JUDGMENT OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)
16 April 1997 *

In Case T-20/94,

Johannes Hartmann, residing at Hamminkeln (Germany), represented by Bernd Meisterernst, Mechtild Düsing, Dietrich Manstetten and Frank Schulze, Rechtsanwälte, Münster, with an address for service in Luxembourg at the Chambers of Lambert Dupong and Guy Konsbruck-Raus, 14 A Rue des Bains,

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 Bruno Eynard, Director General of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

and

Commission of the European Communities, represented by Dierk Booß, of its Legal Service, acting as Agent, and Hans-Jürgen Rabe and Georg M. Berrisch, Rechtsanwälte, Hamburg and Brussels, with an address for service in Luxembourg at the office of Carlos Gomëz de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendants,

* Language of the case: German.

APPLICATION pursuant to Article 178 and the second paragraph of Article 215 of the EC Treaty and Council 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), for compensation for the losses sustained by the applicant owing to the fact that he was prevented from marketing milk as a result of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 (OJ 1984 L 132, p. 11),

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

composed of: A. Saggio, President, C. W. Bellamy, A. Kalogeropoulos, V. Tiili and R. M. Moura Ramos, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 21 May 1996,

gives the following

Judgment

Facts and relevant legislation

1 In 1977, in order to cut back 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). Under that regulation, producers had the opportunity to enter into an undertaking not to market milk or to convert their herds for five years in return for payment of a premium.

2 The applicant, a milk producer in Germany, entered into such an undertaking, which came to an end on 16 July 1986.

3 In 1984, in order to cope with persistent overproduction, the Council adopted Regulation (EEC) No 856/84 of 31 March 1984 (OJ 1984 L 90, p. 10), amending Regulation (EEC) No 804/68 of the Council of 27 June 1968 establishing a common organization of the market in milk and milk products (OJ, English Special Edition 1968(I), p. 176). The new Article 5c of the latter regulation introduced an 'additional levy' on milk delivered by producers in excess of a 'reference quantity'.

4 Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13; 'Regulation No 857/84') fixed the reference quantity for each producer on the basis of production delivered during a reference year, namely the 1981 calendar year, subject to the Member States' opting for the 1982 or 1983 calendar year. That regulation was 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; 'Regulation No 1371/84').

5 The undertaking entered into the applicant covered the reference year proposed. Since he had produced no milk in that year, he was ineligible for a reference quantity and, as a result, unable to market any quantity of milk exempt from additional levy.

6 By judgments of 28 April 1988 in Case 120/86 *Mulder* v *Minister van Landbouw en Visserij* [1988] ECR 2321, hereinafter '*Mulder I*', and Case 170/86 *Von Deetzen* v *Hauptzollamt Hamburg-Jonas* [1988] ECR 2355, the Court of Justice declared invalid Regulation No 857/84, as supplemented by Regulation No 1371/84, on the ground that it infringed the principle of protection of legitimate expectations.

7 In order to comply with those judgments, the Council adopted Regulation (EEC) No 764/89 of 20 March 1989 amending Regulation (EEC) No 857/84 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 1989 L 84, p. 2; 'Regulation No 764/89'). Pursuant to that amending regulation, producers who had entered into non-marketing or conversion undertakings received a reference quantity known as a 'special' reference quantity (or 'quota'). Such producers are referred to as 'SLOM I producers'.

8 Allocation of a special reference quantity was subject to several conditions. Some of those conditions were declared invalid by the Court of Justice by judgments of 11 December 1990 in Case C-189/89 *Spagl* [1990] ECR I-4539 and Case C-217/89 *Pastätter* [1990] ECR I-4585.

9 Following those judgments, the Council adopted Regulation (EEC) No 1639/91 of 13 June 1991 amending Regulation (EEC) No 857/84 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 1991 L 150, p. 35; 'Regulation No 1639/91'), which granted the producers concerned a special reference quantity. Such producers are referred to as 'SLOM II producers'.

10 In the meantime, one of the producers who had brought the action resulting in Regulation No 857/84 being declared invalid had instituted proceedings, together with other producers, against the Council and the Commission in which they sought compensation for the losses which they had sustained on account of their not having been granted a reference quantity under that regulation.

11 By judgment of 19 May 1992 in Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061, hereinafter '*Mulder II*', the Court of Justice held that the Community was liable for the damage in question. It gave the parties one year to reach agreement on the amount of compensation. Since the parties were unable to come to an agreement, the proceedings were reopened in order to enable the Court of Justice to lay down the criteria for quantifying the loss in a judgment which would bring the proceedings to a close.

12 The effect of the judgment in *Mulder II* is that all producers who were prevented from producing milk solely because they had entered into a non-marketing or a conversion undertaking are, in principle, entitled to compensation for the damage sustained.

13 In view of the large number of producers affected and the difficulty in negotiating individual settlements, the Council and the Commission published on 5 August 1992 Communication 92/C 198/04 (OJ 1992 C 198, p. 4; hereinafter 'the Communication' or 'the Communication of 5 August'). After setting out the implications of the judgment in *Mulder II*, the institutions stated their intention to adopt practical arrangements for compensating the producers concerned in order to give full effect to that judgment. Until such time as those arrangements were adopted, the institutions undertook not to plead against any producer entitled to compensation that entitlement to claim was barred by lapse of time under Article 43 of the Statute (EEC) of the Court of Justice. However, that undertaking was made subject to the proviso that entitlement to compensation had not already been barred on grounds of time on the date of publication of the Communication or on the date when the producer had applied to one of the institutions. Lastly, the institutions assured producers that the fact that they did not make an approach to them as from the date of the Communication and until such time as the practical arrangements for compensation were adopted would not adversely affect them.

14 Following the Communication of 5 August, the Council 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; 'Regulation No 2187/93'). The regulation provided for an offer of flat-rate compensation to producers who had received special reference quantities under the terms laid down by Regulations Nos 764/89 and 1639/91.

15 Article 8 of Regulation No 2187/93 provides that compensation is to be granted only for the period for which the right to compensation is not time-barred. The date of interruption of the five-year limitation period set by Article 43 of the Statute of the Court of Justice is to be the date of the application addressed to a Community institution or the date of registration of an application brought before the Court of Justice or, at the latest, 5 August 1992, the date on which the aforementioned Communication was published [Article 8(2)(a)]. The starting date of the compensation is to be five years before the date of interruption of the limitation period and the closing date the date when the producer received a special reference quantity pursuant to Regulations Nos 764/89 and 1639/91.

16 Under the fourth paragraph of Article 14 of Regulation No 2187/93, acceptance of the offer is to imply relinquishment of any claim whatsoever against Community institutions in respect of the loss at issue.

