

JUDGMENT OF THE COURT (Sixth Chamber)
15 February 1996 *

In Case C-63/93,

REFERENCE to the Court under Article 177 of the EC Treaty by the Supreme Court of Ireland for a preliminary ruling in the proceedings pending before that court between

Fintan Duff,

Liam Finlay,

Thomas Julian,

James Lyons,

Catherine Moloney,

Michael McCarthy,

Patrick McCarthy,

James O'Regan,

Patrick O'Donovan

* Language of the case: English.

and

Minister for Agriculture and Food, Ireland,

and the Attorney General

on the interpretation and validity of the first indent of Article 3(1) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13),

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, G. Hirsch (Rapporteur), G. F. Mancini, F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: G. Cosmas,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Fintan Duff and Others, by Frank Clarke SC, James O'Reilly SC, and John Gleeson, Barrister-at-Law, instructed by Lavelle Coleman, Solicitors, Dublin,
- the Minister for Agriculture and Food, Ireland, and the Attorney General, by Michael A. Buckley, Chief State Solicitor, acting as Agent, and Eoghan Fitzsimons SC, Brian Lenihan, Barrister-at-Law, and Finola Flanagan of the Office of the Attorney General, Adviser,

- the Council of the European Union, by Arthur Brautigam, Legal Adviser, and Michael Bishop, of its Legal Service, acting as Agents,
- the Commission of the European Communities, by Christopher Docksey, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Fintan Duff and Others, represented by James O'Reilly and John Gleeson, the Minister for Agriculture and Food and the Attorney General, represented by Michael A. Buckley, assisted by John Cooke SC, and the Commission, represented by Christopher Docksey, at the hearing on 23 March 1995,

after hearing the Opinion of the Advocate General at the sitting on 8 June 1995,

gives the following

Judgment

- 1 By order of 14 January 1993, received at the Court on 11 March 1993, the Supreme Court of Ireland referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation and validity of Article 3(1) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13).
- 2 Those questions have been raised in proceedings between Mr Fintan Duff and Others ('the plaintiffs in the main proceedings'), owners of agriculture holdings

and milk producers, and the Minister for Agriculture and Food and the Attorney General concerning a special reference quantity which they are claiming on the basis of the first indent of Article 3(1) of Regulation No 857/84 on the ground that they had adopted development plans under Council Directive 72/159/EEC of 17 April 1972 on the modernization of farms (OJ, English Special Edition 1972 (II), p. 324).

- 3 After the milk quota scheme was established, all but two of the plaintiffs in the main proceedings obtained reference quantities on the basis solely of their deliveries of milk during 1983. However, those quantities did not take into account the increase in milk production capacity provided for in their development plans, the competent national authority not having allocated them any special reference quantity under the first indent of Article 3(1) of Regulation No 857/84. The plaintiffs in the main proceedings must therefore pay an additional levy on any quantity of milk corresponding to their development plans, since their production exceeds the reference quantities allocated to them on the basis of their 1983 production.
- 4 Those plans, which were lodged before 1 March 1984 and approved by the competent national authority, provided for personal financial investments, part of which have been made. Funds for those investments were partly provided by the competent national authorities. None of those plans, whose implementation was to be spread over several years, had been brought to fruition when the milk quota scheme was introduced.
- 5 In order to obtain reference quantities matching their development plan targets, the plaintiffs in the main proceedings brought an action before the High Court of Ireland. When their action was dismissed, they appealed against that court's judgment.

