JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
20 May 1999 *

In Case T-220/97,

H & R Ecroyd Holdings Ltd, a company incorporated under English law, whose registered office is at Brinsop House, Credenhill (United Kingdom), represented by William Neville, Solicitor, Peter Duffy QC, Philippa Watson and Paul Stanley, Barristers, with an address for service in Luxembourg at the Chambers of Elvinger, Hoss and Prussen, 2 Place Winston Churchill,

applicant,

v

Commission of the European Communities, represented by Ana Maria Alves Vieira and Xavier Lewis, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

* Language of the case: English.

United Kingdom of Great Britain and Northern Ireland, represented by Michelle Ewing, of the Treasury Solicitor's Department, acting as Agent, and Kenneth Parker and Andrew Macnab, Barristers, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

intervener,

APPLICATION for annulment of the Commission decision of 16 May 1997 refusing to take action to comply with the judgment of the Court of Justice of 6 June 1996 in Case C-127/94 *R* v *MAFF* ex parte *Ecroyd* [1996] ECR I-2731,

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

composed of: R.M. Moura Ramos, President, V. Tiili and P. Mengozzi, Judges,

Registrar: J. Vanhamme, Legal Secretary,

having regard to the written procedure and further to the hearing on 11 February 1999,

gives the following

Judgment

Legal context

1 Within the framework of the common agricultural policy, the Council adopted Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products (OJ, English Special Edition 1968 (I), p. 176).

2 Because of significant and increasing surpluses in the milk and milk products sector, 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). Under Article 2(2) of that regulation, grant of the premium was conditional upon a written undertaking by the producer not to market milk or milk products from his holding during a period of five years.

3 Article 4(1) of Regulation No 1078/77 laid down the following methods for calculating and for paying non-marketing premiums:

'The non-marketing premium shall be calculated on the basis of the quantity of milk or its equivalent in milk products delivered by the producer during the 1976 calendar year.

...

50% of the premium shall be paid during the first three months of the non-marketing period.

The balance shall be paid in the third and fifth years in two equal instalments of 25% of the premium, provided the recipient satisfies the competent authorities that the undertakings provided for in Article 2 have been fulfilled.'

4 Article 6 provided that any person taking over an agricultural holding could claim the balance of the premium awarded to his predecessor, provided that he undertook in writing to continue to carry out the undertakings given by his predecessor.

5 In 1984 it became apparent that additional measures were necessary in order to restore a balance in the milk sector. Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation No 804/68 (OJ 1984 L 90, p. 10) inserted Article 5c into Regulation No 804/68. Article 5c instituted a system of additional levies payable by each producer or purchaser of milk or other milk products on quantities exceeding an annual individual reference quantity, the reference quantity being commonly known as 'milk quota'. Under that article, the sum of the reference quantities allocated in each State to the operators concerned could not exceed a guaranteed total quantity equal to the sum of quantities of milk delivered to undertakings treating or processing milk or other milk products in each Member State during a reference year.

6 The rules for the application of the levy were laid down by 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). With regard to producers, Article 2

of Regulation No 857/84 provided that the reference quantity was equal to the quantity of milk or milk equivalent delivered by the producer during the 1981 calendar year, plus 1%. However, the Member States could provide that on their territory the reference quantity was to be equal to the quantity of milk or milk equivalent delivered during the 1982 or the 1983 calendar years, weighted by a percentage established so as not to exceed the guaranteed quantity for each Member State. The United Kingdom fixed the reference quantity on the basis of the 1983 calendar year.

7 Regulation No 857/84 did not provide for the possibility of allocating milk quota to producers, commonly called 'Slom producers', who, because of their participation in the temporary non-marketing system established by Regulation No 1078/77, had not delivered or sold milk during the reference year adopted for the allocation of quotas.

