

JUDGMENT OF THE COURT (First Chamber)

14 May 2009*

In Case C-34/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunale ordinario di Padova (Italy), made by decision of 23 January 2008, received at the Court on 28 January 2008, in the proceedings

Azienda Agricola Disarò Antonio and Others

v

Cooperativa Milka 2000 Soc. coop. arl,

intervening party:

Azienda Agricola De Agostini Lorenzo,

* Language of the case: Italian.

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, M. Ilešič (Rapporteur), A. Borg Barthet, E. Levits and J.-J. Kasel, Judges,

Advocate General: V. Trstenjak,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 January 2009,

after considering the observations submitted on behalf of:

- Azienda Agricola Disarò Antonio and Others, by P. Chiarelli and A. Cimino, avvocati,

- the Commission of the European Communities, by H. Tserepa-Lacombe and D. Nardi, acting as Agents,

- the Council of the European Union, by M. Moore, A. Vitro and G. Castellan, acting as Agents,

— after hearing the Opinion of the Advocate General at the sitting on 3 March 2009,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the validity 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) in the light of the objectives of the common agricultural policy laid down in Article 33(1) EC and of the principles of non-discrimination and proportionality.

- 2 The reference was made in the course of proceedings brought by a number of companies — Azienda Agricola Disarò Antonio and Others ('the claimants in the main proceedings') — against Cooperativa Milka 2000 Soc. coop. arl ('Cooperativa Milka'), contesting a debt relating to the levy payable by those companies in respect of the milk years 1995/1996 to 2003/2004 and the subsequent milk years.

Legal framework

- 3 As a result of the continuing imbalance between supply and demand in the milk sector, 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) introduced in that sector a system of levies payable on quantities of milk that exceed a reference quantity to be determined.

- 4 That system entered into force on 2 April 1984. It has been extended on a number of occasions, most recently by Regulation No 1788/2003, until 31 March 2015.
- 5 The third recital in the preamble to that regulation states that the main purpose of the levy system is, essentially, to reduce the imbalance between supply and demand on the milk and milk products market and the resulting structural surpluses.
- 6 The fifth recital in the preamble to Regulation No 1788/2003 states, inter alia, that producers must be liable vis-à-vis the Member State for payment of their contribution to the levy payable, for the mere fact of having overrun their available quantity.
- 7 According to recital 22 in the preamble to that regulation, the main purpose of the levy is to regularise and stabilise the milk products market and, accordingly, the revenue accruing from the levy should be used to finance expenditure in the milk sector.
- 8 In accordance with Article 1(1) of Regulation No 1788/2003, the 12-month national reference quantities are to be fixed in Annex I to the regulation for each Member State. Under Article 1(3), the reference quantities may be reviewed in the light of the general market situation and particular conditions existing in certain Member States.
- 9 Under Article 1(2) of Regulation No 1788/2003, read in conjunction with Article 6 thereof, milk producers are to be allocated individual reference quantities, the sum of which may not exceed the national reference quantity. If the national reference quantity is exceeded, the Member State concerned must, under Article 3(1) of that regulation, pay the Community a levy commensurate with the overrun.

- 10 In accordance with the first paragraph of Article 4 of that regulation, the levy is then to be entirely allocated among the producers who have contributed to each of the overruns of the national reference quantities and, under the second paragraph of Article 4, producers are to be liable for payment of the levy merely for having overrun their reference quantities.
- 11 Article 6(5) of Regulation No 1788/2003 provides essentially that individual reference quantities are to be modified, where appropriate, for each of the 12-month periods concerned.
- 12 Article 11(1) of Regulation No 1788/2003 states essentially that purchasers are to be responsible for collecting from producers the contributions due from the latter by virtue of the levy and are to pay to the competent body of the Member State the amount of those contributions, which is to be deducted from the price paid for milk to the producers responsible for the overrun, failing which it is to be collected by any other appropriate means.
- 13 Under Article 22 of that regulation, the levy is to be regarded as intervention to stabilise agricultural markets, and the income from that levy is to be applied to financing expenditure in the milk sector.