- 6 On the view that its judgment must depend on the interpretation and validity of the first indent of Article 3(1) of Regulation No 857/84, the Supreme Court, hearing the appeal, stayed proceedings and referred the following three questions to the Court of Justice for a preliminary ruling:
- ‘1. Having regard to the third paragraph in the preamble to Council Regulation (EEC) No 857/84 and to Article 40(3) of the Treaty establishing the European Economic Community, is the first indent of Article 3(1) of the said Council Regulation (EEC) No 857/84 to be construed in Community law as imposing on Member States, in allocating reference quantities, an obligation to grant a special reference quantity to producers who had adopted milk production development plans under Council Directive 72/159/EEC and had invested substantial sums of borrowed monies in furtherance of such plans?
 2. Alternatively, having regard to the fundamental principles of Community law, in particular the principles of respect for legitimate expectations, non-discrimination, proportionality, legal certainty and respect for fundamental rights, should the discretion vested in the competent authority in Ireland by the first indent of the said Article 3(1) of Council Regulation (EEC) No 857/84 be construed as an obligation to grant a special reference quantity to the appellants in view of the fact that their milk production development plans were approved by the competent authority in Ireland?
 3. If the answers to Questions 1 and 2 are in the negative, is Council Regulation (EEC) No 857/84 invalid on the ground that it is contrary to Community law, in particular to one or more of the following principles:
 - (a) proportionality;
 - (b) legitimate expectation;

(c) non-discrimination laid down in Article 40(3) of the Treaty establishing the European Economic Community;

(d) legal certainty, and

(e) respect of fundamental rights,

in so far as it fails to require Member States, in allocating reference quantities, to take into account the special situation of producers who had adopted milk production plans under Council Directive 72/159/EEC?

- 7 In order to give a helpful answer concerning the interpretation and the validity of the first indent of Article 3(1) of Regulation No 857/84, the system of rules of which that provision forms part must first be described.

The relevant legislation

- 8 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) introduced an additional levy where the quantities of milk produced exceed a reference quantity to be determined. Under formulas A and B available under that scheme, the reference quantity exempt from the additional levy is, in principle, equal either to the quantity of milk delivered by a producer during the reference year (formula A, the producer formula) or to the quantity of milk purchased during the reference year by a purchaser, namely a dairy (formula B, the purchaser formula). Ireland opted for formula B and adopted 1983 as the reference year. Under that formula, the purchaser liable to the levy is

required to pass on the levy only to those producers who have increased their deliveries, in proportion to their contribution to the purchaser's reference quantity being exceeded.

- 9 In order to deal with certain exceptional situations, the Community legislature provided for derogations from the levy scheme. One such derogation is contained in Article 3(1) of Regulation No 857/84. That provision allows, *inter alia*, those producers who have adopted a milk production development plan to obtain an increase in the quantity of milk exempt from the additional levy through the grant of a special reference quantity. Article 3(1) of Regulation No 857/84 states:

‘For the determination of the reference quantities referred to in Article 2 and in connection with the application of formulas A and B, certain special situations shall be taken into account as follows:

- (1) Producers who have adopted milk production development plans under Directive 72/159/EEC lodged before 1 March 1984 may obtain, according to the Member State's decision:

- if the plan is still being implemented, a special reference quantity taking account of the milk and milk product quantities provided for in the development plan,
- if the plan has been implemented after 1 January 1981, a special reference quantity taking into account the milk and milk product quantities which they delivered in the year during which the plan was completed.

Investments carried out without a development plan can also be taken into account if the Member State has sufficient information.'

- 10 Against that background the national court referred three questions, which should be dealt with together. In substance, the issue is whether the first indent of Article 3(1) of Regulation No 857/84, interpreted in the light of the third recital in the preamble to that regulation, or alternatively in the light of certain general principles and fundamental rights to which the national court refers, imposes on the Member States an obligation to grant a special reference quantity to producers who have adopted a development plan.

Interpretation of the first indent of Article 3(1) of Regulation No 857/84, read in the light of the third recital in the preamble to that regulation

- 11 Article 3(1) of Regulation No 857/84 has already been interpreted by the Court in its judgments in Joined Cases 196/88, 197/88 and 198/88 *Cornée and Others v Copall and Others* [1989] ECR 2309 and in Case C-16/89 *Spronk v Minister van Landbouw en Visserij* [1990] ECR I-3185. As regards the situation referred to in the first indent of Article 3(1), it is clear from the very wording of the provision, as was held in particular in paragraph 13 of the judgment in *Cornée and Others*, cited above, that Member States have a discretion to decide whether or not special reference quantities should be allocated to the producers mentioned in that provision and, if so, to determine their volume.
- 12 Although that interpretation was given in cases in which, contrary to the present situation, the Member States concerned had in fact exercised that discretion, it cannot, having regard to the purpose of Article 3(1) of Regulation No 857/84, be put in issue in the present case.

