JUDGMENT OF THE COURT (Fifth Chamber)
14 July 1994 *

In Case C-351/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht Düsseldorf (Federal Republic of Germany) for a preliminary ruling in the proceedings pending before that court between

Manfred Graff

and

Hauptzollamt Köln-Rheinau

on the interpretation and validity of the system of charging an additional levy on milk, as set out in Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1984 L 90, p. 10) and 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 (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13),

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, D. A. O. Edward, R. Joliet, G. C. Rodríguez Iglesias, and M. Zuleeg (Rapporteur), Judges,

* Language of the case: German.

Advocate General: W. Van Gerven,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Manfred Graff, by Ernst Handschumacher, Gerda Blume, Johannes Handschumacher and Regina Möhring, of the Düsseldorf Bar,

— the Council of the European Union, by Arthur Brautigam, Legal Adviser, acting as Agent,

— the Commission of the European Communities, by Dirk Booß, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Council and the Commission at the hearing on 18 November 1993,

after hearing the Opinion of the Advocate General at the sitting on 16 December 1993,

gives the following

Judgment

1 By order of 21 August 1992, received at the Court on 9 September 1992, the Finanzgericht (Finance Court) Düsseldorf referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation and validity of the system of charging an additional levy on milk, as set out in Council Regulation No 856/84 of 31 March 1984 amending Regulation No 804/68 on the common organization of the market in milk and milk products (OJ 1984 L 90, p. 10)and in Council Regulation 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).

2 That question was raised in proceedings between Mr Graff, a milk producer established in Germany near the Belgian frontier, and the Hauptzollamt Köln-Rheinau concerning the taking into account of a quantity of milk produced on a holding situated in Belgium for the purpose of calculating the reference quantity to be allocated by the German authorities.

3 In order to curb the production of milk and milk products in the Community, Regulation No 856/84 inserted Article 5c in Regulation No 804/68; Article 5c(1) provides that, during five consecutive periods of 12 months beginning on 1 April 1984, an additional levy is to be payable by producers (formula A) or purchasers (formula B) of cow's milk who exceed a given reference quantity.

4 According to Article 5c(3),

'The sum of the reference quantities ... may not exceed a guaranteed total quantity equal to the sum of quantities of milk delivered to undertakings treating or pro-

cessing milk or other milk products in each Member State during the 1981 calendar year, plus 1%.'

Belgium and Germany were accordingly allocated a guaranteed total quantity of 3 106 000 tonnes and 23 248 000 tonnes respectively.

5 Those provisions were implemented by Regulation No 857/84. Article 2(1) of that regulation provides that, in States which have opted for formula A, the individual reference quantities to be allocated to producers are to be equal to the quantity of milk or milk equivalent delivered by the producer in question during the 1981 calendar year, plus 1%. However, Article 2(2) allows Member States to fix the reference quantities by reference to the 1983 calendar year, provided that the quantity is 'weighted by a percentage established so as not to exceed the guaranteed quantity defined in Article 5c of Regulation (EEC) No 804/68'.

6 Belgium and the Federal Republic of Germany have opted for formula A, and exercised the option provided for in Article 2(2) of Regulation No 857/84 of choosing 1983 as the reference year for the calculation of the individual reference quantities. In Germany, therefore, indent (1) of the second sentence of Paragraph 4(2) of the Milch-Garantiemengen-Verordnung (Regulation on guaranteed quantities for milk, hereinafter 'the MGVO') provided for a deduction to be made in order to meet the increase between 1981, the reference year set by Regulation No 856/84, and 1983. That deduction is all the greater as, between 1981 and 1983, the producer concerned increased his milk production.

7 It appears from the order for reference that Mr Graff delivers the milk he produces on his German holding to the Milchversorgung Rheinland e. G. (hereinafter 'Rheinland'), a Germany dairy cooperative.

8 At the end of 1981, he subleased a holding which was situated in Belgium from his mother, who held the head lease, and which belonged to his grandparents. The 91 869 litres of milk produced on that holding in 1981 was delivered to the Walhorn Eupener Genossenschaftsmolkerei, a cooperative in Walhorn (Belgium). That figure constituted an increase of 70 000 kg over production for the previous year. In 1982, however, the quantity of milk fell to 8 000 litres and, in 1983, the holding ceased to produce milk altogether.

