JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
14 July 1998 *

In Case T-119/95,

Alfred Hauer, residing in Niederweiler (Germany), represented by Matthias François and Heinz Neuhaus, Rechtsanwälte, Bitburg, with an address for service in Luxembourg at the Chambers of Annick Wurth, 100 Boulevard de la Pétrusse,

applicant,

v

Council of the European Union, represented by Arthur Brautigam, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

and

Commission of the European Communities, represented by Klaus-Dieter Borchardt, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendants,

* Language of the case: German.

APPLICATION for annulment of Council Regulation (EEC) No 816/92 of 31 March 1992 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products (OJ 1992 L 86, p. 83) and for compensation for the damage suffered as a result of the application of that regulation,

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

composed of: B. Vesterdorf, President, C. W. Bellamy and R. M. Moura Ramos, Judges,

Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the hearing on 4 March 1998,

gives the following

Judgment

Legal background

1 In 1984, in order to combat overproduction of milk in the Community, the Council adopted 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 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 12 months beginning on 1 April 1984, an additional levy on quantities of milk delivered in excess of a certain reference quantity ('quota') to be determined for each producer or purchaser (paragraph 1 of the new Article 5c). 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').

2 In 1986, in view of the continuing surplus in the milk sector, the guaranteed total quantities were reduced without compensation by 2% for the 1987/88 milk year and by 1% for the 1988/89 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 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).

3 In 1987 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) temporarily withdrew 4% of each reference quantity for the 1987/88 milk year and 5.5% for 1988/89. In return for that withdrawal, producers received compensation of ECU 10 per 100 kg for each of those periods.

4 Council Regulation (EEC) No 1111/88 of 25 April 1988 amending Regulation No 775/87 (OJ 1988 L 110, p. 30) then maintained for three further 12-month periods (1989/90, 1990/91 and 1991/92) the temporary withdrawal of 5.5% of the reference quantities provided for in Regulation No 775/87. Under Article 1(2) of that regulation, the withdrawal was to be compensated by the direct payment of a degressive sum of ECU 8 per 100 kg for 1989/90, ECU 7 per 100 kg for 1990/91 and ECU 6 per 100 kg for 1991/92.

5 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 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), which also increased the compensation provided for in Regulation No 1111/88 to ECU 10, ECU 8.5 and ECU 7 per 100 kg respectively for the three periods.

6 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).

7 Council Regulation (EEC) No 816/92 of 31 March 1992 amending Regulation No 804/68 (OJ 1992 L 86, p. 83) then extended, for the period from 1 April 1992 to 31 March 1993, the reduction of the reference quantities by 4.5%, without providing for any compensation.

8 The first two recitals in the preamble to Regulation No 816/92 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 rationalisation 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(3) of that regulation 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:

...

Germany 27 154.205

...

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:

...

Germany 1 360.215

...

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

Facts of the case

10 The applicant is a milk producer in Germany. In accordance with the rules on the common organisation of the market in milk and milk products, his milk production was limited at the material time to a reference quantity fixed by the national authorities on the basis of the quantity delivered during a reference year. He also had an additional reference quantity which he had purchased from the German authorities during 1990 and 1991.

11 By decision of 29 June 1992 the dairy Erbeskopf eG, established in Thalfang, Germany, withdrew without compensation 4.74% of the applicant's reference quantity, in accordance with Paragraph 4 b VI in conjunction with Paragraph 4 c VI of the Milch-Garantiemengen-Verordnung (Regulation on guaranteed quantities for milk), the national regulation on reference quantities which took up the applicable Community provisions.

12 The applicant brought a complaint against that decision, which was rejected by the competent German authorities on 17 August 1993. The grounds for rejection referred to Regulation No 816/92.

13 By letter of 16 March 1995 he asked the Commission to annul that regulation in part and pay compensation.

Procedure and forms of order sought by the parties

14 By application lodged on 12 May 1995, the applicant brought the present action.

15 He claims that the Court should:

— annul Regulation No 816/92 in so far as it does not provide for compensation for the withdrawn part of the reference quantity;

— award the applicant compensation of DM 59 827.21;

— order the defendants to pay the costs.

