

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

13 July 1995 ^{*}

In Joined Cases T-466/93, T-469/93, T-473/93, T-474/93 and T-477/93,

Thomas O'Dwyer, Thomas Keane, Thomas Cronin and James Reidy, residing respectively at Drumdowney, Snowhill, Waterford, Ireland; at Corbally, Gurty-madden, Loughrea, County Galway, Ireland; at Ardmore, Waterford, Ireland; and at Carrowreagh, Cooper, Tubbercurry, County Sligo, Ireland, represented by Anthony Burke, Solicitor, with an address for service in Luxembourg at the Chambers of Arsène Kronshagen, 12 Boulevard de la Foire,

applicants,

v

Council of the European Union, represented by Arthur Brautigam, Legal Adviser, and Michael Bishop, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate, European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

^{*} Language of the case: English.

supported by

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, and Christopher Docksey, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

intervener,

APPLICATION, in Cases T-466/93, T-469/93, T-473/93 and T-474/93, for reparation of the damage allegedly suffered by the applicants as a result of the application of Council Regulation (EEC) No 816/92 of 31 March 1992 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products (OJ 1992 L 86, p. 83) and, in Case T-477/93, for reparation of the damage allegedly suffered by the applicant as a result of the application of Council Regulation (EEC) No 748/93 of 17 March 1993 amending Regulation (EEC) No 3950/92 establishing an additional levy in the milk and milk products sector (OJ 1993 L 77, p. 16),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: J. Biancarelli, President, C. P. Briët and C. W. Bellamy, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 14 February 1995,

gives the following

Judgment

Facts and legislative background

- 1 The applicants are all dairy farmers in Ireland. The sizes of their farms are: 42 hectares (Mr O'Dwyer), 30 hectares (Mr Keane), 51 hectares (Mr Cronin) and 33 hectares (Mr Reidy). Their herd sizes are 50 dairy cows for Mr O'Dwyer, 23 for Mr Keane, 32 for Mr Cronin and 45 for Mr Reidy.

- 2 In 1984, in order to combat overproduction of milk, the Council adopted 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). That regulation inserted a new Article 5c into Regulation (EEC) No 804/68 of the Council of 27 June 1968 (OJ, English Special Edition, 1968 (I), p. 176), introducing, for five consecutive periods of twelve months beginning on 1 April 1984, an additional levy (currently fixed at 115% of the target price for milk) on quantities of milk delivered in excess of a certain reference quantity ('quota') to be determined for each producer or purchaser (paragraph 1). The sum of those quantities was not to exceed a 'guaranteed total quantity' laid down for each Member State, equal to the sum of the quantities of milk delivered during the 1981 calendar year, plus 1% (paragraph 3), supplemented where appropriate by an additional quantity allocated from the 'Community reserve' (paragraph 4). At the choice of the Member State, the additional levy could be applied either to producers on the basis of the quantities delivered by them ('Formula A') or to purchasers on the basis of the quantities delivered to them by producers, in which case it was to be passed on to those producers in proportion to their deliveries ('Formula B'). Ireland opted for Formula B.

- 3 In 1986, in view of the continuing surplus in the milk sector, the guaranteed total quantities were reduced without compensation by 2% for the 1987-1988 milk year

and by 1% for the 1988-1989 milk year, by Council Regulation (EEC) No 1335/86 of 6 May 1986 amending Regulation No 804/68 (OJ 1986 L 119, p. 19) and by Council Regulation (EEC) No 1343/86 of 6 May 1986 amending 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 1986 L 119, p. 34). That reduction was accompanied by a system of compensation for producers undertaking to discontinue production, under Council Regulation (EEC) No 1336/86 of 6 May 1986 fixing compensation for the definitive discontinuation of milk production (OJ 1986 L 119, p. 21).

- 4 In 1987, because a balance between supply and demand had still not been attained, 4% of each reference quantity for the 1987-1988 milk year, and 5.5% for 1988-1989, were temporarily withdrawn under Article 1(1) of Council Regulation (EEC) No 775/87 of 16 March 1987 temporarily withdrawing a proportion of the reference quantities mentioned in Article 5c(1) of Regulation No 804/68 (OJ 1987 L 78, p. 5). In return, Article 2 of Regulation No 775/87 provided for the payment of compensation of ECU 10 per 100 kg for each of those periods.
- 5 In 1988, the additional levy arrangement was extended for a further three years, until the end of the eighth 12-month period (that is to say until 31 March 1992), by Council Regulation (EEC) No 1109/88 of 25 April 1988 amending Regulation No 804/68 (OJ 1988 L 110, p. 27). At the same time, Article 1 of Council Regulation (EEC) No 1111/88 of 25 April 1988 amending Regulation No 775/87 (OJ 1988 L 110, p. 30) maintained for three further 12-month periods (1989-1990, 1990-1991 and 1991-1992) the temporary withdrawal of 5.5% of the reference quantities provided for in Regulation No 775/87. Under Article 1(2) of Regulation No 1111/88, the withdrawal was to be compensated by the direct payment of a degressive sum of ECU 8 per 100 kg for 1989-1990, ECU 7 per 100 kg for 1990-1991 and ECU 6 per 100 kg for 1991-1992.

- 6 In 1989, Council Regulation (EEC) No 3879/89 of 11 December 1989 amending Regulation No 804/68 (OJ 1989 L 378, p. 1) reduced the guaranteed total quantities by 1% in order to increase the Community reserve and thus make it possible to reallocate additional reference quantities to certain producers at a disadvantage. At the same time, in order to keep the non-withdrawn reference quantities unaltered, the rate of temporary withdrawal was reduced from 5.5% to 4.5% by Council Regulation (EEC) No 3882/89 of 11 December 1989 amending Regulation No 775/87 (OJ 1989 L 378, p. 6). Regulation No 3882/89 also increased the compensation provided for in Regulation No 1111/88 to ECU 10 per 100 kg for 1989-1990, ECU 8.5 per 100 kg for 1990-1991 and ECU 7 per 100 kg for 1991-1992, in order to continue to pay producers the amount resulting from the rate of temporary withdrawal of 5.5%.
- 7 In 1991, Council Regulation (EEC) No 1630/91 of 13 June 1991 amending Regulation No 804/68 (OJ 1991 L 150, p. 19) again reduced the guaranteed total quantities by 2%, subject to compensation as provided for in Articles 1 and 2 of Regulation (EEC) No 1637/91 of 13 June 1991 fixing compensation with regard to the reduction of the reference quantities referred to in Article 5c of Regulation No 804/68 and compensation for the definitive discontinuation of milk production (OJ 1991 L 150, p. 30).
- 8 On 31 March 1992, the Council adopted Regulation (EEC) No 816/92 amending Regulation No 804/68 (OJ 1992 L 86, p. 83), which is the regulation contested in Cases T-466/93, T-469/93, T-473/93 and T-474/93. The first two recitals in the preamble to that regulation read as follows:

'Whereas the additional-levy arrangements introduced by Article 5c of Council Regulation (EEC) No 804/68 ... expire on 31 March 1992; whereas new arrangements applicable until the year 2000 are to be adopted as part of the reform of the

common agricultural policy (CAP); whereas it is necessary in the meantime to continue the present arrangements for a ninth period of 12 months; whereas, under the Commission proposals, the total quantity set by this Regulation may be reduced, in return for compensation, for the said period so that the rationalization efforts already begun can be continued;

Whereas because of the market situation it was necessary temporarily to suspend part of the reference quantities from the fourth to the eighth 12-month period, pursuant to Regulation (EEC) No 775/87 ...; whereas owing to persisting surpluses, 4.5% of the reference quantities for deliveries are not included for the ninth period in the guaranteed total quantities; whereas in the course of the reform of the CAP, the Council will decide definitively what is to happen with these quantities; whereas, on this assumption, the amount for each Member State of the quantities concerned should be specified ...'.

- 9 Article 1 of Regulation No 816/92 amended Article 5c(3) of Regulation No 804/68 by adding the following point:

'(g) for the 12-month period from 1 April 1992 to 31 March 1993, and without prejudice during that period, taking account of the Commission proposals in connection with the reform of the CAP, to a 1% reduction calculated on the basis of the quantity referred to in the second subparagraph of this paragraph, the total quantity, expressed in thousands of tonnes, shall be:

...

Ireland 4 725.600

...

The quantities referred to in Regulation (EEC) No 775/87 which are not included in the first subparagraph are as follows in thousands of tonnes:

...

Ireland 237.600

...

The Council shall take a final decision on the future of those quantities in the context of the reform of the CAP.'

