ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
19 September 2001 *

In Case T-332/99,

Paul Jestädt, of Grossenlüder (Germany), represented by R.J. Seimetz, lawyer, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by A.-M. Colaert, acting as Agent, with an address for service in Luxembourg,

and

Commission of the European Communities, represented by M. Niejahr, acting as Agent, with an address for service in Luxembourg,

defendants,

* Language of the case: German.

APPLICATION for compensation under Article 235 EC and the second paragraph of Article 288 EC, for damage allegedly suffered by the applicant by reason of being prevented from marketing milk pursuant to Council Regulation (EC) 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 supplemented by Commission Regulation (EEC) 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 (EEC) No 804/68 (OJ 1984 L 132, p. 11),

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

composed of: P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges,

Registrar: H. Jung,

makes the following

Order

Legal context

1 In 1977, in order to reduce surplus milk production in the Community, the Council adopted Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the

conversion of dairy herds (OJ 1977 L 131, p. 1). That regulation offered a premium to producers in return for signing an undertaking not to market milk or to convert herds for a period of five years.

2 In 1984, in order to meet persistent over-production, the Council adopted Council Regulation (EEC) No 856/84 of 31 March 1984 (OJ 1984 L 90, p. 10), amending Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products (OJ 1984 L 148, p. 13). The new Article 5c of the latter introduced an 'additional levy' on quantities of milk delivered by products which exceeded a 'reference quantity'.

3 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 No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13) fixed the reference quantity for each producer on the basis of the production delivered during a reference period chosen by the Member States from the years 1981 to 1983. The Federal Republic of Germany chose 1983 as the reference year.

4 By judgments in Case 120/86 *Mulder* [1988] ECR 2321 and Case 170/86 *von Deetzen* [1988] ECR 2355, the Court of Justice ruled that Regulation No 857/84, as supplemented by Commission Regulation (EEC) 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) was invalid on the ground that it was adopted in breach of the principle of protection of legitimate expectations.

5 Pursuant to those judgments, the Council adopted Regulation (EEC) No 764/89 of 20 March 1989 amending Regulation No 857/84 (OJ 1989 L 84, p. 2). In

particular, Regulation No 764/89 added an Article 3a to Regulation No 857/84. Under that amending regulation, producers who had signed undertakings for non-marketing or conversion were given a so-called 'specific' reference quantity (also known as 'quota'). Those producers are called 'SLOM I producers'.

6 The allocation of a specific reference quantity was subject to several conditions, some of which were declared invalid by the Court of Justice in its judgments in Case C-189/89 *Spagl* [1990] ECR I-4539 and Case C-217/89 *Pastätter* [1990] ECR I-4585.

7 Following those judgments, the Council adopted Regulation (EEC) No 1639/91 of 13 June 1991 amending Regulation No 857/84 (OJ 1991 L 150, p. 35), which permitted the allocation of a special reference quantity to the producers concerned, who are called 'SLOM II producers'.

8 In addition, the second indent of Article 3(1) of Regulation No 857/84 laid down a rule against 'overlapping', by virtue of which a special reference quantity could be allocated to transferees of a non-marketing premium only if they had not previously received, in respect of another holding not subject to a non-marketing or conversion undertaking, a reference quantity under Article 2 of Regulation No 857/84. Producers who had no reference quantity because such quantity had already been allocated to them in respect of another holding are called 'SLOM III producers'.

9 The rule against overlapping in the second indent of the said Article 3(1) was also declared invalid by judgment of the Court of Justice in Case C-264/90 *Wehrs* [1992] ECR I-6285 on the ground of breach of the principle of protection of legitimate expectations.

10 Pursuant to that judgment, the Council adopted Regulation (EEC) No 2055/93 of 19 July 1993 allocating a special reference quantity to certain producers of milk and milk products (OJ 1993 L 187, p. 8). That regulation permitted a special reference quantity to be allocated to producers who were transferees of non-marketing premiums and had been excluded from the benefit of Article 3c of Regulation No 857/84 because they had received a reference quantity for another holding under Article 2 or 6 of the latter regulation.

11 One of the producers responsible for bringing the action which led to the declaration of invalidity of Regulation No 857/84 by the *Mulder* judgment cited above, had in the meantime, with other producers, brought an action against the Council and the Commission for damages for not having been allocated a reference quantity under that regulation.

12 By judgment in Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061, the Court of Justice found the Community liable for damages and requested the parties to reach agreement on the amount of damages, subject to a later judgment by the Court.