8 Following the judgments in which the Court of Justice held that Regulation No 857/84 was invalid in so far as it did not provide for the allocation of a reference quantity to Slom producers (Case 120/86 *Mulder* v *Minister van Landbouw en Visserij* [1988] ECR 2321 and Case 170/86 *von Deetzen* v *Hauptzollamt Hamburg-Jonas* [1988] ECR 2355), the Council adopted Regulation (EEC) No 764/89 of 20 March 1989 amending Regulation No 857/84 (OJ 1989 L 84, p. 2), which provided for the provisional grant of a special reference quantity (or 'Slom quota') to Slom producers who satisfied certain conditions.

9 Under Article 3a(1) of Regulation No 857/84, as inserted by Regulation No 764/89, Slom producers had to request an allocation within three months from 29 March 1989.

10 Article 3a(2) fixed the special reference quantity at a particular percentage of the quantity of milk delivered by the Slom producer during the 12 calendar months

preceding the month in which the application for the non-marketing premium was made, provided that the producer had not lost his entitlement to the premium.

11 However, Article 3a(1) of Regulation No 857/84 also provided that transferees of a non-marketing premium who had obtained primary quota by other means in accordance with the conditions laid down in Article 2 of the same regulation were not entitled to Slom quota ('the anti-accumulation rule').

12 Following various judgments, and in particular the judgment in Case C-314/89 *Rauh* v *Hauptzollamt Nürnberg-Fürth* [1991] ECR I-1647, concerning the interpretation and validity of Article 3a of Regulation No 857/84, the Council adopted Regulation (EEC) No 1639/91 of 13 June 1991 amending Regulation No 857/84 (OJ 1991 L 150, p. 35), which modified the milk quota rules once again. There was thus added to Article 3a(1) of Regulation No 857/84 a second subparagraph whose second indent stated: 'Producers... who have received the holding through an inheritance or similar means following expiry of the undertaking entered into under Regulation... No 1078/77 by the originator of the inheritance, albeit before 29 June 1989, shall receive on a provisional basis, on application submitted within a time-limit of three months from 1 July 1991 a special reference quantity...'. Producers in that category are commonly known as 'Slom II producers'.

13 In Case C-264/90 *Wehrs* v *Hauptzollamt Lüneburg* [1992] ECR I-6285, the Court held that the second indent of Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, was invalid in so far as producers who had taken over a holding participating in the non-marketing system under Regulation No 1078/77 and who were accordingly transferees of non-marketing premiums were barred from the allocation of Slom quota if they had already obtained primary quota under Article 2 of Regulation No 857/84 ('Slom III producers').

14 Council Regulation (EEC) No 2055/93 of 19 July 1993 allocating a special reference quantity to certain producers of milk and milk products (OJ 1993

L 187, p. 8) was intended to cure that invalidity by providing that a transferee of a non-marketing premium who had been ineligible under Article 3a of Regulation No 857/84 as a consequence of having received a reference quantity under Article 2 of that regulation was entitled, on request made to the competent authority of the Member State concerned before 1 November 1993, to receive a special reference quantity provided that he satisfied certain conditions. One of those conditions was that the transferee of the non-marketing premium had not, as at the date of his application, transferred all or part of the holding taken over.

Facts

15 H & R Ecroyd Limited (hereinafter 'Ecroyd Limited'), which on 10 May 1993 became H & R Ecroyd Holdings Limited (hereinafter 'the applicant'), was a company acquired in 1966 by Richard Ecroyd and various family interests, including the trustees of a children's settlement created in 1965 by Richard Ecroyd for his children.

16 Ecroyd Limited was the tenant of nine farms owned by the Ecroyd family and the children's settlement trust.

17 In 1976 Ecroyd Limited and a partner, Fountain Farming, formed the partnership Credenhill Farming. Four of the nine abovementioned farms, including one known as Lyvers Ocle, were sub-let to Credenhill Farming by Ecroyd Limited.

18 Credenhill Farming was authorised to participate in a non-marketing scheme for a period of five years from 14 November 1980 to 13 November 1985. Ecroyd

Limited continued to produce milk on the five farms which it operated as tenant and in respect of which it applied for, and in 1984 obtained, primary quota under Article 2 of Regulation No 857/84 (2 001 338 kg).

