
Milk Prices & Production Rights: A Doctrinal Analysis of Irish and EU Case Law since Accession

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Abstract

The introduction of milk quotas in 1984 and their administration under the Common Agricultural Policy profoundly reshaped Irish dairy farming, transforming production ceilings into valuable economic assets while simultaneously denying them the legal status of property. This article examines four landmark disputes - Duff, Mulligan, Mohr, and Maher - that arose from Ireland's implementation of the EU regime and reveals a persistent tension between farmers' legitimate economic expectations and the regulatory character of quota entitlements. Through analysis of European Court of Justice and Irish Supreme Court judgments, it demonstrates how EU law constrained national administrative discretion, protected the economic coherence of the quota system, and repeatedly rejected claims that quotas constituted constitutionally protected property. The decisions clarified the limits of Member State autonomy in allocation and transfer rules, the compensatory nature of discontinuation payments, and the stringent causation requirements for state liability when administrative errors reduced production rights.

Although the quota regime ended in 2015, the jurisprudence retains enduring significance. The principles of proportionality, legitimate expectations, and the regulatory–property distinction articulated in these cases continue to govern contemporary CAP instruments, including eco-schemes, conditionality requirements, and environmental derogations. By tracing the interplay of supranational regulation, domestic administration, and market realities, the article shows that milk prices and producer incomes were never purely market outcomes but were structurally conditioned by a legal framework that both stabilised and disciplined farmers' financial expectations. The Irish experience thus offers a doctrinal template for understanding the persistent legal dynamics of agricultural support in the European Union.

1. Introduction

The regulation of milk production and pricing has long been central to Irish agricultural policy, not least because dairy exports have consistently formed a cornerstone of rural economic life. When Ireland joined the European Economic Community (EEC) in 1973, the governance of milk production shifted decisively to the supranational level. The introduction of the milk-quota regime in 1984, the parallel additional levy, and the continuing evolution of the Common Agricultural Policy (CAP) profoundly shaped farmers' production decisions, capital values, and ultimately the prices they received for their milk.^{1 2 3}

Irish litigation concerning quotas and their administration reflects a deeper legal tension: farmers came to treat quotas as quasi-property, while EU law consistently characterised them as regulatory permissions intended to serve economic objectives rather than confer entrenched private rights. The resulting disputes, particularly *Duff*, *Mulligan*, *Mohr*, and *Maher*, reveal how disputes over entitlements, expectations, and administrative behaviour ultimately filter down to the economic reality of producer receipts.

This commentary examines how these key decisions illuminate the interplay between regulation, state discretion, and market conditions. By situating each case within the wider CAP structure and its economic logic, it highlights how legal rules have directly and indirectly shaped the revenue environment of Irish dairy farmers from the 1970s to the post-quota era.

¹ European Commission, The agricultural situation in the European Union 2002 (Commission Communication and report) COM(2003) 852 final (8 Jan 2004), available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0852:FIN:EN:PDF>.

² Court of Auditors, Special Report No 6/2001 on milk quotas (ECLI: see OJ, with Commission replies) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A52001SA0006>

³ European Commission, Evaluation of the common market organisation for milk and milk products and the regulation on milk quotas (Final report, Sept 2002) https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/cmef/products-and-markets/evaluation-common-market-organisation-milk-and-milk-products-and-regulation-milk-quotas_en

2. The Regulatory Architecture of Milk Production

2.1 The role and rationale of milk quotas

Milk quotas were introduced in 1984 by Council Regulation (EEC) 856/84, which amended Regulation (EEC) 804/68 on the common organisation of the market in milk.⁴ The rationale was economic: supply had grown faster than demand throughout the late 1970s, producing significant intervention stocks and budgetary strain.⁵ The quota system capped production at reference levels, with excess production attracting an additional levy borne either by individual producers or collectively at Member State level.⁶

Quotas operated as market-corrective instruments. By limiting supply, they were intended to support producer prices without requiring the Community to purchase large volumes of surplus milk.⁷ However, because quota levels determined the volume a farmer could lawfully produce, they also became economic assets, influencing land values and farm incomes.⁸ Although the EU legislator never intended quotas to function as transferable private property, Member States - including Ireland - developed systems enabling sales, leases, and transfers, which deepened the perception of quota as a proprietary entitlement.⁹