- 10 In a series of regulations of 30 June 1992 — Regulation (EEC) No 2071/92 amending Regulation No 804/68, Regulation (EEC) No 2072/92 fixing the target price for milk and the intervention prices for certain milk products for two annual periods from 1 July 1993 to 30 June 1995, Regulation (EEC) No 2073/92 on promoting consumption in the Community and expanding the markets for milk and milk products and Regulation (EEC) No 2074/92 establishing an additional levy on the milk and milk-products sector (OJ 1992 L 215, pp. 64, 65, 67 and 69 respectively) — the Council adopted the necessary legislation relating to the operation of the markets for milk and milk products for the 1992-1993 milk year without mentioning the 'reference quantities not included' referred to in Regulation No 816/92.

- 11 By letter of 16 December 1992, the Irish Creamery Milk Suppliers Association ('ICMSA'), acting on behalf of all its members, including the applicants, asked the Council, in substance, to provide compensation for the suspension of reference quantities under Regulation No 816/92 and not to make that suspension permanent or, if the suspension were to be made permanent, to provide proper compensation for the producers affected. By letter of the same date, the ICMSA asked the

Commission to confirm that the proposals which it had made to the Council were not intended to suppress permanently the 4.5% of the reference quantities or, if they were so intended, to withdraw those proposals and to confirm that it would propose compensation for the suspension during the 1992-1993 milk year and for any permanent suppression of those quantities.

12 Next, since it was still necessary to maintain an additional levy system, 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) extended the rules governing the system of reference quantities and additional levies for a further seven years and codified those rules, while at the same time incorporating the previous Community reserve into the guaranteed total quantities (see, in particular, the first and third recitals in the preamble). Article 3 of Regulation No 3950/92 provides that the sum of the individual reference quantities of the same type may not exceed the corresponding total quantities to be determined for each Member State. Article 4 provides that the individual reference quantities are to be equal to those available on 31 March 1993, subject to national adjustments, within the limits of the total quantities referred to in Article 3.

13 On 5 February 1993, the Council replied to the ICMSA that, at its meeting from 14 to 17 December 1992, it had not adopted any measure concerning the temporary suspension provided for in Regulation No 816/92.

14 On 17 February 1993, the Commission replied to the ICMSA that decisions taken by the Council on the basis of a proposal from the Commission took the general

interest into account and might not accommodate all sectional interests in all respects. Reference was also made in the letter to 'the adoption of the Council regulation which converts into a definitive reduction without further compensation the quantities referred to in Regulation (EEC) No 775/87'.

- 15 On 17 March 1993, the Council adopted Regulation (EEC) No 748/93 amending Regulation No 3950/92 (OJ 1993 L 77, p. 16), which is the regulation challenged in Case T-477/93. The last three recitals in the preamble to Regulation No 748/93 read as follows:

'Whereas it is imperative for the guaranteed total quantities for the Member States to be laid down as from 1 April 1993 so that the absence of rules does not render the provisions of Regulation (EEC) No 3950/92 inoperative;

Whereas, pending a subsequent decision, the total guaranteed quantities in force on 31 March 1993 should be rolled over and increased by the amounts from the Community reserve existing on that date;

Whereas the total guaranteed quantities laid down by this Regulation will be adjusted where necessary when all the problems connected with price setting for the 1993/94 marketing year are being reconsidered ...'.

16 Article 1 of Regulation No 748/93 added the following to Article 3 of Regulation No 3950/92:

‘The total guaranteed quantities for the Member States for the 12-month period 1 April 1993 to 31 March 1994 shall be fixed at the same level as those set out in Article 5c(3)(g) of Regulation (EEC) No 804/68, increased by the amounts from the Community reserve as allocated on 31 March 1993, and those set out in the Annex to Regulation (EEC) No 857/84.’

17 Regulation No 748/93 thus excluded from the guaranteed total quantities for the 1993-1994 milk year the reference quantities not included for 1992-1993 under Regulation No 816/92.

18 Finally, Council Regulation (EEC) No 1560/93 of 14 June 1993 amending Regulation No 3950/92 (OJ 1993 L 154, p. 30) replaced Article 3 of Regulation No 3950/92 by a new article fixing total quantities for each Member State. The total quantity fixed for Ireland included an increase of 0.6% in order to permit the allocation of additional quantities to certain categories of producers (see Article 1 of Regulation No 1560/93).

19 The reference quantities initially allocated to each of the applicants and the subsequent changes to those quantities as a result, *inter alia*, of the provisions set out above, are shown in the tables in Annex I to this judgment. The applicants' deliveries of milk are shown in the tables in Annex II. Those tables form an integral part of this judgment.

Procedure

- 20 By applications lodged on 8 February 1993 (Mr O'Dwyer), 15 February 1993 (Mr Keane), 24 March 1993 (Mr Cronin), 30 March 1993 (Mr Reidy) and 13 April 1993 (Mr O'Dwyer) at the Registry of the Court of Justice, the applicants brought the present actions, registered as Cases C-36/93, C-67/93, C-106/93, C-129/93 and C-152/93 respectively.
- 21 By orders of 2 September 1993 in Case C-67/93, 6 September 1993 in Case C-36/93 and 8 September 1993 in Cases C-106/93, C-129/93 and C-152/93, the Commission was granted leave to intervene in these actions in support of the defendant.
- 22 By orders of 27 September 1993 pursuant to Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Council Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities (OJ 1993 L 144, p. 21), the Court of Justice transferred Cases C-36/93, C-67/93, C-106/93, C-129/93 and C-152/93 to the Court of First Instance. They were registered at the Court of First Instance as Cases T-466/93, T-469/93, T-473/93, T-474/93 and T-477/93 respectively.
- 23 By orders of the President of the Third Chamber of the Court of First Instance of 11 October 1994 and 14 January 1995, Cases T-466/93, T-469/93, T-473/93, T-474/93 and T-477/93 were joined for the purposes of the oral procedure and the judgment.
- 24 Upon hearing the report of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry but, as a measure of organization of the procedure, requested the applicants to produce certain figures relating to their production and the amount of the additional levy for which

they were liable for the 1992-1993 milk year and, in Case T-477/93, for 1993-1994. The hearing took place on 14 February 1995.

Forms of order sought

In Cases T-466/93, T-469/93, T-473/93 and T-474/93

25 In their applications, the applicants claim that the Court should:

— declare that Regulation No 816/92 is invalid, null and void;

— award the applicants damages in the sum of:

— ECU 1 084.2 (IRL 1 003.44) in Case T-466/93,

— ECU 280.9 (IRL 268.90) in Case T-469/93,

— ECU 535.2 (IRL 512.33) in Case T-473/93 and

— ECU 943.8 (IRL 903.47) in Case T-474/93,

or such other sum as the Court rules appropriate;

- award interest on those sums at the rate of 8% per year to run from 1 April 1993; and
- order the defendant to pay the costs.

26 The defendant contends that the Court should:

in Cases T-469/93, T-473/93 and T-474/93

- dismiss the applications for the annulment of Regulation No 816/92 as inadmissible;

in all four cases

- dismiss the applications for damages as unfounded; and
- order the applicants to pay the costs.

27 The intervener claims that the Court should:

- dismiss the applications for damages as unfounded;

— order each applicant to pay the costs of the intervention in his case.

28 In reply to the Commission's observations in intervention, the applicants claim that the Court should:

— reject the form of order sought by the intervener;

— grant the forms of order sought in the applications; and

— if the defendant is not ordered to pay the costs of the intervention by the Commission, order the Commission to pay the applicants' costs.

In Case T-477/93

29 In his application, the applicant claims that the Court should:

— declare that Regulation No 748/93 is invalid, null and void;

— award the applicant damages in the sum of ECU 5 759.50 (IRL 5 513.39) or such other sum as the Court rules appropriate, in respect of the loss suffered by the applicant as a result of the effect of Regulation No 748/93;

— award interest on that sum at the rate of 8% per year to run from 1 April 1993;
and

— order the defendant to pay the costs.

30 The defendant contends that the Court should:

— dismiss the application as inadmissible and, in the alternative, as unfounded;

— order the applicant to pay the costs.

31 The intervener claims that the Court should:

— dismiss the application for damages as unfounded;

— order the applicant to pay the costs of the intervention.

32 In reply to the Commission's observations in intervention, the applicant claims that the Court should:

— reject the form of order sought by the intervener;

— grant the forms of order sought in the application; and

— if the defendant is not ordered to pay the costs of the intervention by the Commission, order the Commission to pay the applicant's costs.

33 At the hearing on 14 February 1995, the applicants in Cases T-466/93, T-469/93, T-473/93 and T-474/93, and Mr O'Dwyer, the applicant in Case T-477/93, withdrew their claims for the annulment of Regulation No 816/92 and Regulation No 748/93 respectively. The Court therefore notes the partial withdrawal of the applications in so far as they seek the annulment of the regulations in issue.

