



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

4 February 2021 *

(Reference for a preliminary ruling – Agriculture – Common organisation of markets – Regulation (EC) No 1234/2007 – Milk quotas – Surplus levies – Milk used to produce cheeses with a protected designation of origin (PDO) intended for export to non-EU countries – Exclusion – Article 32(a), Article 39(1) and (2)(a), Article 40(2) and Article 41(b) TFEU – Principles of proportionality and non-discrimination – Validity)

In Case C-640/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), made by decision of 21 May 2019, received at the Court on 28 August 2019, in the proceedings

Azienda Agricola Ambrosi Nicola Giuseppe,

Azienda Agricola Castagna Giovanni,

Azienda Agricola Castellani Enio Nereo e Giuliano Ss,

Azienda Agricola De Fanti Maria Teresa,

Azienda Agricola Giacomazzi Vilmare,

Azienda Agricola Iseo di Lunardi Giampaolo e Silvano Ss,

Azienda Agricola Mastrolat di Mastrotto Franco e Luca Ss,

Azienda Agricola Righetti Michele e Damiano,

Azienda Agricola Scandola Stefano e Gianni,

Azienda Agricola Tadiello Roberto,

Azienda Agricola Turazza Mario,

Azienda Agricola Zuin Tiziano,

2 B Società Agricola Srl,

* Language of the case: Italian.

Azienda Agricola Fracasso Claudio,

Azienda Agricola Pozzan Mirko

v

Agenzia per le Erogazioni in Agricoltura (AGEA),

Ministero delle Politiche agricole e forestali,

THE COURT (Sixth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, C. Toader and M. Safjan, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Azienda Agricola Ambrosi Nicola Giuseppe, Azienda Agricola Castagna Giovanni, Azienda Agricola Castellani Enio Nereo e Giuliano Ss, Azienda Agricola De Fanti Maria Teresa, Azienda Agricola Giacomazzi Vilmare, Azienda Agricola Iseo di Lunardi Giampaolo e Silvano Ss, Azienda Agricola Mastrolat di Mastrotto Franco e Luca Ss, Azienda Agricola Righetti Michele e Damiano, Azienda Agricola Scandola Stefano e Gianni, Azienda Agricola Tadiello Roberto, Azienda Agricola Turazza Mario, Azienda Agricola Zuin Tiziano, 2 B Società Agricola Srl, by F. Manzo and P. Romano, avvocati,
- Azienda Agricola Pozzan Mirko, by E. Ermondi and M. Aldeghehi, avvocatesses,
- the Italian Government, by G. Palmieri, acting as Agent, and P. Gentili, avvocato dello Stato,
- the European Commission, by D. Bianchi and 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 and validity of Articles 1 to 3 of 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), Article 1 and Article 2(1) 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), Article 1(1) and Article 5 of 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), and Articles 55, 64 and 65 of 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), and the annexes thereto.

- 2 The request has been brought in proceedings between Azienda Agricola Ambrosi Nicola Giuseppe and several other Italian milk producers ('the producers in question'), on the one hand, and the Agenzia per le Erogazioni in Agricoltura (AGEA) (the Italian Agricultural Payments Agency) and the Ministero delle Politiche agricole e forestali (Ministry of Agriculture and Forestry Policy, Italy) ('the Ministry'), on the other hand, concerning the procedures for compensation and calculation of domestic production for the purpose of determining additional levies for the dairy products marketing year 2008/2009.

Legal context

EU law

- 3 It is apparent from the first and fourth recitals of Regulation No 856/84 that, on account of a persistent imbalance between supply and demand in the milk sector, the EU legislature introduced, with that regulation, an additional levy system in that sector, under which a levy was payable on quantities of milk and/or or milk equivalent which exceeded a reference quantity to be determined.
- 4 On 31 March 1984, Regulation (EEC) No 857/84 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) was adopted.
- 5 The additional levy scheme was extended on a number of occasions, notably by Regulation No 3950/92, which was amended many times.
- 6 For the purpose, in particular, of simplification and clarification, Regulation No 3950/92 was repealed and replaced by Regulation No 1788/2003, which, in turn, was repealed and replaced by Regulation No 1234/2007, with effect from 1 April 2008.
- 7 Regulation No 1234/2007, which was also amended many times, was repealed by Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671). However, Article 230(1)(a) of Regulation No 1308/2013 provided that, as regards the system of milk production limitation, Section III of Chapter III of Title I of Part II of Regulation No 1234/2007 as well as Article 55, Article 85 thereof and Annexes IX and X thereto continued to apply until 31 March 2015.
- 8 Since the dispute in the main proceedings concerns the marketing year running from 1 April 2008 to 31 March 2009, it is governed, *ratione temporis*, by Regulation No 1234/2007, as amended by Council Regulation (EC) No 248/2008 of 17 March 2008 (OJ 2008 L 76, p. 6) ('the Single CMO Regulation'), which, in order to facilitate the production of more milk within the European Union and to help satisfy emerging market requirements for dairy products, increased the quotas of all the Member States listed in Annex IX to Regulation No 1234/2007 by 2% as from 1 April 2008.

