

## Case T-76/94

Rendert Jansma

v

Council of the European Union  
and Commission of the European Communities

(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producer having entered into a non-marketing undertaking — Sale of the SLOM holding — Limitation period)

Judgment of the Court of First Instance (Fourth Chamber), 31 January 2001 II- 246

### Summary of the Judgment

1. *Non-contractual liability — Conditions — Unlawful conduct of the institutions — Milk producers deprived of reference quantities under the additional milk levy system after suspending their deliveries under the non-marketing premium system — Producer kept out of the milk market by the rules curing the invalidity of Regulation No 857/84 — Damage — Causal link — Burden of proof*  
(EC Treaty, Art. 215, second para. (now Art. 288, second para., EC); Council Regulations Nos 1078/77, 857/84 and 764/89)

2. *Actions for damages — Limitation period — Liability incurred on account of Regulation No 857/84 providing that reference quantities were not to be allocated to milk producers who had entered into non-marketing undertakings — Temporary waiver of the right to plead limitation — Scope*  
(Council and Commission Communication 92/C 198/04)

3. *Actions for damages — Limitation period — Liability incurred on account of Regulation No 857/84 providing that reference quantities were not to be allocated to milk producers who had entered into non-marketing undertakings — Temporary waiver of the right to plead limitation — Suspensive effect on limitation period*  
(EC Statute of the Court of Justice, Art. 43)

1. Community liability for damage suffered caused to certain milk producers as a result of the application of Regulation No 857/84 fixing, under the additional milk levy system, the reference quantity for each producer on the basis of the production delivered during a reference year may be established with regard to the producers who remained excluded from the market in milk after the entry into force of Regulation No 764/89, amending Regulation No 857/84, for reasons which may themselves be ascribed to the inadequate arrangement for the allocation of quotas introduced by Regulation No 857/84, provided that the producer concerned establishes the causal nexus between the non-allocation of a quota pursuant to that regulation and the fact giving rise to the rejection of his request for a quota in the context of the application of Regulation No 764/89, such as, for instance, the sale of the holding which had been the subject of the non-marketing undertaking entered into by the producer under Regulation No 1078/77.
2. The waiver of the right to plead that the action brought against the Community by milk producers deprived of reference quantities under the additional milk levy system after suspending their deliveries under the non-marketing premium system was time-barred (contained in the Communication of the Council and the Commission in connection with the subsequent adoption of Regulation No 2187/93 providing for an offer of compensation for the producers concerned) was a unilateral act which was intended to limit the number of actions brought by encouraging producers to await the introduction of the flat-rate compensation scheme provided for by that Regulation. That Communication was specifically aimed at producers whose entitlement to compensation was not yet time-barred on the date on which it was published in the *Official Journal* or on the date on which they had already applied to one of the institutions. By the latter reference, the Council and the Commission were referring to producers who had applied to the institutions before the publication of the Communication in order to claim entitlement to compensation and who had been requested not to initiate actions for damages pending the adoption of the regulation determining flat-rate com-

(see para. 59)

pensation. The purpose of that reference was to protect those producers' entitlement to compensation.

A producer whose letter addressed to the Council and the Commission was never followed by a reply does not satisfy those conditions, since they had not given any commitment in his regard. In those circumstances, that producer cannot rely on that Communication.

Community's non-contractual liability brought by milk producers deprived of reference quantities under the additional milk levy system after suspending their deliveries under the non-marketing premium system, in order to encourage the producers not to institute proceedings was to interrupt the limitation period for that time. Consequently, it cannot be accepted that, merely as a result of the producers' not bringing an action within the limitation period laid down in Article 43 of the Statute of the Court of Justice, when that

(see paras 84-86)

period expired, the limitation period resumed running from the beginning of that period, as if the undertaking by the institutions had not been given.

3. The effect of the undertaking by the institutions not to invoke, during a specific period, the limitation period in respect of an action to establish the

(see paras 93-95)