- 13 The third recital in the preamble to Regulation No 857/84 stipulates: 'the Member States should be enabled to adapt the reference quantities to take into account the special situations of certain producers and to establish for this purpose, as necessary, a reserve within the abovementioned guaranteed quantity'.
- 14 The rules laid down are therefore intended to enable Member States to deal with the exceptional situations, referred to in Article 3(1) of Regulation No 857/84, which confront certain producers. One cannot, however, infer from those rules that the Community legislature wished to impose on the Member State concerned an obligation to grant special reference quantities and so permit those producers who had adopted a development plan to claim a right to such quantities.
- 15 As the Commission has correctly pointed out, even though the Member States have a discretion when deciding whether or not to allocate specific reference quantities, they are at least obliged, as the first sentence of Article 3 of Regulation No 857/84 makes clear, before taking such a decision, to take into consideration, for the purpose of determining the reference quantities referred to in Article 2, the situation of producers with a development plan.
- 16 In the present case, Ireland's submissions, which describe the discussions between all those engaged in the industry before Ireland adopted its decision, show that it took into account the situation of producers who had adopted development plans when it weighed the interests of the various categories of producers pursuant to Article 2 of Regulation No 857/84.
- 17 It follows that the first indent of Article 3(1) of Regulation No 857/84, read in the light of the third recital in the preamble to that regulation, is to be interpreted as meaning that it does not impose on Member States an obligation to grant a special reference quantity to producers who have adopted milk production development plans under Council Directive 72/159.

General principles of Community law and fundamental rights

- 18 The first general principle of Community law to which the plaintiffs in the main proceedings and the Council refer is the principle of the protection of legitimate expectations. They consider that it is incompatible with that principle to exclude from the allocation of a special reference quantity those producers whose development plans have been approved without any conditions or restrictions being imposed by the competent national authority. In particular, the plaintiffs in the main proceedings draw a parallel between their situation and that of producers who were originally refused any reference quantity on account of their participation in the non-marketing scheme under Council Regulation (EEC) No 1078/77 of 17 May 1977, introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (OJ 1977 L 131, p. 1). The Court held that that refusal was contrary to the principle of the protection of legitimate expectations (see, in particular, the judgments in Case 120/86 *Mulder v Minister van Landbouw en Visserij* [1988] ECR 2321, and in Case 170/86 *Von Deetzen v Hauptzollamt Hamburg-Jonas* [1988] ECR 2355).
- 19 Those arguments, based by the plaintiffs in the main proceedings and the Council on a breach of the principle of the protection of legitimate expectations, cannot be accepted.
- 20 That principle, which is part of the Community legal order (see the judgment in Joined Cases 205/82 to 215/82 *Deutsche Milchkontor and Others v Germany* [1983] ECR 2633, paragraph 30), is the corollary of the principle of legal certainty, which requires that legal rules be clear and precise, and aims to ensure that situations and legal relationships governed by Community law remain foreseeable. It is settled case-law that in the sphere of the common organization of the markets, whose purpose involves constant adjustments to meet changes in the economic situation, economic agents cannot legitimately expect that they will not be subject to restrictions arising out of future rules of market or structural policy (see, in particular, the judgment in Case C-177/90 *Kühn v Landwirtschaftskammer Weser-Ems* [1992] ECR I-35, paragraph 13). According to paragraph 14 of that judgment,

the principle of the protection of legitimate expectations may be invoked as against Community rules only to the extent that the Community itself has previously created a situation which can give rise to a legitimate expectation.