The Single CMO Regulation

9 Recitals 36, 37, 51 and 105 of the Single CMO Regulation state the following:

‘(36) The main purpose of the milk quota system of reducing the imbalance between supply and demand on the respective market and the resulting structural surpluses, thereby achieving a better market equilibrium, still prevails. The application of a levy to quantities of milk collected or sold for direct consumption above a certain guarantee threshold should, therefore, be maintained. In line with the purpose of this Regulation, there is, to a certain extent, a need in particular for terminological harmonisation between the sugar and milk-quota schemes, whilst fully preserving their legal status quo. ... The terms “national reference quantity” and “individual reference quantity” in Regulation (EC) No 1788/2003 should, therefore, be replaced by the terms “national quota” and “individual quota” whilst retaining the legal notion that is being defined.

(37) In substance, the milk quota scheme in this Regulation should be shaped according to Regulation (EC) No 1788/2003. ...

...

(51) Several legal instruments have been put in place to regulate the marketing and designation of milk, milk products and fats. They pursue the objective of improving the position of milk and milk products on the market on the one hand and ensuring a fair competition between spreadable fats of milk and non-milk origin on the other, both to the benefit of producers and consumers. The rules contained in Council Regulation (EEC) No 1898/87 of 2 July 1987 on the protection of designations used in marketing milk and milk products [(OJ 1987 L 182, p. 36)] are aimed at protecting the consumer and at establishing conditions of competition between milk products and competing products in the field of product designation, labelling and advertising which avoid any distortion. ... In line with the objectives of the present Regulation, these rules should be maintained.

...

(105) This Regulation ... incorporates the provisions of the following Regulations:

...

– [Regulation No 1898/87]

...’

10 Under Article 55 of that regulation:

‘1. A quota system shall apply to the following products:

(a) milk and other milk products as defined in points (a) and (b) of Article 65;

...

2. If a producer exceeds the relevant quota ... a surplus levy shall be payable on such quantities subject to the conditions set out in Sections II and III.

...’

- 11 Article 65 of that regulation, which reproduced, in essence, the definitions set out in Article 5 of Regulation No 1788/2003, provided:

‘For the purposes of this Section:

- (a) “milk” shall mean the produce of the milking of one or more cows;
- (b) “other milk products” means any milk product other than milk, in particular skimmed milk, cream, butter, yoghurt and cheese; when relevant, these shall be converted into “milk equivalents” by applying coefficients to be fixed by the Commission;
- (c) “producer” means a farmer with a holding located within the geographical territory of a Member State, who produces and markets milk or who is preparing to do so in the very near future;
- (d) “holding” means a holding as defined in Article 2 of [Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2003 L 270, p. 1)];
- (e) “purchaser” means undertakings or groups which buy milk from producers:
 - to subject it to collecting, packing, storing, chilling or processing, including under contract,
 - to sell it to one or more undertakings treating or processing milk or other milk products.

...

- (f) “delivery” means any delivery of milk, not including any other milk products, by a producer to a purchaser, whether the transport is carried out by the producer, a purchaser, an undertaking processing or treating such products or a third party;
- (g) “direct sale” means any sale or transfer of milk by a producer directly to consumers, as well as any sale or transfer of other milk products by a producer. ...

...’

- 12 Article 66(1) to (3) of that regulation provided:

‘1. The national quotas for the production of milk and other milk products marketed during seven consecutive periods of twelve months commencing on 1 April 2008 (hereinafter referred to as “twelve-month periods”) are fixed in point 1 of Annex IX.

2. The quotas referred to in paragraph 1 shall be divided between producers in accordance with Article 67, distinguishing between deliveries and direct sales. Any overrun of the national quotas shall be determined nationally in each Member State, in accordance with this Section and making a distinction between deliveries and direct sales.

3. The national quotas set out in point 1 of Annex IX shall be fixed without prejudice to possible review in the light of the general market situation and particular conditions existing in certain Member States.’

13 Article 67(1) of the Single CMO Regulation provided:

‘The producers’ individual quota or quotas at 1 April 2008 shall be equal to their individual reference quantity or quantities at 31 March 2008 without prejudice to transfers, sales and conversions of quota that take effect on 1 April 2008.’

14 Under Article 68 of that regulation:

‘Member States shall adopt rules allowing for allocation to producers of all or part of the quotas from the national reserve provided for in Article 71 on the basis of objective criteria to be notified to the Commission.’

15 Article 71(1) of that regulation provided:

‘Each Member State shall set up a national reserve as part of the national quotas fixed in Annex IX, in particular with a view to making the allocations provided for in Article 68. ...’

