JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
4 February 1998 *

In Case T-246/93,

Günther Bühring, residing at Elsfleth (Germany), represented by Hagen Lichtenberg, Bergiusstraße 11, Bremen (Germany),

applicant,

v

Council of the European Union, represented by Arthur Brautigam, Legal Adviser, acting as Agent, assisted by Hans-Jürgen Rabe and Georg M. Berrisch, Rechtsanwälte, Hamburg, and members of the Brussels Bar, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

and

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

defendants,

* Language of the case: German.

APPLICATION pursuant to Article 178 and the second paragraph of Article 215 of the EEC Treaty for compensation for the losses 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 (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),

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

Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the hearing on 25 June 1997,

gives the following

Judgment

1 In 1977, in order to reduce 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, hereinafter 'Regulation No 1078/77'). Under that regulation producers were given the opportunity of

entering into an undertaking not to market milk or to convert their herds for five years in return for payment of a premium.

2 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 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, hereinafter '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 No 804/68 (OJ 1984 L 132, p. 11, hereinafter 'Regulation No 1371/84').

4 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 Regulation No 857/84, as supplemented by Regulation No 1371/84, invalid on the ground that it infringed the principle of protection of legitimate expectations.

5 In order to comply with those judgments, the Council adopted Regulation (EEC) No 764/89 of 20 March 1989 amending Regulation No 857/84 adopting general rules for the application of the levy referred to in Article 5c of Regulation No 804/68 in the milk and milk products sector (OJ 1989 L 84, p. 2, hereinafter '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').

6 In the meantime, one of the producers who had brought the action which had led to Regulation No 857/84 being declared invalid had, with other producers, instituted proceedings 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.

7 By judgment of 19 May 1992 in Joined Cases C-104/89 and C-37/90 *Mulder* 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 in which to reach agreement on the amount of compensation. When the parties failed 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.

8 In view of the large number of producers affected and the difficulty in negotiating individual settlements, the Council and the Commission published Communication 92/C 198/04 on 5 August 1992 (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 EEC Statute of the Court of Justice (hereinafter 'the Statute'). However, that undertaking was made subject to the proviso that entitlement to compensation had not already been barred through lapse of time on the date of publication of the Communication or on the date on which 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.

Background to the dispute

9 On 30 September 1979 the applicant, a milk producer in Germany, entered into an undertaking to convert his cattle herd pursuant to Regulation No 1078/77.

10 The applicant's undertaking, which came to an end on 29 March 1984, covered the reference year adopted under Regulation No 857/84. Since he had produced no milk in that year, the applicant was ineligible for a reference quantity and, as a result, unable to market any quantity of milk exempt from additional levy.

11 The applicant was indebted to a number of banks; he was unsuccessful in discharging his liabilities, and on 25 March 1986 his creditors proceeded with the forced sale of his holding.

12 On 26 June 1989, following the entry into force of Regulation No 764/89, the applicant applied for a specific reference quantity. That application was rejected by decision of the Weser-Ems Chamber of Agriculture of 28 June 1989, on the ground that the applicant no longer had an agricultural holding. Following the rejection on 3 December 1992 of an administrative complaint, an action was brought against that decision on 29 December 1992 before the Verwaltungsgericht (Administrative Court) Oldenburg.

13 The applicant also brought a claim for damages against the Weser-Ems Chamber of Agriculture, by which he sought compensation for the loss suffered as a result of errors allegedly committed by an employee of that Chamber in the context of registration of his application for a conversion premium. After that action was declared time-barred by the Landgericht (Regional Court) and the Oberlandesgericht (Higher Regional Court) Oldenburg, the case was brought before the Bundesgerichtshof (Federal Court of Justice).

14 Against that background, the applicant brought the present proceedings under Articles 178 and 215 of the EEC Treaty, seeking compensation for the damage suffered as a result of the fact that no provision was made by Regulation No 857/84 for the grant of a reference quantity to producers in his situation.

Procedure

15 The application was lodged at the Court of Justice on 30 April 1993. By application lodged on the same day, the applicant applied for legal aid.

16 By decision of the Court of Justice of 14 September 1993 the proceedings were stayed pending delivery of final judgment in *Mulder II* (see paragraph 7 above).

