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

In Case T-143/97,

Gerhardus van den Berg, residing in Dalfsen (Netherlands), represented by H. Pijnacker Hordijk, lawyer, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by A.-M. Colaert and J.-P. Hix, acting as Agents, with an address for service in Luxembourg,

and

Commission of the European Communities, represented by T. van Rijn, acting as Agent, with an address for service in Luxembourg,

defendants,

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

* Language of the case: Dutch.

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 grant of a 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 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 compensation claimed by the applicants.

Facts of the dispute

14 The applicant is a milk producer in the Netherlands. As he gave a non-marketing undertaking, in the context of Regulation No 1078/77, which expired on 23 February 1985, he did not produce any milk during the reference year chosen pursuant to Regulation No 857/84. He was therefore unable to be allocated a reference quantity following the entry into force of that regulation.

15 On 1 May 1985 the applicant acquired a holding at Dalfsen (Netherlands), which he operated together with his initial holding, at Wijhe (Netherlands), for one year. He sold his holding at Wijhe on 13 May 1986.

16 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.

17 Following the *Mulder I* judgment and the adoption of Regulation No 764/89, the applicant again requested the allocation of a quota in June 1989. That request was rejected on 30 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.

18 The applicant unsuccessfully challenged before the national courts that decision rejecting his application. The decision therefore became final.

19 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 beginning to run again.

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

20 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.'

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

Procedure and forms of order sought by the parties

22 By application lodged at the Registry of the Court of First Instance on 29 April 1997, the applicant initiated the present proceedings.

23 By order of 24 June 1997, 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*).

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

25 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, it invited the parties to produce certain documents and to reply in writing to a number of questions.

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

27 The applicant claims that the Court should:

— order the Community to pay him the sum of 606 315 Netherlands guilders (NLG) by way of damages, together with default interest at the rate of 8% per annum from the day on which the application was lodged;

— order the Community to pay the costs.

28 The Council contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

29 The Commission contends that the Court should:

— dismiss the action as inadmissible;

— order the applicant to pay the costs.

Law

30 The applicant claims that the conditions which render the Community liable for the damage 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.

31 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

32 The applicant claims that the Community is liable in respect of the continuous damage which he has sustained and continues to sustain owing to the fact that the Community legislation deprived him of a quota from 1984 and that the regulations which were supposed to make that situation good made no provision for quotas for producers who planned on resuming milk production upon the expiry of their non-marketing undertaking and who voluntarily changed the holding they operated at the time of giving the undertaking (the SLOM holding) for another dairy holding.

33 The applicant observes that, according to the principle established in *Mulder I*, he was entitled to a reference quantity upon expiry of his non-marketing undertaking. Furthermore, in *Mulder II* the Court of Justice held the Community liable for the damage sustained by the SLOM producers who planned on resuming milk production upon the expiry of their undertaking but were unable to do so because they did not have a quota. He maintains that the illegality of Regulation No 857/84 caused him greater harm than a 'normal' SLOM producer (who was able to obtain a quota following the entry into force of Regulations Nos 764/89 and 1639/91) because, upon expiry of his undertaking, he changed his SLOM holding for another holding in a better situation which he could operate more efficiently.

34 In order to comply with the national legislation which allowed milk quotas to be transferred from one holding to another provided that the holder of the quota used both holdings simultaneously for milk production for at least one year, the applicant kept both holdings until 13 May 1986. He therefore satisfied the requirements of the national legislation although he did not have a quota at the time. Had he been allocated a quota, he would have been able to transfer it to his new holding.

35 The applicant stresses that at that time it was impossible to know whether SLOM producers would eventually be able to claim a quota or on what conditions a quota would be allocated. Following the entry into force of Regulations Nos 764/89 and 1033/89 it became clear that the allocation of a quota was subject to the condition that the producer still had his SLOM holding, in whole or in part. The applicant states that at the time when he purchased his second holding and then sold the first he had no reason to assume that such a condition would be imposed. He refers to the judgment in *Spagl*, cited above, and more specifically to the Opinion of Advocate General Jacobs in that case (at [1990] ECR I-4554), and claims that it would be contrary to the principle of protection of legitimate expectations to apply that condition to him.

36 According to the judgments in *Mulder I* and *Mulder II*, the transfer of a SLOM holding shows, as a general rule, that the producer did not genuinely intend to resume milk production, and therefore that he could not rely on an infringement of his legitimate expectation. However, the fact that a SLOM producer no longer has a SLOM holding does not in itself provide grounds for precluding Community liability, particularly where in fact the producer has always manifested the intention of resuming milk production on a permanent basis.

37 The defendants submit that the applicant's claim is unfounded in that it relates to a period after he sold the SLOM holding in 1986.

Findings of the Court

38 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).

39 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).

40 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 (see *Mulder I*, paragraph 24, and *Von Deetzen*, paragraph 13).

41 The applicant claims to have sustained damage caused by the unlawful deprivation of a reference quantity which is the consequence of the application of Regulation No 857/84. The damage is alleged to extend over a period commencing on 23 February 1985, when his non-marketing undertaking expired, and, as he has never obtained a quota, lasting until now.

42 As regards the claim for compensation for damage in respect of the period between 23 February 1985 and 13 May 1986, 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 and that, in

accordance with the case-law just cited, the corresponding damage is attributable to the Community.

43 As regards the damage claimed to have been sustained after 13 May 1986, on the other hand, it is necessary to consider to what extent that damage was a consequence of the initial refusal to grant the applicant a quota in 1985.

