JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
31 January 2001 *

In Case T-76/94,

Rendert Jansma, residing in Engelbert (Netherlands), represented by E.H. Pijnacker Hordijk and H.J. Bronkhorst, lawyers, with an address for service in Luxembourg,

applicant,

v

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

and

Commission of the European Communities, represented by T. van Rijn, acting as Agent, and H.-J. Rabe, lawyer, with an address for service in Luxembourg,

defendants,

* Language of the case: Dutch.

APPLICATION for compensation under Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 EC and the second paragraph of Article 288 EC) for damage suffered by the applicant as a result of his having been prevented from marketing milk by virtue 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 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1984 L 132, p. 11),

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

composed of: V. Tiili, President, R.M. Moura Ramos and P. Mengozzi, Judges,
Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 17 May 2000,

gives the following

Judgment

Legislative framework

1 In 1977, in view of surplus milk production in the Community, the Council adopted Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of

premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (OJ 1977 L 131, p. 1). That regulation gave producers the opportunity of undertaking not to market milk, or undertaking to convert their herds, for a period of five years, in return for a premium.

2 Despite the fact that many producers gave such undertakings, overproduction continued in 1983. The Council therefore 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 organisation 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'.

3 Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13) fixed the reference quantity for each producer on the basis of production delivered during a reference year, namely the 1981 calendar year, subject to allowing the Member States to choose the 1982 or 1983 calendar year. The Kingdom of the Netherlands chose 1983 as reference year.

4 The non-marketing undertakings entered into by certain producers under Regulation No 1078/77 covered the reference years chosen. Since they produced no milk in those years, they could not be allocated a reference quantity, and were consequently unable to market any quantity of milk exempt from the additional levy.

5 By judgments of 28 April 1988 in Case 120/86 *Mulder* v *Minister van Landbouw en Visserij* [1988] ECR 2321 ('*Mulder I*') and Case 170/86 *Von Deetzen* v *Hauptzollamt Hamburg-Jonas* [1988] ECR 2355 the Court of Justice declared

Regulation No 857/84, as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1984 L 132, p. 11), invalid on the ground that it infringed the principle of protection of legitimate expectations.

6 To comply with those judgments, the Council adopted Regulation (EEC) No 764/89 of 20 March 1989 amending Regulation No 857/84 (OJ 1989 L 84, p. 2). Pursuant to that amending regulation, producers who had entered into non-marketing undertakings received a reference quantity known as a 'special' reference quantity (or 'quota').

7 The allocation of the special reference quantity was subject to a number of conditions. Commission Regulation (EEC) No 1546/88 of 3 June 1988 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1988 L 139, p. 12), as amended by Commission Regulation (EEC) No 1033/89 of 20 April 1989 (OJ 1989 L 110, p. 27) required in Article 3a(1) that requests for the grant of a special reference quantity 'be made by the producers concerned to the competent authority designated by the Member State... provided that the producers can prove that they still operate, in whole or in part, the same holdings as those they operated at the time... of their premium applications'.

8 Other conditions, in particular those dealing with the time when the non-marketing undertaking expired, were declared invalid by the Court of Justice in judgments of 11 December 1990 in Case C-189/89 *Spagl* v *Hauptzollamt Rosenheim* [1990] ECR I-4539 and Case C-217/89 *Pastätter* v *Hauptzollamt Bad Reichenhall* [1990] ECR I-4585.

9 Following those judgments, the Council adopted Regulation (EEC) No 1639/91 of 13 June 1991 amending Regulation No 857/84 (OJ 1991 L 150, p. 35) which, by removing the conditions which had been declared invalid, made it possible for the producers concerned to be granted a special reference quantity.

10 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 ('*Mulder II*'), the Court of Justice held the Community liable for the damage caused to certain milk producers who had been prevented from marketing milk owing to the application of Regulation No 857/84 because they had given undertakings under Regulation No 1078/77.