17 By letter dated 30 April 1992, received on 4 May 1992, the applicant applied to the Council for compensation for his losses. By letter of 6 May 1992, the Council denied that the requirements for Community liability *vis-à-vis* the applicant were satisfied but, with a view to avoiding the bringing of an action, informed him that it waived its right to plead limitation until three months after publication of the judgment in *Mulder II*. It made it clear that that waiver applied only to rights which were not yet time barred on the date of the application for compensation.

18 On 26 November 1993, the applicant received from the competent German authority an offer of compensation for the damage sustained, made in conformity with Regulation No 2187/93. Pursuant to Article 8(2)(a) and (b) of that regulation, the offer did not cover the period 17 July 1986 to 3 May 1987.

19 The applicant did not accept that offer in the manner provided for in Article 14 of Regulation No 2187/93.

Procedure and forms of order sought by the parties

20 By application lodged at the Court of First Instance on 22 January 1994, the applicant claimed that the institutions should be ordered to pay compensation calculated in accordance with Regulation No 2187/93 for the period between 17 July 1986, the date on which his non-marketing undertaking expired, and 29 March 1989, the date on which Regulation No 764/89 entered into force.

21 Apart from the claim for compensation, the application also sought annulment of Article 8(2)(a) and (b) of Regulation No 2187/93 in so far as those provisions preclude payment of compensation to him as from 17 July 1986. However, by letter received at the Registry on 21 February 1994, the applicant withdrew his claims for annulment.

22 On 22 January 1994 the applicant further lodged an application for interim measures in which he sought suspension of operation of Article 14 of Regulation No 2187/93. By order of 25 January 1994 (Case T-20/94, not published in the European Court Reports; hereinafter 'order of 25 January'), the President of the Court of First Instance decided that the suspension of the time-limit laid down in the third paragraph of Article 14 of the regulation in question, as decided by interim order of 12 January 1994 in Case T-554/93 R *Abbott Trust and Others* v *Council and Commission* [1994] ECR II-1, would have effects with regard to the applicant. He stated that in the applicant's case the prescribed period would not expire before two weeks of the date of the order bringing other interlocutory proceedings to an end. Those proceedings closed on 1 February 1994 (order of the President of the Court of First Instance in Joined Cases T-278/93 R and T-555/93 R, T-280/93 R and T-541/93 R *Jones and Others* v *Council and Commission* [1994] ECR II-11).

23 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber, Extended Composition) decided to open the oral procedure without any preparatory measures of inquiry. The parties were heard at the hearing on 21 May 1996.

24 In his application, the applicant claims that the Court should:

— order the defendants jointly and severally to pay him, in accordance with Regulation No 2187/93, the sum of ECU 31 976.899 by way of compensation, together with interest at 8% per annum from 19 May 1992;

— annul Article 8(2) of Regulation No 2187/93 in so far as that provision limits the period for which the applicant may be compensated;

— order the defendants jointly and severally to pay the costs.

25 In his reply, the applicant withdrew his claims for annulment and maintained his damages claims, without referring to Regulation No 2187/93.

26 The Council, as defendant, claims that the Court should:

— dismiss the application as inadmissible or, in the alternative, as unfounded;

— order the applicant to pay the costs.

27 The Commission, as defendant, claims that the Court should:

— dismiss the application as inadmissible or, in the alternative, as unfounded;

— order the applicant to pay the costs, including those of the interlocutory proceedings and, in the alternative, those appertaining to the claim for annulment which was withdrawn.

Admissibility

— Arguments of the parties

28 The Council and the Commission maintain that the application is inadmissible for infringing Article 44 of the Rules of Procedure.

29 The Council asserts that the application lacks concrete arguments with regard to the alleged damage. In order to establish his losses, the applicant merely refers to the offer of compensation received pursuant to Regulation No 2187/93. Certain particulars of the applicant's alternative activities during the period when he was prevented from producing milk are also lacking. The particulars produced in the reply, in particular the expert's report, are not based exclusively on data relating to the applicant, but also on statistics relating to milk producers in general. The Council further questions whether the expert's report produced is well founded. Since the evidence is not conclusive, the application is admissible.

30 The Commission alleges that the particulars given in the application are not sufficiently precise to satisfy the requirements of Article 44 of the Rules of Procedure. According to the judgment in *Mulder II* (paragraphs 26 to 34), the applicant should have proved loss of earnings consisting, in principle, in the difference between the income which the applicant would have obtained if he had continued to produce milk and the income from any replacement activities. No such particulars are contained in the application. Moreover, even if the application had referred to Article 178 and the second paragraph of Article 215 of the EC Treaty — the only remaining avenue for obtaining compensation in this case — it would still be

inadmissible. In such case, according to the case-law of the Court of Justice (Case 90/78 *Granaria* v *Council and Commission* [1979] ECR 1081, paragraph 5), an application for damages based on Articles 178 and 215 of the Treaty which did not specify the damage would not satisfy the requirements of the Rules of Procedure and would therefore be inadmissible.

31 In the light of the applicant's reliance in the reply on the second paragraph of Article 215 of the Treaty as the basis for his claim, the Commission avers that Regulation No 2187/93 and Article 215 of the Treaty differ in point of their conditions of application and their consequences. The obligation to prove damage is different in each case and the flat-rate calculation provided for by the regulation cannot replace the more complete presentation required by Article 215 of the Treaty in a situation where the regulation is not applicable. In addition, as far as the particulars adduced by the applicant in the reply are concerned, the applicant is precluded from raising them by the first subparagraph of Article 48(2) of the Rules of Procedure inasmuch as they constitute new pleas.

32 The Commission rejects the applicant's arguments with regard to the interpretation of Article 44(1)(c) and (6) of the Rules of Procedure. Article 44(6) provides for the regularization of the application only where paragraphs 3, 4 and 5, and not paragraph 1, have not been complied with. It follows from the case-law of the Court of Justice (Case 3/66 *Alfieri* v *Parliament* [1966] ECR 437, at 447) that an application for compensation which does not indicate the way in which the alleged loss was calculated is inadmissible.

33 The applicant maintains that the objection of inadmissibility is based on a misinterpretation of Article 44 of the Rules of Procedure. Infringement of paragraph 1 of that article does not have the consequences laid down in paragraph 6. Consequently, the rules on inadmissibility set out in paragraph 6 should not be extended to infringements covered by paragraph 1.

34 In any event, the subject-matter of the dispute and the pleas raised could be determined from the application. Furthermore, according to the case-law of the Court of Justice (Joined Cases 29/63, 31/63, 36/63, 39/63 to 47/63, 50/63 and 51/63 *Laminoirs, Hauts Fourneaux, Forges, Fonderies et Usines de la Providence* v *High Authority* [1965] ECR 911 and *Granaria* v *Council and Commission*, cited above), in the case of an action for damages it is unnecessary to quantify the damages claimed in the application where the application initially focuses on factors causing liability to be incurred.