2.2 National discretion and the limits of administrative autonomy

Member States administered quota allocations within the parameters of EU legislation.¹⁰ This structure inevitably generated legal disputes, particularly where producers alleged

⁴ Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products, OJ L 96/1 (31.3.1984), available at <https://eur-lex.europa.eu/eli/reg/1984/856/oj>

⁵ European Court of Auditors, The milk quota system: implementation and impact (Special/Institutional report / inspection report material summarising quota performance - Court of Auditors materials), (see ECA overview and related reports), e.g. ECA note on the quota regime (inspectorate summary) (1 Oct 2001), available at https://www.eca.europa.eu/lists/ecadocuments/insr01_06/insr01_06_en.pdf

⁶ 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, OJ L 96/9 (31.3.1984), available at <https://eur-lex.europa.eu/eli/reg/1984/857/oj>

⁷ Alan Matthews, Agriculture After Cancún (Trinity Economics Paper No 17, revised 2004) - overview of CAP markets and reform implications, available as Trinity Economic Paper No.17 at https://www.tcd.ie/Economics/TEP/2003_papers/TEPNo17AM23.pdf

⁸ Trevor Donnellan and others (eds), The End of the Quota Era: A History of the Irish Dairy Sector and Its Future Prospects (Teagasc, 2015) - definitive Teagasc volume on Irish dairy, milk quotas and post-quota developments; available at https://teagasc.ie/media/website/publications/2015/End_of_the_Quota_Era_final.pdf

⁹ *ibid.*

¹⁰ Council Regulation (EEC) No 857/84 (n 6) art 7 (administration and transfer rules).

misallocation, unlawful clawbacks, or failure to recognise special categories of entitlement. The case law considered below illustrates how EU courts and Irish courts negotiated the boundaries of this shared competence, with direct implications for producers' revenues.

3. Duff: Administrative Error, EU Compliance, and Producer Loss

3.1 Facts and procedural trajectory

The *Duff* litigation originated from disputes over the interpretation of rules governing special reference quantities - additional quota that certain producers could claim under Council Regulation (EEC) 857/84.¹¹ Several Irish farmers argued that the national administration had misapplied the criteria and that Ireland had adopted an implementation model inconsistent with the EU regime. The High Court referred questions to the Court of Justice in Case C-63/93 *Duff*.¹²

3.2 The ECJ's clarification of Member State discretion

The Court of Justice held that Member States retained administrative discretion over procedural arrangements, but could not introduce substantive conditions that altered the harmonised eligibility framework established by EU law.¹³ Ireland had restricted certain categories of claim in a manner that effectively changed the scope of the EU entitlement. The Court emphasised that the quota regime was designed to operate uniformly across Member States and could not be reshaped to accommodate domestic administrative preferences.¹⁴

This finding is significant because it directly concerns the volume of quota available to individual farmers, which in turn shaped the financial value of their operations. A misinterpretation at national level could therefore cause economic loss by reducing the lawful production capacity of a holding.

¹¹ *ibid.*

¹² Case C-63/93 *Duff and Others v Minister for Agriculture and Food* (Reference for preliminary ruling from the Irish Supreme Court) [1996] ECR I-569; CURIA / EUR-Lex text at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61993CJ0063>.

¹³ *Duff* (n 12) (see Court's reasoning on limits of Member State discretion and special reference quantities; see paras and operative text in the CURIA/EUR-Lex judgment). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61993CJ0063>

¹⁴ (See *Duff* (n 12) text at EUR-Lex / CURIA).

3.3 The Irish Supreme Court and the limits of State liability

When the litigation returned to Ireland, the Supreme Court in *Duff (No 2)* examined whether the State was liable in damages.¹⁵ The Court adopted a cautious approach, holding that while breaches of EU law could give rise to liability, the plaintiffs needed to establish a direct link between the breach and quantifiable economic loss.¹⁶

The Court recognised that quota holdings influenced farmers' economic position, but it was wary of attributing milk-price fluctuations or broader market conditions solely to administrative decisions.¹⁷ Thus, although the litigation demonstrated that incorrect implementation could distort farmers' entitlements, the Irish courts were reluctant to award compensation unless strict causation requirements were met.

3.4 Economic and legal significance

Duff demonstrates how administrative missteps could affect both a farmer's short-term receipts (by restricting production) and long-term capital value (because quota was commonly capitalised into land prices).¹⁸ Even though the Supreme Court set a high bar for compensation, the case affirmed that Ireland could not unilaterally alter the effective value of quota entitlements. The legal structure thereby exerted a stabilising influence on the economic environment in which producers operated.