19 Between 1980 and 1984 the partners in Credenhill Farming changed on several occasions. On 30 September 1984, when the two remaining partners were Ecroyd Limited and Richard Ecroyd, Credenhill Farming was finally dissolved following the retirement of the latter. The assets and business of Credenhill Farming were taken over by Ecroyd Limited. Consequently, from that date Ecroyd Limited had five holdings producing milk and four (coming from Credenhill Farming) subject to the non-marketing scheme. Since it considered itself to be bound by the non-marketing undertaking given by Credenhill Farming, Ecroyd Limited did not, during the remainder of the five-year period covered by that undertaking, produce milk on the land previously farmed by Credenhill Farming, although it gave no written undertaking to that effect.

20 Ecroyd Limited made two applications for the award of a special reference quantity for the land previously farmed by Credenhill Farming. The first application was made in August 1989 following the adoption of Regulation No 764/89 granting a right to Slom quota and the second in September 1991 following the judgments in Case C-189/89 *Spagl* v *Hauptzollamt Rosenheim* [1990] ECR I-4539, in Case C-217/89 *Pastätter* v *Hauptzollamt Bad Reichenhall* [1990] ECR I-4585 and in *Rauh*, cited above. The Ministry of Agriculture, Fisheries and Food (hereinafter 'the Ministry') rejected both applications. Ecroyd Limited then initiated proceedings against the Ministry, claiming that it was entitled to Slom quota.

21 Before the national court, Ecroyd Limited claimed first of all that, notwithstanding the fact that the other partners in Credenhill Farming had left the partnership during the period covered by the non-marketing scheme, so that it had then farmed the holding for its own account, there had been no transfer of the holding

from Credenhill Farming to it for the purposes of Article 6 of Regulation No 1078/77. Consequently, it was not necessary for it to enter into a further non-marketing undertaking, and all the more so because it was in any event bound for the whole of the period at issue by the undertaking given by Credenhill Farming. Ecroyd Limited added that it had abided in full by the terms of the non-marketing undertaking. Finally, as regards the anti-accumulation rule, it stated that the fact that it had received primary quota for a different holding could not, in the light of the judgment in *Wehrs*, cited above, operate as a bar to the grant of Slom quota in respect of the holding previously farmed by Credenhill Farming.

22 According to the Ministry, on 30 September 1984 there was a transfer from one producer to another, namely from Credenhill Farming to Ecroyd Limited. Since Ecroyd Limited had not signed a non-marketing undertaking when it took over Credenhill Farming's holding, it followed that it was not entitled to a special reference quantity. However, if Credenhill Farming and Ecroyd Limited were in fact to be regarded as the same 'producer', Ecroyd Limited would then have been in breach of its undertaking not to produce milk on its holding and would therefore have lost its entitlement to the non-marketing premium, since, during the period of the non-marketing premium scheme, it had continued milk production on the five farms which had not been sub-let to Credenhill Farming. The reasoning of the Court of Justice in *Wehrs* did not apply to the applicant because that judgment concerned only the situation of an assignee of a non-marketing premium, which was not the situation in which Ecroyd Limited found itself.

23 The Ministry added that, even if it were accepted that Regulation No 857/84, as amended by Regulation No 764/89, was invalid in so far as it excluded a producer in the applicant's situation from the grant of a special reference quantity, the Ministry did not, on any view, have the power to award a quota to the applicant before the Council had adopted the necessary measures.

24 By order of 27 October 1993 the High Court of Justice, Queen's Bench Division, referred to the Court of Justice for a preliminary ruling the following questions with regard to Ecroyd Limited's applications:

'1. Does the respondent Ministry have a power and/or duty to award a provisional special reference quantity to the applicant and/or to treat it as if it had been awarded special reference quantity:

(i) pursuant to [Regulation No 857/84] as amended by [Regulation No 764/89]; and/or

(ii) following the [judgment in *Wehrs*],

where:

(a) the applicant was a member of a partnership which farmed the holding and which gave an undertaking pursuant to a non-marketing scheme;

(b) all of the other members left the partnership before the expiry of the period of the non-marketing scheme and the holding in respect of which the non-marketing undertaking was given by the partnership was thereafter farmed by the applicant for its own account;

(c) following the departure of the other members of the partnership, the applicant did not produce milk on the holding for the remainder of the period of the original non-marketing scheme entered into by the partnership;

(d) no fresh written undertaking was given by the applicant, following the departure of the other members of the partnership, pursuant to Article 6 of [Regulation No 1078/77] to carry out the non-marketing undertaking given by the partnership;

(e) the applicant had received primary quota in respect of a separate holding.