11 Following that judgment, the Council and the Commission published Communication 92/C 198/04 on 5 August 1992 (OJ 1992 C 198, p. 4). After setting out the implications of the *Mulder II* judgment, and in order to give it full effect, the institutions stated their intention to adopt practical arrangements for compensating the producers concerned. Until such time as those arrangements were adopted, the institutions undertook not to plead against any producer entitled to compensation that his claim was barred by lapse of time under Article 43 of the EEC Statute of the Court of Justice. However, that undertaking was subject to the condition that entitlement to compensation was not already time-barred on the date of publication of the communication or on the date on which the producer had applied to one of the institutions.

12 The Council then 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). That regulation provides, for producers who obtained a definitive reference quantity, for an offer of flat-rate compensation for the damage sustained as a result of the application of the rules referred to in *Mulder II*.

13 By judgment of 27 January 2000 in Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [2000] ECR I-203, the Court of Justice determined the amount of the compensation claimed by the applicants.

Facts of the dispute

14 The applicant is a milk producer in the Netherlands. In the context of Regulation No 1078/77, he entered into a non-marketing undertaking which expired on 15 December 1984 and did not produce any milk during the reference year adopted pursuant to Regulation No 857/84. He therefore did not obtain a reference quantity following the entry into force of that regulation.

15 In 1983, before the expiry of his undertaking, the applicant purchased the holding which he leased and acquired young cows with a view to resuming milk production in 1984.

16 Then, upon expiry of the undertaking, the applicant resumed milk production. As he was refused a reference quantity, however, he had to pay the additional levy in respect of the agricultural years 1985/1986 and 1986/1987.

17 On 2 March 1987, the applicant was obliged to sell his holding.

18 In 1989, following the entry into force of Regulation No 764/89, the applicant purchased a holding at Groningen (Netherlands), where he resumed milk production.

19 By letter of 31 March 1989 from their legal representative to the Council and Commission, the applicant and 351 other producers listed in an annex to the letter who, as a result of having entered into an undertaking pursuant to Regulation No 1078/77, had not delivered milk during the reference year, commonly known as SLOM producers, stated that they held the Community

liable for the damage resulting from the invalidity of Regulation No 857/84 as established by the Court of Justice in *Mulder I*. The institutions did not reply to that letter.

20 On 26 June 1989, the applicant requested the allocation of a reference quota pursuant to Regulation No 764/89. That request was rejected on 24 August 1989 on the ground that the applicant no longer operated the same holding as the one he had operated at the time of entering into his non-marketing undertaking (the SLOM holding). The applicant was obliged to sell the holding at Groningen.

21 The applicant unsuccessfully challenged before the national courts the decision rejecting his request for a quota and the decisions imposing an additional levy. The decision rejecting his request therefore became final.

22 By letter of 14 July 1992, the applicant's legal representative claimed on behalf of the applicant and the producers referred to in the annex to the letter of 31 March 1989 that the limitation period had been interrupted on the date of that letter. By letter of 22 July 1992, the Director-General of the Legal Service of the Council replied that time had begun to run again as in respect of the 348 producers, including the applicant, who had not brought an action. None the less, he accepted that the letter of 14 July 1992 might constitute in their regard a fresh prior application for the purposes of Article 43 of the Statute of the Court of Justice. He further stated that the Council would not plead the limitation period between that date and 17 September 1992, provided that the applications for compensation submitted by the persons concerned were not already time-barred on 14 July 1992. Finally, he stated:

'During that period, the institutions will endeavour to adopt together the practical arrangements for compensation, in accordance with the judgment of the Court of Justice.

Accordingly, there is no need to institute proceedings before the Court of Justice in order to prevent time from beginning to run again.

If those arrangements are not determined by 17 September next, the Council will inform you what steps to take.'

23 By letter of 10 September 1993, concerning compensation for certain producers in the context of Regulation No 2187/93, the Commission informed the Netherlands authorities:

'Enclosed is the list of SLOM applicants who, by virtue of the general communication from the Community institutions of 5 August 1992, interrupted the limitation period applicable to their requests for compensation by referring the matter to the Commission, the Council or the Court of Justice.'

24 The applicant's name appeared on that list and in his case 31 March 1989 was stated to be the date on which the limitation period was suspended pursuant to the Communication of 5 August 1992.