13 As a result of that judgment, the Council confronted with the large number of producers concerned and faced with the difficulty of negotiating the individual settlements, adopted Regulation (EEC) No 2187/93 of 22 July 1993 providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade (OJ 1993 L 196, p. 6).

14 By judgment in Joined Cases T-195/94 and T-202/94 *Quiller and Heusmann* v *Council and Commission* [1997] ECR II-2247, the Court of First Instance found the Community liable for the damage to SLOM III producers arising from the application of the rule against overlapping which had been declared invalid by the *Wehrs* judgment cited above.

15 As a result of the judgment in the cases of *Quiller and Heusmann* v *Council and Commission*, the Council adopted Regulation (EC) No 2330/98 of 22 October 1998 providing for an offer of compensation to certain producers of milk and milk products temporarily restricted in carrying out their trade (OJ 1998 L 291, p. 4).

Facts giving rise to the dispute

16 The applicant is a milk producer in Germany. On 18 September 1979, in addition to land which he already farmed, he took a lease of agricultural land forming part of the holding of Mr Motz at Grossenlüder, Germany.

17 Mr Motz signed a non-marketing undertaking which expired on 30 June 1985. In accordance with the undertaking, the applicant also refrained from producing fodder for milk production on the area which he leased from Mr Motz.

18 After Regulation No 857/84 entered into force, a reference quantity was allocated to the applicant for the land belonging to him. On the other hand, on the expiry in 1985 of the non-marketing undertaking relating to the land leased from Mr Motz, the applicant was unable to obtain a reference quantity for that land because he had not produced milk on it in 1983.

19 After Regulation No 764/89 entered into force, the competent German authorities once again refused, by decision of 3 October 1989, to allocate a reference quantity to him for the same land, relying on the rule against overlapping in the second indent of Article 3c(1) of Regulation No 857/84.

20 After Regulation No 2055/93 entered into force, and following a judgment delivered by the Verwaltungsgericht, Kassel, on 18 June 1987, the competent German authorities, by decision of 20 August 1997, granted the applicant a quota for the leased land.

21 By letter of 8 October 1997 to the Commission, the applicant requested compensation for the damage allegedly suffered between 1 July 1985, namely the day after the expiry of the non-marketing undertaking relating to the land in question, and 1 August 1993, when Regulation No 2055/93 entered into force.

22 By letter of 3 November 1997, the Commission replied as follows:

'On the question of possible compensation for milk producers who obtained a reference quantity on the basis of Regulation No 2055/93, the Commission considers that it has no obligation to answer for any losses which may be connected with the allocation of a quota.

Until the Court of Justice gives judgment to a different effect in the test cases of *Heusmann...* and *Quiller...*, the Commission is not in a position to offer compensation to the milk producers concerned.'

23 By an undated letter received by the Commission on 9 February 1998, the applicant repeated his request for compensation in reliance on the judgment in the cases of *Quiller and Heusmann* v *Council and Commission*, cited above, which had been given in the meantime by the Court of First Instance.

24 By letter of 3 March 1998, the Commission replied that it was studying practical arrangements for compensating the producers referred to by the said judgment. To avoid proceedings before the Court of First Instance, the Commission gave the applicant an undertaking to waive the limitation period laid down in Article 43 of the EC Statute of the Court of Justice, provided that his right to compensation was not already barred on the date of receipt of his letter. The Commission added that this undertaking would be adhered to until a date of which the applicant would be notified within the framework of the aforementioned arrangements.

25 By letter of 11 May 1999, the Bundesanstalt für Landwirtschaft und Ernährung (Federal Institute for Agriculture and Food, 'BLE') submitted to the applicant, for and on behalf of the Council and the Commission, an offer of compensation pursuant to Regulation No 2330/98. The offer covered the damage which he had suffered between 9 February and 1 August 1993. In the letter, the BLE referred expressly to the three-month period for accepting the offer, beginning on the date of submission.

26 By letter of 9 July 1999, the applicant asked the BLE to reconsider the offer of 11 May 1999 as he did not agree as regards the period for which compensation was offered.

27 By letter of 27 July 1999, the BLE replied that it refused to reconsider the offer. It reminded the applicant of the time-limit for acceptance and asked him to write directly to the Commission.

28 By letter of 11 August 1999 to the Commission, the applicant repeated his request for reconsideration of the offer.

29 By letter of 22 September 1999, the Commission refused the request on the grounds that the applicant had not accepted the offer within the time allowed and that any rights he may have had to compensation were completely time-barred.