— *Findings of the Court*

35 First, a decision should be taken on the legal basis of the application, which seeks to establish liability on the part of the Community *vis-à-vis* the applicant. In this connection, contrary to the Commission's assertions, the Court considers that, by bringing an action to obtain compensation for damage sustained as a milk producer as a result of his not having obtained a quota pursuant to Regulation No 857/84, the applicant acted on the basis of the Community's liability as held in *Mulder II*, to which the second recital in the preamble to Regulation No 2187/93 refers. He therefore placed himself within the ambit of the application provided for by Articles 178 and 215 of the Treaty and supplemented the content of his application in the reply by relying on those provisions of the Treaty in case the right to flat-rate compensation provided for by Regulation No 2187/93 was not granted to him. Moreover, the institutions placed themselves in this area as from the defence. Accordingly, the allegation that there was an entitlement to compensation founded on Articles 178 and 215 of the Treaty was already implicitly embodied in the application.

36 It should next be recalled that, under Article 44(1)(c) of the Rules of Procedure, the application must set out the subject-matter of the proceedings and a summary of the pleas in law on which the application is based.

37 In the present case, the question whether the application satisfies the requirements set out in that provision must be determined within the specific framework of the milk quotas litigation.

38 On 26 November 1993, the applicant received an offer of compensation from the competent German authority in the name and on behalf of the Council and the Commission pursuant to Regulation No 2187/93, which is intended to compensate producers unlawfully refused reference quantities as a result of Regulation No 857/84 (see paragraph 14 of this judgment). Consequently, without prejudging at this stage the applicability of Regulation No 2187/93, which goes to the substance, it must be held that, by their offer, the institutions have recognized that the applicant fulfils the conditions laid down by the regulation, that is to say, damage resulting from the fact that the Community unlawfully prevented him from delivering milk.

39 In this context, the fact that the application alleges damage attributable to an act of the institutions is sufficient to satisfy the requirements of the Rules of Procedure, in so far as it follows on from the aforesaid offer of compensation. Moreover, the succinctness of the application has not prevented the Council and the Commission from defending their interests effectively.

40 Moreover, contrary to the Commission's contention, the application does refer to quantified loss. As for the question whether the loss was calculated in accordance with the guidance given in the judgment in *Mulder II* on replacement income, which was raised by the Commission, it falls to be considered in connection with whether the application is well founded and therefore cannot be discussed when considering whether it is admissible.

41 As for the pleas in law raised in the application, they may be set out very summarily, provided that the applicant, as in this case (see paragraph 141 below), provides all relevant information during the procedure (Case 74/74 *CNTA* v *Commission* [1975] ECR 533, paragraph 4), for instance by means of an expert's report.

42 Accordingly, since the claim as to entitlement to compensation was set out implicitly in the application (see paragraph 35 of this judgment), the express reference made in the reply to the second paragraph of Article 215 of the Treaty and the production, at the same stage, of evidence intended to substantiate the loss sustained do not constitute new pleas within the meaning of Article 48(2) of the Rules of Procedure. The Commission's argument must therefore be rejected.

43 It follows from the foregoing that the application contains sufficient information to satisfy the requirements of the Rules of Procedure.

44 The application is therefore admissible.

Liability of the Community

45 The applicant relies in support of his claims, first, on application of Regulation No 2187/93 and, secondly, on the existence of a right to compensation based on Article 215 of the Treaty.

Application of Regulation No 2187/93

— Arguments of the parties

46 The applicant refers in his claim to Regulation No 2187/93, which he maintains is applicable to his situation.

47 He submits that the time-limit for accepting the offer which he received had not yet expired on 22 January 1994, the date on which he lodged his application. Subsequently, the order of 25 January temporarily stopped time running until a future order was given, yet without fixing when the time-limit would expire. It therefore fixed only a minimum duration.

48 Moreover, the applicant maintains that he accepted the offer in his application. He points out that he signified his agreement to the conditions of the Council's offer, except as regards the period for which compensation was to be paid.

49 The applicant considers the defendants' argument that he did not accept the offer in the manner required by the regulation to be contrary to the principle of protection of legitimate expectations. In his view, the interlocutory proceedings which he brought in Case T-20/94 R are closely connected with the proceedings in Cases T-278/93 R, T-554/93 R and T-555/93 R. By his order of 25 January, the President of the Court of First Instance referred to the whole of the grounds of the order in Case T-554/93 R *Abbott Trust and Others* v *Council and Commission*, in which the Council and the Commission recognized that producers satisfying the conditions laid down for qualifying for the flat-rate compensation provided for by Regulation No 2187/93 are unquestionably entitled to compensation for their losses. By asserting that the regulation in question is not applicable to the applicant because he did not accept the offer, the defendants are at odds with their former position. If he had not placed reliance in those statements, which he construed as implicitly recognizing producers' entitlement to the amount of the offer of compensation received, the applicant would have accepted the offer in the manner laid down to that end.

50 The Council asserts in the first place that the interim order of 25 January 1994 cannot be relied upon in order to claim that the time for accepting the offer of compensation has not expired. On the contrary, it appears from that order that time ran out on 15 February 1994.

51 It considers that an argument cannot be based on declarations allegedly made in the interim proceedings in Cases T-278/93 R, T-555/93 R, T-280/93 R and T-541/93 R to which the applicant refers. The declarations cited by the applicant were quoted out of context. In fact, it is clear from the declarations made by the Council and the Commission in those proceedings that a producer satisfying the requirements of Regulation No 2187/93 is entitled to compensation but that, outside the offer of flat-rate compensation provided for by that regulation, especially in the event of the annulment of the regulation by the Court of First Instance, compensation would be payable only for damage actually proved by the producer.

52 The Commission considers that the applicant cannot base his claim on Regulation No 2187/93. That regulation is not applicable in this case because the applicant did not accept in time the offer made to him. The deadline for accepting the offer was 15 February 1994 as a result of the interlocutory order of the President of the Court of 25 January 1994. The applicant's interpretation, which would be tantamount to acceptance of the offer more than one year after the order, is precluded by the principle of legal certainty.

53 In any event, the applicant did not accept the offer by bringing his action. It is clear from the application that he does not agree to the main items of the offer. In any case, the formalities laid down by Article 14 of Regulation No 2187/93 were not complied with.

54 The Commission considers that the applicant's reliance on the principle of protection of legitimate expectations is a new plea by comparison with the application and that, under Article 48(2) of the Rules of Procedure, that plea cannot be taken into account.