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

- 14 The claimants in the main proceedings are milk producers and members of Cooperativa Milka, a cooperative society which, by virtue of its status as ‘first purchaser’, is responsible for collecting the levy in accordance with Article 11(1) of Regulation No 1788/2003.

- 15 Considerable sums are being demanded from those companies by way of that levy.
- 16 The claimants in the main proceedings objected to those sums before the Italian courts, contesting the validity of Regulation No 1788/2003, as well as the criterion on the basis of which, under that regulation, the guaranteed total quantity for the whole of the Community is to be allocated between the Member States and, more specifically, the way in which that criterion has been applied in the case of the Italian Republic.
- 17 In that regard, they submit in particular that the principles of non-discrimination and proportionality have been infringed.
- 18 As regards the alleged infringement of the principle of non-discrimination, the claimants in the main proceedings submit that, for the purposes of determining the final guaranteed total quantity for the Italian Republic, the Community took into account only the statistics provided by the Istituto nazionale di statistica (Italian National Institute of Statistics) for milk production in a single reference year — 1983 — which it took as a basis for calculating the guaranteed total quantity for the subsequent years, an approach which led to the Italian producers being wrongly classified as ‘surplus producers’.
- 19 Thus, Regulation No 1788/2003 treats Member States with milk production deficits and those with surpluses in the same way, which is an infringement of the principle of non-discrimination that cannot be justified under Community law.
- 20 As regards the alleged infringement of the principle of proportionality, the claimants in the main proceedings submit that the failure to update the figures for the volumes produced penalises small producers, since it prevents them from expanding and

making structural adjustments and, in some cases, jeopardises their very survival because of the inadequate remuneration of the factors of production.

21 In those circumstances, the Tribunale ordinario di Padova (District Court, Padua) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘1. Is Regulation No 1788/2003, which imposes an additional levy on production of milk and milk products in excess of the national quota allocated, without taking account of periodical updating of the quantity allocated to each Community country following specific verification of the respective quantities produced, compatible with Article 32 of the Treaty and with the aims of the common agricultural policy which that article sets out, such as increasing agricultural productivity, developing technical progress, ensuring rational development of agriculture and also optimising utilisation of the factors of production, in particular labour, since that mechanism also has an impact on Italian producers of milk and milk products, detracting from a fair standard of living and from development as a result of inadequate remuneration of the factors of production and since Italy is in fact a milk-deficit country ... forced to import raw material to sustain the industries engaged in the processing and marketing of quality products ...?

2. Is Regulation No 1788/2003 compatible with Article 33 EC, in so far as the latter provides for organisation of the common market yet at the same time excludes all discrimination between producers or consumers in the Community, whereas the uniform application of the ... levy, without identification of those producers who are in deficit as compared with those who are producing surpluses, ultimately discriminates against Italian producers, who belong to a milk-deficit country?

3. Is Regulation No 1788/2003 compatible with Article 34 EC in so far as the latter provides that pursuit of the aims laid down in Article 33 EC “shall exclude any

discrimination between producers or consumers within the Community”, whereas such discrimination is created by the regulation, which, for the purposes of the additional levy, requires a uniform contribution both from producers belonging to milk-surplus countries and from those belonging to milk-deficit countries such as the Italian Republic?

4. Is Regulation No 1788/2003 ... compatible with the principle of proportionality laid down in Article 5 EC in so far as the latter states that Community action is not to go beyond “what is necessary to achieve the objectives of [the] Treaty”, whereas the uniform application of the levy ... goes further than the objective of creating a common organisation of the market because it perpetuates for average Italian farmers low productivity, low income and the need for permanent reliance on State support?

The questions referred for a preliminary ruling

The first question

- 22 By its first question, the national court asks essentially whether the fact that Regulation No 1788/2003 does not take into account, for the purposes of determining the national reference quantity, the fact that the Member State concerned has a milk production deficit is capable of affecting the compatibility of that regulation with the objectives laid down, in particular, in Article 33(1)(a) and (b) EC.