Procedure and forms of order sought by the parties

25 By application lodged at the Registry of the Court of First Instance on 14 February 1994, the applicant initiated the present proceedings.

26 By order of 31 August 1994, the Court of First Instance stayed proceedings pending final judgment of the Court of Justice in Joined Cases C-104/89 (*Mulder and Others* v *Council and Commission*) and C-37/90 (*Heinemann* v *Council and Commission*).

27 By order of 11 March 1999, the President of the Fourth Chamber, Extended Composition, of the Court of First Instance, after hearing the parties at an informal meeting on 30 September 1998, ordered that the proceedings be resumed.

28 By decision of 7 October 1999, the case was assigned to a chamber of three judges.

29 By order of 23 February 2000, the President of the Fourth Chamber granted the applicant legal aid.

30 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure. In the context of the measures of organisation of procedure, the Court (Fourth Chamber) invited the applicant to produce certain documents and to reply in writing to a question.

31 The parties presented oral argument and replied to the Court's oral questions at the hearing on 17 May 2000.

32 The applicant claims that the Court should:

— order the Community to pay him the sum of 2 895 916.18 Netherlands guilders (NLG), by way of damages, together with default interest at the rate of 8% per annum from 19 May 1992;

— in the alternative, order the Community make such award as the Court deems appropriate, being not less than NLG 252 132, which corresponds to the sum payable pursuant to Regulation No 2187/93, together with default interest at the rate of 8% per annum from 19 May 1992;

— order the Community to pay the costs.

33 The Council contends that the Court should:

— declare the action inadmissible;

— order the applicant to pay the costs.

34 The Commission contends that the Court should:

— dismiss the action as inadmissible;

— in the alternative, declare that the harm in respect of which the Community is liable extends only to the period 11 February to 29 March 1989 and determine a 12-month period so that the parties can agree the quantum of compensation;

— order the applicant to pay the costs.

Law

35 The applicant claims that the conditions which render the Community liable for the harm which he has sustained are fulfilled. The defendants dispute that claim and raise a plea of inadmissibility on the ground that the rights on which the applicant relies are time-barred.

36 The Court considers that in the present case before it can examine the limitation period it must first determine whether the liability of the Community under Article 215 of the EC Treaty (now Article 288 EC) is susceptible of being incurred and, if so, until what date.

Liability of the Community

Arguments of the parties

37 The applicant maintains that he is among the milk producers who were prevented from carrying on their trade, as he has been unable to market milk since 1984 without being subjected to the additional levy. He contends that he is entitled to be compensated in full for the damage resulting from that situation, which he continues to suffer even now, in accordance with the decision of the Court of Justice in *Mulder II*.

38 The fact that he does not fulfil the conditions for an offer of compensation pursuant to Regulation No 2187/93 does not exempt the Community from its obligation to pay compensation, because its liability results from Article 215 of the Treaty.

39 The applicant disputes the defendants' argument that the causal nexus between the illegality of Regulation No 857/84 and the loss of earnings which he claims to have sustained was severed when he sold his SLOM holding in 1987. The unlawful refusal to grant him a quota in 1984 prevented him from meeting the financial commitments which he had given to his bank in order to finance the investments which allowed him to resume milk production upon expiry of his non-marketing period and, as a result, he was forced to sell his SLOM holding.

40 That situation was repeated after he purchased the holding at Groningen. Following the second refusal to allocate him a quota, the applicant was forced to sell that holding too.

41 The applicant claims that proof that he always intended to resume milk production and that he did not willingly abandon production, as the defendants allege, may be seen in the fact that he kept all his equipment and machinery after selling the SLOM holding, so that he would be able to use them again.

42 His situation is therefore very different from that of the applicant in Case T-246/93 *Bühring* v *Council and Commission* [1998] ECR II-171, paragraph 51, where it was held that Mr Bühring's holding was no longer viable on expiry of his SLOM undertaking owing to the unfortunate economic decisions he had taken before his request for a quota had been rejected. In the present case, by way of contrast, the sale of the SLOM holding was a direct consequence of the rejection of such a request.

