

## Joined Cases T-195/94 and T-202/94

**Friedhelm Quiller and Johann Heusmann**

**v**

**Council of the European Union  
and Commission of the European Communities**

(Action for damages — Non-contractual liability — Milk —  
Additional levy — Reference quantity — Regulation (EEC) No 2055/93 —  
Compensation for producers — Limitation period)

Judgment of the Court of First Instance (First Chamber, Extended Composition), 9 December 1997 ..... II - 2250

### Summary of the Judgment

1. *Non-contractual liability — Conditions — Legislative measure involving an economic policy choice — Sufficiently serious breach of a superior rule of law for the protection of individuals — Abnormal and special damage*  
(EC Treaty, Article 215, second para.)
2. *Non-contractual liability — Conditions — Legislative measure involving an economic policy choice — Sufficiently serious breach of a superior rule of law for the protection of individuals — Additional levy on milk — Producers who have taken over a holding encumbered by a non-marketing undertaking and, as a result of an illegal anti-accumulation rule, are deprived of any special reference quantity — Principle of the protection of legitimate expectations — Infringement — Liability incurred*  
(EC Treaty, Article 215, second para.; Council Regulations Nos 1078/77, 857/84 and 764/89)

3. *Actions for damages — Limitation period — Starting point — Liability in respect of the anti-accumulation rule laid down by Regulation No 857/84 entailing non-allocation of a special reference quantity to milk producers who have taken over a holding encumbered by a non-marketing undertaking — Date to be taken into account*

(EC Treaty, Arts 178 and 215; EC Statute of the Court of Justice, Art. 43; Council Regulations Nos 1078/77, 857/84 and 764/89)

1. The Community's non-contractual liability for damage caused by the institutions, provided for in the second paragraph of Article 215 of the EC Treaty, is not incurred unless a set of conditions relating to the illegality of the conduct complained of, the occurrence of actual damage and the existence of a causal link between the unlawful conduct and the harm alleged are all fulfilled. As regards liability arising from legislative measures, the conduct with which the Community is charged must, more particularly, constitute a breach of a superior rule of law for the protection of individuals. If the institution has adopted the measure in the exercise of a wide discretion, as is the case in relation to the common agricultural policy, that breach must also be sufficiently serious. Such a breach occurs when the institutions manifestly and seriously disregard the limits of their discretionary power without demonstrating the existence of public interest of a higher order. A breach of that kind occurs where the Community legislature fails to take into consideration a clearly distinct category of economic operators, particularly if the measure taken is unforeseeable and falls outside the bounds of normal economic risks.

2. The prescribed conditions for the non-contractual liability of the Community to

be incurred are met in the case of the anti-accumulation rule in the second indent of Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89 adopting general rules for the application of the additional levy on milk, by virtue of which producers who have taken over holdings encumbered by non-marketing undertakings under Regulation No 1078/77 may benefit from a special reference quantity of the kind referred to by Regulation No 764/89 only if they have not previously received, in respect of other land not encumbered by a non-marketing or conversion undertaking, a reference quantity under Article 2 of Regulation No 857/84.

The provision concerned involves a sufficiently serious breach of the principle of protection of legitimate expectations, which is a superior rule of law for the protection of individuals. More particularly, the Community legislature not only failed to take into consideration a clearly distinct category of economic operators, since the situation of producers who are deprived of any special reference quantity following the takeover of holdings encumbered by undertakings signed under Regulation No 1078/77 was distinct from that of producers who had

directly participated in the scheme provided for by that regulation, but also adopted an unforeseeable measure that was not within the bounds of normal economic risks, since the producers concerned were legitimately entitled to expect to resume marketing on the expiry of those undertakings and the nature and duration of the unavailability to them of any special reference quantity are factors which give rise to a very considerable sacrifice.

3. The limitation period for actions to establish non-contractual liability on the part of the Community, laid down by Article 43 of the Statute of the Court, cannot begin 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. As regards the harm suffered by producers of milk or dairy products who, after they took over holdings encumbered by non-marketing undertakings under Regulation No 1078/77, were unable to benefit, in view of the anti-accumulation rule laid down by the second indent of Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, from any special reference quantity under

Regulation No 764/89, the limitation period began to run on the day on which, following expiry of the non-marketing undertakings to which the producers in question had been subrogated, the latter would have been able to deliver milk produced on the holdings taken over if a reference quantity had not been denied to them in pursuance of Regulation No 857/84, that is to say, on the date of application to them of the latter regulation, as initially drafted, and neither the annulment of Regulation No 857/84 nor a finding that it was invalid constituted a necessary precondition for them to obtain reparation.

The damage to be redressed is not damage caused instantaneously but damage which occurred from day to day over a period of time, as a result of the maintenance in force of an unlawful measure: consequently, the time-bar under Article 43 of the Statute applies, having regard to the date of the event which interrupted the limitation period, to the period preceding that date by more than five years and does not affect rights which arose during subsequent periods.