55 It further asserts that if that plea were eligible to be considered, it would be without foundation.

56 In the first place, inaccurate citations were made in connection with that plea, since the order in Case T-20/94 R drew an analogy only between that case and Case T-554/93 R, not with Case T-555/93 R.

57 Furthermore, the applicant has not shown that he had notice of the Council's position before the deadline for acceptance expired. Only if he had had such notice, could he have relied on the Council's position.

58 Lastly, the alleged infringement of the principle of protection of legitimate expectations could not have the effect of obliging the defendants to treat the applicant as if he had accepted the offer of compensation.

— Findings of the Court

59 Regulation No 2187/93 contains precise provisions relating to acceptance of the offer of compensation. Article 14 provides that the offer is to be accepted by return to the competent national authority, within two months of receipt of the offer, of the receipt accompanying the offer.

60 In this case, since the applicant received the offer of compensation on 26 November 1993, the deadline for accepting it expired on 26 January 1994.

61 Before that deadline expired, the applicant brought an application for interim measures (Case T-20/94 R) in which he sought suspension of operation of Article 14 of Regulation No 2187/93. By interlocutory order of 25 January 1994, cited above, the President of the Court granted that application. Suspension was ordered,

vis-à-vis the applicant, until two weeks after the date of the order closing the interim proceedings in Case T-555/93 R *Jones and Others* v *Council and Commission*, which also sought suspension of operation of the same provision.

62 In the latter case, the interim order was given on 1 February 1994. The deadline for accepting the offer sent to the applicant expired on 15 February 1994.

63 Up to that date, the applicant did not accept the offer on the terms laid down by Article 14 of Regulation No 2187/93.

64 The applicant cannot claim that he accepted the offer by his application lodged on 22 January 1994.

65 On the one hand, Regulation No 2187/93 lays down specific detailed rules and conditions for accepting the offer. Consequently, acceptance cannot be signified in a form not provided for by the regulation.

66 On the other, in his application, the applicant states that he agrees to the offer, except as regards application of the limitation period laid down by Article 8(2) of the regulation. It is clear, however, from the wording of Regulation No 2187/93 and from the nature of the offer as an offer in settlement (see especially Article 14) that it can only be accepted unconditionally.

67 Neither can the applicant claim that the defendant's challenge to his acceptance of the offer is contrary to the principle of protection of legitimate expectations. Without its being necessary to consider to what extent the applicant is entitled to rely on a declaration made in proceedings to which he was not a party, suffice it to say that such a declaration by the defendants has neither the meaning nor the effects alleged by the applicant. By stating that producers fulfilling the requirements for compensation under Regulation No 2187/93 would be entitled to compensation even if they rejected the offer, the institutions merely reaffirmed the rights arising for producers under the judgment in *Mulder II* and observed that it was possible to assert them outside the context of that regulation.

68 It follows from the foregoing that the applicant did not accept the offer made to him under Regulation No 2187/93. Accordingly, he derives no right from that regulation.

Existence of any right to compensation pursuant to Article 215 of the Treaty

69 The applicant relies on the loss sustained throughout the period when he was prevented from producing milk as a result of Regulation No 857/84.

70 The defendants contest whether the losses claimed were genuinely sustained.

71 As regards the damages claim, the Court finds that it appears from *Mulder II* that the Community incurred liability *vis-à-vis* each producer who suffered reparable injury owing to his having been prevented from delivering milk as a result of the application of Regulation No 857/84, as the institutions acknowledged in their Communication of 5 August (paragraphs 1 and 3).

72 In the light of the documents exhibited to the Court, which the defendants have not challenged, the applicant is in the situation of producers referred to in that Communication. Since he had entered into a non-marketing undertaking pursuant to Regulation No 1078/77, he was prevented, as a result of Regulation No 857/84, from resuming the marketing of milk when those undertakings expired.

73 Moreover, on 23 November 1993, the competent German authority made him an offer of compensation for the damage sustained, in the name and on behalf of the Council and the Commission, pursuant to Regulation No 2187/93.

74 In those circumstances, the applicant is entitled to compensation from the defendants for his loss.

75 However, in order to quantify the amount of damages, the extent of the right to compensation needs to be determined, especially the period for which compensation is payable. It must therefore be considered whether and to what extent the applicant's claims are time barred.

Limitation

— Arguments of the parties

76 As regards the period between 17 July 1986 (the date on which marketing of milk could not be resumed following the expiry of the non-marketing undertaking) and 3 May 1987 (the day before the end of the five-year period prior to receipt of the letter asking the institutions for compensation), the applicant submits that the

limitation period laid down by Article 43 of the Statute of the Court of Justice did not begin until 28 April 1988 (date of the judgment in *Mulder I*) and that therefore his rights are not time barred. As regards the period between 4 May 1987 and 29 March 1989 (date of entry into force of Regulation No 764/89 abolishing the obstacle precluding resumption of marketing of milk), the applicant maintains that his rights are not time barred either, even if the date of the judgment in *Mulder I* is not taken as the starting point of the limitation period. For their part, the institutions contend that the limitation period cannot begin running after 17 July 1986.

— Period between 17 July 1986 and 3 May 1987

77 The applicant avers, with regard to the period between 17 July 1986 and 3 May 1987, that his claim is not time barred, on the ground that the limitation period did not start running until the date of the judgment in *Mulder I*. The fact that the invalidity of Regulation No 857/84 found by the Court of Justice has effects as from the date when the regulation entered into force, namely 2 April 1984, has no bearing on the question of limitation. According to the case-law of the Court of Justice (Joined Cases 256/80, 257/80, 265/80, 267/80 and 5/81 *Birra Wührer and Others* v *Council and Commission* [1982] ECR 85 and Case 51/81 *De Franceschi* v *Council and Commission* [1982] ECR 117), the limitation period laid down by Article 43 of the Statute of the Court of Justice cannot begin unless all the requirements governing the obligation to provide compensation for damage are satisfied. It also appears from the case-law (Case 145/83 *Adams* v *Commission* [1985] ECR 3539, '*Adams*', paragraph 50) that where the victim only belatedly became aware of the event giving rise to the damage, time cannot start running until he became aware of that event.

78 Since there is a strong presumption that regulations are lawful, the applicant's situation is even less favourable than that of Mr Adams, who was the subject of an individual decision. The presumption of legality is reinforced by the requirements laid down by the case-law of the Court of Justice with regard to reviewing the conformity of regulations with the Treaty. Moreover, the requirements for an individual to bring an action under Article 173 of the Treaty were not met. Further-

more, even if such an application had been admissible, it would not have had suspensory effect. The act would have remained in force until such time as it was annulled, which would mean that the limitation period would have continued to run as against all those persons who had relied on the conformity of the regulation with the legal order.