43 Furthermore, as the applicant was forced to sell his SLOM holding for reasons following directly from that rejection, he found it impossible in 1989 to fulfil the conditions which under the Community legislation SLOM producers were required to satisfy in order to be eligible for a quota.

44 The defendants accept that the applicant, upon expiry of his undertaking, was in the same position of being unable to resume milk production as the applicant in the *Mulder* cases. However, since he sold his SLOM holding in 1987 and thus abandoned milk production, he cannot claim to have been entitled to a reference quantity in 1989, following the entry into force of Regulation No 764/89, or to have suffered damage after the holding had been sold. As the Court of First Instance held in *Bühring*, cited above (paragraphs 51 and 52), the reparable damage suffered by the applicant as a result of his having been denied that reference quantity could only be the damage sustained by him up to the date on which he lost his SLOM holding. Once it had been sold there was no longer a causal nexus between the initial invalidity of Regulation No 857/84 and the damage relied on.

45 The documents in the case-file show, according to the defendants, that the applicant's financial situation was already precarious before his non-marketing period expired.

46 As regards the principle that reference quantities attach to the land in respect of which they were allocated, laid down in Article 3a(1) of Regulation No 1546/88, the Council states that it applies both to SLOM producers and to other producers and that the principle cannot therefore discriminate against the former.

47 Furthermore, after abandoning milk production, the applicant cannot plead an infringement of the principle of the protection of legitimate expectations, since, according to established case-law, a producer who has voluntarily ceased production for a certain period cannot legitimately expect to be able to resume production under the same conditions as those which previously applied and not to be subject to any rules of market or structural policy adopted in the mean time (*Mulder I*, paragraph 23).

48 In any event, the invalidity of Regulation No 857/84 came to an end before the Council adopted Regulations No 764/89 and No 1639/91, and the Community cannot therefore be held liable for damage occurring after the adoption of those measures.

Findings of the Court

49 The non-contractual liability of the Community for damage caused by the institutions, provided for in the second paragraph of Article 215 of the EC Treaty, may be incurred only if 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 is fulfilled (Joined Cases 197/80 to 200/80, 243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle and Others* v *Council and Commission* [1981] ECR 3211, paragraph 18, and Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 80).

50 As regards the position of milk producers who have signed a non-marketing undertaking, the Community is liable to every producer who has suffered a reparable loss owing to the fact that he was prevented from delivering milk by Regulation No 857/84 (*Mulder II*, paragraph 22).

51 That liability is based on breach of the legitimate expectation which producers who were encouraged by a Community measure to suspend marketing of milk for a limited period in the general interest and against payment of a premium were entitled to have in the limited scope of their non-marketing undertakings (*Mulder I*, paragraph 24, and *Von Deetzen*, paragraph 13).

52 The applicant claims to have sustained damage caused by the unlawful deprivation of a reference quantity as a consequence of the application of Regulation No 857/84. The damage is alleged to extend over a period commencing on 15 December 1984, when his non-marketing undertaking expired, and, as he has never obtained a quota, lasting until now.

53 As regards the claim for compensation for damage in respect of the period between 15 December 1984 and 2 March 1987, the date on which the applicant sold his SLOM holding, it is common ground that, pursuant to Regulation No 857/84, the applicant was unable to market any quantity of milk exempt from the additional levy and that, in accordance with the case-law just cited, the corresponding damage is attributable to the Community.

54 As regards the damage claimed to have been sustained after 2 March 1987, on the other hand, the defendants deny that the Community is liable, on the ground that there is no causal nexus between the applicant's sale of his SLOM holding and the application of Regulation No 857/84 in regard to him.

55 In those circumstances, it is necessary to consider whether the applicant's allegations are capable of establishing a causal nexus between the unlawful conduct of the institutions and the damage claimed to have been sustained.

56 First of all, following the entry into force of Regulation No 764/89 the applicant's request to be allocated a quota under that measure was rejected pursuant to Article 3a(1) of Regulation No 1546/88 (see paragraph 7 above), which provided that requests for the grant of a special reference quantity were to be conditional upon the producers being able to prove that they still operated the SLOM holdings, in whole or in part, when the requests were submitted.