- 21 Neither the Community rules on development plans, nor the terms or purpose of those plans, nor the context in which the plaintiffs in the main proceedings adopted their development plans indicate that the Community created a situation providing producers who were implementing a development plan with reasonable grounds to expect that a special reference quantity referred to in the first indent of Article 3(1) of Regulation No 857/84 would be allocated and that they would therefore be exempted in part from the restrictions established by the additional levy scheme.
- 22 Accordingly, at paragraph 26 of its judgment in *Cornée and Others*, cited above, the Court held that the implementation of a milk production development plan which had been approved by the competent national authorities did not confer on the producer concerned the right to produce the quantity of milk corresponding to the plan's objective without being subject to any restrictions stemming from Community rules adopted after the plan was approved. Consequently, producers with a development plan, even one approved prior to the entry into force of the levy scheme, could not rely on any alleged legitimate expectation based on the implementation of their plan in order to oppose any reductions in such reference quantities (paragraph 27). That ruling was confirmed and amplified by the judgment in *Spronk*, cited above, in which the Court stated, at paragraph 29, that the carrying out of investments, even as part of a development plan, did not entitle the producer concerned to entertain any legitimate expectation based on the making of those investments in order to claim a special reference quantity allocated precisely on account of the investments.
- 23 Moreover, at the time when the plaintiffs in the main proceedings adopted their development plans, which, according to the replies to a question put by the Court at the hearing, they did not start to implement before 1981, they could not have been unaware that the Community legislature had already, before that time, taken

steps to overcome the structural surpluses on the market for milk by a variety of measures, including the scheme for the non-marketing of milk under Regulation No 1078/77, cited above.

- 24 In so far as the plaintiffs in the main proceedings claim that, their legitimate expectations having been infringed, they should be treated by the Court in the same manner as it treated producers who had entered into a non-marketing undertaking under Regulation No 1078/77, it should be noted that the two categories of producers are not in the same situation. Unlike in the case of producers who entered into a non-marketing undertaking, the Community legislature did not impose on producers who had adopted a development plan any particular restriction as regards the implementation of their plans. Where, as in the present case, a Member State does not exercise its discretion under the first indent of Article 3(1) of Regulation No 857/84, a producer implementing a development plan is subject to the same restrictions as other producers. Consequently, unlike in the case of producers wholly excluded from any reference quantity and so precluded from producing any milk because of their undertaking given under Regulation No 1078/77, the maintenance of milk production at the level of production in the reference year is guaranteed — as it is for all producers — for those producers who have adopted a development plan.
- 25 Secondly, the national court raises the possibility of a breach of Article 40(3) of the EC Treaty and of the general principle of non-discrimination. That point cannot be accepted.
- 26 The prohibition of discrimination laid down in Article 40(3) of the Treaty is merely the specific expression of the principle of equality which is one of the general principles of Community law. Whilst that principle precludes different situations from being treated in the same way, unless such treatment is objectively justified (judgment in Case 106/83 *Sermide v Cassa Conguaglio Zuccheri* [1984] ECR 4209, paragraph 28), it does not preclude producers who have adopted a development plan from being granted, like all producers, only a reference quantity reflecting their production in the reference year. Having regard to the purpose of the levy

scheme, which is to restore a balance between supply and demand on the market for milk characterized by structural surpluses by limiting milk production to the level of production in the reference year, it is the reference year which is decisive for comparing the situation of the two categories of producers. In relation to that year, the plaintiffs in the main proceedings cannot claim, regardless of the future production envisaged by them, that their situation differs from that of other producers and so enables them to claim a right to the allocation of a special reference quantity.

