

ORDER OF THE PRESIDENT OF THE COURT
OF FIRST INSTANCE

12 January 1994 *

In Case T-554/93 R,

Abbott Trust, established in Cambridge (United Kingdom), and the other milk producers whose names and addresses are listed in the annex to the present order, represented by E. H. Pijnacker Hordijk, member of the Amsterdam Bar, and H. J. Bronkhorst, member of the Bar of the Hoge Raad der Nederlanden, instructed by Burges Salmon, Solicitors in Bristol, with an address for service in Luxembourg at the Chambers of Luc Frieden, 62 Avenue Guillaume,

applicants,

v

Council of the European Communities, represented by Arthur Brautigam, Legal Adviser, and Michel Bishop, member of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Director of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

and

* Language of the case: English.

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, and Christopher Docksey, member of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Nicola Annecchino, member of the Legal Service, Wagner Centre, Kirchberg,

defendants,

APPLICATION for suspension, for a period of three weeks from the date on which the order is given in Case T-555/93 R (order of 1 February 1994, [1994] ECR II-11), of the operation of the third paragraph of Article 14 of Council 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 (Official Journal 1993 L 193, p. 6),

THE PRESIDENT OF THE COURT
OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

makes the following

Order

Facts

- 1 By an application lodged at the Court Registry on 29 October 1993 A. Aharn, of Lower Sunville, Aropatrick (Ireland), and 588 other milk producers, including the applicants in the present proceedings for interim measures, brought an action

under Articles 173, 178 and 215, second paragraph, of the EEC Treaty seeking, first, the annulment of Articles 8(2)(a) and 14, fourth paragraph, of Council 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 (Official Journal 1993 L 196, p. 6) and, secondly, compensation for the damage which they suffered 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 (Official Journal 1984 L 90, p. 13).

- 2 By a separate application lodged at the Court Registry of 22 December 1993 a number of the applicants in the main proceedings sought, by way of interim measures, the suspension, for a period of three weeks from the date on which the order is given in Case T-555/93 R *Jones and Others v Council and Commission*, of the operation of the third paragraph of Article 14 of Regulation No 2187/93.
- 3 The defendants presented their oral observations at the hearing on 6 January 1994.
- 4 The present application for interim measures must be seen against the background of the various applications for interim measures made to the Court seeking, in substance, suspension of the operation of the fourth paragraph of Article 14 of Regulation No 2187/93.
- 5 The material facts for the purposes of the decision in the present proceedings may be summarized as follows.

- 6 By a judgment of 19 May 1992 in Joined Cases C-104/89 and C-37/90 *Mulder and Others v Council and Commission* the Court of Justice held that the Council and the Commission were bound to make good the damage suffered by the applicants as a result of the application of 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 (Official Journal 1984 L 132, p. 11), in so far as those regulations did not provide for the allocation of a reference quantity to producers who, pursuant to an undertaking given under Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (Official Journal 1977 L 131, p. 1), did not deliver any milk during the reference year adopted by the Member State concerned.
- 7 Following that judgment of the Court of Justice the Council, upon a proposal from the Commission and after obtaining the opinions of the European Parliament and the Economic and Social Committee, adopted Regulation No 2187/93, which provides for an offer of flat-rate compensation for certain producers of milk and milk products who were temporarily prevented from carrying on their trade and lays down the detailed terms and conditions for the grant of such compensation.
- 8 Article 10(1) and (2) of Regulation No 2187/93 provided that the application for compensation was to be addressed to the competent authority designated for that purpose in each Member State by 30 September 1993 at the latest. By virtue of the first paragraph of Article 14 that authority then had a maximum period of four months from the receipt of the application to make, in the name and on behalf of the Council and the Commission, an offer of compensation to the producer, accompanied by a receipt in full and final settlement.
- 9 According to the third paragraph of Article 14 of Regulation No 2187/93, failure to accept the offer within two months of its receipt means that it is not binding in the future on the Community institutions concerned, that is to say the Council and the Commission. In addition, the fourth paragraph of Article 14 provides that acceptance of the offer by the return, to the competent national authority within

the two-month period, of the duly approved and signed receipt implies the relinquishment of any claim of whatever nature against the Community institutions in respect of the loss which is the subject of the offer of compensation.