The claims for damages in Cases T-466/93, T-469/93, T-473/93 and T-474/93

34 The applicants in Cases T-466/93, T-469/93, T-473/93 and T-474/93 claim that in adopting Regulation No 816/92, and thus reducing without compensation the total guaranteed quantities for the period between 1 April 1992 and 31 March 1993, the Council manifestly and gravely disregarded the limits on the exercise of its powers and infringed superior rules of law for the protection of the individual, thus incurring the non-contractual liability of the Community under the last paragraph of Article 215 of the EEC Treaty ('the Treaty'). In that regard, all four applicants put forward six identical pleas in law: (i) breach of the principle of the protection of legitimate expectations; (ii) breach of Article 190 of the Treaty; (iii) breach of Articles 39 and 40 of the EC Treaty; (iv) breach of the right to property and the right to pursue a trade or profession; (v) breach of the principle of proportionality; and (vi) breach of the principle of non-discrimination.

35 In addition, in support of their claims for damages in Cases T-469/93, T-473/93 and T-474/93, Mr Keane, Mr Cronin and Mr Reidy put forward a series of pleas in law

to the effect that Regulation No 816/92 temporarily withdrew or suppressed without compensation reference quantities other than those originating in Article 5c(1) and (3) of Regulation No 804/68. Those pleas will be considered after those put forward jointly by all four applicants.

The first plea — Breach of the principle of the protection of legitimate expectations

Summary of the parties' arguments

- ³⁶ The applicants put forward, in substance, two main arguments. First, they consider that the legislative context prior to the adoption of Regulation No 816/92 had given them a legitimate expectation which was violated, for the period from 1 April 1992 to 31 March 1993, either by the failure to pay compensation or by the failure to reinstate the 4.5% of the reference quantities which had been temporarily withdrawn by Regulation No 775/87. Secondly, they assert that the withdrawal, without any prior notice or transitional measures, of the compensation provided for in Regulation No 775/87 also constitutes a violation of their legitimate expectations.
- ³⁷ With regard to the legislative context, the applicants state that Regulation No 816/92 falls within the same legislative context as Regulation No 775/87, as amended by Regulations No 1111/88 and No 3879/89, which concerned a 'temporary' withdrawal, with compensation, of 4.5% of the reference quantities, as the Court of Justice held in Case C-311/90 *Hierl v Hauptzollamt Regensburg* [1992] ECR I-2061. In those circumstances, Regulation No 816/92 should be interpreted as extending the temporary withdrawal of the 4.5% at least for the 1992-1993 milk year, since the second recital in its preamble (paragraph 8 above) specifies that the quantities in issue 'are not included' and that 'the Council will decide definitively

what is to happen with these quantities'. In the applicants' view, such an extension of the temporary withdrawal necessarily implies a continuation for the same period of the compensation with which it had always been closely linked.

38 In support of their argument that Regulation No 816/92 did not effect a definitive reduction of the reference quantities, the applicants cite, *inter alia*, the provisions of Regulation No 816/92 itself, the letter from the Council of 5 February 1993 (paragraph 13 above), the Presidency compromise adopted at the meeting of the Council on 24-26 May 1993, referring to 'suspended quantities', and the press releases of the Irish Department of Agriculture and Food of 1 July 1992 and 17 December 1992 stating that the matter of the reference quantities temporarily withdrawn had not been dealt with finally and that the Minister had included a declaration to that effect in the Council minutes for the December 1992 meeting.

39 The applicants further claim that no other convincing instance can be found of a quota reduction without compensation. The present situation is thus comparable to that in Case 120/86 *Mulder v Minister van Landbouw en Visserij* [1988] ECR 2321 (*Mulder I*), since the non-payment of compensation could not have been anticipated either from the context of the previous regulations or from any change in objective circumstances.

40 Furthermore, the nature of milk production requires planning, in particular because of the financial and contractual commitments entered into by most producers on an annual basis; that requirement is exacerbated by the need to avoid becoming liable for the additional levy. In those circumstances, the withdrawal of compensation without any prior warning or transitional measures is such as to render the Community liable (Case 74/74 *CNTA v Commission* [1975] ECR 533, paragraph 43).

- 41 Finally, the fact that the applicants had already received compensation over the five previous milk years is not relevant because the compensation provided for in Regulation No 775/87 had always been related to the previous temporary withdrawal and was not adequate, as the Court of Justice acknowledged in *Hierl*. The applicants further deny the defendant's allegation that milk prices in Ireland have increased since 1987.
- 42 The defendant stresses that to admit that milk producers can have a legitimate expectation in the indefinite continuation of the compensation would be tantamount to recognizing acquired rights in that respect, contrary to consistent case-law (see Case 250/84 *Eridania v Cassa Conguaglio Zuccheri* [1986] ECR 117 and Case 203/86 *Spain v Council* [1988] ECR 4563).
- 43 The withdrawal effected by Regulation No 775/87 was initially introduced as a temporary measure and was due to a desire to review the proportion withdrawn in the light of market developments. According to the first recital in the preamble to that regulation, the compensation was to be proportionate to the additional imposition on producers — thus explaining, since the effort of adjustment required decreases as time goes by, the progressive reduction of the amount of compensation. If the price of milk remains the same or decreases producers need to find replacement activities to make good the loss of income but if prices increase — as was the case here — the initial loss of income disappears with time.
- 44 Since the unfavourable trend in demand had necessitated subsequent reductions in supply, the Commission, in its proposals for the reform of the common agricultural policy published on 31 December 1991, proposed transforming that tempo-

rary quota suspension into a definitive reduction and no longer paying degressive compensation (OJ 1991 C 337, p. 35).

- 45 When adopting Regulation No 816/92, the Council followed the Commission's proposal not to extend the degressive compensation. The suspended reference quantities, on the other hand, were deducted from the guaranteed total quantities, giving rise to a definitive reduction in individual quotas, although the Council reserved the right to review their situation in the light of market developments. The only promise made to producers was therefore that the question of the 4.5% of the reference quantities would be reexamined, as was subsequently the case when Regulation No 1560/93 was adopted (paragraph 18 above).
- 46 Several other reductions of the reference quantities had already been imposed and had not always been temporary or accompanied by compensation. Furthermore, the Court of Justice has consistently held that a prudent and well-informed operator should expect measures which have to be imposed in view of market developments (see Case C-350/88 *Delacre and Others v Commission* [1990] ECR I-395). The principle in the *CNTA* judgment cited by the applicants does not apply in the present case since there is an overriding public interest justifying subsequent reductions in the reference quantities, and such reductions were perfectly foreseeable in view of the unfavourable developments on the market. Moreover, the compensation paid out in the present case under Regulation No 775/87, amounting in total to ECU 45.5 per 100 kg, very amply compensated producers both for any potential loss of income and for the efforts of adjustment required.
- 47 The Commission, the intervener, argues, *inter alia*, that the changes introduced by Regulation No 816/92 were foreseeable (Case 265/85 *Van den Bergh en Jurgens v*

Commission [1987] ECR 1155). The fact that the quantities in question had been withdrawn for a number of years, the degressive compensation paid over that period, the continuing surplus production and the explanatory memorandum to the Commission's proposal COM(91) 409 final of 31 October 1991 should have enabled a prudent and well-informed producer to realize that the former situation could not be restored and to anticipate further reductions to the reference quantities and the discontinuance of the compensation.

Findings of the Court

- 48 It must first be borne in mind that any economic operator to whom an institution has given justified hopes may rely on the principle of the protection of legitimate expectations. However, operators may not have a legitimate expectation that a situation which may be modified at the discretion of the Community institutions will be maintained. That applies particularly in an area such as the common organization of the agricultural markets whose purpose involves constant adjustments to meet changes in the economic situation (see *Delacre and Others*, paragraph 33; Case C-280/93 *Germany v Council* [1994] ECR I-4973, paragraph 80; Case T-489/93 *Unifruit Hellas v Commission* [1994] ECR II-1201, paragraph 67; and Case T-472/93 *Campo Ebro Industrial v Council* [1995] ECR II-0000, paragraph 61). In such a context, the scope of the principle of the protection of legitimate expectations cannot be extended to the point of generally preventing new rules from applying to the future effects of situations which arose under the earlier rules (*Spain v Council*, paragraph 19; *Campo Ebro Industrial*, paragraph 52).
- 49 In the present case, the determination of the guaranteed total quantities under the additional levy scheme set up by Regulation No 856/84 falls within the Council's broad power of appreciation to adjust the common organization of the market in milk and milk products as a result of variations in the economic situation. It follows that, in principle, no economic operator may entertain a legitimate expecta-

tion that the Council will not, in its administration of the common agricultural policy, reduce the guaranteed total quantities, and thus individual producers' reference quantities, for the future (see, *inter alia*, *Spain v Council*, paragraphs 19 and 20).

50 Nor, the Court considers, may milk producers legitimately expect in such a context that any reduction in their individual reference quantities will be accompanied by compensation. The *Hierl* judgment, cited by the applicants, does not run counter to that view. In particular, the mere fact that compensation was granted when the total guaranteed quantities were reduced by previous regulations cannot have given the operators concerned any legitimate expectation that compensation would be granted on the occasion of each subsequent reduction in those quantities.