Procedure and forms of order sought by the parties

30 By application lodged at the Court Registry on 24 November 1999 the applicant brought this action.

31 The applicant claims that the Court should:

— order the defendants to pay him DEM 67 522.36, with interest from 1 July 1985;

— order the defendants to pay the costs.

32 The Council and the Commission contend that the Court should:

— principally, declare the application inadmissible;

— alternatively, dismiss the application as unfounded;

— order the applicant to pay the costs.

Admissibility

33 Under Article 111 of the Rules of Procedure of the Court of First Instance, where an action is manifestly inadmissible, the Court may, by reasoned order, give a decision on the action without taking further steps in the proceedings.

34 In the present case, the Court considers that it has sufficient information from the documents in the file to rule on the admissibility of the application without further steps in the proceedings.

The parties' arguments

35 The applicant submits that he is entitled to compensation for the damage suffered as a SLOM III producer from 1 July 1985, namely the day following the expiry of the non-marketing undertaking relating to the land leased from Mr Motz, and 1 August 1993, the date when Regulation No 2055/93 entered into force.

36 He contends that the limitation period for this claim did not begun to run until 20 August 1997, when he obtained a quota from the German authorities. The limitation period could not have begun to run before that date because the Commission, pursuant to Regulation No 2330/98, refused to make an offer of compensation to producers who had not been allocated a reference quantity at the date of their compensation claim. The limitation period could therefore have started to run only from the date on which the Commission recognised the existence of a right to compensation.

37 Moreover, before that date the applicant could not have submitted a claim to the Commission because his right to a quota had not yet been established and a claim for compensation would have had no chance of success. In this connection he relies on a judgment of the Bundesverwaltungsgericht of 9 December 1998 to the

effect that a claim which was submitted out of time because it had previously had no chance of success was not made in bad faith if the prospects of success had changed.

38 The applicant rejects the defendants' argument that the Commission's letter of 3 November 1997 expressly rejected his compensation claim in the letter of 8 October 1997 with the result that, for the limitation period to be interrupted on that date, he ought to have brought an action for annulment within the prescribed period. According to the applicant, if it was the Commission's intention to reject the claim, it ought to have given detailed reasons and, if necessary, particulars of the remedies available. In the present case, it was reasonable to infer from the brevity and the terms of the Commission's reply that it would include the applicant among the recipients of compensation if the Court of First Instance granted the application in the case which gave rise to the judgment in *Quiller and Heusmann* v *Council and Commission*, cited above.

39 The defendants contend that the applicant's claim is time-barred.

Findings of the Court

40 The limitation period laid down by Article 43 of the Statute of the Court of Justice cannot begin to run before all the requirements governing the obligation to make good the damage are satisfied and, in particular, in cases where liability stems from a legislative measure, before the injurious effects of the measure have been produced. Those conditions consists of the existence of unlawful conduct on the part of the Community institutions, the fact of the damage alleged and the existence of a causal link between that conduct and the loss claimed (see the judgment in Case T-20/94 *Hartmann* v *Council and Commission* [1997] ECR II-595, paragraph 107).

41 It has consistently been held that damage suffered by being unable to use a reference quantity arises on the date when, following the expiry of his non-marketing undertaking, the producer concerned would have been able to resume milk deliveries, without having to pay the additional levy, if he had not been refused a reference quantity. Therefore it is on that date that the requirements for an action for damages against the Community are satisfied (see judgments in Case T-554/93 *Saint and Murray* v *Council and Commission* [1997] ECR II-563, paragraph 87, and in *Hartmann* v *Council and Commission*, cited above, paragraph 130).

42 Consequently, in the present case, the limitation period began to run on 1 July 1985, namely the day after the expiry of the non-marketing undertaking relating to the land which the applicant leased from Mr Motz.

43 In this connection, the applicant cannot claim that the limitation period could not begin before he obtained a quota, which is the condition to which the Commission subjects the right to compensation under Regulation No 2330/98. As the Court has already held in relation to Regulation No 2187/93, in establishing the system for flat-rate compensation of SLOM I and II producers, which served as the model for Regulation No 2330/98, the Commission merely opened up an additional avenue for compensation to producers entitled to compensation in so far as they could already avail themselves of an action for damages under Article 235 EC and the second paragraph of Article 288 EC (see judgment in *Saint and Murray* v *Council and Commission*, cited above, paragraph 40).