Arguments of the parties

- 23 The claimants in the main proceedings submit that the national reference quantity guaranteed to the Italian Republic in 1983 was based on erroneous statistics, since these did not take into account the fact that that Member State had a milk production deficit. Accordingly, even though a number of increases have been applied to that quantity since 1983, in accordance with the mechanism laid down in Regulation No 1788/2003, the national reference quantity allocated to the Italian Republic represented only half of its needs. Consequently, since the only way the Italian milk producers can achieve the objectives laid down in Article 33 EC is by exceeding the national quantity, Regulation No 1788/2003 runs counter to the objectives laid down in Article 33 EC.
- 24 The Council of the European Union argues that the claimants in the main proceedings are seeking a system under which the quotas set would depend on whether the Member State concerned has a 'milk production surplus' or a 'deficit'. In that connection, it points out that, by maintaining milk quotas at Community level, Regulation No 1788/2003 does not subdivide the market in the manner desired by the claimants in the main proceedings because Article 34 EC provides for a European market organisation. It is incorrect, therefore, to claim that a special system should be introduced for a Member State with a milk production deficit such as the Italian Republic.
- 25 The Council maintains that the system of milk quotas in force is not incompatible with the objectives of the common agricultural policy. The Community legislature is required, in the context of Article 33 EC, to ensure the rational development of agricultural production and the optimum utilisation of the factors of production, and to stabilise markets. With a view to achieving that last objective, the Council adopted the levy on the quantities of milk marketed. However, the Court has held that the institutions may, in the light of economic facts or circumstances, accord temporary priority to one of those objectives.

26 Accordingly, the Council maintains that the levy payable under Regulation No 1788/2003 is not contrary to Articles 33 and 34 EC, and that it applies regardless of the Member State in which the producer concerned is established.

27 The Commission argues that the determination, on the facts, of the balance between milk supply and demand in a particular Member State, in order to determine whether that Member State has a milk production deficit, is not significant for the purposes of achieving the objectives of the common agricultural policy. It states that the Court has already rejected the argument that deficits are a decisive factor for assessing whether the objectives of the common agricultural policy have been achieved, and that that reasoning applies by analogy to a case such as that before the referring court.

28 The Commission argues that the introduction of the levy on milk is compatible with the objective of stabilising the market. As regards other objectives laid down in Article 33 EC — such as to increase agricultural productivity and to ensure the rational development of agricultural production and the optimum utilisation of the factors of production — the Commission adds that, following the introduction of the quota and levy system, Italy has witnessed:

- a reduction in the number of dairy holdings from 182 000 in 1988/1989 to 49 000 in 2006/2007;
- an increase in the milk yield per dairy cow from 3 900 litres to 6 000 litres per annum; and
- a constant increase in the average price of milk.

29 Consequently, the Commission concludes that an analysis of the first question does not disclose any factor which might affect the validity of Regulation No 1788/2003 on grounds of its incompatibility with the objectives of the common agricultural policy, laid down in Article 33 EC.

Answer of the Court

— Whether the milk production deficit of a Member State is a relevant factor for the purposes of determining the national reference quantity

30 The claimants in the main proceedings submit in essence that, for the purposes of determining the ‘national reference quantity’ as fixed by Regulation No 1788/2003, account ought also to have been taken of the fact that the Italian Republic has a milk production deficit. A Member State has a milk production deficit where, due to the extent of domestic demand, it is forced to import milk from other Member States. As it is, the Italian Republic has been allocated a reference quantity which represents approximately half of its domestic needs and it is obliged to import the rest of the milk needed from other Member States.

31 In that respect, it should be borne in mind that the fact that a Member State has a milk production deficit is not a relevant factor for the purposes of determining the national reference quantity (see, to that effect, Case C-203/86 *Spain v Council* [1998] ECR 4563, paragraph 29).

32 Although that judgment concerned a reduction in the national reference quantity, it should be noted that the same reasoning must also apply with regard to increases in that quantity. The ‘main purpose’ of Regulation No 1788/2003, as described in the third recital in the preamble thereto, is to address the imbalance between supply and demand in the context of milk products with regard to both reductions and increases in the reference quantity.