51 Those considerations are all the more pertinent in the present case in that the whole set of rules governing the additional levy scheme set up by Regulation No 856/84, including Regulation No 775/87 as amended by Regulation No 1111/88 and Regulation No 3879/89, was due to expire on 31 March 1992. Since the conditions under which that system could be renewed for future years fell within the Council's broad power of appreciation, no economic operator could in principle have any legitimate expectation whatever as to the tenor of the legislative measures which the Council would adopt for the period subsequent to 31 March 1992, particularly as regards the maintenance of the total guaranteed quantities.

52 In principle, therefore, the applicants may not claim that the reduction without compensation of their reference quantities for the 1992-1993 milk year in Regulation No 816/92 constituted a breach of their legitimate expectations.

- 53 It has, furthermore, consistently been held that where a prudent and discriminating economic operator could have foreseen the adoption of a Community measure likely to affect his interests, he cannot plead that his legitimate expectations have been infringed if the measure is adopted (*Van den Bergh en Jurgens*, paragraph 44; *Delacre and Others*, paragraph 37; *Unifruit Hellas*, paragraph 51).
- 54 In the present case, the Court considers that a prudent and well-informed operator could have foreseen that the reference quantities in issue would be reduced without compensation for the 1992-1993 milk year. Given that equivalent reference quantities had been temporarily withdrawn for the five previous years, that degressive compensation amounting to a total of ECU 45.5 per 100 kg had already been paid to producers over the course of that period and that there was still a surplus of milk production, the Court considers that a prudent and well-informed milk-producer could have foreseen the reduction of the reference quantities without compensation for the period from 1 April 1992 to 31 March 1992 effected by Regulation No 816/92. The Commission had, moreover, made a formal proposal to that effect in October 1991, published on 31 December 1991 (OJ 1991 C 337, p. 35). In those circumstances, the applicants are not entitled to plead that their legitimate expectations have been infringed (*Van den Bergh en Jurgens*, paragraph 44).
- 55 For the same reasons, the Court considers that, contrary to the applicants' arguments, the Council did not act in breach of the principles in the *CNTA* judgment when it adopted Regulation No 816/92. In this Court's view, that case-law does not apply when the contested measure was foreseeable. In the present case, all interested parties had been explicitly informed, by the publication of the Commission's proposals (paragraph 54 above), of the possibility that the quantities in issue would be reduced without compensation as from 1 April 1992. Since milk production is planned, essentially, on an annual basis from 1 April each year, the applicants were thus in a position to foresee the proposed measures sufficiently in advance and to take appropriate steps to deal with them.

56 Nor does the Court consider that there is merit in the applicants' argument based on the legislative context, to the effect that Regulation No 816/92 should be interpreted as extending the temporary withdrawal effected by Regulation No 775/87, thus giving rise to a legitimate expectation that the reduction of reference quantities effected by Regulation No 816/92 would be accompanied by compensation.

57 The very nature of a legitimate expectation means that, if it is to be effectively relied upon, it must have been derived from acts or omissions prior to the measure which is alleged to have infringed it. The terms of Regulation No 816/92, the measure contested in the present case, therefore cannot themselves serve as a basis for the legitimate expectations on which the applicants seek to rely. All the other elements which the applicants adduce as having caused them to entertain legitimate expectations (see paragraph 38 above) must likewise be dismissed in so far as they are subsequent to the adoption of Regulation No 816/92.

58 The only circumstance prior to 31 March 1992 adduced by the applicants to establish their legitimate expectations is the temporary withdrawal provided for in Regulation No 775/87 as amended by Regulation No 1111/88 and Regulation No 3879/89. However, for the reasons given above, the terms of those previous regulations could not themselves give rise to a legitimate expectation as to the measures subsequently to be adopted by the Council in its administration of the common agricultural policy. In particular, the use of the word 'temporary' in Regulation No 775/87 did not give rise to any legitimate expectation that the quantities in question would be returned or that compensation would be granted for their definitive withdrawal.

59 Nor, furthermore, can the Court accept the applicants' argument that Regulation No 816/92 must be interpreted as extending the temporary withdrawal provided for in Regulation No 775/87. Regulation No 816/92 is a completely new measure

laying down the total guaranteed quantities for the period from 1 April 1992 to 31 March 1993, following the expiry of the whole additional levy scheme — including the temporary withdrawal under Regulation No 775/87 — on 31 March 1992. In that context, therefore, Regulation No 816/92 provided for a definitive reduction of the total quantities for the 1992-1993 milk year, postponing a decision on the future of the quantities not included for that year.

60 The applicants' first plea in law must therefore be rejected.

The second plea — Breach of Article 190 of the Treaty

Summary of the parties' arguments

61 Citing the case-law of the Court of Justice, the applicants claim, in substance, that the preamble to Regulation No 816/92 (paragraph 8 above) does not indicate the reasons for the divergence between its provisions and the previous system of temporary withdrawal with compensation, established by Regulation No 775/87. In particular, no reasons are given for no longer granting compensation and it is not specified to what extent or for what reason the temporary withdrawal of the reference quantities may have been converted into a permanent reduction. Nor is there any certainty as to how long such a measure is intended to last.

62 The non-payment of compensation does not form part of the overall system of measures adopted by the Council, in particular because Regulation No 816/92 involved a fundamental departure from the system of temporary withdrawal with compensation set up by Regulation No 775/87, Regulation No 1111/88 and Regu-

lation No 3879/89. The applicants add that the seventh recital in the preamble to Council Regulation (EEC) No 1639/91 of 13 June 1991 amending 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 1991 L 150, p. 35), stating that 'Regulation (EEC) No 775/87 ... provides for degressive compensation over five years for the reduction in production capacity resulting from such suspension', does not form part of the system of measures dealing with the temporary withdrawal and, in any event, could be interpreted as meaning that the temporary withdrawal would be lifted at the end of the five years.

63 The defendant agrees that no explicit, detailed reasons are given in Regulation No 816/92 for the non-payment of compensation but considers that such non-payment forms part of the overall system of measures adopted by the Council and therefore does not require such a statement of reasons (*Eridania*, paragraphs 37 and 38; see also Case 125/77 *Koninklijke Scholten-Honig v Hoofdproduktschap voor Akkerbouwprodukten* [1978] ECR 1991, paragraphs 18 to 22; and *Delacre*, paragraph 16).

64 In Regulation No 775/87, as subsequently extended, the Council withdrew part of the reference quantities in order to improve the balance of a market suffering from a serious surplus and provided for the temporary payment of degressive compensation. The degressive nature and limited duration of the compensation in the present case were stressed, *inter alia*, in the seventh recital in the preamble to Regulation No 1639/91 (paragraph 62 above). The background to Regulation No 816/92 was therefore easy for those concerned to understand.

65 In any event, a failure to state reasons for acts of the Community cannot give rise to non-contractual liability on the part of the Community (Case 106/81 *Kind v EEC* [1982] ECR 2885, paragraph 14).

66 The intervener points out that the seventh recital in the preamble to Regulation No 1639/91, which was adopted on 13 June 1991, provided that the degressive compensation would come to an end in the future and that the Commission itself set out and explained, in its proposals to the Council in October 1991, its intention to convert the suspension into a definitive reduction.

Findings of the Court

67 According to the case-law of the Court of Justice, the statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure so as to inform the persons concerned of the justification for the measure adopted and thus to enable them to defend their rights and the Court to exercise its powers of review. However, the statement of the reasons on which regulations are based is not required to specify the often very numerous and complex matters of fact and law dealt with in the regulations, provided that they fall within the general scheme of the body of measures of which they form part (*Eridania*, paragraphs 37 and 38; *Delacre and Others*, paragraphs 15 and 16).

68 With regard to the reduction of the reference quantities effected by Regulation No 816/92, Article 1 of that regulation lays down the total guaranteed quantities for each Member State for the 1992-1993 milk year and specifies that, for that period, certain quantities — given in tonnes for each Member State — are not included in the total guaranteed quantities. It further states that 'the Council shall take a final decision on the future of these quantities in the context of the reform of the CAP'.

69 It is clear from the second recital in the preamble to Regulation No 816/92 that those quantities were not included for the 1992-1993 milk year because 'owing to

persisting surpluses, 4.5% of the reference quantities for deliveries are not included for the ninth period in the guaranteed total quantities’.

70 The Court considers, therefore, that the Council gave a sufficient statement of the reasons for which the reference quantities in issue were not included in the total guaranteed quantities for the 1992-1993 milk year.