79 The applicant maintains that the Community cannot incur liability unless the act which gave rise to the damage is unlawful and the said unlawfulness constitutes a sufficiently serious breach of a superior rule of law for the protection of individuals (Case 5/71 *Zuckerfabrik Schöppenstedt* v *Council* [1971] ECR 975). Consequently, the fact that a legislative measure, such as a regulation, is unlawful does not *ipso facto* cause the Community to incur liability. Consequently, it cannot be said that it was for the applicant to raise the question of the legality of Regulation No 857/84, especially since liability for legislative acts is unknown to the legal systems of most Member States. To adopt such an approach would, moreover, result in every Community regulation of doubtful legality being systematically scrutinized.

80 In conclusion, the applicant argues that, in view of the specific nature of regulations, there is only awareness of the act which gave rise to damage, within the meaning of the case-law of the Court of Justice, when its illegality has been established. The limitation period for an action for compensation could therefore not commence running before the Court has declared the act unlawful.

81 The applicant goes on to assert that the legal situation of SLOM producers was particularly ambiguous and vague. He could not reasonably have been expected to have brought an action for damages before the legal situation had been clarified. In this connection, the case-law of the superior German courts has established that, where the legal situation is particularly confused and uncertain, the injured party is not deemed to have been aware of the event which gave rise to the damage and is entitled to wait until the situation has been clarified. Accordingly, the limitation period does not begin where, as a result of such a situation, major legal ambiguities

preclude awareness of the damage or make it impossible for the institution under the obligation to make reparation for it. Since the Court of Justice and the Court of First Instance have not yet ruled this issue, the solution adopted in German law could be used here, particularly since the relevant requirements are satisfied. The Council's argument that the applicant spared himself the costs and risks of litigation is therefore completely baseless. The implicit consequence of such an argument would be congestion of national and Community courts. Economy of proceedings also commends the solution put forward by the applicant.

82 The applicant contests the Commission's claim that he should have brought an action immediately after the judgment in *Mulder I* in order to avoid any limitation problem. In his view, the problem of limitation cannot be settled in the light of a particular case. On the contrary, the date on which the limitation period begins should be determined in a general manner. The applicant argues that, on the Commission's approach, where a judgment declares a regulation unlawful more than five years after the date on which all the other requirements for Community liability were satisfied, the rights of all those persons who did not bring proceedings are time barred. In such a situation, the rights to compensation of victims who did not bring an action would depend on chance, that is to say, on how long it took for a case to be decided. The risk would be even greater where an act had to be found invalid in preliminary-ruling proceedings. In short, if proceedings extended beyond five years, the period laid down by Article 43 of the Statute of the Court of Justice, as interpreted by the Commission, would be too short to enable victims to uphold their rights.

83 The applicant considers that, for a producer in his situation, recourse to national courts would have been the most obvious solution, since producers thought that the national authorities had mistakenly failed to allocate them reference quantities. Moreover, the Council and the Commission had intimated in *Mulder I* that the Federal Republic of Germany was entitled to assist producers in the context of Regulation No 857/84. Nevertheless, the right to compensation could not be relied upon as against the Community until the Court of Justice had declared the regulation invalid.

84 Lastly, the applicant argues that a declaration that the act was unlawful is among the requirements to which the obligation to make reparation is subject and that, according to the case-law of the Court of Justice, those requirements have to be met before the limitation period can start to run. He stresses that, even if the finding that the regulation was invalid was sufficient to cause time to start running, the outcome of any action for damages brought immediately was still very uncertain, since Community liability *vis-à-vis* SLOM producers was not finally recognized until 1992.

85 In conclusion, he considers that the conditions laid down in *Birra Wührer* and *De Franceschi* with regard to the commencement of the limitation period were not satisfied until 28 April 1988, the date of the judgment in *Mulder I*.

86 The Council acknowledges that the applicant interrupted the limitation period by his letter received on 4 May 1992. In its reply of 6 May 1992, the Council waived its right to plead limitation until the judgment in *Mulder II*. Accordingly, the period for which the claim was time barred was between 17 July 1986, the date of the end of the non-marketing undertaking, and 4 May 1987, the date five years before the date on which the limitation period was interrupted. In addition, since the applicant had been aware since 28 April 1988 that Regulation No 857/84 was invalid, he could have brought an action as from that date, in common with the applicants in *Mulder II*. In any event, it is settled law that a judgment, such as that given in *Mulder I* on a reference for a preliminary ruling, which declares a regulation invalid, is retroactive to the date when the act in question entered into force.

87 The *Birra Wührer* and *De Franceschi* case-law is very clear. For the purposes of fixing the date on which the limitation period starts, it does not require knowledge that the act which gave rise to the damage was invalid. Moreover, in those cases, some of the applicants' claims were held to be time barred precisely because, in full awareness of the facts, they waited for other applicants to obtain compensation before they themselves brought proceedings. The applicant's interpretation is contrary to the requirements of legal certainty which underlie the fixing of limitation periods and mean that damage caused by a legislative act can be compensated for

only for a limited period. According to the case-law, liability ensuing from such an action should be interpreted strictly (Joined Cases 83/76 and 94/76, 4/77, 15/77 and 40/77 *HNL and Others* v *Council and Commission* [1978] ECR 1209).

88 The Council concludes by stating that a strict interpretation would not be unreasonable. The instance of the applicant, who interrupted the limitation period by means of his letter received on 4 May 1992, shows that it was possible for producers to safeguard most of their rights in good time.

89 Contesting the applicant's arguments based on German case-law, the Council avers that a solution derived from national law cannot dictate a particular interpretation of the provisions relating to liability on the part of the Community.

90 As regards the judgment in *Adams*, referred to by the applicant, the Council admits that in that case the Court of Justice held that a person who is unaware of the cause of damage is protected against limitation. However, the Court of Justice did not hold that it was necessary to be aware of the illegality of the act which caused the damage in order for the limitation period to begin running. In this case, the applicant was aware of the cause of the damage, namely application of Regulation No 857/84, as from the end of the non-marketing period. From that time on, producers could have contacted the institutions and interrupted the limitation period in accordance with Article 43 of the Statute of the Court of Justice. In that event, the institutions would have waived pleading limitation until delivery of the judgment in *Mulder II*.

91 In conclusion, the Council claims that the application should be dismissed.

92 The Commission also considers that the applicant's claims based on Article 215 of the Treaty are time barred in so far as they refer to rights which arose between 17 July 1986 and 3 May 1987. It relies on three arguments, alleging respectively that the limitation period laid down by Article 43 of the Statute of the Court of Justice began running at the latest on 17 July 1986, that the applicant claims that he interrupted the limitation period on 4 May 1992 and that pleading limitation is not in breach of good faith.