If so, when did such power and/or duty arise?

2. If the answer to Question 1 above is that the respondent Ministry has no power and/or duty is Article 3a(1) of Council Regulation No 857/84 as amended by Council Regulation No 764/89 unlawful and invalid in so far as it excludes an applicant from an award of a special reference quantity in the circumstances set out above?

3. If the answer to Question 2 is that Article 3a(1) of Regulation No 857/84 is unlawful and invalid to the extent that it excludes the applicant from an award of milk quota, does the respondent Ministry have the power and/or duty to award milk quota to the applicant and/or to treat it as if it had been awarded special reference quantity, before the enactment of further Community legislation to cure or take account of the invalidity of the measure in question?

If so, when does or did such power and/or duty arise?

4. If the answer to the above questions is that the respondent Ministry had the power and/or duty to award a special reference quantity to the applicant and/or to treat it as if it had been awarded special reference quantity, before such time as the Council of Ministers has adopted fresh legislation and/or following the [judgment in *Wehrs*], is the applicant entitled in principle to damages from the respondent Ministry for having failed to grant him a special reference quantity?

5. If the answer to Question 4 is that the applicant is entitled to damages from the Ministry, on what basis are such damages to be assessed?'

25 By judgment of 6 June 1996 in Case C-127/94 *R* v *MAFF* ex parte *Ecroyd* [1996] ECR I-2731 ('the judgment in *Ecroyd*'), the Court of Justice held, as regards the applications for quota submitted by Ecroyd Limited:

'1. The competent national authority had no duty under... Regulation... No 857/84..., as amended by... Regulation... No 764/89..., and in particular under Article 3a(1) thereof, to award a provisional special reference quantity to producers finding themselves in the circumstances described under points (a) to (e) of Question 1, nor did it have the power to do so.

2. The competent national authority had no duty, following the [judgment in *Wehrs*], to award a provisional special reference quantity to producers finding themselves in the abovementioned circumstances, nor did it have the power to do so.

3. Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, is invalid in so far as it excludes producers finding themselves

in the abovementioned circumstances from the award of a special reference quantity.

4. Before the adoption of further Community legislation intended to cure the invalidity found, the competent national authority has no duty to award a special reference quantity to producers finding themselves in the abovementioned circumstances, nor does it have the power to do so.'

26 After delivery of that judgment, the applicant's legal representatives asked the Commission, by letter of 26 July 1996, what action it would be taking in order to comply with the judgment. As they did not receive a reply, they sent a further letter on 9 August 1996.

27 On 6 September 1996 the applicant's legal representatives had a telephone conversation with the relevant Commission officials, in the course of which the latter stated that they had determined the legal repercussions of the judgment in *Ecroyd* at an internal meeting on the previous day. In a letter of 9 September 1996 the applicant's legal representatives asked the Commission to inform them in writing of its conclusions in that regard.

28 As the Commission did not reply, the applicant's legal representatives repeated their request on 19 September 1996, referring to the telephone conversation of 6 September and to their letter of 9 September.

29 By letter of 10 October 1996 addressed to the Ministry, the Commission set out its provisional view on three questions:

— the measures necessary at Community level in order to comply with the judgment in *Ecroyd*;

— the applicant's rights to quota under the existing legislation;

— the obligations which arose for the national authorities from the judgment in *Ecroyd*.

30 As to the first question, the Commission stated that by adopting Regulation No 2055/93 it had already cured the invalidity found by the Court of Justice and that, for that reason, it was unnecessary to take further measures at Community level. As to the second question, the Commission explained that, if it were accepted that the applicant was a Slom III producer, it could obtain a quota under Regulation No 2055/93. Lastly, as regards the third question, the Commission stated that, in the light of the Court of Justice's answers to the questions referred for a preliminary ruling by the High Court, the national authorities were not obliged to award a quota.

