

JUDGMENT OF THE COURT (Third Chamber)
19 March 1992 *

In Case C-311/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht München (Finance Court, Munich) for a preliminary ruling in the proceedings pending before that court between

Josef Hierl

and

Hauptzollamt Regensburg

on the validity of the first, second and third subparagraphs of 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 (EEC) No 804/68 on the common organization of the market in milk and milk products (Official Journal 1987 L 78, p. 5),

THE COURT (Third Chamber),

composed of: F. Grévisse, President of the Chamber, J. C. Moitinho de Almeida and M. Zuleeg, Judges,

Advocate General: F. G. Jacobs,
Registrar: J. A. Pompe, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the Danish Government, by Jørgen Molde, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent;

* Language of the case: German.

- the Greek Government, by Konstantinos Stavropoulos, Advocate and Legal Adviser at the Ministry of Foreign Affairs, and by Meletis Tsotsanis, Jurist at the Ministry of Agriculture, acting as Agents;
- the Council of the European Communities, by Professor Bernard Schloh, Adviser in the Council's Legal Service, acting as Agent;
- the Commission of the European Communities, by Dierk Booß, acting as Agent;

having regard to the Report for the Hearing,

after hearing oral argument from the Greek Government, represented by Dimitrios Raptis, acting as Agent, the Council and the Commission at the hearing on 29 November 1991,

after hearing the Opinion of the Advocate General at the sitting on 18 January 1992,

gives the following

Judgment

1 By order of 17 July 1990, which was received at the Court on 10 October 1990, the Finanzgericht München (Finance Court, Munich) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the validity of the first, second and third subparagraphs of 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 (EEC) No 804/68 on the common organization of the market in milk and milk products (Official journal 1987 L 78, p. 5).

- 2 Those questions were raised in the course of proceedings between Josef Hierl, who operates a farm of approximately 10.8 ha of useable agricultural land, and the Hauptzollamt (Principal Customs Office) Regensburg. Mr Hierl originally received a reference quantity of 17 000 kg of milk, which had been granted to him under the arrangements governing the additional levy on milk. That quantity was reduced by 510 kg with effect from 1 April 1987, pursuant to the second and third subparagraphs of Article 5d(3) of Regulation No 804/68, as amended by Council Regulation (EEC) No 1335/86 of 6 May 1986 (Official Journal 1986 L 119, p. 19). At the same time a quantity of 935 kg, that is to say 5.5% of the original quota, was temporarily withdrawn, with effect from the same date, pursuant to the first three subparagraphs of Article 1(1) of Regulation No 775/87.
- 3 That provision, with which this reference for a preliminary ruling is concerned, is worded as follows:

‘From the fourth 12-month period of application of the additional levy arrangements specified in Article 5c of Regulation (EEC) No 804/68, a uniform proportion of each reference quantity as mentioned in paragraph 1 of that Article shall be withdrawn.

This proportion shall be set to give a total withdrawn quantity of 4%, for the fourth period, and of 5.5%, for the fifth period, of the guaranteed total quantity for each Member State laid down in paragraph 3 of Article 5c of Regulation (EEC) No 804/68 for the third 12-month period.

However, Member States shall be authorized to withdraw, as from the fourth period, the quantities provided for the fifth period.’

4 It should also be noted that Article 2(1) of Regulation No 775/87 provides that, for the fourth and fifth periods of application of the arrangements, producers are to be granted compensation, fixed at ECU 10 per 11 kg of the quantity withdrawn.

5 The main proceedings brought by Mr Hierl against the Hauptzollamt Regensburg concern the withdrawal of a quantity of 935 kg from Mr Hierl's reference quantity.

6 It was in those circumstances that the Finanzgericht München, before which the case came, decided to stay the proceedings and refer to the Court the following questions for a preliminary ruling:

'1. Are the first three subparagraphs of Article 1(1) of Regulation (EEC) No 775/87 of 16 March 1987 invalid as contrary to Article 39 of the EEC Treaty and the principle of equal treatment laid down in EEC law, on the ground that upon the withdrawal of reference quantities the same percentage rate of reduction is applied without distinction, irrespective of the amount of the individual reference quantity?

2. If Question 1 is answered in the affirmative:

Is the abovementioned legal provision invalid in its entirety or only in so far as milk producers having a certain reference quantity are affected thereby (and if so what quantity)?'

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the Community provisions at issue, the procedure and the written arguments submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

- 8 The first question concerns the validity of the first three subparagraphs of Article 1(1) of Regulation No 775/87.
- 9 In the grounds for the order of reference, the national court expresses doubts as to the validity of the rules at issue. In its view, the fact that the proportion of the reference quantity withdrawn is determined proportionately and not progressively has the effect of placing a heavier burden on small, family-type holdings, which use their own fodder production to raise cattle, than on large holdings, which operate on an industrial scale and which are in a position to compensate for the withdrawal of reference quantity either by reducing their purchases of feeding-stuffs or by intensifying other production. The national court concludes that such an effect infringes both Article 39 of the Treaty and the principle of equal treatment.