¹⁵ *Duff v Minister for Agriculture and Food (No 2)* [1997] 2 IR 22 (Supreme Court of Ireland) - Irish Supreme Court report of the domestic proceedings following the ECJ reference; available on legal databases (vLex/IrishReports). (Summary available on legal databases.)

¹⁶ *Duff (No 2)* (n 15) (see the Supreme Court's discussion on causation and the test for damages - consult the printed report for page pinpoints).

¹⁷ *Duff (No 2)* (n 15) (see same).

¹⁸ See *Teagasc, The End of the Quota Era* (n 8) (analysis of quotas' capitalisation into land values and farm economics).

3. Mulligan: Clawback Rules and the Transferability of Quotas

4.1 Background and the challenged regulations

The *Mulligan* case (Case C-313/99) concerned the Irish practice of imposing a clawback - a mandatory deduction of quota from the amount transferred when a producer sold a holding.¹⁹ The State justified this deduction on policy grounds, arguing it prevented undesirable concentration of quota in the hands of larger producers and facilitated redistribution to needy or disadvantaged farmers.²⁰

The applicants contended that the clawback breached EU law because it altered the value and substance of the quota entitlement and infringed principles of legal certainty, legitimate expectations, and proportionality.

4.2 The ECJ's assessment

The Court of Justice acknowledged that Member States could adopt procedures for transfers, but held that any such measures must comply with general principles of EU law.²¹ The Court considered whether the clawback was proportionate to the legitimate objective of structural adjustment and whether it preserved the essential features of the quota system.²²

Although the Court did not strike down the measure outright, it emphasised that national rules could not undermine the economic coherence of the EU regime.²³ A deduction that significantly distorted market values or rendered the economics of transfer unpredictable could be unlawful.

¹⁹ Case C-313/99 *Mulligan and Others v Minister for Agriculture and Food*, Judgment of 20 June 2002, EU:C:2002:386 - text at CURIA / EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61999CJ0313>

²⁰ European Communities (Milk Quota) Regulations, 2000 (S.I. No. 94/2000) - the Irish implementing statutory instrument that gave effect to quota administration measures; available at the Irish Statute Book: <https://www.irishstatutebook.ie/eli/2000/si/94/made/en/print>

²¹ *Mulligan* (n 19)). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61999CJ0313>

²² *ibid.*

²³ *ibid.*

4.3 Implications for producer earnings

By reducing the amount of quota accompanying a land transfer, the clawback diminished the capital price obtainable for the farm.²⁴ Because the value of a dairy holding was closely linked to its quota, this reduction had material consequences for farmers exiting the industry and for those seeking to restructure their operations. The legal scrutiny applied by the Court therefore provided a measure of protection against regulatory interventions that would compromise farmers' financial expectations.

4. Mohr: Compensation for Ceasing Production and the Nature of Farmer Income

5.1 The compensation scheme

In the 1980s and 1990s, the EU introduced voluntary discontinuation schemes to encourage permanent cessation of milk production, seeking further reductions in surplus.²⁵ Farmers who joined such schemes received lump-sum payments in exchange for abandoning production. The fiscal and legal nature of these payments was litigated in *Mohr* (Case C-215/94), which concerned whether they constituted taxable consideration for VAT purposes.²⁶

5.2 The Court's reasoning

The ECJ held that the payment was not consideration for a service but constituted a compensatory measure flowing from a public-law intervention.²⁷ The farmer did not supply a service to the State; rather, the State paid to achieve a regulatory objective.²⁸

²⁴ See Teagasc analysis of quota values and transfers in *The End of the Quota Era* (n 8).

²⁵ Council Regulation (EEC) No 1336/86 of 6 May 1986 fixing compensation for the definitive discontinuation of milk production, OJ L 119/21 (8.5.1986). EUR-Lex: <https://eur-lex.europa.eu/eli/reg/1986/1336/oj>

²⁶ Case C-215/94 *Mohr v Finanzamt Bad Segeberg* [1996] ECLI:EU:C:1996:72 - ECJ judgment on the characterisation (VAT) of payments for discontinuation of milk production; text at EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61994CJ0215>

²⁷ *Mohr* (n 24). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61994CJ0215>

²⁸ *ibid.*

5.3 Relevance to price structures and income analysis

Mohr illustrates the distinction between market income (prices received for milk produced) and policy income (payments tied to regulatory schemes).²⁹ The two interact indirectly: large numbers of farmers exiting production could reduce supply, which in turn influenced prices. Moreover, the availability of compensatory payments affected farmers' strategic behaviour - some might cease production and thus limit supply growth, while others might expand after purchasing quota freed by the scheme.³⁰

The case therefore illuminates how administrative compensation mechanisms form part of the economic environment shaping price formation, even though such payments are not themselves market transactions.