31 In a letter sent to the applicant's legal representatives on the same day, the Commission stated that Regulation No 2055/93 was an appropriate legislative response by way of compliance with the judgment of the Court of Justice and that it was for the national authorities to examine whether or not the applicant satisfied the conditions for the award of a quota under that regulation.

32 On 8 April 1997 the Council stated, in reply to a letter sent to it by the applicant's legal representatives, that it was for the Commission to ensure that the judgment in *Ecroyd* was complied with and that, if the Commission did not submit a legislative proposal to that end, the Council was not in a position to act.

33 In a letter of 16 May 1997 the Commission confirmed the conclusions which it had provisionally stated in its letter of 10 October 1996.

Procedure and forms of order sought

34 By application lodged at the Registry of the Court of First Instance on 29 July 1997, the applicant brought the present action.

35 By order of the President of the Third Chamber of the Court of 12 May 1998, the United Kingdom of Great Britain and Northern Ireland, pursuant to its application lodged at the Registry on 11 February 1998, was granted leave to intervene in support of the form of order sought by the defendant.

36 The written procedure closed on 2 October 1998.

37 Upon hearing the Report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. However, by way of measures of organisation of procedure, the parties were requested to reply in writing to certain questions before the hearing. The parties presented oral argument and answered questions put to them by the Court at the hearing on 11 February 1999.

38 The applicant claims that the Court should:

— annul the Commission decision of 16 May 1997;

— order the defendant to pay the costs;

— order any other relief which the Court may deem fit.

39 The defendant contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Law

Arguments of the parties

40 The applicant has put forward a single plea in law, alleging infringement of Articles 155 and 176 of the EC Treaty (now Articles 211 EC and 233 EC).

41 It states that those articles impose a legal obligation on the Commission to take the necessary steps to comply with a judgment of the Court of Justice. In particular, the Commission must take measures where the Court of Justice has found that there has been an infringement of Community law. The Commission must thus reconsider the situation of the person who has been the victim of unlawful treatment. In the present case, the Commission has manifestly failed to fulfil that obligation.

42 The applicant points out that compliance with a judgment of the Court of Justice must be effective and that the institutions cannot be allowed to block compliance.

43 Finally, the obligation to ensure effective compliance with judgments of the Court of Justice is so fundamental that its breach constitutes a ground for liability on the part of the institutions for the financial losses suffered by the victim of the default. Article 176 of the Treaty does not make compensation for the damage dependent on the existence of a new fault, distinct from the unlawful measure annulled by the judgment, but provides for compensation for damage which results from that unlawful measure and which continues as a result of the refusal to comply with the judgment annulling it. The applicant has suffered serious financial loss as a result of being unlawfully deprived of the quota to which it was entitled. Those losses continue to grow and their cumulative effect is to create a risk of bankruptcy.

44 The defendant states that Regulation No 2055/93 was adopted in response to the judgment in *Wehrs* and that this regulation is an appropriate legislative response with regard to transferees of non-marketing obligations. It covers in particular the situation of Slom III producers. It would also have covered the applicant if it had been producing milk.

45 The defendant points out next that, as the Court of Justice held in the judgment in *Ecroyd*, the applicant's situation 'can be compared to that of a transferee of a premium granted under Regulation No 1078/77 who has obtained a reference

quantity under Article 2 of Regulation No 857/84'. The applicant should therefore have been classified as a 'transferee' of a non-marketing obligation within the meaning of Article 1(1) of Regulation No 2055/93 on 30 September 1984, that is to say the date on which Credenhill Farming was dissolved and its assets transferred to Ecroyd Limited. Consequently, Regulation No 2055/93 covers the situation in which the applicant was to be found at the time when the non-marketing undertaking expired.