16 Article 75 of that regulation, concerning special measures for the transfer of quotas, provided in paragraph 2 thereof, that the measures referred to in paragraph 1 could be implemented at national level, at the appropriate territorial level or in specified collection areas.

17 The first subparagraph of Article 78(1) of the Single CMO Regulation provided:

‘A surplus levy shall be payable on milk and other milk products marketed in excess of the national quota as established in accordance with Subsection II.’

18 Article 114(1) of that regulation provided:

‘Foodstuffs intended for human consumption may be marketed as milk and milk products only if they comply with the definitions and designations laid down in Annex XII.’

19 Under Article 201 of that regulation:

‘1. Subject to paragraph 3, the following Regulations shall be repealed:

...

(b) Regulations ... No 1788/2003 ..., as from 1 April 2008;

(c) Regulations ... No 1898/87 ..., as from 1 July 2008;

...

3. The repeal of the Regulations referred to in paragraph 1 shall be without prejudice to:

(a) the maintenance in force of Community acts adopted on the basis of those Regulations; and

- (b) the continuing validity of amendments made by those Regulations to other acts of Community law that are not repealed by this Regulation.’
- 20 Under Article 204(2)(g) of that regulation, the regulation applied, as regards the system of milk production limitation established in Chapter III of Title I of Part II, as from 1 April 2008.
- 21 Point 1 of Annex IX to the Single CMO Regulation, which set out the milk quotas allocated to each Member State, allocated in that respect 10 740 661.200 tonnes to the Italian Republic.
- 22 Annex XII to that regulation, entitled ‘Definitions and designations in respect of milk and milk products referred to in article 114(1)’, provided:

‘...

II. Use of the term “milk”

1. The term “milk” means exclusively the normal mammary secretion obtained from one or more milkings without either addition thereto or extraction therefrom.

However, the term “milk” may be used:

- (a) for milk treated without altering its composition or for milk the fat content of which is standardised under Article 114(2) in conjunction with Annex XIII;
- (b) in association with a word or words to designate the type, grade, origin and/or intended use of such milk or to describe the physical treatment or the modification in composition to which it has been subjected, provided that the modification is restricted to an addition and/or withdrawal of natural milk constituents.
2. For the purposes of this Annex, “milk products” means products derived exclusively from milk, on the understanding that substances necessary for their manufacture may be added provided that those substances are not used for the purpose of replacing, in whole or in part, any milk constituent.

The following shall be reserved exclusively for milk products.

- (a) the following designations:

...

(viii) cheese,

...

- (b) designations or names within the meaning of Article 5 of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs [(OJ 2000 L 109, p. 29)], actually used for milk products.
3. The term “milk” and the designations used for milk products may also be used in association with a word or words to designate composite products of which no part takes or is intended to take the place of any milk constituent and of which milk or a milk product is an essential part either in terms of quantity or for characterisation of the product.
4. The origin of milk and milk products to be defined by the Commission shall be stated if it is not bovine.’

Regulation (EC) No 510/2006

- 23 Recital 2 of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12) stated:

‘The diversification of agricultural production should be encouraged so as to achieve a better balance between supply and demand on the markets. The promotion of products having certain characteristics can be of considerable benefit to the rural economy, particularly in less-favoured or remote areas, by improving the incomes of farmers and by retaining the rural population in these areas.’

- 24 Article 13(1) of that regulation, the wording of which was identical to that of Article 13(1) of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1), provided for the protection of ‘registered names’.
- 25 Regulation No 510/2006, which pursuant to the first paragraph of Article 20 thereof entered into force on 31 March 2006, repealed Regulation No 2081/92.

Regulation (EC) No 248/2008

- 26 Recitals 3, 4 and 5 of Regulation No 248/2008 state:

- ‘(3) The Council requested that the Commission undertake a market outlook report when the 2003 reforms of the common market organisation in milk and milk products had been fully implemented with a view to assessing the appropriateness of allocating additional quotas.
- (4) This report has been conducted and concluded the current situation of the Community and world markets and their projected situation in the period to 2014, warrant an additional increase in quota by 2 % to facilitate the production of more milk within the Community to help satisfy emerging market requirements for dairy products.
- (5) Therefore it is appropriate to increase all Member State quotas as shown in Annex IX of Regulation (EC) No 1234/2007 by 2 % from 1 April 2008.’

Italian law

Decree-Law No 49/2003

- 27 Article 2(1), (2) and (2bis) of decreto-legge n. 49, recante 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 dairy products sector) of 28 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:

‘1. From the first period of application of the present decree, the individual reference quantities, divided between deliveries and direct sales, are determined by the sum of quota A and quota B,

which are provided for in Article 2 of Law No 468 of 26 November 1992, taking into account the reductions made under Decree-Law No 727 of 23 December 1994, ... and the additional allocations made pursuant to Article 1(21) of Decree-Law No 43 of 1 March 1999 ...