9 In 1984 Rheinland allocated to Mr Graff for 1984/85 a reference quantity of 368 900 kg. That quantity was calculated on the basis of the quantities of milk delivered in 1981 and 1983, equivalent to 405 305 kg and 398 796 kg respectively. The first of those quantities included the quantity of milk produced on the German holding — 335 305 kg — increased by 70 000 kg, representing the increase in production recorded on the Belgian holding in 1981.

10 Following audits of Rheinland carried out at the end of the 1980s, it transpired that Mr Graff's German holding had produced only 335 305 kg of milk in 1981. After refusing to take into account the 70 000 kg produced in Belgium for the purposes of the deduction to be made under the MGVO, the Hauptzollamt revoked the initial reference quantity and replaced it as from 2 April 1984 with a reference quantity of 349 000 kg. The claimant disputes that retroactive reduction of 19 900 kg.

11 The Hauptzollamt rejected the objection lodged by Mr Graff, who thereupon brought an action before the Finanzgericht. In its order for reference, the national court casts doubt on the determination of the reference quantities effected by the German authorities. It points out that, according to indent (2) of the second sentence of Paragraph 4(2) of the MGVO, the deduction is to be reduced when the producer has taken over another holding and has to add his own production to that of the holding taken over. Accordingly, the reference quantity initially allocated to the claimant would have been correct if, in 1981, he had leased a holding situated in Germany. The national court therefore raises the question whether the failure to take into account deliveries from the Belgian holding is in breach of the

principle of equality, and in particular the second subparagraph of Article 40(3) of the Treaty.

12 The national court stayed the proceedings and referred the following question to the Court pursuant to Article 177 of the EEC Treaty for a preliminary ruling:

'Is a failure to take account, when determining a reference quantity, of the milk production from a holding which was taken over and worked together with a holding situated in another Member State contrary to the principle of equal treatment and the second subparagraph of Article 40(3) of the EEC Treaty, if it is only the fact that the holding taken over and worked with the other holding is situated in another Member State which precludes account being taken of it, as would otherwise be done under national law, resulting in a higher reference quantity?'

13 By that question, the national court asks essentially whether the principle of equality and the second subparagraph of Article 40(3) of the EEC Treaty prevent a Member State from refusing to take into account, in fixing the reference quantities of a producer established within its territory, of the quantities of milk produced on a holding situated in another Member State and accordingly granting him a lower reference quantity.

14 According to the second subparagraph of Article 40(3) of the EEC Treaty, the common organization of agricultural markets to be established as part of the Common Agricultural Policy 'shall exclude any discrimination between producers or consumers within the Community'.

15 It is settled case-law that the prohibition of discrimination laid down in that provision is merely a specific enunciation of the general principle of equality which is one of the fundamental principles of Community law (see the judgments in Case

C-177/90 *Kühn* [1992] ECR I-35, paragraph 18, and in Case C-98/91 *Herbrink* [1994] ECR I-223, paragraph 27); that principle precludes comparable situations from being treated in a different manner unless the difference in treatment is objectively justified (see the judgments in Joined Cases 201/85 and 202/85 *Klensch* [1986] ECR 3477, paragraph 9, and in Joined Cases C-267/88 to C-285/88 *Wuidart* [1990] ECR I-435, paragraph 13).

16 That rule applies to national provisions of the kind which are at issue in this case and which, adopted in implementation of the Community rules on milk, determine the method of calculating the reference quantity.

17 According to well-established case-law, the requirements flowing from the protection of fundamental rights and principles in the Community legal order are also binding on Member States when they implement Community rules and the Member States must therefore, as far as possible, apply those rules in accordance with those requirements (see the judgments in Case 5/88 *Wachauf* [1989] ECR 2609, paragraph 19, and in Case C-2/92 *Bostock* [1994] ECR I-955, paragraph 16).

18 In particular, Article 40(3) of the EEC Treaty covers all measures relating to the common organization of agricultural markets, irrespective of the authority which lays them down. Consequently, it is also binding on the Member States when they are implementing the said common organization (see the judgment in *Klensch*, cited above, paragraph 8).