93 As regards the application of Article 43 of the Statute of the Court of Justice, the Commission states that, according to the case-law of the Court of Justice (*Birra Wührer* and *De Franceschi*, at paragraph 10), the limitation period begins when all the requirements governing the obligation to provide compensation for damage are satisfied and, in particular, when the damage to be made good has materialized. In this case, the limitation period began at the end of the applicant's non-marketing period, namely on 17 July 1986.

94 Contrary to the applicant's assertions, it does not follow from the judgment in *Adams* that the limitation period did not commence until the Court of Justice declared Regulation No 857/84 invalid. In order for the limitation period to start running, the judgment in *Adams* (paragraph 50) required the applicant to be aware only of the cause of the damage, not of its illegality. In this case, the cause of the damage was Regulation No 857/84, and the applicant became aware of it at the latest when he was prevented from delivering milk, that is to say, on 17 July 1986.

95 In so far as entitlement to compensation under Article 215 of the Treaty is not contingent upon the Court of Justice having first declared the act which gave rise to the damage unlawful, the declaration that Regulation No 857/84 was unlawful had no effect on the starting date of the limitation period. If, in the case of damage caused by a legislative measure, the limitation period did not start until the date on which that measure was declared invalid, limitation would, in view of the procedural time-limits, be deprived of effectiveness, namely its effect of having a situation clarified judicially as soon as possible. Furthermore, such an approach would be at odds with the view of the Court of Justice that Community liability on

account of unlawful acts committed by the Community legislature should be exceptional (*HNL and Others* v *Council and Commission*, paragraphs 4 and 5).

96 In the Commission's contention, there is no difference between the situation of the addressee of an individual act and that of the victim of damage caused by a regulation as far as the limitation period, a declaration of invalidity and the suspensory effect of bringing proceedings are concerned. The fact that the limitation period continues to run as far as non-applicants are concerned where an action is brought against a measure of general scope is simply the normal risk run by persons who refrain from bringing proceedings.

97 The Commission contests the applicant's argument based on the claim that the legal situation of SLOM producers was not clarified. The German courts' case-law is inapplicable in this case since Article 43 of the Statute of the Court of Justice, unlike Article 215 of the Treaty, does not refer to the law of the Member States. Furthermore, German law does not admit of the possibility of claiming liability on the part of the public authorities in the event of an unlawful act committed by the legislature. Consequently, the German supreme court would never have to rule on whether such a right was time barred.

98 In any event, the fact that other producers did bring actions against the Community shows that the applicant could also have taken this route. The applicant did not do so because he did not want to take any risks. Accordingly, he waited for six years after the judgment in *Mulder I* was delivered before bringing an action. Moreover, he is represented by lawyers who had already been instructed in some of the milk quotas cases. There had been nothing to prevent him taking the same route.

99 As far as interruption of the limitation period is concerned, the Commission alleges that application of the criteria set out in the judgments in *Birra Wührer* and *De Franceschi* results in the application being time barred as regards the period prior to 4 May 1987. Even if the applicant had interrupted the limitation period by means of his letter received on 4 May 1992, the period for which compensation is

payable would have begun five years earlier, namely on 4 May 1987. All damage prior to that date is therefore time barred. Compensation therefore covers only the period between that date and the date on which the applicant was once again in a position to be allocated a special reference quantity, that is to say, 28 March 1989.

100 Lastly, the Commission submits that it is not a breach of good faith to plead limitation, in any case not in respect of the period prior to 4 May 1987. Neither the Commission's answer to the applicant's letter of 30 April 1992 nor the Communication of 5 August, in conjunction with the offer made by Regulation No 2187/93, suggested that limitation would not be pleaded. In so far as those acts waived limitation, they did not cover rights which were already time barred. In those circumstances, the defendants are entitled to plead limitation in respect of rights which were no longer enforceable on 4 May 1992.

— The period between 4 May 1987 and 29 March 1989

101 As regards the period between 4 May 1987 and 29 March 1989, the applicant avers that the Commission's claim that all his rights are time barred as from 16 July 1991 (five years after the onset of the damage) is based on a misunderstanding of the issue. Since milk is produced daily, the applicant suffered damage every day since 17 July 1986, the day after his non-marketing undertaking expired, and so long as he was deprived of a reference quantity. Consequently, the effects of the act which caused the damage did not come to an end until he resumed milk production. Since the damage continued over time, each day caused a new limitation period to run. A calculation of this type, moreover, underlay the draft of Regulation No 2187/93 (document COM(93) final of 21 March 1993, p. 6) and the proposal for compensation which the Council made to the applicant. In any case, only the period between 4 May 1987 and 29 March 1989 is time barred.

102 The Commission's arguments that the Communication of 5 August does not prevent it from pleading limitation against the applicant are contradictory. According

to the Communication, the Commission undertook not to plead limitation in respect of rights which were not yet time barred on 5 August 1992. The fact that the damage recurred daily precludes the Commission, as a result of the Communication, from pleading limitation in respect of the period between 4 May 1987 and 29 March 1989. Moreover, the Commission reached exactly the same conclusion in its defence as regards rights derived from Regulation No 2187/93. Consequently, the Commission could not, without contradicting itself, defend a different calculation of the limitation period in respect of rights derived from Article 215 of the Treaty. To do so would disregard the fact that, in this case, what is involved is damage which recurred on a daily basis and that Regulation No 2187/93 is based on Article 215 of the Treaty. The latter considerations suffice to rule out the possibility of calculating limitation differently in the two cases. Furthermore, the Commission's interpretation is unfair to the applicant, since his right to compensation has already been recognized.

103 The Commission claims that the conditions for an action for damages were satisfied on 17 July 1986, the date on which the applicant was prevented from resuming the marketing of milk. Consequently, the limitation period began to run on that date, with the result that all the applicant's rights were time barred on 17 July 1991, that is to say, five years after the date when the period began. What is more, there is nothing to prevent the institutions from pleading limitation (see paragraph 96 of this judgment). The Commission states that, in its view, Regulation No 2187/93 is not applicable in this case. Consequently, Article 8 thereof cannot be taken into consideration in proceedings based on Article 215 of the Treaty. The fact that, in its preliminary draft for the regulation in question and in calculating the offer of compensation, the Commission based itself on the concept of a right to compensation recurring each day does not have the consequences claimed by the applicant. In any event, since the applicant is entitled to derive rights only from Article 215 of the Treaty, limitation can be governed only by Article 43 of the Statute of the Court of Justice. It is not possible, in interpreting that provision, to invoke Article 8 of Regulation No 2187/93, which, moreover, is a lower-ranking provision.