Law

- 10 Under the combined provisions of Articles 185 and 186 of the EEC Treaty and Article 4 of the Council Decision of 24 October 1988 establishing the Court of First Instance of the European Communities, the latter may, if it considers that the circumstances so require, order that application of the contested act be suspended or prescribe any necessary interim measures.

Arguments of the parties

- 11 The applicants state that a majority of them have already received an offer of compensation and that, if they wish to accept it, they must all do so within a period of two months from its receipt — and at the same time relinquish any claims against the Council and the Commission — in order to avoid losing all rights to the flat-rate compensation provided for by the regulation. In the annex to their application for interim measures the applicants produce a copy of the offer of compensation received by one of them, BGW&Co; the offer is dated 17 November 1993, which means that for that applicant, as stated in the offer itself, the final date for notifying acceptance is 18 January 1994.
- 12 Since the hearing in Case T-553/93 R is scheduled for 6 January 1994, the applicants consider it probable that the order of the President of the Court will not be given in that case before a number of them have been obliged to accept or refuse the offer of compensation.

- 13 According to the applicants, the fact that they will not have available to them the order which will be given in Case T-555/93 R before the final date for acceptance or refusal of the offer of compensation will mean that they are unable to consider the implications of that order for their personal situation and that they will be forced to take a decision which they perhaps would not have taken if they had had knowledge of it.
- 14 The applicants add, finally, that the suspension sought is of the utmost importance for them, in particular from the financial point of view, whereas there are no grounds for considering that the interests of the Community would be adversely affected by such a limited suspension.
- 15 In their oral observations at the hearing the Council and the Commission contested the applicants' claim for suspension of the operation of Article 14, third paragraph, of Regulation No 2187/93 and claimed first that, according to the information received from the United Kingdom authorities, no offer of compensation had yet been sent out and, secondly, such a suspension would infringe the principle of equality, since in other Member States some producers had already received and accepted the offer of compensation from the Community institutions.

Appraisal of the application

- 16 It should be noted, first, that a number of applications for interim measures, including that in Case T-555/93 R, seeking suspension of the operation of the fourth paragraph of Article 14 of Regulation No 2187/93 are at present pending.

The hearing in those cases has already taken place on 6 January 1994 and the respective orders will be adopted in the next few weeks.

- 17 Secondly, it appears that, if some of the applicants who have already received offers of compensation are required to reply to them before the President of the Court has ruled on the applications for suspension of the operation of Article 14, fourth paragraph, of Regulation No 2187/93, any suspension of the operation of that provision ordered by the President could not produce any effect as regards those applicants.
- 18 Acceptance of the offer means that producers must relinquish any claim against the Community institutions for the damage for which they seek compensation. On the other hand, failure to accept an offer has the consequence that it is no longer binding on the Community institutions. It follows that, if suspension of operation were granted, it could not alter the consequences which would follow necessarily from the application of the third and fourth paragraphs of Article 14 of Regulation No 2187/93 for those producers for whom the period for accepting or rejecting the offer of compensation had in the meantime expired.
- 19 In those circumstances, and having regard in particular to the limited temporal effects of the measure sought, it seems justified in the interests of proper administration of justice to order, as a protective measure, that the period laid down in the third paragraph of Article 14 of Regulation No 2187/93 shall not expire until two weeks after the date on which the order bringing to an end the interlocutory proceedings in Case T-555/93 R has been given.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The period laid down in the third paragraph of Article 14 of Council Regulation (EEC) No 2187/93 of 22 July 1993 providing for an offer for compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade shall not expire until two weeks after the date on which the order bringing to an end the interlocutory proceedings in Case T-555/93 R has been given;
2. Costs are reserved.

Luxembourg, 12 January 1994.

H. Jung

J. L. Cruz Vilaça

Registrar

President