16 The defendant Council contends that the Court should:

— dismiss the claim for annulment as inadmissible or, in the alternative, as unfounded;

— dismiss the claim for compensation as unfounded;

— order the applicant to pay the costs.

17 The defendant Commission contends that the Court should:

— dismiss the claim for annulment as inadmissible, in so far as it is brought against the Commission;

— dismiss the claim for compensation as unfounded;

— order the applicant to pay the costs.

18 The applicant and the Commission presented argument at the hearing on 4 March 1998. The Council was not represented at the hearing.

The claim for annulment

Admissibility

Arguments of the parties

19 The Council submits that the claim for annulment must be dismissed as inadmissible, in that the contested regulation is not of direct and individual concern to the applicant (Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409 and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853). The applicant is concerned by the measure only in his objective capacity as a milk producer in the same way as any other economic operator in the same situation.

20 The Commission argues that it is not capable of being a defendant in proceedings for the annulment of an act such as Regulation No 816/92, which was adopted by the Council. The claim for annulment should therefore be dismissed as inadmissible in so far as it is directed against the Commission.

21 The applicant has stated no position on those arguments.

Findings of the Court

22 The Court points out, to begin with, that it is settled case-law that the time-limits for bringing proceedings are at the discretion of neither the Court nor the parties

and are a matter of public policy (Case T-514/93 *Cobrecaf and Others* v *Commission* [1995] ECR II-621, paragraph 40). Under Article 113 of the Rules of Procedure, the Court must ascertain of its own motion whether the time-limit for bringing proceedings has been observed (Joined Cases T-121/96 and T-151/96 *Mutual Aid Administration Services* v *Commission* [1997] ECR II-1355, paragraph 39), even if, as in the present case, the parties have made no submissions on the point.

23 Since the applicant's claim is for the annulment of a regulation, the period prescribed for bringing proceedings is that laid down in the fifth paragraph of Article 173 of the Treaty, namely two months. For an action brought against a measure published on 1 April 1992, that period ran from 16 April 1992, in accordance with Article 102(1) of the Rules of Procedure. With the addition of the extension on account of distance of six days in accordance with Article 102(2) of the Rules of Procedure, the period therefore expired during June of that year.

24 Since the application was lodged on 12 May 1995, nearly three years later, the action is out of time.

25 In those circumstances, without there being any need to rule on the pleas of inadmissibility raised by the defendants, the claim for annulment must be dismissed as inadmissible.

The claim for compensation

26 The Community's non-contractual liability for damage caused by the institutions, provided for in the second paragraph of Article 215 of the EC Treaty, is not incurred unless a set of conditions relating to the illegality of the conduct complained of, the occurrence of actual damage and the existence of a causal link

between the unlawful conduct and the harm alleged are all fulfilled. In the case of liability arising from legislative measures, the conduct with which the Community is charged must, according to settled case-law (Case 5/71 *Zuckerfabrik Schöppenstedt* v *Council* [1971] ECR 975, paragraph 11, and Case T-390/94 *Schröder and Others* v *Commission* [1997] ECR II-501, paragraph 52), constitute a breach of a superior rule of law for the protection of individuals. If the institution has adopted the measure in the exercise of a wide discretion, as is the case in relation to the common agricultural policy, the breach must also be sufficiently serious, that is to say manifest and grave (see, *inter alia*, Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061, paragraph 12, and Joined Cases T-195/94 and T-202/94 *Quiller and Heusmann* v *Council and Commission* [1997] ECR II-2247, paragraphs 48 and 49).

27 In the circumstances of the case, the Court considers that the first point to examine is whether there was unlawful conduct on the part of the institutions.

Existence of an unlawful act as the source of the alleged damage

28 The applicant puts forward, in the context of his claim for annulment, three pleas in law on the unlawfulness of Regulation No 816/92: breach of the right to property, breach of the principle of the protection of legitimate expectations, and breach of the principle of equality.