71 As regards the absence of compensation, the Court considers that Regulation No 816/92 falls within the scheme of the body of measures adopted in the field of the additional levy scheme. In that context, the applicants were aware that the degressive compensation provided for in Regulation No 775/87, as amended by Regulation No 1111/88 and Regulation No 3882/89, was due to expire on 31 March 1992 and that its renewal was not provided for in any legislation. Furthermore, for the reasons already given, the reduction of the quantities in issue without compensation for the 1992-1993 milk year was foreseeable (paragraph 54 above). Consequently, the absence of a specific statement of the reasons for the absence of compensation in respect of the 1992-1993 milk year was not such as to deprive the applicants of an effective opportunity to defend their rights or to prevent the Court from exercising its powers of review.

72 Finally, in any event, a failure to state reasons for a legislative act cannot give rise to non-contractual liability on the part of the Community (*Kind*, paragraph 14; Case C-119/88 *AERPO and Others v Commission* [1990] ECR I-2189, paragraph 19; *Unifruit Hellas*, paragraph 41).

73 The applicants’ second plea in law must therefore be rejected.

The third plea — Breach of Articles 39 and 40 of the Treaty

Summary of the parties' arguments

- 74 The applicants claim that the temporary withdrawal, in Regulation No 816/92, of part of the reference quantities without compensation, constitutes a flagrant breach of the objectives set out in Article 39(1)(b) and (2) of the Treaty. In that regard, they stress the need not to disrupt the delicate balance between all the measures taken in the common organization of the market in milk and milk products, particularly in view of the penal sanction of the additional levy if a producer exceeds his reference quantity.
- 75 Contrary to what the defendant argues, Regulation No 816/92 creates an imbalance between the different objectives of Article 39 of the Treaty and does not take account of the comprehensive nature of the rules concerning the additional levy, (see *Hierl*, paragraph 15). Nevertheless, the reasoning of the Court of Justice in *Hierl*, concerning Regulation No 775/87, cannot be transposed to the present case because Regulation No 816/92 embodies a permanent suppression of reference quantities without compensation and not a temporary withdrawal with compensation.
- 76 The effects of the contested measure are much more complex than the defendant seeks to assert, since the applicants are exposed to a lower level of deliveries, without being able to adapt to that situation, whilst remaining subject to the additional levy in the absence of any compensation. Joined Cases C-104/89 and C-37/90 *Mulder and Others v Commission* [1992] ECR I-3061 (*'Mulder II'*) and *Spain v Council*, cited above, concern different situations.

77 The defendant considers that the aim of guaranteeing agricultural earnings, provided for in Article 39(1)(b) of the Treaty, must be reconciled with that of stabilizing the markets in accordance with Article 39(1)(c) and that temporary priority may be given to the latter in certain circumstances (*Van den Bergh en Jurgens*, paragraph 20; *Hierl*, paragraph 13). Such priority is legitimate in the present case.

78 Even on the assumption that non-payment of compensation was contrary to the objectives of Article 39, the Community could not incur non-contractual liability in so far as the non-payment was justified by the greater public interest in the stabilization of a market suffering from a serious surplus (see *Mulder II*, paragraph 12). Account should also be taken of the fact that the system of reference quantities made it possible to maintain higher milk prices despite that surplus, whereas the other possibility open to the Community institutions to deal with such a situation, namely a reduction in prices, would have had much more negative effects on incomes (*Spain v Council*, paragraph 14).

79 The intervener does not comment on this plea.

Findings of the Court

80 In accordance with the case-law of the Court of Justice, in pursuing the objectives of the common agricultural policy the Community institutions must constantly reconcile any conflicts between those objectives taken individually and, where necessary, give any one objective temporary priority in order to satisfy the demands of the economic factors or conditions in view of which their decisions are made. It has also been held that, in matters concerning the common agricultural policy, the

Community legislature has a broad discretion which corresponds to the political responsibilities imposed upon it by Articles 40 and 43 of the Treaty (see *Hierl*, paragraph 13, and *Germany v Council*, paragraph 47).

81 In that regard, the Court notes that the reduction of the reference quantities for the 1992-1993 milk year, effected by Regulation No 816/92, falls within the additional levy arrangements set up by Regulation No 856/84 and continued for a ninth period of twelve months by Regulation No 816/92 itself. As noted above (paragraph 69), the aim of that reduction was to stabilize the milk market, characterized by structural surpluses, thus pursuing the objective of stabilizing markets specifically referred to in Article 39(1)(c) of the Treaty (see *Spain v Council*, paragraph 11; *Hierl*, paragraph 10).

82 Thus the Council could, within the framework of its broad discretionary powers in the field of the common agricultural policy, legitimately give temporary priority to the objective of stabilizing the market for milk products without stepping beyond the limits of its powers under Article 39 of the Treaty. Furthermore, in Case 84/87 *Erpelding v Secrétaire d'État à l'Agriculture et à la Viticulture* [1988] ECR 2647, paragraph 26, the Court of Justice held that the additional levy system, whose purpose is to re-establish, by limiting milk production, the balance between supply and demand in the milk market, characterized by structural surpluses, is both within the ambit of the objective of rational development of milk production within the meaning of Article 39(1)(a) of the Treaty and, by contributing to a stabilization of the income of the agricultural community affected, within that of ensuring a fair standard of living for that community within the meaning of Article 39(1)(b) of the Treaty.

83 Finally, the Court notes that, in any event, the applicants have not adduced any evidence whatsoever that the Council acted in breach either of the objective of

ensuring a 'fair standard of living' for the agricultural community within the meaning of Article 39(1)(b) of the Treaty, or of Article 39(2) of the Treaty, by not providing for compensation for the 1992-1993 milk year.

84 In that regard, the Court notes, first, that the reduction of the reference quantities in issue for the 1992-1993 milk year did not render the applicants liable to pay the additional levy applied when a producer exceeds his reference quantity. It is clear from Annex II to this judgment that, during the 1992-1993 milk year, deliveries by Mr O'Dwyer and Mr Cronin did not reach the level of the reference quantities then available to them. At the hearing, it was confirmed by the applicants' solicitor that Mr Keane and Mr Reidy would not have been subjected to the additional levy even if they had exceeded their available quotas because, under Formula B, applied in Ireland, a producer is not liable for the supplementary levy unless the total quantity of milk delivered to a purchaser (normally an agricultural cooperative to which the producer belongs) exceeds that purchaser's reference quantity (see Case 61/87 *Thevenot v Centrale Laitière de Franche-Comté* [1988] ECR 2375). That was not the case for Mr Keane and Mr Reidy during the 1992-1993 milk year.

85 Secondly, as is also clear from Annex II to this judgment, the applicants regularly exceeded their available reference quantities during the milk years from 1987-1988 to 1991-1992. However, for the reasons explained above, they were not subjected to the additional levy.

86 Thirdly, each of the applicants has already received a total of ECU 45.5 per 100 kg in compensation for the withdrawal of 4.5% of the reference quantities during the milk years from 1987-1988 to 1991-1992, without any account being taken of the extent to which they exceeded their available reference quantities during those years.

- 87 Fourthly, with the exception of Mr O'Dwyer, the applicants have taken advantage of the opportunities provided, in particular by 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) as replaced by Regulation No 3950/92, to increase their reference quantities substantially. As can be seen from Annex I to this judgment, additional reference quantities were granted to Mr Keane, as a small producer, in the 1989-1990 milk year, and, by decisions of the Milk Quotas Appeals Tribunal, to Mr Keane and Mr Cronin in the 1990-1991 milk year and again to Mr Keane in 1991-1992. Mr Keane, Mr Cronin and Mr Reidy also increased their reference quantities by certain purchases of additional quotas under the Milk Quota Restructuring Schemes set up in Ireland. Finally, Mr Cronin and Mr Reidy leased certain additional quantities.
- 88 It follows from the above that the quotas available to Mr Keane, Mr Cronin and Mr Reidy in the 1992-1993 milk year, after the reduction effected by Regulation No 816/92, were higher than those available to them immediately prior to the temporary withdrawal effected by Regulation No 775/87, by some 132%, 47% and 11% respectively (see Annex I to this judgment).
- 89 Even if it were to be assumed that the applicants had suffered a loss of income as a result of the absence of compensation for the 1992-1993 milk year — which is, in any event, in no way established by the documents before the Court — it is clear from paragraphs 13 and 14 of the *Hierl* judgment that, to a certain extent, a loss of earnings likely to cause a temporary lowering of the standard of living of farmers must be accepted, in the context of measures adopted by the Council to limit production, in a market situation characterized for a long period by serious structural surpluses. Furthermore, as the Court of Justice held in *Spain v Council*, paragraph 14, the alternative to the adoption of a regulation reducing reference quantities, namely a reduction of the intervention price for milk products, would have had more negative effects on farmers' incomes, as the Council has rightly pointed out.

90 It follows from all the foregoing that the applicants' third plea in law must be rejected.

The fourth plea — Infringement of the right to property and the right to pursue a trade or profession

Summary of the parties' arguments

91 The applicants stress that the right to property forms part of the fundamental rights guaranteed in the Community legal order. In Case 44/79 *Hauer v Land Rheinland-Pfalz* [1979] ECR 3727, it was held that it is necessary to identify the aim pursued by the disputed measure and to examine whether the restrictions in question correspond reasonably to that aim or whether they constitute a disproportionate and intolerable interference with the rights of the owner.