17 By order of 27 September 1993 the Court of Justice referred the case to the Court of First Instance pursuant to Article 3 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21). The case was registered in the Court of First Instance under number T-246/93.

18 Following the adoption of measures of organisation of procedure in the milk quota cases, the Court of First Instance ordered the resumption of the procedure by order of 14 September 1994.

19 The written procedure closed on 16 February 1995 with the lodging of the rejoinder.

20 By order of 4 December 1995 the Court of First Instance granted the applicant legal aid.

21 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber) decided to open the oral procedure without any preparatory measures of inquiry. The parties presented oral argument at the hearing on 25 June 1997.

Forms of order sought by the parties

22 The applicant claims that the Court should:

— order the defendants to pay him compensation in the sum of DM 2 362 400, consisting of DM 1 500 000 for the loss of the holding as a result of its forced sale, DM 504 000 for the loss of the profit which he could have made from leasing the reference quantity and DM 358 400 representing the value of that reference quantity denied to him, together with interest at 8% per annum from delivery of the judgment;

— order the defendants to pay the costs.

23 The Council and the Commission contend that the Court should:

— dismiss the application as inadmissible;

— alternatively, dismiss the application as unfounded;

— order the applicant to pay the costs.

Admissibility

Lack of capacity to be sued

Arguments of the parties

24 The defendants observe that, as is apparent from the relevant case-law (Joined Cases 63/72 to 69/72 *Werhahn* v *Council* [1973] ECR 1229, paragraphs 6 to 8), it is only the Community which can be held liable and thus act as defendant in an action based on Article 215 of the Treaty. Consequently, inasmuch as the application designates the Council and the Commission as defendants, the action has been brought against institutions which do not have the capacity to be sued.

25 The applicant has not replied to that plea of inadmissibility.

Findings of the Court

26 It is settled case-law that, where the liability of the Community is involved by reason of the act of one or more of its institutions, it is represented before the Community judicature by the institution or institutions which are alleged to be responsible for the matter giving rise to liability. The fact that an action is brought against the institutions and not specifically against the Community will not render the application inadmissible where it does not affect the rights of the defence (*Werhahn* v *Council*, cited above, paragraphs 7 and 8).

27 In the present case, the defendants have not alleged that their rights have been affected. The plea of inadmissibility must therefore be rejected.

Infringement of Article 44 of the Rules of Procedure

Arguments of the parties

28 The institutions maintain that the applicant is simultaneously claiming compensation for the loss resulting from his own non-utilisation of a reference quantity and for the loss resulting from the non-utilisation of that quantity by lessees. They contend that this amounts to an aggregation of two mutually exclusive heads of damage. Consequently, in so far as it relates to the value of the reference quantity denied to the applicant, the application contains no conclusive pleas in law and is inadmissible under Article 44 of the Rules of Procedure.

29 The applicant submits that a reference quantity awarded under Regulation No 857/84 has an intrinsic economic value that is antecedent to its exploitation value and which does not cease to exist when it is temporarily exploited by a third party. Since the applicant did not receive a reference quantity under that regulation, the damage suffered by him is not restricted to the loss of earnings resulting

from the non-exploitation of that reference quantity but also includes its intrinsic value. At all events, the application contains all the requisite particulars relating to that aspect of the loss suffered.

Findings of the Court

30 According to Article 44(1)(c) of the Rules of Procedure, an application must state the subject-matter of the proceedings and must contain a summary of the pleas in law on which it is based.

31 The application in the present case fulfils the requirements of that provision.

32 In that document the applicant refers to Articles 178 and 215 of the Treaty as constituting the legal basis for the application, clearly puts in issue the defendants' liability arising from the application of Regulation No 857/84, as supplemented by Regulation No 1371/84, sets out the facts of the case, specifies the three heads of damage for which he claims compensation, provides figures in respect of each of them and applies for an order requiring the defendants to pay the corresponding sums.

33 The question whether the applicant is entitled simultaneously to apply for compensation for the loss arising from his own non-utilisation of a reference quantity and for the loss arising from the non-utilisation of that quantity by lessees does not go to any issue of admissibility but to the substance of the case and must, if need be, be determined in the context of that matter.