First plea: breach of the right to property

— Arguments of the parties

29 The applicant submits that the right to property is one of the general principles whose observance is ensured by the Court (Case 44/79 *Hauer* v *Land Rheinland-Pfalz* [1979] ECR 3727, paragraph 17). In the present case, the fact that the

contested regulation does not provide for compensation for the reduction in the reference quantity has equivalent effect to an expropriation, in that the milk sold in excess of the quota is subject to the supplementary levy. The effect is thus that of a prohibition of marketing. Even if it derives from a legislative provision, an expropriation may take place, from the point of view of national law, only if the instrument which imposes it makes provision for the manner and amount of compensation. If there is no compensation, the situation created constitutes a breach of the right to property.

30 The applicant submits that his situation differs on an essential point from that which this Court ruled on in Joined Cases T-466/93, T-469/93, T-473/93, T-474/93 and T-477/93 *O'Dwyer and Others* v *Council* [1995] ECR II-2071, cited by the defendants. He says that he acquired reference quantities from the national authorities. The defendants' arguments therefore do not apply to those quantities, which were acquired for consideration and enjoy the protection given to the right to property. The applicant states that if he had known at the time of acquisition that those quantities could be withdrawn without compensation, he would not have entered into such a transaction, from which the national authorities were ultimately the only ones to benefit.

31 That restriction of the right to property is not justified in the public interest. Depriving producers of their income is in complete contradiction to the aims of Article 39 of the Treaty and is disproportionate to the results sought.

32 The Council stresses that reference quantities are not the subject of property rights distinct from the land to which they are attached. The reduction of those quantities which was imposed in the present case cannot therefore, as a matter of principle, infringe the applicant's right to property (Case C-44/89 *Von Deetzen* v *Hauptzollamt Oldenburg* [1991] ECR I-5119, paragraph 27).

33 Nor is the right to property an absolute right in Community law. In the context of a common organisation of the market, it is protected only against such disproportionate and intolerable interference as infringes the very substance of the right in question (Case 265/87 *Schräder* v *Hauptzollamt Gronau* [1989] ECR 2237, paragraph 15). There is no such interference in the present case, and the contested restriction clearly responds to an objective of general interest. In any event, in view of the small scale of the reduction in question, the existence of the applicant's holding is not under threat, so that the substance of his right to property cannot have been affected.

34 The Council also states that the aim of ensuring agricultural earnings, provided for in Article 39(1)(b) of the Treaty, must be reconciled with the aim of stabilising the markets under Article 39(1)(c), and that temporary priority may be given to the latter in certain circumstances (Case 265/85 *Van den Bergh en Jurgens and Van Dijk Food Products* v *Commission* [1987] ECR 1155, paragraph 20, and Case C-311/90 *Hierl* v *Hauptzollamt Regensburg* [1992] ECR I-2061, paragraph 13). Such priority was legitimate in the present case.

35 The Commission argues that in *O'Dwyer* this Court has already rejected the plea put forward by the applicant, in holding that the withdrawal of the reference quantity without compensation under Regulation No 816/92 was justified by the need to stabilise the market in milk and reduce structural surpluses. That withdrawal thus cannot in itself constitute a breach of the right to property.

36 The defendants submit that some of the applicants in *O'Dwyer* had also acquired additional reference quantities. They stress that the Court nevertheless rejected any distinction, with respect to the reduction or withdrawal of reference quantities, according to their origin. They consider that the requirements of stabilising the market are incompatible with such a distinction.

37 The Commission observes that purchases of reference quantities from the national authorities are not authorised by the regulation, the only permitted transactions of that kind being sales between milk producers. It notes that the applicant has not stated on what legal basis he acquired the additional quantities. His argument is thus immaterial. After all, if all the additional quantities purchased by producers were to be left out of account for the reduction, the corresponding volume would be such that it would not be possible to attain the objectives of Regulation No 816/92.

