order for reference, that Italian law establishes such a category.

39 Therefore, the question referred must be understood as seeking, in essence, to ascertain whether Article 16(1) of Regulation No 595/2004 must be interpreted as precluding national legislation the effect of which is that reimbursement of the overpayment of the additional levy must, as a matter of priority, benefit producers in respect of whom purchasers have fulfilled their monthly obligation to pay that levy.

- 40 As is clear from its wording, Article 13(1)(b) of Regulation No 1788/2003 provides that, where, in the case of deliveries or direct sales, the levy is found to be payable and the contribution collected from producers is greater than that levy, the Member State may redistribute the excess levy partially or totally to producers who fall within priority categories established by the Member State on the basis of objective criteria and within the period to be laid down or who are affected by an exceptional situation resulting from a national rule unconnected with the additional levy scheme.
- 41 In accordance with Article 13(2) of Regulation No 1788/2003, where it is established that no levy is payable, any advances collected by purchasers or the Member State are to be reimbursed no later than the end of the following twelve-month period.
- 42 Detailed rules for the application of Article 13(1)(b) of Regulation No 1788/2003 are set out in Article 16(1) of Regulation No 595/2004, which lays down the criteria for redistributing the excess levy. In accordance with the latter provision, Member States are to determine the priority categories of producers referred to in Article 13(1)(b) of Regulation No 1788/2003, on the basis of one or more objective criteria listed in points (a) to (e) of Article 16(1) of Regulation No 595/2004 in order of priority. Article 16(1)(a) of Regulation No 595/2004 contains the criterion of formal acknowledgement by the competent authority of the Member State that all or part of the levy has been wrongly charged.
- 43 The first subparagraph of Article 16(2) of Regulation No 595/2004 provides that, where the excess levy, referred to in Article 13(1) of Regulation No 1788/2003, available for a given period, is not used up after redistribution in accordance with the criteria set out in Article 16(1) of Regulation No 595/2004, the Member State is to adopt other objective criteria after consulting the Commission.
- 44 It thus follows from the very wording of Article 16 of Regulation No 595/2004 that Member States may lay down criteria additional to those defined in Article 16(1) of that regulation only where the excess amount referred to in Article 13(1) of Regulation No 1788/2003 has not been used up after the redistribution carried out in accordance with those criteria.
- 45 That interpretation is supported by the regulatory context of Article 16 of Regulation No 595/2004.
- 46 Thus, first, Article 16 lays down detailed rules for the application of Article 13(1)(b) of Regulation No 1788/2003. It follows from the latter provision that, while Member States may choose whether or not to reimburse the excess, the reimbursement, should they decide to make it, is made to producers who fall within priority categories established by the Member State on the basis of objective criteria to be laid down in accordance with the procedure laid down in that regulation or who are affected by an exceptional situation resulting from a national rule unconnected with the additional levy scheme. It follows that the discretion on the part of the Member State for determining priority categories is limited by the criteria laid down in Regulation No 595/2004.
- 47 Secondly, it is apparent from recital 1 of Regulation No 595/2004 that the provisions of that regulation incorporate to a large extent the provisions of Regulation No 1392/2001. The wording of Article 16(1) and (2), first subparagraph, of Regulation No 595/2004 is similar to that of Article 9(1) and (2) of Regulation No 1392/2001.

- 48 The Court has held that the criteria laid down in Article 9(1) of Regulation No 1392/2001 are exhaustive and Member States may add further criteria only where the financial resources available for a given period were not used up after those criteria were applied in order of priority (judgment of 11 September 2019, *Caseificio Sociale San Rocco and Others*, C-46/18, EU:C:2019:706, paragraph 38).
- 49 Third, as is apparent from recital 5 of Regulation No 1468/2006, that regulation amended Article 16(1) of Regulation No 595/2004 in order to address the Member States' need for more clarity and more flexibility for the definition of priority categories. Article 16(1) of Regulation No 595/2004, as amended, no longer provides that the objective criteria set out in that provision are to be applied in order of priority and provides, in point (f), for the possibility for Member States to adopt other objective criteria after consulting the Commission. It is only that provision, which entered into force after the adoption of the communication at issue in the main proceedings, as referred to in paragraph 25 above, which abolished the condition that the Member States could not add criteria additional to those laid down in Article 16(1) of Regulation No 595/2004 unless the financial resources available for a given period were not used up after the latter criteria were applied.
- 50 Therefore, it must be held that the criteria laid down in Article 16(1) of Regulation No 595/2004, in the version in force during the reference period, are exhaustive and that Member States may add further criteria only where the financial resources available for a given period were not used up after those criteria were applied.
- 51 Article 16(1) of Regulation No 595/2004 does not mention, as a criterion for redistributing the excess levy, the fact of belonging to the category of milk producers in respect of whom milk purchasers have fulfilled their obligation to pay the additional levy on a regular monthly basis to the competent authority of the Member State.
- 52 Consequently, in the light of all the foregoing considerations, the answer to the question referred is that Article 16(1) of Regulation No 595/2004 must be interpreted as precluding national legislation which has the effect that reimbursement of the excess amount of the additional levy must, as a matter of priority, benefit producers in respect of whom purchasers have fulfilled their obligation to pay that levy on a monthly basis.

Costs

- 53 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 those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 16(1) of Commission Regulation (EC) No 595/2004 of 30 March 2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector must be interpreted as precluding national legislation which has the effect that reimbursement of the excess amount of the additional levy must, as a matter of priority, benefit producers in respect of whom purchasers have fulfilled their obligation to pay that levy on a monthly basis.

[Signatures]