

# Case T-261/94

Bernhard Schulte

v

Council of the European Union  
and Commission of the European Communities

(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Regulation (EC) No 2187/93 — Compensation for producers — Act of the national authorities — Limitation)

Judgment of the Court of First Instance (Fourth Chamber), 7 February 2002 II - 445

## Summary of the Judgment

1. *Non-contractual liability — Conditions — Unlawful conduct of the institutions — Milk producers deprived of reference quantities under the additional levy scheme following their suspension of deliveries under non-marketing premium arrangements — Refusal of a specific reference quantity resulting from an autonomous*

*decision of national authorities — Decision based on considerations which are different from those relating to producers who have taken over a holding by succession after expiry of a non-marketing undertaking entered into by their predecessor — Liability not incurred*

(EC Treaty, Art. 215, second para. (now Art. 288, second para., EC); Council Regulations Nos 1078/77, 857/84 and 764/89)

2. *Actions for damages — Limitation period — Starting point — Liability on account of Regulation No 857/84 resulting in a reference quantity not being allocated to milk producers who entered into a non-marketing undertaking — Date to be taken into consideration*

(EC Treaty, Arts 178 and 215 (now Arts 235 EC and 288 EC); EC Statute of the Court of Justice, Art. 43; Council Regulations Nos 1078/77 and 857/84)

3. *Actions for damages — Limitation period — Interruption — Conditions — Bringing of proceedings before the Community judicature or lodging of a preliminary application with the relevant institution*

(EC Treaty, Art. 173 (now, after amendment, Art. 230 EC) and Art. 175 (now Art. 232 EC); EC Statute of the Court of Justice, Art. 43; Council Regulations Nos 1078/77, 857/84 and 2187/93; Communication of the Council and Commission 92/C 198/04)

1. The Community's liability for losses resulting from the application of Regulation No 857/84, which fixes the reference quantity to be allocated under the scheme for additional levies on milk to each producer on the basis of production delivered during a reference year, cannot be incurred with respect to losses sustained after the date of the entry into force of Regulation No 764/89 amending Regulation No 857/84, since the refusal of a specific reference quantity is the result of an autonomous decision by the national authorities, based on considerations which are, to a very large extent, different from those mentioned by the Court of Justice in its judgment in Case C-314/89 *Raub* in relation to producers who have taken over a holding by succession or by a similar transaction after expiry of a non-mar-

keting undertaking entered into under Regulation No 1078/77 by the predecessor in title.

(see para. 57)

2. The limitation period for actions against the Community on grounds of non-contractual liability, laid down by Article 43 of the Statute of the Court of Justice, cannot start 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.

munity, the limitation period expired five years after that date unless it was interrupted before that date.

(see paras 59-62)

In the case of damage suffered by a producer of milk or milk products who, on account of a non-marketing or conversion undertaking entered into under Regulation No 1078/77, could not, in the light of Regulation No 857/84, be allocated a reference quantity, and was consequently unable to market any quantity of milk exempt from the additional levy, the requirements for bringing an action for compensation against the Community were fulfilled and the limitation period started to run on the date on which Regulation No 857/84 became applicable to that producer. Since, moreover, that damage was not caused instantaneously but recurred on a daily basis, entitlement to compensation relates to consecutive periods commencing on each day on which it was not possible to market milk. Since it has been held that the damage which the applicant, a producer who took over a holding by succession after expiry of the non-marketing undertaking entered into by his predecessor, claims to have sustained after the date of the entry into force of Regulation No 764/89 amending Regulation No 857/84 is no longer linked to the illegality of the Community legislation and therefore attributable to the Com-

3. Under Article 43 of the Statute of the Court of Justice, the limitation period is interrupted only if proceedings are instituted before the Community judicature or if, prior to such proceedings, an application is made to the relevant Community institution, provided always that, in the latter case, interruption only occurs if the application is followed by proceedings instituted within the time-limits determined by reference to Article 173 of the Treaty (now, after amendment, Article 230 EC) or Article 175 of the Treaty (now Article 232 EC), depending on the case. The reference in the last sentence of Article 43 of the Statute to Articles 173 and 175 of the Treaty has the effect of rendering applicable, as far as interruption of the limitation period is concerned, the rules for calculating the time-limits laid down by those provisions.

With respect to damage suffered by producers of milk or milk products who, on account of non-marketing or conversion undertakings entered into

under Regulation No 1078/77, could not, in the light of Regulation No 857/84, be allocated a reference quantity, and were consequently unable to market any quantity of milk exempt from the additional levy, the waiver of the right to plead limitation contained in the Communication of the Council and the Commission relating to the subsequent adoption of Regulation No 2187/93 providing for an offer of compensation to the producers concerned is 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 that regulation. Having regard to its purpose, that waiver ceased to have effect at the end of the period allowed for accepting the compensation offer made in accordance with that regulation or upon the explicit rejection of that offer, if it took place before the expiry of that period. Consequently, the institutions once again became entitled, from that time onwards, to plead limitation.

When a producer has received a compensation offer under Regulation No 2187/93, he may enjoy the benefit of the waiver of the right to plead limitation contained in the Communication of the Council and the Commission only if he has instituted proceedings for compensation within two months following the expiry of the period allowed for accepting the compensation offer or if that offer is explicitly rejected before the expiry of that period. However, if that producer sent an application for compensation to the institutions on a date prior to that communication, and if that application was made within the period laid down by the last sentence of Article 43 of the Statute of the Court of Justice for instituting proceedings, the limitation period is interrupted on the day on which the application for compensation was made. In that case, the undertaking given by the institutions results in suspension of that period for as long as the waiver referred to above produces effects.

(see paras 63, 66-69)