— Findings of the Court

38 It should be recalled, to begin with, that Regulation No 816/92 was adopted in succession to a number of measures which also provided for limitations of reference quantities. It was held in Case 203/86 *Spain* v *Council* [1988] ECR 4563, paragraph 15, and *Hierl*, paragraph 21, that Regulations No 1335/86 and No 1343/86, which reduced the total guaranteed quantity for each Member State by 3%, and the provision in Regulation No 775/87 which provided for the withdrawal of part of each reference quantity did not infringe any rule of Community law. Moreover, in *O'Dwyer* this Court dismissed an application which, as in the present case, sought compensation for damage caused by Regulation No 816/92. Finally, in Case C-22/94 *Irish Farmers Association and Others* v *Minister for Agriculture, Food and Forestry, Ireland, and the Attorney-General* [1997] ECR I-1809, paragraph 42, the Court of Justice found in the provision of that regulation which provided for the contested reduction no factor capable of affecting its validity. The present claim for compensation must be examined in the light of those decisions.

39 The right to property, which the applicant claims was infringed, is guaranteed in the Community legal order. However, that right is not absolute but must be considered in relation to its social function. Consequently, the Community may, in the pursuit of its objectives of general interest, impose restrictions on the right to property, in particular in the context of a common organisation of a market, provided that those restrictions actually correspond to those objectives and do not constitute, in the light of the aim pursued, a disproportionate and intolerable

interference (*Hauer*, paragraph 23, *Schräder*, paragraph 15, Case C-177/90 *Kühn* v *Landwirtschaftskammer Weser-Ems* [1992] ECR I-35, paragraph 16, and *Irish Farmers Association*, paragraph 27; *O'Dwyer*, paragraph 98).

40 In pursuing the objectives of the common agricultural policy, the political responsibilities conferred by the Treaty on the Community legislature bring with them a wide discretion. That discretion must enable the Community institutions *inter alia* to ensure the constant reconciliation which may be required by any conflicts between those objectives taken individually and, where necessary, to give one or other of them the temporary priority demanded by the economic facts or conditions in view of which their decisions are made (*Spain* v *Council*, paragraph 10, and *Hierl*, paragraph 13). Reductions of reference quantities may thus be accepted if they are intended to ensure that supply and demand are balanced and the market in milk stabilised.

41 In the present case, the reduction of the reference quantities under Regulation No 816/92 complies with those requirements. As can be seen from the preamble to the regulation, the withdrawal of reference quantities was justified by the concern to continue with the rationalisation of the milk market, following other similar measures adopted for previous years (see paragraphs 2 to 7 above).

42 The reduction at issue was not so large that it exceeded a tolerable interference, and it thus did not affect the very substance of the right to property. As the Court of Justice acknowledged in *Hierl*, paragraphs 13 to 15, and *Spain* v *Council*, paragraphs 10 and 11, temporary reductions of reference quantities with the objective of stabilising markets on which there are surpluses do not breach the right to property. Moreover, it follows from *Irish Farmers Association*, paragraph 29, that even the conversion of the temporary reduction of reference quantities by 4.5% into a definitive reduction without compensation is not such as to breach that right.

43 Finally, if the percentage reduction communicated to the applicant was 4.74%, as he asserts, and not 4.5% as provided for by Regulation No 816/92, it is the national authorities who are responsible for that difference.

44 Having regard to the above considerations, the applicant's argument based on an alleged infringement of Article 39 of the Treaty must also be rejected. The Council could legitimately, within the framework of its wide discretion in the sphere of the common agricultural policy, give temporary priority to the objective of stabilising the market for milk products, as the measures adopted contribute, by means of a rational development of production, to maintaining a fair standard of living for the agricultural community within the meaning of Article 39(1)(b) of the Treaty (*O'Dwyer*, paragraph 82, and, on the additional levy system generally, Case 84/87 *Erpelding* v *Secrétaire d'État à l'Agriculture et à la Viticulture* [1988] ECR 2647, paragraph 26).