57 In that regard, it is significant that the allocation of reference quantities to SLOM producers was provided for in regulations adopted by the Council and by the Commission for the purpose of remedying a situation caused by an earlier unlawful measure. By the condition laid down in Article 3a the legislature wished to ensure that the quotas would benefit those who genuinely intended to produce milk and to prevent producers from seeking them for the sole purpose of deriving economic advantages from them.

58 However, the fact that a producer was denied a quota because he did not fulfil the conditions laid down in the Community legislation adopted in order to remedy the invalidity of Regulation No 857/84 does not call in question the finding that at the time when his undertaking expired he had a legitimate expectation in the possibility of resuming milk production.

59 It follows that the liability of the Community may be established *vis-à-vis* the SLOM producers who remained excluded from the market in milk after the entry into force of Regulation No 764/89 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 applicant 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, namely, in the present case, the sale of the SLOM holding.

60 It is clear upon examining the case-file and the answers to the questions put by the Court that the applicant's reasons for selling his SLOM holding in 1987 are directly linked to the fact that he was not allocated a quota following the expiry of his non-marketing undertaking in 1984. It follows, in particular, from the correspondence between the applicant and his bank that the financing which he obtained in order to resume milk production in 1985 was granted and calculated on the basis of the income which he reasonably counted on receiving from milk production after 1985. Although he was refused a quota in 1984, the applicant none the less resumed milk production during the agricultural years 1985/1986 and 1986/1987 but, being obliged to pay additional levies, he did not receive sufficient income to meet his financial commitments and was therefore forced to sell his SLOM holding on 2 March 1987 (see, in particular, judgment of the College van Beroep voor het Bedrijfsleven of 13 July 1994).

61 Contrary to what the defendants claimed at the hearing, moreover, it is clear from the case-file that the financial commitments entered into by the applicant were necessary if he was to resume milk production after a five-year break. The loan of NLG 360 000 which the applicant obtained from his bank was used to finance the purchase of 10 hectares of land which he had previously leased in connection with his milk-production activity and the lease on which was due to expire, to finance the purchase of 30 calves and to restore the cowsheds.

62 Consequently, it must be held that the damage sustained by the applicant after he sold his SLOM holding in 1987 is attributable not to lack of foresight or to

mismanagement on his part but to the unlawful refusal to allocate a reference quantity in 1984 pursuant to Regulation No 857/84.

63 It follows that the damage sustained by the applicant after 15 December 1984 and up to the present time is of such a kind as to render the Community liable.

64 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. The Court must therefore consider whether and to what extent the applicant's claims are time-barred.

Limitation

Arguments of the parties

65 The applicant maintains that the limitation period for submitting his claim was interrupted by the letter of 31 March 1989. By that letter, he and 351 other SLOM producers informed the institutions that they held the Community liable for loss of earnings resulting from the refusal to grant them quotas following the entry into force of Regulation No 857/84. As the institutions undertook in the Communication of 5 August 1992 not to plead that entitlement to claim was time-barred in respect of the producers who, like the applicant, had already applied to the institutions for compensation and whose claims for compensation

were not already time-barred, that waiver applies to the applicant from 31 March 1989.

66 The letter of 22 July 1992 from the Director-General of the Council's Legal Service was rendered void in that regard by the Communication of 5 August 1992, which was a later measure.

67 Furthermore, Mr Booss, a member of the Commission's Legal Service who at the time was responsible for dealing with SLOM cases, confirmed to the applicant's legal representative by telephone that the letter of 31 March 1989 constituted a measure that suspended the limitation period.

68 Shortly after the entry into force of Regulation No 2187/93, moreover, the Commission sent the Netherlands authorities a list of all the SLOM producers, including the applicant, who were entitled to claim compensation.

69 The defendants' position is not only contrary to the terms of the Communication of 5 August 1992 in which they expressly encouraged SLOM producers not to lodge actions for damages against the Community, but also discriminatory in that the Commission did not plead that the claims of other Netherlands SLOM producers who received offers of compensation and whose names were also on the list enclosed with the letter of 31 March 1989 were time-barred.