2. A public register of quotas shall be introduced by the AGEA, listing, for each producer, the individual reference quantities divided between deliveries and direct sales.

2bis. Before the start of each marketing period, the regions and autonomous provinces shall update and calculate the individual reference quantities for each producer ...'

Law No 468/1992

28 Article 2(2) and (3) of legge, n. 468 – Misure urgenti nel settore lattiero-caseario (Law No 468 laying down urgent measures in the dairy sector), of 26 November 1992 (GURI No 286 of 4 December 1992) ('Law No 468/1992'), provided:

'2. For producers who are members of associations belonging to the Unione nazionale fra le associazioni di produttori di latte bovino (Unalat) [national union of bovine milk producers' associations], and for members of the Associazione produttori latte (Azoolat) [milk producers' association], the quotas for deliveries and direct sales are divided into two distinct parts:

(a) Quota A, equal to the production capacity for the 1991/1992 period, corresponding to the quantity of product marketed by producers during the 1988/1989 period. For producers whose production was affected, during the 1988/1989 period, by the events referred to in the second subparagraph of Article 3(3) of Regulation No 857/84, account shall be taken of the quantity of product marketed during the period from 1985/1986 to 1987/1988.

(b) Quota B, equal to the positive difference of the quantity marketed by the producers referred to in point (a) during the period 1991/1992 compared to the 1988/1989 period. Producers who sent the declaration provided for in Article 2 of the [Decree of the Minister for Agriculture and Forestry of 30 September 1985], published in GURI No 237 of 8 October 1985, who are not affected by the provisions in point (a), shall be allocated a quota B equal to the quantity of product marketed during the 1991/1992 period.

3. Producers who are not members of an association shall be allocated the quotas set out in the annexes to the Decree of the Minister for Agriculture and Forestry of 26 May 1992, published in the Ordinary Supplement to GURI No 130 of 4 June 1992, and in the subsequent supplements to those annexes, under quota A. That allocation may not be greater than the quantities actually produced and marketed during the 1990/1991 or 1991/1992 periods, unless the producer ceased its activity before the 1990/1991 period without receiving any compensation for discontinuation of milk production or for slaughter. ...'

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

29 For the milk and milk product marketing period 2008/2009, the AGEA sent communications to each of the Italian producers concerned regarding the procedures for compensation and calculation of domestic production for the purpose of establishing additional levies which they would have to pay.

- 30 Those producers brought an action for annulment of the payment orders issued against them and all the letters from the AGEA and the Ministry linked to those payment orders.
- 31 They claim that those acts are unlawful, in particular because they do not comply with EU law. In support of their claims, they rely, inter alia, on the unreliable nature of the data used to establish the level of domestic production in the milk and milk products sector. They take the view that the quantities of milk used for the production of cheeses with a protected designation of origin (PDO) intended for export to countries outside the European Union should be excluded from the guaranteed total quantity allocated to the Member States.
- 32 The referring court takes the view that, as regards milk quotas, the need to protect the balance between supply and demand of milk and milk products concerns only the internal market of the European Union. Accordingly, milk intended for the production of PDO milk products to be exported outside the European Union should not be included in the calculation of milk quotas and national reference quantities, with the result that the additional levy should concern only the quantities of cow's milk or other milk products marketed during the 12-month period in the market of the European Union alone.
- 33 It considers that that interpretation is apparent from Regulation No 856/84 – the rules of which have been reiterated by the regulations succeeding it – which refers to only the 'market in milk products in the Community', and from recital 51 of the Single CMO Regulation, which does not mention specifically the manufacture and marketing of products intended for export outside the European Union. Moreover, the judgment of 25 March 2004, *Azienda Agricola Ettore Ribaldi and Others* (C-480/00, C-482/00, C-484/00, C-489/00 to C-491/00 and C-497/00 to C-499/00, EU:C:2004:179) does not call into question such an interpretation of those regulations.
- 34 In that regard, the referring court notes the unique nature of PDO products. The milk used to produce such products has specific characteristics since it must be both produced and used within the PDO region alone. Moreover, that milk has neither its own market nor users other than the establishments that produce those products. In addition, since the final product is to be exported outside the European Union, and in so far as it actually is, it can have no effect on the relationship between supply and demand of milk products in the internal markets of the Member States.
- 35 Therefore, when establishing the quantities of milk allocated to each Member State, taking into account the quantities necessary for the production of milk products that are to be exported to countries outside the European Union would have the effect of rendering unreliable the allocation of national reference quantities and, accordingly, the individual reference quantities. In addition, making the quantities of milk needed for the production of PDO cheeses intended for export to countries outside the European Union subject to the same milk quota scheme as the quantities of milk intended for sale within the European Union would have the consequence of treating two different situations in the same way.
- 36 As a result, the referring court questions whether the national legislation, which includes in the calculation of the national quotas the quantities of milk used for the production of PDO cheeses that are to be exported to countries outside the European Union, is consistent with the relevant provisions of the regulations introducing additional levies in the milk sector.