45 As regards the additional reference quantities acquired from the national authorities, the applicant has not put forward any argument capable of showing that the additional quantities of milk should be distinguished from the original reference quantity. It would be contrary to the very logic of the contested regulation, which is intended to control surplus production, to exclude additional quantities from the reduction provided for by Regulation No 816/92 solely because they were acquired outside the reference quantity originally granted.

46 In any event, contrary to the applicant's assertions, several of the applicants in *O'Dwyer* had also acquired additional reference quantities from the national authorities (see paragraphs 119 to 130 of that judgment). The fact of having purchased such additional quantities is an economic choice by the producers which enables them to increase their volume of deliveries. Those producers consequently contribute to increasing the structural surplus in the sector, and it is therefore justified that they should be obliged to participate to a greater extent in the effort

at reduction demanded of producers. The reduction provided for by Regulation No 816/92 thus applies proportionately to all the reference quantities, regardless of their specific origin (see *O'Dwyer*, paragraph 128).

47 In those circumstances, without its being necessary to consider whether, as the Commission argues, the acquisition of the additional quantities in question was contrary to the provisions in force at the time, the applicant's argument must be rejected in so far as it refers to protection of the right to property.

48 The first plea in law must therefore be rejected in its entirety.

Second plea in law: breach of the principle of protection of legitimate expectations

— Arguments of the parties

49 The applicant states that the withdrawal of reference quantities, until the adoption of the contested regulation, was the subject of compensation. He was therefore entitled to think that he could preserve and take account of those items of his property. Moreover, he had made investments with a view to profiting from the additional quantities acquired from the national authorities. If he had suspected that such an intervention might take place, he would not have acquired the additional quantities or made those investments.

50 At the hearing, when invited by the Court to comment on the scope of the *Irish Farmers Association* judgment, the applicant stated that his position was different from that examined by the Court of Justice in that judgment, since he had

purchased additional reference quantities within the framework of measures adopted by the national authorities. He could thus have expected to be able to exploit them, but had been the victim of the change in the rules a year later.

51 The Council stresses that to acknowledge that milk producers can have a legitimate expectation in the indefinite continuation of compensation would be tantamount to recognising acquired rights in that respect, contrary to the consistent case-law (see Case 250/84 *Eridania and Others* v *Cassa Conguaglio Zucchero* [1986] ECR 117 and *Spain* v *Council*).

52 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 discriminating 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 reductions at issue were perfectly foreseeable in view of those developments.

53 The Commission submits that, according to the settled case-law confirmed by *O'Dwyer*, paragraphs 48 and 49, economic operators cannot have a legitimate expectation that an existing situation which may be modified at the discretion of the institutions will be maintained. The fact that under the previous rules all reductions of reference quantities attracted compensation could not have given rise to a legitimate expectation, since the new system introduced by Regulation No 816/92 fell within such discretion.

— Findings of the Court

54 The Court notes 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 are not entitled to expect that an existing 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 organisation of the agricultural markets whose purpose involves constant adjustments to meet changes in the economic situation (see *Delacre*, paragraph 33, and 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, Case T-472/93 *Campo Ebro Industrial* v *Council* [1995] ECR II-421, paragraph 61, and *O'Dwyer*, paragraph 48). Furthermore, 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).

55 As follows from *Irish Farmers Association*, paragraph 22, the Council and the Commission did not create a situation in which milk producers could legitimately expect that the reference quantities temporarily withdrawn would be restored on the indicated dates. Even before the date on which the withdrawal arrangements introduced by Regulation No 775/87 were to expire, those arrangements were extended by Regulation No 1111/88. The latter regulation also introduced compensation which, unlike that provided for by Regulation No 775/87, was degressive. Moreover, the Commission had made a formal proposal for the reduction of the reference quantities without compensation, that proposal being published on 31 December 1991 (OJ 1991 C 337, p. 35). Finally, when the arrangements thus extended expired, namely on 31 March 1992, milk producers could not have been unaware of the continuing surplus in milk production, and hence of the need to maintain the levy scheme. It follows that the duration of the temporary withdrawal scheme was intrinsically linked, from its entry into force as well as from its renewal, to the duration of the additional levy scheme.