92 In the present case, the absence of compensation for the 1992-1993 milk year means that such a reasonable correspondence is no longer present. In the applicants' view, Regulation No 816/92 involves an expropriation without compensation, since reference quantities are an asset with a real economic value (see the Opinion of Advocate General Jacobs in Case 5/88 *Wachauf v Bundesamt für Ernährung und Forstwirtschaft* [1989] ECR 2609, at p. 2622). Their permanent suppression without compensation is therefore an intolerable interference in the right to property and threatens the applicants' holdings.

93 The applicants further invoke the right to pursue a trade or profession, also confirmed in Community law in *Hauer*, paragraph 32. They consider that the provisions of Regulation No 816/92 constitute an infringement of that right, not justified in the public interest.

- 94 The defendant stresses that the Court of Justice has never acknowledged that milk quotas can be the subject of property rights distinct from the land to which they are attached. The reduction of the reference quantities imposed in the present case cannot therefore, as a matter of principle, infringe the parties' right to own property (Case C-44/89 *Von Deetzen v Hauptzollamt Oldenburg* [1991] ECR I-5119, ('*Von Deetzen II*') paragraph 27).
- 95 Furthermore, neither the right to property nor the right to pursue a trade or profession is an absolute prerogative in Community law. They are merely rights protected, particularly in the context of a common organization of the market, against such disproportionate and intolerable interference as infringes their very substance (Case 265/87 *Schröder v Hauptzollamt Gronau* [1989] ECR 2237, paragraph 15). There is no such interference in the present case and the contested restriction is clearly a response to an objective of general interest.
- 96 In any event, in view of the low level of the reduction in question, the existence of the applicants' holdings has not been threatened and the substance of their right to property or freedom to pursue a trade or profession cannot have been affected.
- 97 The intervener does not comment on this plea.

Findings of the Court

- 98 The Court of Justice has consistently held that both the right to property and the freedom to pursue a trade or profession form part of the general principles of Community law. However, those principles are not absolute, but must be viewed in relation to their social function. Consequently, the exercise of the right to property

and the freedom to pursue a trade or profession may be restricted, particularly in the context of a common organization of a market, provided that any restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, in the light of the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (*Schräder* paragraph 15; *Wachauf* paragraph 18; Case C-177/90 *Kühn v Landwirtschaftskammer Weser-Ems* [1992] ECR I-35, paragraphs 16 and 17; and *Germany v Council*, paragraph 78).

99 Furthermore, the right to property safeguarded within the Community legal order does not include the right to dispose for profit of an advantage such as the reference quantities allocated in the context of a common organization of the market, which does not derive either from the assets or from the occupational activity of the person concerned (*Von Deetzen II*, paragraph 27; Case C-2/92 *The Queen v Ministry of Agriculture, Fisheries and Food ex parte Bostock* [1994] ECR I-955, paragraph 19).

100 The Court has already held (paragraphs 81 and 82 above) that by reducing the reference quantities without compensation for the 1992-1993 milk year, Regulation No 816/92 was responding to the objectives pursued by the Council in the general interest within the framework of the common organization of the market in milk and milk products, in particular those of stabilizing the market and reducing structural surpluses.

101 Nor can the loss of those reference quantities as such or the absence of compensation therefor constitute, in themselves, an infringement of the right to property or the right to pursue a trade or profession as recognized in Community law (*Bostock*, paragraphs 19 and 20).

102 As to whether the reduction of reference quantities effected by Regulation No 816/92 threatened the applicants' exploitation of their holdings, impairing the very substance of their right to property or to pursue a trade or profession, it is clear from Annexes I and II to this judgment and from the Court's findings in paragraphs 84 to 88 above that the applicants have in no way demonstrated that those rights have been infringed.

103 The applicants' fourth plea in law must therefore be rejected.

The fifth plea — Breach of the principle of proportionality

Summary of the parties' arguments

104 The applicants consider that the provisions of Regulation No 816/92 are disproportionate to the aim pursued by the Community legislature and place an onerous burden on them. Since compensation was provided as an integral part of the previous regulations, since the recitals in the preamble to Regulation No 816/92 do not suggest that circumstances have materially changed since the adoption of Regulation No 3882/89, which provided for the payment of compensation, and since those same recitals show that the main purpose of the regulation was to provide a stop-gap measure pending the Commission's proposals for the reform of the common agricultural policy, the failure to grant compensation is disproportionate to the aim desired. As a result, the applicants suffer the double penalty of being liable for the additional levy at a lower level of deliveries and not receiving compensation for that reduction. In *Hierl* (paragraph 11), the Court of Justice stressed that Regulation No 775/87 did not infringe the principle of proportionality because compensation was paid, but there is no longer any compensation in the present case.

105 The defendant considers that this plea in law is directly connected with the previous plea alleging infringement of the right to property and that it has already been sufficiently demonstrated that the reduction imposed is not disproportionate to the objectives sought. In any event, it is clear that the Council has not manifestly exceeded the limits of the discretionary powers which the Court recognizes that it enjoys in that regard.

106 The intervener does not comment on this plea.

Findings of the Court

107 The Court of Justice has consistently held that the principle of proportionality is one of the general principles of Community law. By virtue of that principle, the lawfulness of the prohibition of an economic activity is subject to the condition that the prohibitory measures are appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued. However, as already stated above (see paragraph 82), in matters concerning the common agricultural policy the Community legislature has a broad discretionary power which corresponds to the political responsibilities imposed on it by Articles 40 and 43 of the Treaty. Consequently, the legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see in particular *Schräder*, paragraphs 21 and 22; Case C-331/88 *The Queen v Minister for Agriculture, Fisheries and Food ex parte Fedesa and Others* [1990] ECR I-4023, paragraphs 13 and 14; and *Germany v Council*, paragraphs 88 to 91).

108 The Court considers that, for the reasons set out above in reply to their first, third and fourth pleas in law, the applicants have not established that the measures adopted in Regulation No 816/92 were manifestly inappropriate having regard to the objective of stabilizing the milk market pursued by that regulation. Their fifth plea must therefore be rejected.

The sixth plea — Breach of the principle of non-discrimination

Summary of the parties' arguments

109 The applicants point out that the principle of non-discrimination is one of the most fundamental in Community law and is expressed in the second subparagraph of Article 40(3) of the Treaty. They also point to the terms of the eighth recital in the preamble to Regulation No 856/84 and the second recital in the preamble to Commission Regulation No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation No 804/68 (OJ 1984 L 132, p. 11), which specify, respectively, that in Ireland the dairy industry contributes to a significant extent to the gross national product and that the scope for developing alternatives to milk production is very limited in Ireland. In those circumstances, the applicants consider that Regulation No 816/92 does not comply with the conditions laid down by the Court of Justice in *Hierl*, paragraph 19, in particular because it does not recognize the particular difficulties imposed by it on Irish producers. It has thus resulted in such producers being covertly treated similarly to those in other Member States, although their different situation has been recognized.

110 The temporary withdrawal without compensation is also discriminatory because producers in other Member States were able to adapt more readily to the conse-

quences of the measure in question without suffering the same disabilities. Although, according to *Hierl*, local conditions may not always be relevant in assessing whether or not there has been a breach of Article 40(3) of the Treaty, they should be relevant in the present case given the acknowledgment by the Council in Regulation No 856/84 and by the Commission in Regulation No 1371/84 that local conditions are material in Ireland. In addition, small holdings such as those of the applicants require greater protection than large holdings.

111 The defendant points out that similar arguments have already been rejected by the Court of Justice in *Spain v Council* and in *Hierl*. Ireland's special position was recognized in the 1984 regulations cited by the applicants, from which it is clear that the national reference quantity was originally fixed on a more favourable basis than that applicable to all the other Member States except Italy. However, that specific character cannot indefinitely exonerate Irish producers from later reference quantity reductions made necessary by the Community's overall surplus.

112 The intervener states that not only was Ireland's special position taken into account when the reference quantities were first fixed in 1984 but also the favourable effect of that more generous calculation has endured throughout the life of the scheme, so that any across-the-board reductions have necessarily had a lesser effect on producers in Ireland, who have therefore enjoyed a more favourable situation than that of other producers.