70 In the alternative, the applicant accepts that his action might be time-barred for a period of five months and eleven days. That period corresponds to the period

between the cut-off date provided for in Article 10 of Regulation No 2187/93 by which producers were able to apply to the Commission for compensation, 30 September 1993, and the date on which the action was brought, 14 February 1994.

71 The defendants contend that the applicant's claim is wholly time-barred. Time began to run on 15 December 1984, the date on which Regulation No 857/84 was applied in respect of the applicant. The limitation period therefore expired on 2 March 1992, five years after he sold the SLOM holding on 2 March 1987, unless it was interrupted.

72 Contrary to what the applicant claims, the letter of 31 March 1989 did not interrupt the limitation period since it was not followed by an action as provided for in Article 43 of the Statute of the Court of Justice. As regards the Communication of 5 August 1992, the applicant, whose entitlement was time-barred before that date, could not rely on the fact that the institutions waived the right to plead that claims were time-barred.

73 The Commission claims, in the alternative, that even if the Communication of 5 August 1992 had the effect of suspending the running of time until 30 September 1993, that is to say, for 13 months and 26 days, the applicant's claim continued to be time-barred in respect of damage sustained before 18 December 1987 (six years, one month and 26 days before he brought the action on 14 February 1994). However, that suspension is of no advantage to the applicant, because the liability of the Community was precluded as from the sale of the SLOM holding on 2 March 1987 (see paragraph 44 above).

74 As regards the Commission's practice of not pleading that claims were time-barred in the case of the producers on the list enclosed with the letter of

31 March 1989 who were able to benefit from an offer pursuant to Regulation No 2187/93, the defendants claim that it does not in any way discriminate against the applicant. The Commission merely waived the right to plead that claims were time-barred in the case of producers who fulfilled the conditions laid down in *Mulder II* and who had received an offer in accordance with the provisions of Regulation No 2187/93.

75 In conclusion, time began to run on 15 December 1984. The defendants maintain that following the sale of his SLOM holding on 2 March 1987 the applicant was no longer entitled to a reference quantity, so that from that date he no longer sustained any reparable damage. In the absence of a measure suspending the running of time, the limitation period expired on 2 March 1992.

Findings of the Court

76 The limitation period laid down by Article 43 of the Statute of the Court of Justice, which applies to proceedings before the Court of First Instance by virtue of Article 46 of the Statute, cannot start to run before all the requirements governing the obligation to make good the damage are satisfied and, in particular, in cases where liability stems from a legislative measure, before the injurious effects of the measure have been produced (Case T-20/94 *Hartmann* v *Council and Commission* [1997] ECR II-595, paragraph 107).

77 In this case, the damage arising from the impossibility of utilising a reference quantity was suffered as from the day on which, following the expiry of his

conversion undertaking, the applicant could have resumed milk deliveries without being required to pay the additional levy if he had not been refused such a quantity, that is to say, from 15 December 1984, the date on which Regulation No 857/84 became applicable to him. It was on that date, therefore, that the requirements for bringing an action for damages against the Community were fulfilled and that the limitation period started to run.

78 For the purposes of determining the period during which the damage was suffered, it must be noted that that damage was not caused instantaneously. It continued for a period, that is to say, for so long as the applicant was unable to obtain a reference quantity. The damage was continuous and recurred on a daily basis (*Hartmann*, cited above, paragraph 132). Entitlement to compensation relates, therefore, to consecutive periods commencing on each day on which it was not possible to market milk.

79 In the present case, since a causal nexus has been established between the non-allocation of a quota and the sale of the applicant's SLOM holding on 2 March 1987, the damage caused to him by the application of Regulation No 857/84 did not cease on that date, as in *Bühring*, cited above (paragraph 70), but continued after the entry into force of Regulation No 764/89 and, more specifically, Regulation No 1033/89, when the applicant again found it impossible to obtain a milk quota for the entire remainder of the period to which the rules on the additional levy applied. Consequently, 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 (*Hartmann*, cited above, paragraph 132).