56 In those circumstances, and since the applicant has not put forward any factor which might displace that conclusion, he cannot claim that the defendant institutions aroused a legitimate expectation on his part.

57 Nor can his decision to make investments following the acquisition of additional reference quantities from the national authorities be justified by such a legitimate expectation. It must be emphasised that he states that he acquired those quantities in 1990 and 1991. During that period the reference quantities were the subject of temporary withdrawal under Regulation No 1111/88. At the time when he acquired the quantities, therefore, the applicant could not have been unaware of the existence of surplus milk production and the measures suspending reference quantities which, although the subject of degressive compensation, showed that the market was in a special situation. In those circumstances, regardless of whether, as the Commission claims, the acquisitions of additional reference quantities were contrary to the rules in force at the time, it must be concluded that, by acquiring those additional quantities, the applicant took an economic decision whose consequences he must accept.

58 The second plea in law must therefore be rejected.

Third plea: breach of the principle of equality

— Arguments of the parties

59 The applicant submits that the reduction of reference quantities introduced by Regulation No 816/92 is unlawful in that it provides for a uniform rate of reduction for all holdings, which in practice has the consequence that the reduction affects a small holding more than it does a large one. The introduction of a

uniform rate of reduction is thus contrary to the principle of equal treatment. That also constitutes a breach of Article 39 of the Treaty.

60 The Council observes that similar arguments have already been rejected by the Court of Justice in *Spain* v *Council* and *Hierl*. In the latter judgment the Court considered that the fact that the withdrawal of reference quantities applied in the same way to large and small producers did not constitute an infringement of Article 39 of the Treaty. The same reasoning should be followed in the present case.

61 The Council submits that in any event, even if the contested regulation was unlawful, it was not contrary to superior rules of law for the protection of individuals. It therefore could not be the cause of the alleged damage.

62 The Commission notes that in *Hierl*, paragraph 19, the Court of Justice stated that the fact that a measure adopted within the framework of the common organisation of a market may affect producers in different ways does not constitute discrimination if that measure is based on objective criteria. Accordingly, it considers that, as this Court held in *O'Dwyer*, paragraph 117, the reduction without compensation of an individual reference quantity, imposed for 1992/93 under Regulation No 816/92, does not constitute an unlawful act. The right to damages which is claimed on that basis by the applicant is thus unfounded.

— Findings of the Court

63 The principle of equality means that comparable situations must not be treated differently or different situations in the same way, unless such treatment is objectively

justified. Measures taken under the common organisation of the market 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 (*Spain* v *Council*, paragraph 25, and *Irish Farmers Association*, paragraph 34; *O'Dwyer*, paragraph 113).

64 The fact that a measure adopted within the framework of a common organisation of the market may affect producers in different ways depending on the particular nature of their production thus does not constitute discrimination if that measure is based on objective rules which are formulated to meet the needs of the general common organisation of the market (Case 179/84 *Bozzetti* v *Invernizzi* [1985] ECR 2301, paragraph 34). That is the case with the temporary withdrawal arrangements at issue, which are such that the quantities withdrawn are proportional to the reference quantities (see *Hierl*, paragraph 19, and *O'Dwyer*, paragraph 117).

65 The third plea in law must therefore also be rejected.

66 It follows that it has not been shown that the source of the alleged damage was an unlawful act of the institutions. The claim for compensation must therefore be dismissed, without there being any need to examine whether the other conditions of liability are fulfilled.

Costs

67 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 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 (First Chamber),

hereby:

1) Dismisses the claim for annulment as inadmissible;

2) Dismisses the claim for compensation as unfounded;

3) Orders the applicant to pay the costs.

Vesterdorf Bellamy Moura Ramos

Delivered in open court in Luxembourg on 14 July 1998.

H. Jung B. Vesterdorf

Registrar President