5. Maher: Constitutional Characterisation and the Limits of Property Claims

6.1 Facts and legal arguments

In *Maher v Minister for Agriculture, Food and Rural Development*, several farmers challenged the validity of the European Communities (Milk Quota) Regulations 2000.³¹ They argued that quotas amounted to property rights protected under Articles 40.3 and 43 of the Irish Constitution and that the Minister's regulations unlawfully interfered with such rights.³²

6.2 The Supreme Court's approach

The Supreme Court firmly rejected the claim that quota entitlements were constitutional property.³³ Quotas were a statutory regulatory construct grounded in EU law, conferring a conditional permission rather than an inherent proprietary interest.³⁴ The State's implementing

²⁹ Simone Severini and Luigi Biagini, 'The direct and indirect effect of CAP support on farm income enhancement: a farm-based econometric analysis' (2020) <https://arxiv.org/abs/2009.07684>; see also Case C-215/94 Jürgen Mohr v Finanzamt Bad Segeberg, EU:C:1996:72, paras 19–22 (compensation under Regulation 1336/86 not a taxable supply of services but a regulatory payment).

³⁰ *ibid.*

³¹ *Maher v Minister for Agriculture, Food and Rural Development* [2001] IESC 32, [2001] 2 IR 139.

³² *ibid.*

³³ *ibid.*

³⁴ *ibid.*

measures simply operationalised EU obligations and therefore did not constitute an unconstitutional delegation of legislative power.³⁵

6.3 Consequences for producers and legal doctrine

Maher is doctrinally significant for two reasons. First, it makes clear that subsidies, quotas, and similar CAP instruments do not attract constitutional protection akin to freehold or leasehold property.³⁶ Farmers thus cannot rely on the Constitution to challenge EU-driven reforms that diminish or abolish such entitlements. Secondly, the judgment confirms that quota-based expectations - however entrenched economically - remain vulnerable to policy change. The abolition of quotas in 2015 ultimately validated the Court's analysis: production entitlements could be radically restructured without triggering constitutional compensation.³⁷

7. Competition Law and the Market Structure for Milk

Although the CAP profoundly influenced production levels, market structure also played a crucial role in determining the prices actually received by farmers. During the early 2000s, the Irish Competition Authority (now CCPC) investigated alleged price-fixing and coordination among processors and retailers, including major supermarkets.³⁸ The investigations resulted in settlements rather than litigation, but they revealed the concentration of bargaining power in downstream actors.

From a legal-economic perspective, these investigations highlight the complementary relationship between regulatory production constraints and competition law. Even if quotas constrained supply and supported prices, dominant purchasing practices from processors or retailers could suppress the farm-gate price.³⁹ Legal scholars have therefore argued that

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ European Parliament Research Service (EPRS), Measures to support dairy farmers after the end of EU milk quotas (Briefing, 16 Oct 2015) - summary of post-quota measures and Commission package; available at [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2015\)569012](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2015)569012)

³⁸ Competition and Consumer Protection Commission (formerly Competition Authority), Milk price-fixing investigations and settlements (2003) - CCPC / Competition Authority materials and determination; see CCPC pages and Determination PDF at <https://www.ccpc.ie/business/enforcement/civil-competition-enforcement/civil-court-cases/milk-price-fixing-case-settlement/> and https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/m_05_006_p1d_0.pdf

³⁹ *ibid.*

competition law enforcement remains essential to the proper functioning of agricultural markets, especially in concentrated sectors such as dairy processing.⁴⁰

8. Cross-Cutting Themes

8.1 The regulatory–property distinction

Across the jurisprudence, courts consistently rejected the notion that quotas constituted traditional property rights.⁴¹ While quotas had economic characteristics resembling property - transferability, value, scarcity - their legal nature remained regulatory. This distinction underpins the courts' reluctance to award damages for losses arising from reforms or administrative adjustments unless specific legal guarantees were breached.