33 Moreover, in order to achieve that purpose, a concerted effort is required by all Community producers in equal measure (see Case 179/84 *Bozzetti* [1985] ECR 2301, paragraph 32, and *Spain v Council*, paragraph 29). The mechanism of the common agricultural market is predicated on the assumption that, where domestic demand for milk exceeds supply, the Member States can import milk, especially from Member States where demand is lower than supply. Furthermore, the claimants in the main proceedings argued at the hearing that the total reference quantity for the Community is not exceeded, which implies that overall demand for milk in the Community does not exceed supply.

34 It follows that, for the purposes of determining the 'national reference quantity' as fixed by Regulation No 1788/2003, the fact that the Member State concerned has a milk production deficit is not relevant, and the arguments of the claimants in the main proceedings in that regard must therefore be rejected.

35 The claimants in the main proceedings further submit that it was incorrect to take 1983 as the reference year, since the criteria on the basis of which the choice of reference year was made did not include the fact that the Member State concerned had a milk production deficit.

36 First, it should be noted that it is apparent from paragraph 34 of this judgment that that criterion is irrelevant for the purposes of determining the national reference quantity. That holds true *a fortiori* as regards the relevance of that criterion at the time when the system of reference quantities was introduced by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products (OJ 1984 L 90, p. 10).

37 Secondly, it follows from established case-law that, where implementation by the Council of a common policy requires it to assess a complex economic situation, its discretion is exercisable not only in relation to the nature and scope of the provisions

which are to be adopted but also, to a certain extent, to the findings as to the basic facts, especially in the sense that it is free to base its assessment, if necessary, on findings of a general nature (see, inter alia, Joined Cases C-248/95 and C-249/95 *SAM Schiffahrt and Stapf* [1997] ECR I-4475, paragraph 25).

38 Thirdly and lastly, it should be noted that it is apparent from the ninth recital in the preamble to Regulation No 856/84 that the determination of the national reference quantity for the Italian Republic is based on criteria that are particularly favourable to that Member State. The year 1983 was chosen as the reference year, since in 1981 the collection of milk production in Italy had been at its lowest for 10 years; the milk yield per cow had been below the Community average; and the apparent increase in supplies between the years 1981 and 1983 corresponded in large part to a structural change consisting in a reduction in direct supplies, which was offset by an increase in supplies to dairies.

39 In consequence, the arguments of the claimants in the main proceedings concerning the choice of the year 1983 must be rejected.

40 However, the claimants in the main proceedings submit that, according to the judgment in Case C-340/98 *Italy v Council* [2002] ECR I-2663, the fact that the production of the Member State concerned is in deficit must be taken into account in the context of the common milk policy in the same way as is done in the context of the common sugar policy.

41 In that connection, it is sufficient to note that that criterion is expressly included in the Community rules on the sugar scheme which was at issue in *Italy v Council*. By

contrast, if the Community legislature had intended to designate milk production deficit as one of the relevant criteria for the purposes of determining the 'national reference quantity' as fixed by Regulation No 1788/2003, it could easily have done so by making a reference to that effect in that regulation. However, since that is not the case, that argument must be rejected.

⁴² It is also necessary to reject the argument of the claimants in the main proceedings that they are required to contribute to the payment of surpluses for which they are not responsible. Under Article 4 of Regulation No 1788/2003, which reflects the fifth recital in the preamble to that regulation, all the producers who contribute to the overrun are to be liable vis-à-vis the Member State for payment of their contribution to the levy due merely for having overrun their available quantity, which means that the producers or the Member States responsible for surplus milk production do not fall to be identified more specifically.

⁴³ It follows that the fact that a Member State has a milk production deficit cannot be regarded as a relevant criterion for the purposes of determining the 'national reference quantity' as fixed by Regulation No 1788/2003.