46 Furthermore, the judgment in *Ecroyd* does not examine the position of the applicants before the national court in those proceedings *vis-à-vis* Regulation No 2055/93. In fact, Questions 1 and 3 submitted to the Court of Justice in regard to Ecroyd Limited concerned the award of a Slom III type quota before the adoption of the legislation required to amend the unlawful anti-accumulation rule.

47 The defendant concludes that Regulation No 2055/93 constitutes a proper response, in accordance with Article 176 of the Treaty, to the illegality found in the judgment in *Ecroyd*, since that illegality is the same as the one found in *Wehrs*.

48 The United Kingdom of Great Britain and Northern Ireland supports the Commission's view that the applicant is not entitled to a special reference quantity under Regulation No 2055/93 because it was not, as a matter of law or fact, a producer at the material time.

Findings of the Court

49 In accordance with settled case-law, when the Court of Justice rules in proceedings under Article 177 of the EC Treaty (now Article 234 EC) that an

act adopted by the Community legislature is invalid, its decision has the legal effect of requiring the competent Community institutions to adopt the measures necessary to remedy that illegality (Joined Cases 117/76 and 16/77 *Ruckdeschel and Ströh* v *Hauptzollamt Hamburg-St. Annen* [1977] ECR 1753, paragraph 13, and Case 300/86 *Van Landschoot* v *Mera* [1988] ECR 3443, paragraph 22). In those circumstances, they are to take the measures that are required in order to comply with the judgment containing the ruling in the same way as they are, under Article 176 of the Treaty, in the case of a judgment annulling a measure or declaring that the failure of a Community institution to act is unlawful. It is clear from the abovementioned case-law that, when a Community measure is held to be invalid by a preliminary ruling, the obligation laid down by Article 176 of the Treaty applies by analogy.

50 Furthermore, when the Commission has the necessary powers to take measures remedying the illegality found by the Court of Justice in a preliminary ruling, its obligation so to act clearly also falls within its general obligation of supervision imposed by Article 155 of the Treaty (Case 804/79 *Commission* v *United Kingdom* [1981] ECR 1045, paragraph 30).

51 In the light of those initial findings, it is necessary to examine whether the Commission was entitled to decide that all the measures required in order to comply with the judgment in *Ecroyd* had already been taken.

52 The decision by the Commission essentially relates to the following extract from the operative part of the judgment in *Ecroyd*:

'As regards Ecroyd Limited

...

3. Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, is invalid in so far as it excludes producers finding themselves in the abovementioned circumstances from the award of a special reference quantity.'

53 As the parties acknowledge, that declaration of invalidity concerns the anti-accumulation rule. The Court of Justice had already held that rule to be invalid in 1992, in its judgment in *Wehrs*. In that judgment the Court had ruled as follows: 'The second indent of Article 3a(1) of... Regulation... No 857/84..., as amended by... Regulation... No 764/89..., is invalid in so far as persons taking over a premium granted pursuant to... Regulation... No 1078/77... are barred from allocation of a special reference quantity if they have received a reference quantity under Article 2 of Regulation... No 857/84.'

54 The operative part of the judgment in *Ecroyd* does not follow the general wording of the declaration of invalidity contained in the judgment in *Wehrs*. It expressly declares that the anti-accumulation rule unlawfully excluded from the award of a special reference quantity producers finding themselves in the 'abovementioned circumstances', that is to say, in particular, 'Ecroyd Limited', to whom the national authorities had refused to award a special reference quantity in 1989 and 1991 (see paragraph 20 above). The Court of Justice makes it clear that it had been not open to the national authorities to decide otherwise (see paragraphs 1, 2 and 4 of the operative part cited in paragraph 25 above).

55 In those circumstances, when the Commission was asked by the applicant about the measures it would be taking following that judgment, it was not entitled simply to reply that the anti-accumulation rule had in the meantime been repealed. Notwithstanding the elimination, at administrative or legislative level,

of the unlawful measure, the Commission was obliged to determine whether that measure had caused the applicant damage which had to be made good (Case 76/79 *Könecke* v *Commission* [1980] ECR 665, paragraph 15). The wrong which, in accordance with the judgment in *Ecroyd*, had been done to the applicant by the application of the anti-accumulation rule could not have been righted by the adoption of Regulation No 2055/93. That regulation allowed, subject to certain conditions, a special reference quantity to be awarded to producers who had unlawfully been refused one, but it was not designed to make good harm already suffered by those producers because of the application of that rule.