- 27 Thirdly, contrary to the contentions of the plaintiffs in the main proceedings, the decision not to allocate special reference quantities does not infringe the principle of proportionality. The Community legislature and the national legislature did not exercise their discretion under the Common Agricultural Policy wrongly in not granting special reference quantities. The absence of any such obligation cannot be considered incompatible with the purpose of the additional levy scheme, as described in paragraph 26.
- 28 Finally, the national court raises the question of the protection of fundamental rights. The observations of the plaintiffs in the main proceedings show that it is only the right to property and the freedom to pursue a trade or profession recognized by Community law that are in issue (see, in particular, the judgment in Case C-306/93 *SMW Winzersekt* [1994] ECR I-5555, paragraph 22).
- 29 As the Court held in its judgment in Case 5/88 *Wachauf v Bundesamt für Ernährung und Forstwirtschaft* [1989] ECR 2609, at paragraph 19, the requirements of the protection of fundamental rights in the Community legal order are also binding on the Member States when they implement Community rules.

- 30 However, application of the rules in question does not impair either of the fundamental rights to which the national court refers. Those rules, which meet the general interest aim of correcting the surpluses existing on the market for milk, do not affect the actual substance of the right to property and the freedom to pursue a trade or profession. Even though they authorize the national authorities to exercise their discretion in such a way that producers who have adopted development plans may ultimately be prevented from increasing their production, they nevertheless enable those producers to continue to produce milk at the level of their production in 1983.
- 31 Consequently, no requirement flowing from the protection afforded by general principles of law, such as protection of legitimate expectations, the prohibition of discrimination, proportionality and legal certainty, or by fundamental rights places the competent national authority under any obligation, under the first indent of Article 3(1) of Regulation No 857/84, to grant special reference quantities to producers who have adopted development plans, even where those plans were approved by the competent authorities.
- 32 If the requirements ensuing from the abovementioned general principles and fundamental rights do not impose any obligation to grant special reference quantities to producers who have adopted development plans, it also follows that those same principles do not affect the validity of the first indent of Article 3(1) of Regulation No 857/84.
- 33 Consequently, consideration of the general principles and fundamental rights recognized by Community law has not revealed any factor of such a kind as to affect the validity of the first indent of Article 3(1) of Regulation No 857/84.

34 Having regard to the foregoing, the answers to the national court's questions must be that

- the first indent of Article 3(1) of Regulation No 857/84, read in the light of the third recital in the preamble to that regulation, is to be construed as not imposing on Member States an obligation to grant a special reference quantity to producers who had adopted milk production development plans under Directive 72/159;
- no requirement flowing from the protection afforded by general principles of law, such as the protection of legitimate expectations, the prohibition of discrimination, proportionality and legal certainty, or by fundamental rights, such as the right to property and the freedom to pursue a trade or profession, imposes on the competent national authority any obligation, under the first indent of Article 3(1) of Regulation No 857/84, to grant special reference quantities to producers who have adopted development plans, even where those plans had been approved by the competent authorities;
- consideration of the abovementioned general principles and fundamental rights has not disclosed any factor of such a nature as to affect the validity of the first indent of Article 3(1) of Regulation No 857/84.

Costs

35 The costs incurred by Ireland, the Council of the European Union and 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the three questions referred to it by the Supreme Court of Ireland, by order of 14 January 1993, hereby rules:

- (1) The first indent of Article 3(1) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector, read in the light of the third recital in the preamble to that regulation, is to be construed as not imposing on Member States an obligation to grant a special reference quantity to producers who had adopted milk production development plans under Council Directive 72/159/EEC of 17 April 1972 on the modernization of farms.
- (2) No requirement flowing from the protection afforded by general principles of law, such as the protection of legitimate expectations, the prohibition of discrimination, proportionality and legal certainty, or by fundamental rights, such as the right to property and the freedom to pursue a trade or profession, imposes on the competent national authority any obligation, under the first indent of Article 3(1) of Regulation No 857/84, to grant special reference quantities to producers who have adopted development plans, even where those plans had been approved by the competent authorities.
- (3) Consideration of the abovementioned general principles and fundamental rights has not disclosed any factor of such a nature as to affect the validity of the first indent of Article 3(1) of Regulation No 857/84.

Kakouris

Hirsch

Mancini

Schockweiler

Kapteyn

Delivered in open court in Luxembourg on 15 February 1996.

R. Grass

C. N. Kakouris

Registrar

President of the Sixth Chamber