- 37 In the alternative, the referring court is uncertain as to whether such a milk quota scheme is lawful in the light of the protection objectives of the PDOs, Article 32(a), Article 39(1) and (2)(a), Article 40(2) and Article 41(b) TFEU and the principles of legal certainty, protection of legitimate expectations, proportionality, non-discrimination and freedom of economic initiative.
- 38 In those circumstances, the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘(1) In so far as they are intended to protect the balance between supply and demand for dairy products on the EU market, are Articles 1, 2 and 3 of Regulation No 856/84, Article 1 and Article 2(1) of Regulation No 3950/92, Article 1(1) and Article 5 of Regulation No 1788/2003 and Articles 55, 64 and 65 of [the Single CMO Regulation], and the annexes thereto, to be interpreted as excluding from the calculation of “milk quotas” production intended for the export of PDO cheeses to countries outside the European Union, in line with the objectives aimed at the protection of such products laid down by Article 13 of Regulation No 2081/92, as confirmed by Regulation No 510/2006 and Articles 4 and 13 of [Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1)], in accordance with the principles set out in Articles 32, 39, 40 and 41 TFEU?
- (2) If the first question is answered in the affirmative, do those rules, thus interpreted, preclude the inclusion in individual reference quantities of quotas of milk intended for the production of PDO cheeses for export outside the European Union, this being the effect of Article 2 of [Decree-Law No 49/2003], and Article 2 of [Law No 468/1992], in so far as that provision is referred to in Article 2 of Decree-Law No 49/2003?

In the alternative, in the event that that interpretation is not considered to be correct:

- (3) Are Articles 1, 2 and 3 of Regulation No 856/84, Article 1 and Article 2(1) of Regulation No 3950/92, Article 1(1) and Article 5 of Regulation No 1788/2003 and Articles 55, 64 and 65 of [the Single CMO Regulation], and the annexes thereto (as well as the national Italian transposition provisions set out in [Article 2 of] [Decree-Law No 49/2003], and Article 2 of [Law No 468/1992], in so far as that provision is referred to in Article 2 of Decree-Law No 49/2003), which include rather than exclude in the calculation of the quantities allocated to each Member State milk used for the production of PDO cheeses exported to or intended for markets outside the European Union, in so far as such exports are concerned, at odds with the protection objectives set out in Regulation No 2081/92, which protects PDO production, with particular reference to Article 13, as confirmed by Regulation No 510/2006 and by Regulation No 1151/2012, and also with reference to the protection objectives set out in Article 4 of the latter regulation, and also at odds with Articles 32, 39, 40 and 41 TFEU, the principles of legal certainty, [protection of] legitimate expectations, proportionality and non-discrimination and the principle of freedom to conduct business when exporting goods outside the European Union?

Consideration of the questions referred

The first question

- 39 By its first question, the referring court asks, in essence, whether Articles 55, 65 and 78 of the Single CMO Regulation must be interpreted as excluding the quantities of milk used for the production of PDO cheeses that are intended for export to non-EU countries from the calculation of national quotas for the production of milk and other milk products and of surplus levies.
- 40 In that regard, it must be noted that Article 65(a) and (b) of that regulation does not define ‘milk’ and ‘other milk products’ with regard to their use for the production of certain derivative products, such as PDO cheeses.
- 41 In addition, first, under Article 55(1)(a) of that regulation, a quota system is applicable to milk and milk products, which are defined in Article 65(a) and (b) of the same regulation, with that quota system being set out in Articles 66 to 78 thereof. Second, as provided for in Article 55(2) of the Single CMO Regulation, where a producer exceeds the corresponding quota, a surplus levy will be payable on such quantities, subject to the conditions set out in Sections II and III thereof.
- 42 In those circumstances, in accordance with the case-law of the Court, it is necessary to interpret those provisions by reference not only to their wording but also by reference to the context in which they occur and the objectives pursued by the rules of which they form part (see, by analogy, judgment of 11 September 2019, *Lexitor*, C-383/18, EU:C:2019:702, paragraph 26).
- 43 It must be noted that neither the provisions concerning the milk quota system nor those concerning the levies on the quantities of milk and milk products marketed in excess of those quotas include specific rules regarding the quantities of milk used for the production of other PDO milk products intended for export to countries outside the European Union. In particular, those provisions do not arrange those systems according to the designation which may be attributed to those milk products and their final destination.
- 44 That finding is supported by the objective of the Single CMO Regulation, as indicated inter alia in recital 36 thereof, and by the objective of the levy system applicable to quantities of milk exceeding a reference quantity introduced by Regulation No 856/84 and extended several times. That objective consists in reducing the imbalance between supply and demand on the respective market and the resulting structural surpluses, in order to achieve a better equilibrium in that market. In the context of the milk quota system and the surplus levy system, the EU legislature intended to take action to control the growth of all milk production within the European Union, irrespective of the end sales market of those products.
- 45 The aim pursued by the EU legislature is expressly apparent, as the Italian Government and the Commission noted in their written observations, from the fifth recital of Regulation No 856/84, which states that the guaranteed total quantity laid down for the Community as a whole was fixed in the light of the level of internal consumption and export possibilities.
- 46 In addition, as is also apparent from recital 4 of Regulation No 248/2008, for the purpose of justifying an additional 2% increase of the milk quotas allocated to each Member State, intended to facilitate the production of more milk within the Community and help satisfy emerging

market requirements for dairy products, the EU legislature relied on the Commission's market outlook report, which concerned both the situation of the EU market and the situation of the world markets.