104 In any event, should the damage at issue be of a recurring nature, the Commission draws the Court's attention to the fact that after he received its letter of 30 April 1992 on 4 May 1992, the applicant did not bring proceedings within the time-limit

laid down by the third sentence of Article 43 of the Statute of the Court of Justice. It infers from this that it is doubtful whether he can rely on the limitation period having been interrupted on that date. In those circumstances, the limitation period was not interrupted until 22 January 1994 when the action was brought. Consequently, the applicant's rights are time barred in respect of all damage preceding that date by more than five years, that is to say, damage sustained before 22 January 1989.

105 The Council does not claim that the applicant's rights are time barred in respect of the period 4 May 1987 to 29 March 1989.

— Findings of the Court

106 In order to determine to what extent the claim is time barred, it is necessary first to fix the date on which the damage materialized, before determining the date on which any act interrupting the limitation period occurred.

107 The limitation period laid down by Article 43 of the Statute of the Court of Justice cannot begin 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 (*Birra Wührer* and *De Franceschi*, at paragraph 10). Those conditions consist 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 (Case 4/69 *Lütticke* v *Commission* [1971] ECR 325, paragraph 10; Case T-478/93 *Wafer Zoo* v *Commission* [1995] ECR II-1479, paragraph 47).

108 In this case, the applicant sustained damage as from the day on which, following the expiry of his non-marketing undertaking, he could have resumed milk deliveries if he had not been refused a reference quantity. That damage was directly caused by a legislative act, namely Regulation No 857/84, which was declared invalid by the judgment in *Mulder I*.

109 Having regard to the arguments of the parties, it must be considered whether satisfaction of the requirements on which the Community's obligation to make reparation depend — which determines the starting point of the limitation period — occurred on the date when the damage materialized, in accordance with the judgments in *Birra Wührer* and *De Franceschi* and the defendants' contentions, or whether it occurred at the date of the judgment in *Mulder I*, declaring Regulation No 857/84 invalid, as the applicant maintains.

110 As far as the first argument is concerned, the applicant is not entitled to claim, on the basis of the judgment in *Adams*, that, in a situation such as the one at issue, where he allegedly only belatedly became aware of the event which give rise to the damage, the limitation period did not begin until that date.

111 The facts of the *Adams* case were different. The applicant in the *Adams* case had suffered damage the apparent cause of which was not conduct on the part of the Commission. That damage had arisen in circumstances such that he could be presumed not to suspect any liability on the part of the Community. In such a context, account has indeed to be taken of the time when the applicant became aware of the event which caused the damage. Consequently, the Court of Justice held that expiry of the limitation period cannot constitute a valid defence to a claim by a person who has suffered damage where that person only belatedly became aware of the event giving rise to it and could not have had a reasonable time in which to react thereto (*Adams*, paragraph 50).

112 Furthermore, as the Council and the Commission have observed, it does not follow from the judgment in *Adams* that time under the limitation period does not start to run until the person who suffered the damage has become aware of the illegality of the act. What the Court of Justice emphasized is the importance of awareness of the event which gave rise to the damage and not of its illegality. In this case, however, the applicant could have been in no doubt at the time when he was prevented from marketing milk that that situation was the consequence of the application of a legislative measure, Regulation No 857/84.

113 In those circumstances, the first argument must be rejected.

114 As far as the second argument is concerned, the applicant cannot usefully rely on the presumption that regulations are lawful.

115 It has been consistently held that actions for damages are independent of actions for annulment (order of 21 June 1993 in Case C-257/93 *Van Parijs and Others* v *Council and Commission* [1993] ECR I-3335, paragraphs 14 and 15). It follows that it was unnecessary for Regulation No 857/84 to have been annulled or declared invalid before an action for damages could be brought. In this case, therefore, there was nothing to prevent the applicant from bringing an action for damages as soon as he sustained damage.

116 In that connection, the applicant's assertions as to the very restrictive conditions to which the case-law (*Zuckerfabrik Schöppenstedt* v *Council*, cited above, paragraph 11) subjects Community liability on account of a legislative measure (see paragraph 79 of this judgment) are irrelevant. In fact, those conditions are verified only when the question of the existence of an obligation to make reparation has to be considered as a substantive matter. The applicant, however, did not bring an action for damages in good time; the mere bringing of such an action would have had the effect of interrupting the limitation period immediately. In view of that consequence, the difficulties in such an application succeeding are irrelevant.

117 The argument raised is incapable of justifying the inaction on the part of the applicant, who did not approach the institutions until four years after the Court of Justice declared invalid the measure which had given rise to the damage which he had sustained, whereas other producers — the applicants in *Mulder II* — whose situation was similar to his, brought an action in good time and obtained a decision holding that the Community was under an obligation to pay compensation.

118 It must be emphasized that, where an application for annulment is brought against a regulation which has given rise to damage or where a request for a preliminary ruling on the validity of such a regulation is made, as in the case of the applicants in *Mulder I*, time under the limitation period continues to run against all other persons who have sustained damage but not brought court proceedings. Since damage is caused to each of them by the legislative measure, it is incumbent upon them to seek compensation from the institutions or, where appropriate, to bring judicial proceedings against them within the time-limit laid down by Article 43 of the Statute of the Court of Justice, failing which the right to bring proceedings will be extinguished.

119 Consequently, the second argument must be rejected.

120 As regards the third argument, the applicant cannot rely on the ambiguous, vague nature of the SLOM producers' situation.

121 It appears from what the applicant himself says that that uncertainty was due to the fact that, until judgment was given in *Mulder I*, it was unclear whether the Community or the Member States were liable for the SLOM producers' situation.

122 Since the uncertainty was confined to that question alone, it was incumbent on producers who had sustained damage to interrupt the limitation period *vis-à-vis* both the national authorities and the Community.

123 In that regard, the Court finds that the applicant did not make a direct approach to the institutions until his letter dated 30 April 1992, received by the Council on 4 May 1992, by which he sought compensation. Likewise, it is undisputed that he brought no judicial proceedings before the judgment in *Mulder II*.

124 Yet there was nothing to prevent him from bringing an action for damages, which, as has been consistently held, could have been brought in the absence of the prior annulment of Regulation No 857/84 or of a declaration that it was invalid.

125 In those circumstances, the third argument must be rejected.

126 Lastly, as regards the fourth argument, the applicant is not entitled to claim that a declaration of the invalidity of the act which gave rise to the damage is one of the requirements on which the obligation to make reparation depends and whose satisfaction, by virtue of the judgments in *Birra Wührer* and *De Franceschi*, constitutes the starting point of the limitation period.

127 It must be recalled that time under the limitation period cannot begin running until the right to bring proceedings can be exercised.

128 Accordingly, the applicant's argument is tantamount to making the right to bring an action for damages depend on the act which caused the damage having first been annulled or declared invalid. Consequently, he is denying that actions for damages under Articles 178 and 215 of the Treaty are independent of actions for annulment; the fact that they are so independent enables an action for damages to be brought without there first having been an action for annulment, and therefore secures greater protection for individuals.