34 In those circumstances, the objection of inadmissibility must be rejected.

Liability of the Community

Arguments of the parties

35 The applicant states that he is one of a group of farmers who have suffered loss as a result of the fact that Regulation No 857/84 did not provide for the allocation of a reference quantity to farmers who, pursuant to undertakings given under Regulation No 1078/77, supplied no milk during the reference year. He claims that the facts of the case are therefore the same as those in *Mulder II* and that the defendants are liable for the damage caused.

36 The applicant maintains that the forced sale of his holding did not result from any over-indebtedness or mismanagement on his part. He states that his holding was perfectly viable at the time when the conversion undertaking expired. Relying on inspection reports of the Weser-Ems Chamber of Agriculture and of the Lower Saxony Agricultural Federation, he maintains that he could have resumed milk production. He acknowledges that he was driven into debt as a result of the losses which he suffered following submission of his application for a conversion premium, but considers that responsibility for those losses lies with the defendants themselves in the context of the implementation of Regulation No 1078/77.

37 Consequently, there is a sufficient causal link between the non-allocation of a reference quantity and the forced sale of the applicant's holding. A reference quantity was an essential prerequisite for the continued operation of the holding, and the absence of such a quantity meant that the holding ceased to have any *raison d'être*.

38 The defendants contest the applicant's claims.

39 As regards the damage relating to the loss of the holding in consequence of its sale by auction, they maintain that the criteria laid down in the second paragraph of Article 215 of the Treaty are not fulfilled. Responsibility for that damage lies with the applicant alone; in any event, there is no causal link in the present case between Regulation No 857/84 and the loss to which it allegedly gave rise, as required by the relevant case-law.

40 The forced sale of the farm was brought about solely by the economic decisions which the applicant took in 1979. By the beginning of 1984, he was so heavily indebted that he could not possibly have made the investments needed in order to resume production on the holding. That conclusion is confirmed by the decision of the Amtsgericht (District Court) Brake of 16 May 1986 ordering that it be sold by auction, from which it is apparent that the applicant's debts were not covered by the value in 1984 of the items listed in the inventory of the assets of the holding.

41 In those circumstances, the applicant's holding was no longer viable when the conversion undertaking expired in March 1984. Consequently, the refusal to allocate the applicant a reference quantity had no subsequent effect on the economic decline of his holding.

42 Having regard to the applicant's economic situation, the fact that he was not allocated a reference quantity could, at most, merely have contributed to the aggravation of his financial difficulties and to the forced sale of the holding. This is not enough, however, to cause the Community to incur liability by virtue of a legislative act.

43 The causal link is broken in that regard, in that the damage, which was brought about at least in part by a lack of foresight or mismanagement on the part of the applicant, is primarily due to the victim's behaviour (Case 169/73 *Compagnie Continentale* v *Council* [1975] ECR 117, at 135, and Case 26/81 *Oleifici Mediterranei* v *EEC* [1982] ECR 3057, at 3079).

44 As regards the second head of damage pleaded, relating to the impossibility of the applicant's leasing the reference quantity during the period from 1 April 1984 to 31 March 1993, the defendants maintain that this does not give rise to any liability to pay compensation.

45 The term for which the reference quantity could have been leased could only have covered the period from the expiry of the conversion undertaking to 25 March 1986, the date of the forced sale of the holding. During that period the leasing of reference quantities was not permitted by Article 5c of Regulation No 804/68 in conjunction with Article 7 of Regulation No 857/84; that situation was held by the Court of Justice, in its judgment in Case C-44/89 *von Deetzen* [1991] ECR I-5119, not to be contrary to the principle of protection of legitimate expectations. It follows that it was not possible for the applicant to lease the quantity in question during the period when he might have enjoyed the benefit of it.

46 As regards the third head of damage pleaded, corresponding, in the applicant's submission, to the value of the reference quantity denied to him, the defendants contend that this cannot cover more than the loss of earnings arising from the fact that it was impossible for him to use the reference quantity himself. They observe, however, that, following the forced sale of his holding in 1986, the applicant was no longer in a position to produce milk or, consequently, to obtain a reference quantity for the ensuing milk-marketing years.