- 47 Lastly, it should be noted that the interpretation advocated by the applicants in the main proceedings, according to which the quantities of milk used for the production of PDO cheeses intended for export to countries outside the European Union should be excluded from the calculation of national quotas for the production of milk and other milk products and of surplus levies, assumes that the milk delivered by the producers to the processors to be used to make PDO cheeses for export to countries outside the European Union is precisely identifiable and can be traced back to each producer. However, as the Italian Government and the Commission point out, for the purpose of applying the milk quota system and the surplus levy system, EU law does not require milk producers to provide for such traceability as to whether or not the milk is to be used to produce PDO cheeses to be exported to countries outside the European Union.
- 48 In the light of the foregoing, the answer to the first question is that Articles 55, 65 and 78 of the Single CMO Regulation must be interpreted as not excluding the quantities of milk used for the production of PDO cheeses to be exported to countries outside the European Union from the calculation of national quotas for the production of milk and other milk products and of surplus levies.

The second question

- 49 Having regard to the answer given to the first question, there is no need to answer the second question.

The third question

- 50 By its third question, the referring court asks the Court, in essence, to assess the validity of Articles 55, 65 and 78 of the Single CMO Regulation, in so far as they do not exclude the quantities of milk used for the production of PDO cheeses intended for export to countries outside the European Union from the calculation of national quotas for the production of milk and other milk products and of surplus levies, in the light of the protection objectives of the PDOs that are apparent from Article 13 of Regulation No 510/2006 and of Article 32(a), Article 39(1), Article 39(2)(a), Article 40(2) and Article 41(b) TFEU, and of the principles of legal certainty, protection of legitimate expectations, proportionality, non-discrimination and freedom of economic initiative.
- 51 As regards, at the outset, the referring court's questions regarding whether Articles 55, 65 and 78 of the Single CMO Regulation comply with the objectives of protecting PDO products, which are apparent inter alia from Article 13 of Regulation No 510/2006, it must be noted, first, that the milk quota system and the PDO legislation have common objectives such as, inter alia, achieving a better balance between supply and demand on the markets. Although the means employed to achieve those objectives are not identical, it is apparent in particular from recital 36 of the Single CMO Regulation and from Recital 2 of Regulation No 510/2006 that they also are not entirely different.

- 52 Indeed, it must be borne in mind that, as the Court ruled in paragraph 36 of the judgment of 17 October 2019, *Caseificio Cirigliana and Others* (C-569/18, EU:C:2019:873), the rules on PDOs protect those entitled to use them against improper use of those designations by third parties seeking to profit from the reputation which they have acquired.
- 53 Those rules are thus a way to highlight the quality of a product according to previously fixed criteria. The milk quota system, on the other hand, includes provisions affecting the quantity of production.
- 54 Moreover, the referring court invokes, in support of the grounds for excluding the production of milk used to make PDO cheeses intended for export to countries outside the European Union from the quotas in question, Regulation No 1898/87, the provisions of which were repealed by the Single CMO Regulation as from 1 July 2008 pursuant to Article 201(1)(c) thereof and integrated into the latter regulation, as is also apparent from recital 105 of the Single CMO Regulation.
- 55 In that regard, it must be borne in mind that, under Article 114(1) of the Single CMO Regulation, foodstuffs intended for human consumption may be marketed as milk and milk products only if they comply with the definitions and designations laid down in Annex XII to that regulation, which covers the definitions and designations in respect of milk and milk products referred to in Article 114(1).
- 56 That provision cannot be interpreted as providing for the exclusion of the quantities of milk used for the production of PDO products intended for export to countries outside the European Union. Those rules on the protection of designations used for milk and milk products were thus designed to protect those designations having regard to their natural composition, in the interests of producers and consumers (see to that effect, judgment of 16 December 1999, *UDL*, C-101/98, EU:C:1999:615, paragraphs 15 and 32), and are irrelevant for the purposes of interpreting the scope of the milk quota system, since they form part, as evidenced by recital 51 of that regulation, of the measures put in place to regulate the marketing and designation of milk, milk products and fats.
- 57 It follows that the objectives linked to the protection of PDOs, as evident from Article 13 of Regulation No 510/2006, do not require the exclusion of quantities of milk used for the production of PDO cheeses intended for export to countries outside the European Union from the calculation of national quotas for the production of milk and other milk products provided for the Single CMO Regulation.
- 58 As regards the referring court's questions as to whether the milk quota system and the surplus levy system, which derive from Articles 55, 65 and 78 of the Single CMO Regulation, comply with the provisions of the TFEU invoked by the referring court and referred to in paragraph 50 above, it should be borne in mind that the EU legislature enjoys a wide discretion in matters concerning the common agricultural policy, commensurate with the political responsibilities given to it by Articles 40 to 43 TFEU (judgment of 14 May 2009, *Azienda Agricola Disarò Antonio and Others*, C-34/08, EU:C:2009:304, paragraph 44).