19 In the circumstances, as the national court has already stated, under the relevant rules of national law a producer who, like Mr Graff, has taken over a holding in another Member State is at a disadvantage in relation to a producer who has taken

over a holding situated within national territory. In the latter case, the deduction from the reference quantity is reduced on account of the fact that the producer who has taken over another holding has to add to his own production that of the latter holding, which is not the case where the holding taken over is situated in another Member State.

20 Where comparable situations are treated differently, it is necessary to ascertain whether that difference of treatment on account of the location of the second holding is objectively justified in connection with the system of reference quantities.

21 So far as concerns that system, the fifth recital in the preamble to Regulation No 856/84 states that the guaranteed total quantity laid down for the Community has been distributed among the Member States on the basis of deliveries on their territory during the 1981 calendar year. Since the total quantity so allocated to each Member State limits milk production in that State, the sum of the reference quantities allocated individually to producers must not exceed that limit. It is important to note that, under Article 5 of Regulation No 857/84, even additional reference quantities may be granted only within that limit.

22 In distributing the guaranteed total quantities amongst individual producers, certain States took as a basis the quantities of milk produced by each producer in 1981 while others, such as Germany and Belgium, took the quantities of milk produced by each producer in 1983, as they were authorized to do by Article 2(2) of Regulation No 857/84. Those two States accordingly applied an abatement rate to those quantities so as to ensure that, notwithstanding the increase in production between 1981 and 1983, their sum would not exceed the guaranteed total quantity.

23 If, as the national court advocates, the Member States were required, in determining the individual reference quantities, to take account of the quantities produced by domestic producers in other Member States, that system of calculation as a whole would be distorted and there would be no certainty of the guaranteed quantities allocated to the Member States pursuant to Article 5c(3) being observed.

24 The fact, referred to by the national court, that in this case the effects on the guaranteed total quantity of the State concerned of taking into consideration the quantity of milk produced in another Member State are negligible is immaterial.

25 The fact that the method of calculation adopted has no effect in a specific case does not mean that it may be treated as permissible in general. If the Member State concerned agreed to take into consideration the quantities of milk produced abroad and there were an increase in individual cases of this kind, there would be a serious risk of the guaranteed total quantity allocated to that State being exceeded.

26 In the light of the foregoing, the aim pursued by the system of reference quantities, which is to curb Community milk production, justifies the refusal by a Member State to take account, in determining the individual reference quantity, of the quantity of milk produced in 1981 in another Member State.

27 That conclusion is not gainsaid by the judgment in Joined Cases C-90/90 and C-91/90 *Neu* [1991] ECR I-3617. That case was concerned with a reduction in the individual reference quantity allocated under formula B on account of a change

of dairy by the members in circumstances, unlike those of the present case, in which all the traders resided in the same Member State. Hence the need to ensure observance of the guaranteed total quantity of the Member State concerned was not at issue.

28 In the light of the foregoing, there would not appear to be any need to consider the argument deduced by the Commission from the difficulties of verification that would arise if account were taken, in calculating the reference quantity, of the quantities of milk produced in other Member States.

29 For those reasons, the answer to the question submitted must be that failure to take account, in determining a reference quantity, of the milk production from a holding taken over and worked together with a holding situated in another Member State is not contrary to the principle of equal treatment and the second subparagraph of Article 40(3) of the EEC Treaty, if it is only the fact that the holding taken over and worked with the other holding is situated in another Member State which precludes account being taken of it, as would otherwise be the case under national law, resulting in the grant of a higher reference quantity.

Costs

30 The costs incurred by the Council and by the Commission of the European Communities, 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

action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Finanzgericht Düsseldorf, by order of 21 August 1992, hereby rules:

Failure to take account, in determining a reference quantity, of the milk production from a holding taken over and worked together with a holding situated in another Member State is not contrary to the principle of equal treatment and the second subparagraph of Article 40(3) of the EEC Treaty, if it is only the fact that the holding taken over and worked with the other holding is situated in another Member State which precludes account being taken of it, as would otherwise be the case under national law, resulting in the grant of a higher reference quantity.

Moitinho de Almeida Edward Joliet

Rodríguez Iglesias Zuleeg

Delivered in open court in Luxembourg on 14 July 1994.

R. Grass Moitinho de Almeida

Registrar President of the Fifth Chamber