— Compatibility of Regulation No 1788/2003 with the objectives laid down in Article 33(1) EC

⁴⁴ First of all, it should be borne in mind that the Community legislature enjoys a wide discretion in matters concerning the common agricultural policy, commensurate with the political responsibilities given to it by Articles 34 EC to 37 EC (Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handel and ZVK* [2008] ECR I-69, paragraph 34).

45 As regards, more specifically, the objectives of the common agricultural policy as laid down in Article 33 EC, the Community 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 (see, in particular, Case C-311/90 *Hierl* [1992] ECR I-2061, paragraph 13 and the case-law cited).

46 It should be noted that, under Article 33(1) EC, the objectives of the common agricultural policy are:

‘(a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;

(b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;

(c) to stabilise markets;

(d) to assure the availability of supplies;

(e) to ensure that supplies reach consumers at reasonable prices.’

47 It should be borne in mind that Regulation No 1788/2003 comes under the objective of stabilising the markets, which is expressly laid down in Article 33(1)(c) EC (see, by analogy, *Hierl*, paragraph 10).

48 First, and as is apparent from paragraph 4 of this judgment, Regulation No 1788/2003 extended the system of levies to be applied where the quantities of milk supplied exceed a reference quantity determined for each Member State.

49 Secondly, according to the third recital in the preamble to Regulation No 1788/2003, the main purpose of that regulation is to reduce the imbalance between supply and demand on the milk and milk products market and the resulting structural surpluses in order to achieve better market equilibrium. Moreover, according to recital 22 in the preamble to Regulation No 1788/2003, the main purpose of the levy provided for in that regulation is to stabilise agricultural markets.

50 In addition, it must be noted that the pursuit of that objective is of limited duration and applies, as is apparent from paragraph 4 of this judgment, until 31 March 2015.

51 In those circumstances, it follows that, by temporarily according priority to the objective of ‘stabilising markets’ as laid down in Article 33(1) EC, the Council has not exceeded its discretion, within the meaning of the case-law referred to in paragraph 45 of this judgment, by adopting Regulation No 1788/2003.

52 Nevertheless, it should be borne in mind that stabilising the market is not the only objective pursued by Regulation No 1788/2003. It should be noted that it is already implicit from the notion of ‘main purpose’, to which the third recital in the preamble to that regulation refers, that the regulation does not pursue a sole objective.

53 As regards, more specifically, the objectives to which the national court and the claimants in the main proceedings have drawn attention, the Court has consistently held that the purpose of the levy system is to re-establish, by limiting milk production, 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 (Joined Cases C-480/00 to C-482/00, C-484/00, C-489/00 to C-491/00, and C-497/00 to C-499/00 *Azienda Agricola Ettore Ribaldi and Others* [2004] ECR I-2943, paragraph 57 and the case-law cited).

54 Moreover, as the Commission argues, following the introduction of the levy system, the Italian Republic in particular has witnessed a substantial increase in the annual milk yield per dairy cow and a constant increase in the average price of milk.

55 It should also be noted, as the Commission and the Council point out, that for the period from 1984/1985 to 2006/2007, the sum of the national reference quantities for the 10 Member States decreased by a total of 2%, whereas the reference quantity for the Italian Republic increased by 6% and was set at 10 530 060.000 tonnes in Annex I to Regulation No 1788/2003.

56 Moreover, Article 1(3) of Regulation No 1788/2003 provides for the possibility that the national reference quantities set out in Annex I to that regulation may be reviewed in the light of the general market situation and particular conditions existing in certain

Member States. Thus, in accordance with the most recent amendment — made by Council Regulation (EC) No 248/2008 of 17 March 2008 amending Regulation (EC) No 1234/2007 as regards the national quotas for milk (OJ 2008 L 76, p. 6) — the reference quantity was increased to the advantage of all Member States, and in the case of the Italian Republic, it was set at 10 740 661.200 tonnes. Consequently, it cannot be ruled out that the increase in that reference quantity also led, pursuant to Article 6(5) of Regulation No 1788/2003, to an increase in that Member State of the individual reference quantities.

