JUDGMENT OF THE COURT (Fourth Chamber)

17 July 2008 *

In Case C-51/05 P,

APPEAL under Article 56 of the Statute of the Court of Justice, lodged on 7 February 2005,

Commission of the European Communities, represented by C. Cattabriga and L. Visaggio, acting as Agents, with an address for service in Luxembourg,

appellant,

the other parties to the proceedings being:

Cantina sociale di Dolianova Soc. coop. arl, established in Dolianova (Italy),

Cantina Trexenta Soc. coop. arl, established in Senorbì (Italy),

Cantina sociale Marmilla — Unione viticoltori associati Soc. coop. arl, established in Sanluri (Italy),

* Language of the case: Italian.

Cantina sociale S. Maria La Palma Soc. coop. arl, established in Santa Maria La Palma (Italy),

Cantina sociale del Vermentino Soc. coop. arl Monti-Sassari, established in Monti (Italy),

represented by C. Dore and G. Dore, avvocati,

applicants at first instance,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, G. Arestis (Rapporteur), R. Silva de Lapuerta, J. Malenovský and T. von Danwitz, Judges,

Advocate General: E. Sharpston,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 22 November 2007,

gives the following

Judgment

1 By its appeal, the Commission of the European Communities requests the Court of Justice to set aside the judgment of the Court of First Instance of the European Communities of 23 November 2004 in Case T-166/98 *Dolianova and Others* v *Commission* [2004] ECR II-3991 ('the judgment under appeal') in so far as, by that judgment, the Court ordered the Commission to make good the damage suffered by Cantina sociale di Dolianova Soc. coop. arl, Cantina Trexenta Soc. coop. arl, Cantina sociale Marmilla — Unione viticoltori associati Soc. coop. arl, Cantina sociale S. Maria La Palma Soc. coop. arl, and Cantina sociale del Vermentino Soc. coop. arl Monti-Sassari (herineafter collectively referred to as 'the Cantine'), following the insolvency of Distilleria Agricola Industriale di Terralba ('DAI'), by reason of the absence of a procedure that would guarantee, under the system introduced by Article 9 of Commission Regulation (EEC) No 2499/82 of 15 September 1982 laying down provisions concerning preventive distillation for the 1982/1983 wine year (OJ 1982 L 267, p. 16), payment to the producers concerned of the Community aid provided for by that regulation.

Legal framework

2 Article 5(1) of Regulation No 2499/82 sets the minimum buying-in price for wines for distillation.

3 According to the 8th recital in the preamble to Regulation No 2499/82, that price normally renders it impossible to market the products of distillation at market prices. The regulation therefore laid down a compensation procedure whereby the

intervention agency would pay fixed aid for distilled wine, the amount of which is set out in Article 6 thereof.

4 Article 9 of Regulation No 2499/82 provides:

'1. The minimum buying-in price referred to in the first subparagraph of Article 5(1) shall be paid by the distiller to the producer not later than 90 days after the entry into the distillery [of the total quantity of wine or, where appropriate, of each consignment of wine].

2. The intervention agency shall pay to the distiller the aid provided for in Article 6(1) and, where appropriate, the increase in the minimum buying-in price referred to in the second subparagraph of Article 5(1) within 90 days of submission of proof that the total quantity of wine specified in the contract has been distilled.

…

The distiller shall be required to supply the intervention agency with proof that he has paid the minimum buying-in price referred to in the first subparagraph of Article 5(1) within the period specified in paragraph 1 and, where appropriate, the increase in the said price within the period referred to in the fourth paragraph. If such proof is not submitted within 120 days of the date of submission of the proof referred to in the first paragraph, the amounts paid shall be recovered by the intervention agency. …'

5 Article 11 of Regulation No 2499/82 provides:

'1. The distiller in the case referred to in Article 9 … may ask for an amount equal to the aid referred to in the first paragraph of Article 6 to be paid to him by way of advance on condition that he has provided a security equal to 110% of the said amount in the name of the intervention agency.