Infringement of Article 39 of the Treaty

- 10 With regard to the alleged infringement of Article 39 of the Treaty, it should be pointed out first of all that, according to the first recital of its preamble, the aim of Regulation No 775/87 is to attain a reasonable balance between supply and demand on the market in milk and milk products. Such an aim comes within the framework of the stabilization of the markets, which is one of the objectives of the common agricultural policy expressly laid down in Article 39(1)(c) of the Treaty.
- 11 There is no evidence before the Court to suggest that the rules in question are inappropriate to the achievement of the aim thus legitimately pursued or that they are disproportionate in relation to the desired result. The conclusion that the rules are not disproportionate is reinforced by the fact that the temporary withdrawal of reference quantities which is in question is accompanied by the grant of compensation, in an amount proportional to the quantity withdrawn, so as to compensate at a standard rate the loss of earnings likely to be caused by the withdrawal.

12 Nor does the measure at issue disregard the requirement to ensure a 'fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture' laid down in Article 39(1)(b) of the Treaty.

13 It is true that the loss of earnings caused by the withdrawal of the reference quantities, in so far as it is not wholly made good by the compensation, may cause a temporary lowering of the standard of living of the farmers concerned and their families. Such an effect must, however, be accepted in this case. The Court has held that in pursuing the objectives of the common agricultural policy the Community institutions must secure the permanent harmonization made necessary by any conflicts between those objectives taken individually and, where necessary, give any one of them temporary priority in order to satisfy the demands of the economic factors or conditions in view of which their decisions are made (see, in particular, the judgment in Case 203/86 *Spain v Council* [1988] ECR 4563, paragraph 10). The Court has also 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, most recently, the judgment in Joined Cases C-267/88 to C-285/88 *Wuidart and Others* [1990] ECR I-435, paragraph 14).

14 Given those criteria, the Community legislature cannot in these circumstances be accused of having exceeded the limits of its discretion when, faced with a situation on the market characterized for a long period by structural surpluses, it gave temporary priority to stabilizing the market, neglecting for the time being the objective of increasing the individual earnings of the farmers concerned.

5 That conclusion is not altered by the fact that the rules in question do not provide for any exemption or a rate reduction in favour of holdings with a low production volume, even if it were accepted that those holdings are more affected by the measure in question than holdings with a higher production volume. That measure

is in fact part of a wider set of rules concerning the additional levy on milk and may be assessed only in the context of those rules.

- 16 As the Commission has correctly pointed out, preferential treatment is given to small producers pursuant to a number of other provisions of the scheme, among which it is appropriate to mention, in particular, Article 2(2) 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 (Official Journal 1984 L 90, p. 13). That provision authorizes Member States when determining the method for calculating the reference quotas to take account of, *inter alia*, the level of deliveries of certain categories of producers.
- 17 The argument alleging the infringement of Article 39 of the Treaty cannot thus be upheld.

Infringement of the principle of equal treatment

- 18 With regard to the alleged infringement of the principle of equal treatment, it should be noted that in the words of the second subparagraph of Article 40(3) of the Treaty the common organization of the agricultural markets is to exclude any discrimination between producers or consumers within the Community. As the Court has consistently held, that prohibition on discrimination is only a specific expression of the general principle of equal treatment in Community law, which means that comparable situations are not to be treated differently and that different situations are not to be treated alike unless such treatment is objectively justified (see, most recently, the judgment in *Spain v Council*, cited above, paragraph 25).

19 Apart from the fact that the argument before the Court has provided no evidence to support the view that the measure in issue, which is applicable without distinction to all recipients of reference quotas, does in fact place a heavier burden on small producers than on large producers, it must be pointed out that the fact that a measure adopted within the framework of the common organization of the market may affect producers in different ways, depending upon the particular nature of their production, does not constitute discrimination if that measure is determined on the basis of objective rules, which are formulated to meet the needs of the general common organization of the market (see the judgment in Case 179/84 *Bozzetti v Invernizzi* [1985] ECR 2301, paragraph 34). That is the case with the arrangements for the temporary withdrawal of reference quantities, which are such that the quantities withdrawn are proportional to the reference quantities, which are themselves fixed at such a level that their total does not exceed the overall guaranteed reference quantity of each Member State.

20 The argument alleging infringement of the principle of equal treatment cannot therefore be upheld.

1 For all those reasons, the answer to the first question must be that examination of the first, second and third paragraphs of Article 1(1) of Council Regulation (EEC) No 775/87 of 16 March 1987 has not disclosed any factor of such a kind as to affect the validity of that provision.

The second question

2 In view of the answer given to the first question, there is no need to answer the second question.

Costs

- 23 The costs incurred by the Greek and Danish Governments and by the Council 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Finanzgericht München by order of 17 July 1990, hereby rules:

Examination of the first, second and third paragraphs of 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 (EEC) No 804/68 on the common organization of the market in milk and milk products has not disclosed any factor of such a kind as to affect the validity of that provision.

Grévisse

Moitinho de Almeida

Zuleeg

Delivered in open court in Luxembourg on 19 March 1992.

J.-G. Giraud

Registrar

F. Grévisse

President of the Third Chamber