57 Having regard to all of the foregoing, the answer to the first question is that the fact that Regulation No 1788/2003 does not take into account, for the purposes of determining the national reference quantity, the fact that the Member State concerned has a milk production deficit is not capable of affecting the compatibility of that regulation with the objectives laid down, in particular, in Article 33(1)(a) and (b) EC.

The second and third questions

58 By those questions, which should be examined together, the national court asks essentially whether Regulation No 1788/2003 infringes the principle of non-discrimination in that it fails to take into account, for the purposes of determining the national reference quantity, the fact that the Member State concerned has a milk production deficit.

Arguments of the parties

- 59 The claimants in the main proceedings submit essentially that the principle of non-discrimination also means that different situations may not be treated in the same way. In the case before the referring court, Regulation No 1788/2003 accords the same treatment to situations which were different and which remain different, since the substantial deficit in Italian milk production is not taken into account, with the result that that regulation infringes the principle of non-discrimination.
- 60 They further submit that the unequal treatment referred to is not objectively justified. First, the reference to the joint liability of producers is not an objective justification for treating different situations alike. Secondly, it is not correct to state that all European producers participate equally in the attempt to stabilise the market, since producers that are not in surplus are called upon to bear burdens which, in part, are not their responsibility.
- 61 The Council maintains that its observations on the first question are also valid for the second and third questions.
- 62 The Commission argues essentially that, in a common market, the requirement to import milk cannot of itself signify a difference in treatment. The Court has already held that the criterion for determining the national reference quantities, like the reduction of those quantities, cannot give rise to discrimination against a Member State merely because that Member State has a milk production deficit.

63 In addition, the Italian Republic in any event received favourable treatment from the Community regarding the determination of the reference quantities, in order to take account of its specific circumstances.

64 The Commission further argues that the basis of the system for determining the national reference quantities fixed in Regulation No 1788/2003 is compatible with the principle of regional specialisation, in accordance with which it must be possible for production to occur at the place that is economically the most suitable. It follows from that principle that, in the context of excluding 'discrimination' in accordance with the second subparagraph of Article 34(2) EC, the fact that a Member State has a production deficit in a specific good, viewed in relation to the domestic consumption of that good, cannot be relevant.

65 Accordingly, the Commission maintains that Regulation No 1788/2003 is not invalid in the light of the principle of non-discrimination.

Answer of the Court

66 The claimants in the main proceedings submit essentially that since Italian milk production is in deficit — a situation which is particularly damaging to small producers — their position is different from that of other milk producers, and in particular from those in Member States with surplus production.

67 In that regard, it should be borne in mind that, under the second subparagraph of Article 34(2) EC, the common organisation of agricultural markets must exclude any discrimination between producers and consumers within the Community. 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 (Case C-273/04 *Poland v Council* [2007] ECR I-8925, paragraph 86 and the case-law cited).

68 That being so, it is sufficient to note, in relation to that line of argument, that it is apparent from paragraphs 30 to 43 of this judgment that the fact that a Member State has a milk production deficit is irrelevant for the purposes of determining the national reference quantity, which means that the claimants in the main proceedings cannot argue that, on that ground, they are in a position different from that of the milk producers in other Member States.

69 However, even if Regulation No 1788/2003, which applies to all recipients of reference quotas alike, did in fact place a heavier burden on small producers than on large producers, it must be held that the fact that a measure adopted within the framework of the common organisation of the market may affect producers in different ways, depending upon the particular nature of their production, does not constitute discrimination if that measure is determined on the basis of objective criteria which are adapted to meet the needs of the general common organisation of the market. That is true of the milk quota and levy system, which is 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, by analogy, *Hierl*, paragraph 19 and the case-law cited).

70 It follows that, since the claimants in the main proceedings are not — as submitted — in a different position, the answer to the second and third questions is that an analysis of Regulation No 1788/2003 in the light of the principle of non-discrimination has not disclosed any factor which might affect the validity of that regulation.