Findings of the Court

113 It is settled law that the prohibition of discrimination between producers or consumers in the Community, laid down in the second subparagraph of Article 40(3)

of the Treaty, requires that comparable situations should not be treated in a different manner, or different situations in the same manner, unless such treatment is objectively justified. Measures taken under the common organization of the market, and in particular its intervention mechanisms, must therefore not be differentiated according to regions and other conditions relating to production or consumption except on the basis of objective criteria which ensure that the advantages and disadvantages are distributed proportionately among those concerned, without any distinction being made between the territories of the Member States (see *Spain v Council*, paragraph 25; *Hierl*, paragraph 18; and *Germany v Council*, paragraph 67). Furthermore, with regard to judicial review of the way in which the prohibition of discrimination laid down in the second subparagraph of Article 40(3) of the Treaty is implemented, in matters concerning the common agricultural policy the Council has, as has already been stated, a broad discretion which corresponds to the political responsibilities imposed on it by Articles 40 and 43 of the Treaty (see Joined Cases C-267/88 to C-285/88 *Wuidart and Others v Laiterie Coopérative Eupenoise* [1990] ECR I-435, paragraph 14).

114 It is common ground in the present case that additional reference quantities were already allocated to Ireland by Regulation No 856/84 and Regulation No 1371/84, in order, in particular, to take into account the extent to which the dairy industry contributes to the gross national product in Ireland and the factors rendering it difficult in Ireland to develop alternatives to milk production.

115 In those circumstances, the Court finds that the applicants have not adduced any evidence to establish that when it adopted Regulation No 816/92 the Council was under a duty to treat Irish producers even more favourably in derogation from the fundamental principle of equal treatment enshrined in the second subparagraph of Article 40(3) of the Treaty. In particular, the applicants have adduced no evidence that the present situation of milk producers in Ireland is appreciably more difficult than that of producers in the other Member States.

116 On the contrary, the figures in Annexes I and II to this judgment and the findings in paragraphs 84 to 88 above support the conclusion that no preferential treatment would have been justified for producers such as the applicants.

117 As regards the position of small producers, it must be borne in mind that the Court of Justice held in paragraph 19 of the *Hierl* judgment that the fact that a measure adopted within the framework of the common organization of a market may affect producers in different ways, depending on the particular nature of their production, does not constitute discrimination if that measure is determined on the basis of objective rules which are formulated to meet the needs of the general common organization of the market. Regulation No 816/92, in the legislative context set out above, meets those requirements as regards the objective and proportional natures of the criteria which it applies.

118 The sixth plea in law must therefore be rejected.

The arguments raised by the applicants other than Mr O'Dwyer

Summary of the parties' arguments

119 Mr Keane, Mr Cronin and Mr Reidy maintain that the temporary withdrawals under Regulation No 775/87 applied to the original reference quantities laid down in Article 5c(1) and (3) of Regulation No 804/68. Those original reference quantities, they claim, are separate from the quantities derived from the Community reserve set up by Article 5c(4) of Regulation No 804/68. However, it is clear from the fourth subparagraph of Article 1(1) of Regulation No 775/87 that, because Formula B is applied in Ireland, the suspension of 4.5% of the guaranteed total quan-

tities would affect all purchasers' reference quantities and thus be passed on in turn to producers without there being any scope for taking into account the specific composition of producers' reference quantities.

- 120 As a result, the suspension without compensation provided for by Regulation No 816/92 has affected additional reference quantities obtained by the applicants from the Community reserve, in particular in the case of Mr Keane and Mr Cronin (see paragraph 87 above).
- 121 In those circumstances, the applicants claim, in particular, that: (i) they could legitimately expect that reference quantities other than those originating in Article 5c(1) and (3) of Regulation No 804/68 would not be withdrawn without compensation; (ii) Regulation No 816/92 cannot be compatible with the objectives of Article 39 of the Treaty inasmuch as it suppresses without compensation reference quantities not having their origin in Article 5c(1) of Regulation No 804/68; (iii) the suppression of reference quantities not having their origin in Article 5c(1) and (3) of Regulation No 804/68 infringes the applicants' right to property and right to pursue a trade or profession and breaches the principle of proportionality, thus in itself constituting discrimination affecting their competitive situation.
- 122 The defendant contends that the uniform suspension of the reference quantities, regardless of their initial source, has its origin in Regulation No 775/87 and not in Regulation No 816/92. In any event, the principle of non-discrimination does not require that parts of reference quantities allocated on an optional basis by national authorities should be exempt from the efforts of adjustment and solidarity required of all producers.
- 123 The intervener does not comment on these pleas.

Findings of the Court

- ¹²⁴ The applicants complain, in substance, that the reduction of the reference quantities as a result of Regulation No 816/92 affects not only the reference quantities allocated to them when Regulation No 856/84 was adopted but also the additional reference quantities which they have since acquired, in particular those allocated by the Irish authorities to Mr Keane and Mr Cronin.
- ¹²⁵ However, the applicants do not deny that, under Formula B, applied in Ireland, the reduction of the total guaranteed quantities provided for in Regulation No 816/92 was necessarily passed on to each milk purchaser who was in turn obliged to pass the relevant reduction on to the reference quantities of the milk producers concerned. It is common ground that it is necessary to proceed in that proportional manner without regard to the specific origin of the different reference quantities of individual producers.
- ¹²⁶ In those circumstances, the Court considers, first, that there is no relevant legal distinction between the initial reference quantities provided for by Article 5c(1) and (3) of Regulation No 804/68 and those deriving from the Community reserve referred to in Article 5c(4) of that regulation. It is clear from the actual wording of Article 5c of Regulation No 804/68 that Article 5c(3) applies 'subject to paragraph 4' and that the function of the Community reserve referred to in Article 5c(4) is that of 'supplementing' the guaranteed quantities of the Member States. The origin of the quantities in question is thus irrelevant for determining the reference quantity of an individual producer for the purposes of Article 5c(1). Moreover, the Community reserve was formally abolished and its various parts incorporated into the guaranteed total quantities by Regulation No 3950/92 of 28 December 1992 (paragraph 12 above). The distinction on which the applicants rely has thus become irrelevant since the introduction of that regulation, which was adopted before the applicants brought their actions.

127 Secondly, the opportunity afforded to certain milk producers of increasing their individual reference quantities is expressly provided in the Community legislation, in particular by the relevant provisions of Regulation No 857/84 as replaced by Regulation No 3950/92, and forms a significant enhancement of the flexibility of the additional levy scheme. To the extent to which producers make use of that flexibility and opt to increase their reference quantities, they derive a greater benefit from the price guarantees provided within the framework of the common organization of the market while at the same time increasing proportionately their contribution to the structural surplus in that sector. It is therefore right for them to be obliged to participate in reductions of the guaranteed total quantities in the same proportions as other producers.

128 In those circumstances, the Court considers that Mr Cronin, Mr Keane and Mr Reidy may not successfully plead a breach of the principle of the protection of legitimate expectations based on the fact that the reduction in total guaranteed quantities in Regulation No 816/92 affected the additional reference quantities which they had acquired after the allocation of their initial reference quantities. Likewise, in the Court's opinion, the fact that Regulation No 816/92 imposed a uniform reduction in the reference quantities without taking their individual origins into account, does not conflict with the objective of Article 39 of the Treaty, with the principles of proportionality and non-discrimination, or with the right to property and the right to pursue a trade or profession.

129 The specific pleas put forward by Mr Keane, Mr Cronin and Mr Reidy must therefore be rejected.

130 It follows from all the foregoing that, in the absence of any culpable illegality, the claims for damages in Cases T-466/93, T-469/93, T-473/93 and T-474/93 must be dismissed without there being any need to consider whether the alleged breaches

of Community law on which the applicants rely may be described as ‘sufficiently serious’, within the meaning of the case-law of the Court of Justice, for the Community to incur non-contractual liability (see *Mulder II*, paragraphs 19 to 21). Nor, in the absence of any illegality arising out of the adoption of the contested regulation, is it necessary to rule on the calculations of the alleged loss put forward by the applicants or on the existence of a causal link between the damage allegedly suffered and the contested measure.

The claim for damages in Case T-477/93

131 Mr O’Dwyer, the applicant in Case T-477/93, claims that in adopting Regulation No 748/93 (see paragraphs 15 and 16 above) and thus rolling over without compensation for the period from 1 April 1993 to 31 March 1994 the total guaranteed quantities provided for in Regulation No 816/92, the Council again acted illegally by manifestly and gravely disregarding the limits on the exercise of its powers and infringed superior rules of law for the protection of the individual, thus incurring the Community’s non-contractual liability under the last paragraph of Article 215 of the Treaty. The applicant puts forward, *mutatis mutandis*, the same six pleas in law as were adduced in Cases T-466/93, T-469/93, T-473/93 and T-474/93, adding a number of supplementary arguments.

132 To the extent to which the pleas and arguments put forward in Case T-477/93 reiterate those already examined above, they must be rejected for the same reasons. The Court notes, moreover, that in response to its questions the applicant has produced figures indicating that in the 1993-1994 milk year he exceeded his reference quantity to an appreciable extent without being subjected to the additional levy.

133 The Court considers that only two of the pleas in law put forward in Case T-477/93 — those alleging breach of the principle of the protection of legitimate expectations and breach of Article 190 of the Treaty, respectively — comprise new or additional arguments.