44 The applicant transferred his SLOM holding in 1986 and transferred production to another holding for reasons of economic efficiency. Clearly, that decision on the applicant's part, taken of his own free will, had no connection with the refusal to grant him a quota upon the expiry of his non-marketing undertaking in 1985.

45 Furthermore, it follows from Article 7(1) of Regulation No 857/84, as amended by Council Regulation (EEC) No 590/85 of 26 February 1985 (OJ 1985 L 68, p. 1), in conjunction with Article 7 of Regulation No 1546/88, that even in the situation of a milk producer who had not given a non-marketing or conversion undertaking, the possibilities of transferring a quota from one holding to another were limited either to cases where land was transferred to the public authorities and/or for public use (Article 7(1)), or to those where rural leases were due to expire and could not be renewed (Article 7(4)).

46 Therefore, even supposing it were true that in 1985/1986 producers with a reference quantity were able to transfer it in accordance with Netherlands administrative practice, that situation would not have been one with which the Community legislature was concerned and it would have been for the Netherlands authorities, should the need arise, to accord the applicant non-discriminatory treatment.

47 Next, it should be observed that, following the entry into force of Regulation No 764/89, the applicant's application for a quota under that measure was rejected pursuant to Article 3a(1) of Regulation No 1546/88 (see paragraph 7 above), which provides that in order to be granted a special reference quantity producers must be able to prove that on the date of making such application they still operate the SLOM holding, in whole or in part.

48 Contrary to what the applicant claims, however, and as the Court of Justice has already held on a number of occasions (see, in particular, Case C-98/91 *Herbrink* [1994] ECR I-223), that requirement merely establishes in relation to special reference quantities the principle laid down in Article 7(1) of Regulation No 857/84 that the reference quantity is transferred with the land in respect of which it was allocated (paragraph 13). In those circumstances, the applicant cannot maintain that the application of that requirement in his case constitutes an infringement of the principle of protection of legitimate expectations in that he could not foresee at the time of transferring his SLOM holding that such a condition would be imposed.

49 Since the sale of the applicant's SLOM holding was not the consequence of his having been unlawfully refused a quota in 1985, and since the circumstances of the sale were not such that it was covered by the possibilities of transfer provided for in Regulation No 857/84, the reasons for which the applicant was unable to obtain a quota under Regulation No 764/89 and the consequent harm cannot be attributed to the Community.

50 It follows that the damage sustained by the applicant as a result of being deprived of a reference quantity can only be that incurred up to 13 May 1986.

51 It is therefore necessary to consider whether and to what extent the applicant's claim is time-barred.

Limitation

Arguments of the parties

52 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.

53 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.

54 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 running of time.

55 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 who were entitled to claim compensation and also the claims which were already time-barred. The applicant therefore requests that the defendants produce that table to the Court and, should they refuse to do so, that the Court order that it be produced.

56 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.

57 The defendants contend that the applicant's claim has been wholly time-barred since 13 May 1991. As the reparable damage sustained by the applicant ceased on 13 May 1986, the five-year limitation period provided for in Article 43 of the Statute of the Court of Justice expired on 13 May 1991, in the absence of a measure interrupting the limitation period before that date.

Findings of the Court

58 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 (Case T-20/94 *Hartmann* v *Council and Commission* [1997] ECR II-595, paragraph 107).

59 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 23 February 1985, 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.

60 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.

61 However, since the applicant sold his SLOM holding on 13 May 1986, he was, as from that date, no longer entitled to a reference quantity (see paragraph 7 above). Since it has been held that the harm which he claims to have sustained following that sale has no connection with the application to him of Regulation No 857/84, the limitation period expired five years after 13 May 1986, that is to say on 13 May 1991, unless it was interrupted before that date.

62 Under Article 43 of the Statute of the Court of Justice, 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).

63 It follows that the applicant cannot rely, for the purposes of interruption of the limitation period provided for in Article 43 of the Statute of the Court of Justice, on the letter of 31 March 1989 to the institutions, since he did not subsequently institute proceedings before the Court of First Instance.

64 The applicant 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.

65 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* v *Council and Commission*, cited above, paragraph 38).

66 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.

67 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.

68 Next, it is necessary to reject the applicant's argument based on the fact that his 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.

69 First of all, that list was sent to the national authorities in order to inform them, in case they should receive claims for compensation within 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 had been allocated a definitive reference quantity, and who were therefore entitled to receive a proposal for a compromise pursuant to Regulation No 2187/93 from those who, like the applicant, had not received a quota and consequently did not come within such a compromise arrangement. It follows that the applicant's name was included on that list in error.

70 However, such an error was not capable of leading the applicant to believe that he was entitled to take advantage of 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.

71 Furthermore, the defendants' position as regards the limitation period in respect of the present action cannot amount to discrimination by comparison with the

Commission's attitude to the SLOM producers who received offers of compensation, since, as just pointed out (see paragraph 69 above), the applicant's position is different from that of those entitled to take advantage of Regulation No 2187/93.

72 Last, 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.

73 In those circumstances, in the absence of any interruption or suspension of the limitation period no later than 13 May 1991, the proceedings instituted on 29 April 1997 were brought at a late point, at a time when the applicant's rights to compensation were already time-barred.

74 It follows from the foregoing that the application must be dismissed as inadmissible.

Costs

75 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 (Fourth Chamber)

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the applicant to pay the costs.**

Tiili Moura Ramos Mengozzi

Delivered in open court in Luxembourg on 31 January 2001.

H. Jung
Registrar

P. Mengozzi
President