Findings of the Court

47 It follows from *Mulder II* that the Community incurred liability *vis-à-vis* each producer who suffered reparable injury through 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) (see also the judgment of the Court of First Instance in Case T-20/94 *Hartmann* v *Council and Commission* [1997] ECR II-595, paragraph 71).

48 In the light of the documents before the Court, which the defendants have not challenged, the applicant is in the same situation as that of the producers referred to in *Mulder II*. Because he had entered into a conversion undertaking pursuant to Regulation No 1078/77, he was refused, as a result of Regulation No 857/84, the grant of a reference quantity when that undertaking expired.

49 In those circumstances, he is entitled to compensation from the defendants for the loss suffered by him as a result of the application of Regulation No 857/84.

50 It is clear from *Mulder II* that reparable damage is damage which results from the deprivation of a reference quantity during the period between the date on which Regulation No 857/84 in its original version was applied to each producer and the date on which those producers were allocated a specific reference quantity pursuant to Regulation No 764/89.

51 In the present case, however, although the applicant was unlawfully denied a reference quantity pursuant to Regulation No 857/84 in 1984, he was no longer entitled to such a quantity after 25 March 1986, the date of the forced sale of the holding in respect of which a conversion undertaking had been entered into in 1978. Since a reference quantity is allocated in relation to a specific parcel of land (Case C-98/91 *Herbrink* [1994] ECR I-223, paragraph 13, and Case C-15/95 *EARL de Kerlast* v *Unicopa* [1997] ECR I-1961, paragraph 17), the applicant was no longer entitled to such a quantity once he ceased to be the owner of land qualifying for it.

52 It follows that the reparable damage suffered by the applicant as a result of his having been denied that quantity can only be the damage sustained by him up to 25 March 1986.

53 Before the extent of the applicant's right to compensation can be determined, it is necessary to consider whether and to what extent the applicant's claims are barred through lapse of time.

Time-bar

Arguments of the parties

54 The applicant maintains that the defendants are not entitled to plead expiry of the limitation period, since they waived the right to do so in their Communication of 5 August. The institutions are required by virtue of the rule of law to adhere to the positions adopted by them, on which the producers must be able to place reliance. It is not open to the institutions, therefore, subsequently to plead expiry of the limitation period.

55 The applicant considers that in any event his rights are not barred through lapse of time. He submits that, 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, hereinafter '*Birra Wührer and De Franceschi*'), the limitation period does not begin to run until the victim becomes aware of the damage and of the act giving rise to it. The victim must be in a position to appreciate the factual and legal circumstances of the matter. In the present case, that was not possible prior to publication of the judgment in *Mulder II*, the time at which it became clear that the institutions were liable to the producers.

56 Even assuming that time started to run on the date of the forced sale of the holding in 1986, the limitation period was interrupted by Regulation No 764/89, which was adopted following delivery of the judgment in *Mulder I* and was designed to settle the actions for compensation resulting from the lacunae in the original version of Regulation No 857/84.

57 The applicant further relies in that regard on the proceedings brought by him before the national court of competent jurisdiction against the decision refusing him a reference quantity under Regulation No 764/89 (see paragraph 12 above).

58 Lastly, he maintains that his application cannot be barred through lapse of time, in view of the fact that, from 1992 onwards, following delivery of the judgment in *Mulder II*, he approached the Commission with a view to negotiating an amicable settlement.

59 The defendant institutions contend that the action for compensation for the damage alleged is barred through lapse of time. The limitation period laid down in Article 43 of the Statute starts to run, in matters concerning damage caused by a legislative act, once the applicant has suffered ascertainable injury (*Birra Wührer and De Franceschi*, paragraphs 10).

60 In the present case, the alleged damage was caused by Regulation No 857/84. It was already sufficiently ascertainable when that regulation entered into force on 1 April 1984, inasmuch as it was clear, as from that date, that the applicant would not obtain a reference quantity. At the very least, time had started to run on 26 March 1986, the day after the forced sale of the holding. Consequently, the applicant's action was barred on 26 March 1991, five years after the sale and prior to the institution of the proceedings.