Breach of the principle of the protection of legitimate expectations

Summary of the parties' arguments

- 134 The applicant submits that, by failing in Regulation No 748/93 to deal with the suspended reference quantities and to provide proper compensation, the Council committed a flagrant violation of the principle of the protection of legitimate expectations. In support of that contention he puts forward, in addition to the arguments summarized in paragraphs 36 to 41 above, the following further arguments.
- 135 The applicant compares Regulation No 748/93 to Regulation No 816/92, both being apparently intended to fill a legal void. As appears from its preamble (paragraph 15 above), Regulation No 748/93 was adopted in haste and without consideration of all the questions, in particular the issue of the reference quantities temporarily withdrawn. In a statement issued on 17 March 1993 following the meeting at which Regulation No 748/93 was adopted, the Council declared that it would 'take a decision ... on other questions already raised by delegations,' which might refer, *inter alia*, to the reference quantities temporarily suspended.
- 136 The applicant submits that it may be concluded from Regulation No 3950/92 and Regulation No 748/93, taken together, that (i) their drafting and reasoning are imprecise and insufficient; (ii) Regulation No 748/93 does not constitute a final decision on the future of the suspended quantities; (iii) the Council has illegally sought to suppress those quantities indirectly; and (iv) since the provisions of Regulation No 775/87 have not been extended, the quantities previously suspended should have been restored on 1 April 1993.

137 He maintains, in particular, that Regulation No 816/92 did not give rise to a definitive reduction and cites as proof the reference to a subsequent final decision. Nor, however, does Regulation No 748/93 constitute a definitive decision. The adoption of Regulation No 816/92, followed by that of Regulation No 748/93, has placed producers in a state of great uncertainty.

138 Regulation No 748/93 should therefore be assessed as a further extension of the temporary suspension, for which compensation should therefore be granted. If, however, Regulation No 748/93 were to be interpreted as permanently suppressing the quantities in question, the Council has still infringed legitimate expectations by acting without notice and by not providing for the payment of compensation.

139 The defendant, supported by the intervener, replies with the arguments summarized in paragraphs 42 to 46 above. It adds that Regulation No 748/93 was adopted on 17 March 1993 after the 4.5% of the quotas had been definitively withdrawn, subject to review, by Regulation No 816/92. It was an interim measure adopted in order to avoid a legal vacuum for the 1993-1994 milk year, but there is nothing in its preamble or provisions to suggest that the withdrawn quantities would be reintroduced. The review provided for in Regulation No 816/92 took place at the meeting of the Council on 24 to 27 May 1993, resulting in the adoption of Regulation No 1560/93 (paragraph 18 above).

Findings of the Court

140 It must be borne in mind that the effect of Regulation No 748/93 was to roll over, for the 1993-1994 milk year, the guaranteed total quantities laid down for the 1992-1993 milk year by Regulation No 816/92.

- 141 For the reasons already set out in paragraphs 48 to 60 above, *mutatis mutandis*, the Court considers that the applicant may not in principle successfully rely on the principle of the protection of legitimate expectations in order to argue that the reference quantities not included for the 1992-1993 milk year under Regulation No 816/92 should have been given back or that compensation should have been granted for 1993-1994.
- 142 As regards the specific elements on which the applicant relies as the basis for his alleged legitimate expectation (paragraph 38 above), the only elements prior to the adoption of Regulation No 748/93 are: the provisions of Regulation No 816/92; the Council's letter of 5 February 1993 (paragraph 13 above); and the two press releases from the Irish Department of Agriculture and Food of 1 July 1992 and 17 December 1992.
- 143 The Court considers that those elements could, at the most, give rise to a legitimate expectation that the Council would reexamine the question of the future of the quantities not included under Regulation No 816/92 and would take a final decision in that regard. No time-limit was set, however, for that reexamination.
- 144 In those circumstances, the Court considers that there was nothing to prevent the Council from continuing for the 1993-1994 milk year the guaranteed total quantities for 1992-1993, before the reexamination provided for, *inter alia*, in the last subparagraph of Article 1 of Regulation No 816/92.
- 145 It must, furthermore, be acknowledged that that reexamination took place prior to the adoption of Regulation No 1560/93 on 14 June 1993 (paragraph 18 above). That regulation repealed Regulation No 748/93 and laid down new guaranteed quantities, providing for an increase of 0.6% in the case of Ireland.

146 The applicant's plea alleging a breach of his legitimate expectations must therefore be rejected.

Breach of Article 190 of the Treaty

Summary of the parties' arguments

147 Since the preamble to Regulation No 816/92 stated that the 4.5% of the reference quantities were not to be included for the 1992-1992 milk year, the applicant considers that Regulation No 748/93 should have specified whether that percentage was to be included for the 1993-1994 milk year. Moreover, although Regulation No 816/92 had indicated that the Council would decide definitively what was to happen to that percentage, Regulation No 748/93 did not so decide, without stating reasons. Regulation No 748/93 infringes Article 190 of the Treaty by stating neither the reasons nor the legal basis for the permanent reduction without compensation which is the obvious objective of the combined effects of Regulation No 3950/92 and Regulation No 748/93.

148 In those circumstances, it is not possible to refer to the statement of reasons in previous regulations since only Regulation No 748/93 could have dealt properly with those reference quantities, being the first in which it was possible to give effect to the provisions of Regulation No 816/92 stating that a definitive decision was to be taken in that regard.

149 The provision in Regulation No 816/92 to the effect that the reference quantities referred to therein were not to be included for the 1992-1993 milk year implies that the matter should have been dealt with by the end of that period, therefore by

Regulation No 748/93. However, if such a decision was not taken during that period, then Regulations No 3950/92 and No 748/93 should have contained clarification as to the future of those quantities.

150 The defendant, supported by the intervener, states that it was not Regulation No 748/93 but Regulation No 816/92 which definitively reduced quotas without compensation. It was therefore not necessary for Regulation No 748/93 to provide reasons in that regard.

151 The reference in Regulation No 816/92 to a definitive decision being taken subsequently in the course of the reform of the common agricultural policy does not imply that such a decision must be taken during the 1992-1993 milk year, and Regulation No 748/93 was not the only measure which could have dealt with the matter.

152 Even if the Court were to hold that sufficient reasons were not provided, a failure to state reasons in a Community measure cannot give rise to non-contractual liability on the part of the Community (*Kind*, paragraph 14).

Findings of the Court

153 Regulation No 748/93 forms part of the body of measures adopted in the field of the additional levy scheme, including, *inter alia*, Regulation No 816/92 and Regulation No 3950/92, from which it is clear that structural surpluses were persisting in the milk sector and that the additional levy system remained necessary. In that context, the third recital in the preamble to Regulation No 748/93 specifies that 'pending a subsequent decision, the total guaranteed quantities in force on 31 March 1993 should be rolled over and increased by the amounts from the Community reserve existing on that date'.

154 In those circumstances, the Court considers that the Council has sufficiently stated its reasons for rolling over for the 1993-1994 milk year the total guaranteed quantities for 1992-1993. The Court further considers, in the light of the whole body of measures adopted in the field of the additional levy scheme, that the absence of a statement of reasons for the non-payment of compensation for the 1993-1994 milk year did not deprive the applicant of an effective opportunity to defend his rights or to prevent the Court from exercising its powers of review (see paragraph 71 above).

155 Nor, in the absence of any time-limit for the reexamination provided for in the last subparagraph of Article 1 of Regulation No 816/92, was the Council under any obligation to provide details regarding the future of the quantities referred to in that provision. In that regard, Regulation No 748/93 specifically states that it was adopted 'pending a subsequent decision'.

156 In any event, a failure to state reasons on which Regulation No 748/93 is based cannot give rise to non-contractual liability on the part of the Community, as the Court has already held (paragraph 72 above).

157 The plea alleging a failure to state sufficient reasons must therefore be rejected.

158 It follows from all the foregoing that the claims for compensation in Case T-477/93 must be dismissed without there being any need either to consider whether the applicant has established all the elements required by the case-law of the Court of Justice for the Community to incur non-contractual liability (see paragraph 130 above) or to rule on the admissibility of the claim.

159 Since the applicants have withdrawn their claims for annulment (see paragraph 33 above) and since their claims for compensation have been dismissed, it follows from all the foregoing that the applications in Cases T-466/93, T-469/93, T-473/93, T-474/93 and T-477/93 must be dismissed in their entirety.

Costs

160 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful and the Council has applied for costs, each of the applicants must be ordered to pay his own costs and those incurred by the Council in the relevant case.

161 The Commission, which intervened in support of the Council, must be ordered to bear its own costs in accordance with Article 87(4) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the applications;

2. Orders the applicants to bear their own costs and those incurred by the Council;

3. Orders the Commission to bear its own costs.

Biancarelli

Briët

Bellamy

Delivered in open court in Luxembourg on 13 July 1995.

H. Jung

J. Biancarelli

Registrar

President