- 59 Against that background, the referring court's questions concern whether the objectives set out in Article 32(a) TFEU are undermined by the milk quota system and the surplus levy system, as interpreted in paragraph 48 above. The referring court questions whether such systems are compatible with the objective of promoting trade between Member States and third countries which is apparent from that provision of the TFEU.
- 60 In that regard, it must be noted that although, under Article 32(a) TFEU, in carrying out the tasks entrusted to it under Part Three, Title II, Chapter 1 TFEU, headed 'The customs union', the Commission is to be guided by the need to promote trade between Member States and third countries, it is not apparent from the order for reference that, when adopting the milk quota system, grounds connected to the need to promote trade between Member States and third countries were not taken into consideration.
- 61 In any event, even if Article 32(a) TFEU obliged the EU legislature to exclude the quantities of milk used for the production of PDO milk products intended for export to countries outside the European Union, it could not be considered, in the light of the broad discretion the EU legislature enjoys in the area of common agricultural policy, that by not excluding that milk from the calculation of the quotas and surplus levies, it exceeded the discretion afforded it in the implementation of that policy.
- 62 As regards whether the objectives referred to in Article 39 TFEU are undermined, it must be noted that, in accordance with the case-law of the Court, the EU institutions must make sure that a way is found to pursue those objectives in harmony and on an ongoing basis, where this becomes necessary as a result of conflicts which may arise between those objectives when they are pursued in isolation, and, where necessary, give any one of them temporary priority in order to satisfy the demands of the economic factors or conditions in the light of which their decisions are made (judgment of 14 May 2009, *Azienda Agricola Disarò Antonio and Others*, C-34/08, EU:C:2009:304, paragraph 45, and order of 3 December 2019, *Fruits de Ponent v Commission*, C-183/19 P, not published, EU:C:2019:1039, paragraph 25).
- 63 First, as the Court has held as regards Regulation No 1788/2003, the Council, by temporarily according priority to the objective of stabilising markets, did not exceed its discretion (judgment of 14 May 2009, *Azienda Agricola Disarò Antonio and Others*, C-34/08, EU:C:2009:304, paragraph 51).
- 64 In addition, by limiting milk production, the levy system aims to re-establish the balance between supply and demand in the milk market, which is characterised by structural surpluses. That purpose therefore falls within the ambit of the objectives of rational development of milk production and, by contributing to a stabilisation of the income of the agricultural community affected, that of ensuring a fair standard of living for the agricultural community (see, inter alia, judgment of 14 May 2009, *Azienda Agricola Disarò Antonio and Others*, C-34/08, EU:C:2009:304, paragraph 53).
- 65 The same is true as regards the Single CMO Regulation. It is apparent in particular from recitals 36 and 37 of that regulation that it is a continuation of the objectives pursued by Regulation No 1788/2003 and of the means put in place by that regulation to achieve those objectives.