61 Contrary to the applicant's submission, neither the date on which the Court of Justice found, in *Mulder I*, that Regulation No 857/84 was invalid nor the date on which, in *Mulder II*, it held that compensation was payable can constitute the point in time at which the limitation period started to run. In that regard, the sole factor to be taken into consideration is knowledge of the act giving rise to the damage; awareness that it has been declared invalid, or that compensation has been held to be payable, cannot constitute a material consideration (judgment of the Court of Justice in Case 145/83 *Adams* v *Commission* [1985] ECR 3539, paragraph 50).

62 The defendants also maintain that only the institution of proceedings in good time would have been enough to interrupt the limitation period.

63 It is clear from the second sentence of Article 43 of the Statute that the adoption of a legal act does not bring about such an interruption. Consequently, the adoption of Regulation No 764/89 did not affect the running of time.

64 Similarly, the institution of proceedings before the national courts, which in the present case did not in any event put in issue the liability of the Community, is not enough to interrupt the limitation period.

65 As regards the Communication of 5 August, the defendants maintain that the waiver contained in that communication of the right to plead expiry of the limitation period related only to rights which had not yet become time-barred on that date or on the date on which the producer applied to one of the institutions. As it is, the applicant's claim for damages in the present case became time-barred on 26 March 1991, prior to publication of that communication, and the applicant failed to apply to the institutions in good time.

Findings of the Court

66 The limitation period laid down by Article 43 of the Statute, 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 (*Birra Wührer and De Franceschi*, paragraphs 10, and *Hartmann* v *Council and Commission*, cited above, paragraph 107).

67 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 if he had not been refused such a quantity, that is to say, from 1 April 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.

68 The applicant's argument that the limitation period did not begin to run until the date on which Regulation No 857/84 was declared invalid by the judgment in *Mulder I* is unfounded. As the Court has previously held, that 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 ignoring the fact 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 (*Hartmann* v *Council and Commission*, cited above, paragraph 128).

69 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* v

Council and Commission, 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.

70 However, since the applicant lost his holding on 25 March 1986, he was, as from that date, no longer entitled to a reference quantity (see paragraphs 51 and 52 above). Consequently, he did not suffer any injury linked to the application of Regulation No 857/84 after that date; all the damage suffered by him, including the loss of the holding, was already known. It follows that the limitation period expired five years after 25 March 1986, that is to say, on 25 March 1991.

71 The applicant did not, prior to 25 March 1991, perform any of the acts which, under Article 43 of the Statute, interrupt the limitation period, namely the institution of proceedings before the Community judicature or the prior submission of an application to the competent Community institution.

72 The proceedings before the national courts on which the applicant seeks to rely did not constitute an act interrupting the limitation period. Only the commencement of an action before the Community judicature could have had such an effect. Moreover, the proceedings in question concerned the refusal by the national authorities to allocate a reference quantity to the applicant pursuant to Regulation No 764/89. They cannot, therefore, affect the present application for compensation.

73 The applicant's assertion that he entered into negotiations with the Commission in 1992 is not borne out by the documents before the Court. In particular, the applicant has not produced any document which could have constituted a prior application within the meaning of Article 43 of the Statute.

74 Lastly, contrary to the applicant's submission, Regulation No 764/89 did not itself interrupt the period of limitation. That regulation merely provides for the allocation of a reference quantity to certain producers. It cannot, therefore, have any effect on the reparation of damage suffered prior to its entry into force. Moreover, none of its provisions expresses any intention on the part of the institutions to suspend the limitation periods then running.

75 In those circumstances, since there was no interruption or suspension of the limitation period, which expired at the latest on 25 March 1991, the proceedings brought on 8 September 1993 were initiated too late, the remedy already being barred through lapse of time.

76 It is not open to the applicant, in that regard, to deny that the defendants are entitled to plead expiry of the limitation period, on the ground that they waived the right to do so in the Communication of 5 August. In that communication, the institutions undertook not to raise such a plea provided that entitlement to compensation was not already time-barred on the date on which the Communication was published.

77 It follows that the application must be dismissed.

Costs

78 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, he must be ordered to pay the costs, as applied for by the defendants.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicant to pay the costs.

Saggio Tiili Moura Ramos

Delivered in open court in Luxembourg on 4 February 1998.

H. Jung A. Saggio

Registrar President