56 The Commission was therefore wrong in concluding that the Community was no longer required to adopt specific measures to remedy the illegality committed *vis-à-vis* the applicant and found in the judgment in *Ecroyd*. It is not for the Court to take the place of the Commission and to specify the measures it should have taken. However, it is appropriate to point out that the obligation on the institutions to take the necessary measures to remedy illegalities found by the Community judicature requires them not only to adopt the essential legislative or administrative measures but also to make good the damage which has resulted from the unlawful act, subject to fulfilment of the conditions laid down in the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC), namely the presence of fault, harm and a causal link (Case C-412/92 P *Parliament* v *Meskens* [1994] ECR I-3757, paragraph 24; Case T-84/91 *Meskens* v *Parliament* [1992] ECR II-2335, paragraphs 78 and 79). Thus, the Commission could have initiated action with a view to compensating the applicant. It may indeed be deduced from the judgment in *Ecroyd*, read in the context of the 'milk quotas' case-law, that the conditions for non-contractual liability of the Community are satisfied.

57 First of all, the Court of Justice had held that the anti-accumulation rule was invalid because it infringed the principle of the protection of legitimate expectations (*Wehrs*, paragraph 15), a superior rule of law for the protection of individuals (see, *inter alia*, Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061, paragraph 15). Consequently, that invalidity, recorded afresh by the Court of Justice in the judgment in *Ecroyd*, constitutes a sufficiently serious fault to give rise to non-

contractual liability on the part of the Community (as was confirmed in Joined Cases T-195/94 and T-202/94 *Quiller and Heusmann* v *Council and Commission* [1997] ECR II-2247, paragraphs 53 to 57).

58 As regards, next, the existence of harm and of a causal link, it was held in the judgment in *Ecroyd* that Ecroyd Limited's situation could, at the time of its applications for quota in 1989 and 1991, be compared to that of a transferee of a premium granted under Regulation No 1078/77 who had obtained a reference quantity under Article 2 of Regulation No 857/84 (paragraph 62 of the judgment). Nor is it in dispute that the judgment in *Ecroyd*, both in the grounds and in the operative part, treats Ecroyd Limited as a milk producer for the purposes of the Community legislation. Those findings effectively invalidate the justifications for the refusals of quota (see paragraph 22 above) and thus demonstrate the existence of a causal link between the unlawful anti-accumulation rule and those refusals. Furthermore, it can hardly be disputed that a refusal of quota causes harm to a milk producer, particularly where, as in the present case, that producer or its successor resumes the marketing of milk at a subsequent stage, thereby proving that it did not abandon milk production (see, in that regard, *Mulder and Others* v *Council and Commission*, cited above, paragraph 23).

59 It follows from all of the above considerations that, by refusing to take action to comply with the judgment in *Ecroyd*, the Commission has failed to fulfil its obligation to take specific measures with regard to the applicant, as is required in order to remedy the illegality found by the Court of Justice. As a result, the contested decision must be annulled.

Costs

60 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 Commission has been unsuccessful and the applicant asked

for an order for costs against the Commission, the Commission must be ordered to bear its own costs and to pay those incurred by the applicant.

61 In accordance with Article 87(4) of the Rules of Procedure, the United Kingdom of Great Britain and Northern Ireland is to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Annuls the Commission decision of 16 May 1997 refusing to take action to comply with the judgment of the Court of Justice of 6 June 1996 in Case C-127/94 R v *MAFF* ex parte *Ecroyd* [1996] ECR I-2731;**

2. **Orders the Commission to bear its own costs and to pay those incurred by the applicant;**

3. **Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.**

Moura Ramos Tiili Mengozzi

Delivered in open court in Luxembourg on 20 May 1999.

H. Jung R.M. Moura Ramos

Registrar President