129 The fourth argument must therefore also be rejected.

130 Consequently, it must be held that in this case time began running under the limitation period on 17 July 1986, the date on which Regulation No 857/84 began to have injurious effects on the applicant by preventing him from resuming marketing milk.

131 The Commission is not entitled to claim that the applicant's damages claim is time-barred in its entirety five years after 17 July 1986, that is to say, on 17 July 1991.

132 The damage which the Community must make good was not caused instantaneously on 17 July 1986. The damage continued for a period, that is to say, for so long as the applicant was unable to obtain a reference quantity and, as a result, to deliver milk. The damage was continuous and recurred on a daily basis. As a result, with respect to the date of the event which interrupted the limitation period, the time bar under Article 43 of the Statute of the Court of Justice applies to the period preceding that date by more than five years and does not affect rights which arose during subsequent periods.

133 It follows from the foregoing that, in order to determine to what extent the applicant's rights are time barred, it is necessary to fix the date on which the limitation period was interrupted.

134 As far as this question is concerned, it is clear from the material in the case-file that the applicant interrupted the limitation period by means of a letter sent to the Council which was received on 4 May 1992. Under Article 43 of the Statute of the Court of Justice, an action for damages should have been brought within two months of the Council's reply.

135 However, it appears that, by letter dated 6 May 1992, the Council, seeking to avoid an action for damages, waived its right to plead limitation against the applicant in respect of rights not yet time barred (rights relating to the five-year period prior to 4 May 1992, the date on which the limitation period was interrupted) until three months following publication of the judgment in *Mulder II* in the *Official Journal of the European Communities*. Consequently, that letter of 6 May sought to induce the applicant not to bring proceedings within the two-month period laid down by Article 43 of the Statute of the Court of Justice. Accordingly, it signified that, in the circumstances indicated therein, the Council waived the right to plead that such an action had not been brought.

136 By their Communication of 5 August, following on from the Court of Justice's recognition of producers' right to compensation (see paragraph 13 of this judgment), the Council and the Commission extended the period for which that waiver was effective. By paragraphs 2 and 3 of the Communication, the institutions undertook not to plead limitation under Article 43 of the Statute of the Court of Justice until the end of the period for lodging applications for compensation, for which practical arrangements were to be adopted at a later date.

137 Those practical arrangements were adopted by means of Regulation No 2187/93. Under the second subparagraph of Article 10(2) of that regulation, the institutions' self-imposed restriction of their right to plead limitation came to an end on 30 September 1993 as regards producers who had not made an application for compensation under that regulation. It follows from the system of the regulation that, in the case of producers who had made such an application, the self-imposed restriction ended at the end of the period for accepting the offer made pursuant to the application.

138 On 26 November 1993, an offer of compensation was made to the applicant in the name of the Council and the Commission in response to an application from him. Since the application in this case was lodged on 22 January 1994, it must be held that it was brought within the two-month time-limit prescribed by Article 14 of

Regulation No 2187/93 for accepting the offer and hence during the period in which the institutions had undertaken not to plead limitation.

139 The Court finds that, having regard to Article 43 of the Statute of the Court of Justice, the limitation period was duly interrupted by the applicant by the letter which he sent to the Council on 30 April 1992, which was received on 4 May 1992, since the institutions waived their right to plead, and hence cannot rely on, the period between that date and the date on which the action was brought. Accordingly, the limitation period was interrupted on 4 May 1992.

140 According to the case-law (Joined Cases 256/80, 257/80, 265/80, 267/80, 5/81, 51/81 and 282/82 *Birra Wührer and Others* v *Council and Commission* [1984] ECR 3693, paragraph 16), the period for which compensation is payable is the five years preceding the date on which the limitation period was interrupted. It therefore extends from 4 May 1987 to 28 March 1989, which was the day before the entry into force of Regulation No 764/89, which put an end to the damage sustained by the applicant by enabling SLOM I producers thereafter to be allocated special reference quantities.

Quantum of damages

141 The applicant seeks damages of ECU 31 976.899. In the reply, he has produced particulars, including an expert's report, according to which his actual loss for the period 16 July 1986 to 29 March 1989 amounts to DM 119 863.21, to which interest should be added from 19 May 1992, the date of the judgment in *Mulder II*.

142 The defendants allege that the applicant has not adduced proof of the individual damage which he sustained. The expert's report produced is based on statistics for milk producers generally. According to the Commission, the applicant has consid-

erably overstated the income which he would have obtained from hypothetical milk deliveries and understated his income from alternative activities. In fact, he sustained no damage.

143 It must be observed that the parties have not yet had an opportunity to give their views specifically on the amount of any compensation appertaining to the period decided on by the Court, namely 4 May 1987 to 28 March 1989.

144 The Court considers that the possibility of settling the dispute out of court is not ruled out. Pursuant to Regulation No 2187/93, the defendants sent the applicant, a flat-rate offer of compensation through the competent national authorities, which he received on 26 November 1993. In his application, the applicant mentioned that he was in agreement in principle with the amount of compensation fixed by Regulation No 2187/93, except for the aspect of the length of the period for which compensation was payable (see paragraph 48 of this judgment). Although it has been found that the applicant did not accept the offer of compensation on the terms laid down by that regulation (see paragraphs 59 to 68 of this judgment), the Court considers that the possibility of reaching an agreement has not disappeared.

145 In those circumstances, the Court asks the parties to attempt to reach an agreement in the light of this judgment on the amount of compensation for the whole of the damage eligible for compensation within 12 months. In the event of failure to reach agreement, the parties shall submit to the Court within that period their quantified claims.

Costs

146 Having regard to paragraph 145 of this judgment, the decision as to costs must be reserved.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber, Extended Composition)

hereby:

1. Declares that the defendants are bound to make good the damage sustained by the applicant as a result of the application of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector, 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, in so far as those regulations did not make provision for the allocation of a reference quantity to producers who, pursuant to an undertaking given under Council 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, did not deliver milk during the reference year opted for by the Member State concerned;

2. Declares that the period in respect of which the applicant must be compensated for the losses sustained as a result of the application of Regulation No 857/84 is that beginning on 4 May 1987 and ending on 28 March 1989;

3. Orders the parties to forward to the Court, within 12 months of this judgment, the amounts to be paid, established by mutual agreement;

4. Orders the parties, in the absence of an agreement, to submit to the Court their quantified claims;

5. Reserves the costs.

Saggio Bellamy Kalogeropoulos

Tiili Moura Ramos

Delivered in open court in Luxembourg on 16 April 1997.

H. Jung A. Saggio

Registrar President