8.2 EU primacy and national discretion

Duff and *Mulligan* together illustrate how EU primacy constrains national discretion. Member States administer the system, but they cannot introduce measures that distort the essential structure of the quota regime.⁴² This ensures a level of regulatory consistency, which stabilises producer expectations and prevents national measures from undermining market value.

8.3 Remedies and causation

The line of cases also shows the judiciary's reluctance to attribute complex market outcomes to specific administrative decisions. In sectors where prices fluctuate due to global demand, exchange rates, and weather conditions, courts require a stringent showing of causation.⁴³ This reflects a broader principle of judicial restraint in awarding damages tied to market forces.

⁴⁰ European Commission / JRC, Analyses of the Functioning of Milk Package Provisions as regards Producer Organisations and collective negotiations (JRC Technical report, 2017) - on collective bargaining in milk supply chains and market functioning; available at

https://publications.jrc.ec.europa.eu/repository/bitstream/JRC107880/milk_package_pos-jrc_report.pdf

⁴¹ Maher (n 29).

⁴² Duff (n 12); Mulligan (n 19).

⁴³ Duff (No 2) (n 15).

8.4 Interdependence of regulation and markets

Finally, the cases underscore that producer receipts are shaped by a combination of regulatory constraints and market structures. Quotas influenced how much farmers could sell; competition law influenced the terms on which they sold. Both domains therefore shape income.

9. Ongoing Relevance after Quota Abolition

Although the milk-quota system ended in 2015, its case law continues to bear relevance. Current CAP schemes - including decoupled payments, eco-conditionality, and environmental restrictions - share key structural features with the historical regime: they form part of a complex regulatory environment in which national administrations exercise constrained discretion.^{44 45 46}

Issues concerning legitimate expectations, proportionality, and the distinction between regulatory permissions and protected property continue to arise in contemporary litigation.⁴⁷ For instance, challenges to nitrate-derogation rules or changes in eco-scheme eligibility resemble earlier disputes over quota allocations, in that they engage farmers' understandings of long-standing entitlements. Thus, while the quota regime has vanished, the jurisprudence pertaining to it provides a doctrinal and analytic template for understanding the legal dynamics of agricultural regulation today.

⁴⁴ European Commission, CAP Strategic plans: guidance document (DG AGRI, 2021–2022 guidance material) - Commission guidance on CAP strategic plans and the legal framework for modern CAP measures; see DG AGRI guidance pages and Commission documents, e.g. https://agriculture.ec.europa.eu/common-agricultural-policy/cap-strategic-plans_en

⁴⁵ Report: Development of milk production in the EU after the end of milk quotas (European Parliament, Directorate-General for Internal Policies, Policy Department for Structural and Cohesion Policies, PE 747.268, Nov 2023)

https://www.europarl.europa.eu/RegData/etudes/STUD/2023/747268/IPOL_STU%282023%29747268_EN.pdf

⁴⁶ Lukáš Čechura, Zdeňka Žáková Kroupová & Irena Benešová, 'Productivity and Efficiency in European Milk Production: Can We Observe the Effects of Abolishing Milk Quotas?' (2021) 11 Agriculture 835 <https://doi.org/10.3390/agriculture11090835>

⁴⁷ EU Administrative Law – Paul Craig, Legal Certainty and Legitimate Expectations, in Paul Craig (ed), EU Administrative Law (2nd ed, OUP 2012) ch 18.

10. Conclusion

The case law arising from Ireland's engagement with the EU milk-quota system reveals a nuanced interplay between regulatory structure, administrative discretion, and market forces. In *Duff*, the ECJ and Supreme Court clarified how Member State mis-implementation can distort production rights, though remedies remained limited. *Mulligan* demonstrated the constraints EU law imposes on national attempts to redistribute quota through clawbacks. *Mohr* illustrated the distinction between regulatory compensation and market receipts, while *Maher* clarified that quotas lack constitutional property status.

Taken together, these decisions form a coherent body of law demonstrating how supranational agricultural regulation interacts with domestic legal systems and economic realities. They further show that milk prices - and producer incomes more broadly - cannot be understood without recognising the legal scaffolding within which agricultural markets operate. Even in a post-quota era, the principles articulated in this jurisprudence continue to guide courts and policymakers navigating the complex terrain of agricultural regulation.

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