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

81 Under Article 43 of the Statute, the limitation period is interrupted only if proceedings are instituted before the Community judicature or if, prior to such proceedings, an application is made to the relevant Community institution, it being however understood that, in the latter case, interruption only occurs if the request is followed by an application within the time-limits determined by reference to Article 173 of the EC Treaty (now, after amendment, Article 230 EC) or Article 175 of the EC Treaty (now Article 232 EC), depending on the case (Case 11/72 *Giordano* v *Commission* [1973] ECR 417, paragraph 6, and Case T-222/97 *Steffens* v *Council and Commission* [1998] ECR II-4175, paragraphs 35 and 42).

82 It follows, first of all, that the applicant cannot rely, for the purposes of an interruption of the limitation period laid down in Article 43 of the Statute of the Court of Justice, on the letter of 31 March 1989 to the institutions, because it was not followed by an action brought before the Court.

83 The applicant none the less claims that it follows from the application of the Communication of 5 August 1992 in his case that the defendants undertook not to plead that his claim was time-barred after 31 March 1989, the date on which he submitted a claim to the institutions.

84 It should be pointed out, in that regard, that the waiver of the right to plead that entitlement to claim was time-barred contained in the Communication of 5 August 1992 was a unilateral act which was intended to limit the number of actions brought by encouraging producers to await the introduction of the flat-rate compensation scheme provided for by Regulation No 2187/93 (*Steffens*, cited above, paragraph 38).

85 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 (see paragraph 11 above). By the latter reference, the defendants were referring to producers who had applied to the institutions before the publication of the communication in order to claim entitlement to compensation on the basis of *Mulder II* and who had been requested not to initiate actions for damages pending the adoption of the regulation determining flat-rate compensation. The purpose of that reference was to protect those producers' entitlement to compensation.

86 However, the letter of 31 March 1989 was never followed by a reply from the defendants and, consequently, they never gave any commitment in regard to the applicant on that date. In those circumstances, the applicant cannot rely on the Communication of 5 August 1992.

87 Second, it is necessary to reject the argument based on the fact that the applicant's name was on a list sent to the Netherlands authorities by the Commission following the entry into force of Regulation No 2187/93 setting out the producers entitled to benefit from the undertaking given in the Communication of 5 August 1992 not to rely on the limitation period.

88 First of all, that list was sent to the national authorities in order to inform them, in case they should receive claims for compensation under the compromise arrangement provided for in Regulation No 2187/93, of the date from which the limitation period for claims had been interrupted. It did not distinguish the SLOM producers who were in the same position as the applicants in *Mulder II* and who were therefore entitled to receive a proposal for a compromise under

Regulation No 2187/93 from those who, like the applicant, had not received a quota and consequently were not covered by such a compromise arrangement. It follows that the applicant's name was included on that list in error.

89 However, such an error was not capable of leading the applicant to believe that he was entitled to take advantage the undertaking given in the Communication of 5 August 1992 and that the limitation period in respect of his request had been interrupted with effect from 31 March 1989. When the list in question was sent, on 10 September 1993, the applicant was already aware that he was not entitled to take advantage of the compromise offer provided for in Regulation No 2187/93 and that he was therefore not concerned by the abovementioned undertaking.

90 Third, the defendants' position as regards the limitation period in respect of the present action cannot constitute discrimination by comparison with the Commission's attitude to the SLOM producers who received offers of compensation, since, as just pointed out (see paragraph 88 above), the applicant's position is different from that of those entitled to take advantage of Regulation No 2187/93.

91 Fourth, as regards the applicant's assertions concerning the statements allegedly made by Mr Booss, it is sufficient to observe that they are not supported by any evidence.

92 It follows that only the bringing of the action on 14 February 1994 could have interrupted the limitation period. None the less, by letter of 22 July 1992 (see paragraph 22 above), the Council stated that it regarded the letter of 14 July 1992, *vis-à-vis* the applicant and the other producers who had not yet brought an action, as a prior application for the purpose of Article 43 of the Statute of the Court of Justice and that it waived the right to invoke the limitation period between that date and 17 September 1992 (in other words until the expiry of a three-month period from the publication in the *Official Journal of the European*

Communities of the operative part of *Mulder II* on 17 June 1992). That was consistent with the practice of the institutions at that time, which was to send letters to that effect to producers who submitted to them requests to make good the damage sustained by them.