- 66 Second, as regards the alleged failure of the Council to take into account, in breach of Article 39(2)(a) TFEU, the particular characteristics of the production of milk used to make PDO cheeses when setting up the milk quota system and the surplus levy system, while the PDOs are closely linked to a specific geographical area, it must be borne in mind that that provision provides for an obligation to take into account, in working out the common agricultural policy and the special methods for its application, inter alia ‘the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions’. It cannot however be considered that the specific characteristics of the PDOs forms part of the structural and natural disparities between the various agricultural regions mentioned in that provision, since those specific characteristics are the result of the EU legislature’s decision to encourage the diversification of agricultural production by highlighting the provenance of products.
- 67 By contrast, the Single CMO Regulation contains provisions which guarantee a certain flexibility, allowing, inter alia, for structural and natural disparities between the various agricultural regions to be taken into account, for example through the review of national quotas in the light of the general market situation and particular conditions existing in certain Member States, according to Article 66(3) of the regulation, or by means of the possibility of producers being allocated all or part of the quotas from the national reserve, according to Article 68 of the regulation, or even for the Member States to provide for special transfer measures at national level, at the appropriate territorial level or in specified collection areas, as provided for in Article 75 of the regulation.
- 68 It also cannot be considered, on the ground that the producers of PDO cheeses are not in a situation comparable to that of other cheese producers, that including the quantities of milk used for the production of PDO cheeses intended for export to countries outside the European Union in the calculation of the national quotas and in the calculation of the levies on the quantities marketed in excess of those quotas infringes the limits imposed by Article 40(2) TFEU.
- 69 In that regard, it should be borne in mind that, under that provision, the common organisation of the agricultural markets may include all measures required to attain the objectives set out in Article 39 TFEU and must exclude any discrimination between producers or consumers within the European Union.
- 70 It is settled case-law that the principle of non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (judgment of 14 May 2009, *Azienda Agricola Disarò Antonio and Others*, C-34/08, EU:C:2009:304, paragraph 67).
- 71 However, as the Italian Government states in its written observations, the fact that PDO cheese may be sold on a market for dairy products outside the European Union does not make it possible to differentiate it, on that ground alone, from other milk products.
- 72 In any event, the Court has held that, even if Regulation No 1788/2003, which applies to all recipients of reference quotas alike, did establish a difference in treatment between producers of milk intended for the production of PDO products and those intended for the production of other milk products, and therefore place a heavier burden on certain producers, such a difference in treatment does not constitute discrimination, provided that the measure which establishes it, adopted within the framework of the common organisation of the market and affecting producers in different ways depending upon the particular nature of their production, was determined on the basis of objective criteria which are adapted to meet the needs of the general

common organisation of the market. That is the case of the milk quota system and the surplus levy system, which are arranged in such a way that national and individual reference quantities are set at such a level that their total does not exceed the overall guaranteed reference quantity for each Member State (see, to that effect, judgment of 14 May 2009, *Azienda Agricola Disarò Antonio and Others*, C-34/08, EU:C:2009:304, paragraph 69).

- 73 It follows that including quantities of milk used to produce PDO cheeses intended for export to countries outside the European Union in the production subject to those systems cannot be considered to be contrary to the principle of non-discrimination.
- 74 As regards a possible infringement of Article 41(b) TFEU, it should be recalled that, under that provision, to enable the objectives set out in Article 39 TFEU to be attained, provision may be made within the framework of the common agricultural policy for joint measures to promote consumption of certain products. That provision does not impose any obligations on the institutions of the European Union as such.
- 75 It also cannot be held that the milk quota system and the surplus levy system infringe the principle of proportionality. In that regard the Court held, in paragraph 83 of the judgment of 14 May 2009, *Azienda Agricola Disarò Antonio and Others* (C-34/08, EU:C:2009:304), that the analysis of Regulation No 1788/2003 in the light of the principle of proportionality did not disclose any factor which might affect the validity of that regulation.
- 76 The same applies to the Single CMO Regulation. The limitation of the overall production of milk in the European Union which that regulation provides for facilitates the disposal of surplus milk produced within the European Union and thus reduces the imbalance between supply and demand of milk and milk products and the resulting structural surpluses. Accordingly, it cannot be held that that measure is manifestly unsuitable for achieving the objective of stabilisation and better market equilibrium, referred to in recital 36 of the Single CMO Regulation.
- 77 It is true that the milk quota system and the surplus levy system may affect to a greater extent producers of milk used to produce PDO cheeses, who are required to source solely milk originating from a specific geographical area, while the mechanism of the agricultural market is based on the premiss that where the demand for milk in a Member State exceeds the supply of milk, that State can import the necessary amount of milk from other Member States. However, that consequence does not lead to the conclusion that, in the light of the discretion the EU legislature enjoys in matters concerning the common agricultural policy, the milk quota system is a manifestly unsuitable means of pursuing its principle objective.
- 78 As regards the claim that Articles 55, 65 and 78 of the Single CMO Regulation do not comply with the principles of legal certainty, protection of legitimate expectations and freedom of economic initiative, it must be noted that on the basis of the information set out in the order for reference the Court does not consider it necessary to assess whether the milk quota system and the surplus levy system provided for in those provisions are consistent with those principles. In particular, the referring court does not set out the reasons which led it to doubt the validity of that system in the light of those principles.
- 79 In the light of all the foregoing considerations, the answer to the third question is that examination of the question has not revealed any factors of such a kind as to affect the validity of Articles 55, 65 and 78 of the Single CMO Regulation.

Costs

- 80 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 (Sixth Chamber) hereby rules:

- 1. Articles 55, 65 and 78 of 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, as amended by Council Regulation (EC) No 248/2008 of 17 March 2008, must be interpreted as not excluding the quantities of milk used for the production of cheeses with a protected designation of origin intended for export to countries outside the European Union from the calculation of national quotas for the production of milk and other milk products and of surplus levies.**
- 2. Examination of the third question referred has not revealed any factors of such a kind as to affect the validity of Articles 55, 65 and 78 of Regulation No 1234/2007 as amended by Regulation No 248/2008.**

[Signatures]