The fourth question

- 71 By this question, the national court asks essentially whether Regulation No 1788/2003 infringes the principle of proportionality in that the uniform application of the levy goes further than the objective of creating a common organisation of the market, by imposing on average Italian farmers low productivity and low income.

Arguments of the parties

- 72 The applicants in the main proceedings submit essentially that the system of milk quotas in the Italian Republic causes especially severe damage to small producers, since it prevents them from expanding. Only structural adjustments to the companies would enable them to survive in the market, which would entail an increase in production that would, on the other hand, be prohibited because of the quota system.
- 73 In addition, that system is in no way an appropriate means of achieving the objectives of the agricultural policy. The only objective it pursues, to the detriment of the other objectives, is to stabilise markets. Consequently, the quota system infringes the Community principles of reasonableness and proportionality.
- 74 The Council maintains that the Community legislature enjoys a wide discretion, in particular as regards the legislative choices necessary to implement the common

agricultural policy. In addition, only if a measure adopted in that sphere is manifestly inappropriate in terms of the objective which the competent institution seeks to pursue, can its legality be affected, which is not the case as regards Regulation No 1788/2003.

- 75 The Commission argues that the order for reference does not contain sufficient information to establish that Regulation No 1788/2003 is manifestly inappropriate. In its submission, first, the quota and levy system has stabilised the market and proved an effective means of solving the problem of overproduction and, secondly, it is also compatible with other objectives of the common agricultural policy.

Answer of the Court

- 76 Since Regulation No 1788/2003 forms an integral part of the common agricultural policy, it should be borne in mind that, in that field, the Council has a discretion and review by the Court of that discretion is limited to ascertaining whether a measure adopted in that field is manifestly inappropriate in the light of the objective which the competent institution is seeking to pursue (see, to that effect, Case C-94/05 *Emsland-Stärke* [2006] ECR I-2619, paragraph 54 and the case-law cited, and judgment of 5 March 2009 in Case C-479/07 *France v Council*, paragraph 63 and the case-law cited).
- 77 It is apparent from paragraphs 47 to 49 of this judgment that stabilising the market in milk and milk products is the main purpose of Regulation No 1788/2003, which comes under the objective of stabilising markets, expressly laid down in Article 33(1)(c) EC. Moreover, as stated in paragraphs 4 and 50 of this judgment, the pursuit of that objective is of limited duration.

78 It follows more specifically from paragraph 49 of this judgment that it was necessary to adopt Regulation No 1788/2003 in order to reduce the imbalance between supply and demand on the milk and milk products market, as well as the resulting structural surpluses, in order to achieve better market equilibrium.

79 In addition, as the Advocate General stated in points 9 and 67 of her Opinion, the Community legislature considered reducing the support price as an alternative to the levy system, which would have had more unfavourable effects on the income of milk producers than the levy system introduced.

80 Moreover, it has been noted in paragraphs 30 to 43 of this judgment that the fact that a Member State has a milk production deficit is irrelevant for the purposes of determining the national reference quantity.

81 As stated in paragraph 57 of this judgment, Regulation No 1788/2003 is compatible with the objectives laid down in Article 33(1)(a) and (b) EC.

82 Accordingly, it must be concluded that Regulation No 1788/2003 is not manifestly inappropriate for the purposes of pursuing the objective of stabilising markets.

83 Having regard to all of the foregoing, it must be concluded that the analysis of Regulation No 1788/2003 in the light of the principle of proportionality has not disclosed any factor which might affect the validity of that regulation.

Costs

84 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 (First Chamber) hereby rules:

- 1. The fact that Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector does not take into account, for the purposes of determining the national reference quantity, the fact that the Member State concerned has a milk production deficit is not capable of affecting the compatibility of that regulation with the objectives laid down, in particular, in Article 33(1)(a) and (b) EC.**
- 2. The analysis of Regulation No 1788/2003 in the light of the principle of non-discrimination has not disclosed any factor which might affect the validity of that regulation.**

- 3. The analysis of Regulation No 1788/2003 in the light of the principle of proportionality has not disclosed any factor which might affect the validity of that regulation.**

[Signatures]