93 It is therefore necessary to determine the effects of the undertaking by the institutions not to invoke the limitation period, which encouraged the producers, in return, not to institute proceedings.

94 It cannot be accepted, as the institutions contend, that, merely as a result of the applicant's not bringing an action within the limitation period laid down in Article 43 of the Statute of the Court of Justice, after 17 September 1992, the limitation period resumed running on 14 July 1992, as if the undertaking by the institutions had not been given. That undertaking was a unilateral act of the institutions intended to encourage the applicant not to bring an action. The defendants cannot therefore rely on the fact that the applicant behaved in a manner which worked exclusively to their benefit.

95 In those circumstances, the limitation period was suspended from 14 July 1992, the date stated in the letter sent by the Council to the applicant, until 17 September 1992.

96 According to the case-law (*Hartmann*, cited above, paragraph 140), the period for which compensation is payable is the five years preceding the date on which the limitation period was interrupted, namely 14 February 1994. However, since the limitation period was suspended between 14 July 1992 and 17 September 1992, that is to say for two months and three days, the period for which compensation is payable is that between 11 December 1988 and the day on which the present judgment is given.

Quantum of damages

Arguments of the parties

97 As regards the calculation of the damage, the applicant claims that he is entitled to compensation in a higher amount than that offered to SLOM producers pursuant to Regulation No 2187/93. Compensation for the damage he claims to have suffered should include, in addition to the loss of profits resulting from the refusal to grant him a milk quota, the cost of purchasing a replacement quota, and comes to NLG 2 895 916.18, together with default interest at the rate of 8% per annum from 19 May 1992.

98 As regards the Commission's alternative claim that the Court should grant the parties a 12-month period to negotiate the quantum of compensation, the applicant replies that as the questions in issue were resolved in *Mulder and Others* v *Council and Commission*, cited above, the period granted should be much shorter.

99 The defendants contend that the Court must confine itself to determining the liability of the Community for the damage relied on by the applicant and therefore reserve their submissions concerning the quantum of damage.

100 In any event, the Council disputes the amount claimed by the applicant in that it is inflated and does not correspond to the criteria laid down in *Mulder II*. It also disputes that default interest is payable in respect of a period prior to the delivery

of the judgment terminating the present proceedings and contends that the rate claimed is excessive.

Findings of the Court

101 When the proceedings in the present case were resumed, the parties were invited to concentrate on the problem of the existence of entitlement to damages, first because the quantum of damages depends on the period during which the damage sustained by the applicant is found by the Court to have to be made good by the Community and, second, in order to provide the parties with the opportunity to negotiate the amount of compensation according to the criteria laid down by the Court of Justice in *Mulder and Others* v *Council and Commission*, cited above.

102 In those circumstances, the Court asks the parties to attempt to reach, within six months, an agreement on this point in the light of this judgment and of the explanations contained in the judgment in *Mulder and Others* v *Council and Commission*, cited above, as regards the manner in which the damage is to be calculated. In the event of failure to reach agreement, the parties shall submit to the Court within that period their quantified claims.

103 None the less, in order to put the applicant in the position in which he would have been had Regulation No 857/84 not been vitiated by illegality, and having regard to the fact that throughout the period during which the additional levy scheme was in force the applicant is unable to produce milk not subject to that levy without first obtaining a reference quantity, the amount of the compensation to be awarded to him must also take into account the price of a replacement quota equivalent to the one he should have obtained pursuant to Regulation No 857/84.

Costs

104 Having regard to what has been stated in paragraph 102, the decision as to costs must be reserved.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber),

by way of interim decision, 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 11 December 1988 and ending on the date of delivery of this judgment. That amount must include the purchase price of a reference quantity equivalent to the one the applicant should have obtained pursuant to Regulation No 857/84;

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

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

5. Reserves the costs.

Tiili Moura Ramos Mengozzi

Delivered in open court in Luxembourg on 31 January 2001.

H. Jung
Registrar

P. Mengozzi
President