44 For the purposes of determining the period during which the damage was suffered, it must be observed that it was not caused instantaneously. It continued over a certain time, that is to say, for so long as the applicant was unable to obtain a reference quantity, which, as the applicant himself states, continued until 1 August 1993, the date on which Regulation No 2055/93 entered into force.

The damage was continuous and recurred on a daily basis (see the judgment in the case of *Hartmann* v *Council and Commission*, cited above, paragraph 132). The right to compensation therefore relates to successive periods beginning on every day when marketing was not possible.

45 As a result, the time bar under Article 43 of the Statute of the Court of Justice applies to the period preceding by more than five years the date of the event which interrupted the limitation period and does not affect rights which arose during subsequent periods (see the judgment in the case of *Hartmann* v *Council and Commission*, cited above, paragraph 132).

46 It follows that, to determine the extent to which an action for compensation is time-barred, the date on which the limitation period was interrupted must be ascertained.

47 In accordance with Article 43 of the Statute of the Court of Justice, the period of limitation is interrupted only if proceedings are instituted before the Court or an application is made to the competent institution of the Community; however, in the latter case, interruption only occurs if the request is followed by an application within the time-limit determined by reference to Articles 230 EC or 232 EC (see the judgments in Case 11/72 *Giordano* v *Commission* [1973] ECR 417, paragraph 6, and Case T-222/97 *Steffens* v *Council and Commission* [1998] ECR II-4175, paragraphs 35 and 42).

48 The applicant cannot claim that the limitation period was interrupted by the letter of 8 October 1997 to the Commission, which replied on 3 November 1997, because the Commission's reply was not followed by the institution of proceedings before the Court of First Instance.

49 In that connection, the applicant cannot plead that the Commission's reply was ambiguous. It is clear from the passage quoted from the letter in paragraph 22 above that it is formulated in terms which clearly express rejection of the applicant's request, even though the Commission also implicitly indicated that it would reconsider its position if the Court were to find the Community liable for the damage suffered by SLOM III producers in the case which gave rise to the judgment of *Quiller and Heusmann* v *Council and Commission*, cited above. Furthermore, such rejection was acknowledged by the applicant himself in his undated letter received by the Commission on 9 February 1998, in which he writes:

'In your letter [of 3 November 1997] you say that you are not in a position to grant my request for compensation...'.

50 In addition, the applicant cannot complain that the Commission did not indicate possible remedies in order to justify his failure to bring an action for liability within two months following the refusal of compensation in the letter of 3 November 1997, since it has consistently been held that 'in the absence of express provisions of Community law, the Community administration and judicature cannot be placed under a general obligation to inform the addressees of those measures of the judicial remedies available or of the time-limits for availing themselves thereof' (see order in Case C-153/98 P *Guérin Automobiles* v *Commission* [1999] ECR I-1441, paragraph 15).

51 Finally, with regard to the waiver of the limitation period in the Commission's letter of 3 March 1998, as the Court has already held in relation to Regulation No 2187/93, the waiver was a unilateral act which was intended to limit the number of actions brought by encouraging producers to await the introduction of

the flat-rate compensation scheme provided for by Regulation No 2330/98 (see judgment in *Steffens* v *Council and Commission*, cited above, paragraph 38).

52 For that purpose Regulation No 2330/98 provided that the producers concerned could request an offer of compensation which had to be accepted within three months. In view of the purpose of the abovementioned waiver, it ceased to have effect at the end of the period for acceptance of the offer. In the present case, the period in question expired on 11 August 1999 without the applicant accepting the offer.

53 Under those circumstances, if the applicant wished to benefit from the waiver of the limitation period in the abovementioned letter and, consequently to interrupt the limitation period in accordance with Article 43 of the Statute of the Court of Justice at the date of his request for compensation, 9 February 1998, he would have had to commence the present action no later than two months following the expiry of the period for accepting the offer, namely by 17 October 1999, including extension of time on account of distance.

54 As the applicant did not do so, it follows that the limitation period was not interrupted until the institution of proceedings on 24 November 1999. However, as the damage suffered by the applicant came to an end on 1 August 1993, when Regulation No 2055/93 entered into force, it follows that the proceedings were brought out of time and the action for compensation was already time-barred.

55 It follows that the application must be dismissed as manifestly inadmissible.

Costs

56 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. As the applicant has been unsuccessful, he must be ordered to pay the costs, as applied for by the Council and the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. The application is dismissed as manifestly inadmissible.

2. The applicant shall pay the costs.

Luxembourg, 19 September 2001.

H. Jung — Registrar

P. Mengozzi — President