2. The security shall be provided in the form of a guarantee by an establishment meeting the criteria laid down by the Member State to which the intervention agency is responsible.

3. The advance shall be paid not later than 90 days after proof is furnished that the security has been provided and in any case after the date of approval of the contract or declaration.

…'

6 Article 46 of the Statute of the Court of Justice provides:

'Proceedings against the Communities in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court or if, prior to such proceedings, an application is made by the aggrieved party to the relevant institution of the Communities. In the latter event the proceedings must be instituted within the period of two months provided for in Article 230 of the EC Treaty and Article 146 of the EAEC Treaty; the provisions of the second paragraph of Article 232 of the EC Treaty and the second paragraph of Article 148 of the EAEC Treaty, respectively, shall apply where appropriate.'

Facts of the dispute

7 The facts of the dispute, as set out in paragraphs 16 to 44 of the judgment under appeal, may be summarised as follows.

8 The Cantine, which are wine cooperatives, are producers of wine in Sardinia (Italy). In the context of preventive distillation in respect of the 1982/1983 marketing year they delivered, between January and March 1983, wine to DAI which was distilled within the time-limit laid down by the provisions of Article 4 of Regulation No 2499/82. The 90-day period laid down by Article 9(1) of that regulation within which DAI was required to pay the Cantine expired in June 1983.

9 On 22 June 1983 DAI requested the Azienda di Stato per gli Interventi nel Mercato Agricolo (the Italian intervention agency, 'AIMA') to make an advance payment of Community aid, under Article 11 of Regulation No 2499/82, in respect of the wine which had been delivered and distilled. To that end, DAI provided the security required by that provision, equal to 110% of the amount of the aid, in the form of a bond issued by Assicuratrice Edile SpA ('Assedile') in favour of AIMA. On 10 August 1983, AIMA paid the advance requested to DAI in accordance with Article 11.

10 Due to financial difficulties, DAI failed to pay, either in full or in part, the producers, including the Cantine, who had delivered wine for distillation. In October 1983 DAI applied for administration under Italian bankruptcy law. As the court to which the matter was subsequently referred, the Tribunale di Oristano (District Court, Oristano) (Italy), granted that application, DAI suspended all its payments, including those still owed to the producers who had delivered wine to it.

11 AIMA requested DAI to reimburse the Community aid, less the sums duly paid to the abovementioned producers, on the ground that DAI had not supplied it, within the time-limit laid down in Article 9(2) of Regulation No 2499/82, with proof that

it had paid the other producers the minimum buying-in price for wine within the period of 90 days after the entry into the distillery laid down in Article 9(1) thereof. As DAI did not reimburse that aid, AIMA applied to Assedile for payment of the security.

12 At the request of DAI, the Pretore di Terralba (Magistrate's Court, Terralba) (Italy) made an interim order on 26 July 1984 prohibiting Assedile from paying the security to AIMA. It gave DAI a period of 60 days within which to bring an action on the merits of the case.

13 In September 1984 DAI brought such an action before the Tribunale civile di Roma (Civil District Court, Rome) (Italy). It claimed inter alia that that court should declare that the producers were the intended ultimate recipients of the security provided by Assedile, to the extent of the sums still owed to them. It maintained that that security was intended to guarantee payment of the minimum buying-in price to producers in proportion to the amount of production delivered in the event of the distiller failing to meet its obligations. It proposed that questions concerning the interpretation of the relevant Community regulations should be referred to the Court of Justice for a preliminary ruling.

14 The Cantine, another wine cooperative and a consortium of wine cooperatives intervened in the proceedings in support of the form of order sought by DAI. They contended that the sums to which the security provided by Assedile related were due to them in proportion to the amount of wine delivered and they therefore sought a ruling from the Tribunale civile di Roma requiring Assedile to pay them the outstanding amounts of the debts owed to them by DAI, and, in the alternative, a ruling requiring AIMA to pay them those sums.

15 Meanwhile, by judgment of 27 February 1986, the Tribunale di Oristano declared DAI insolvent.

16 In its judgment of 27 January 1989, the Tribunale civile di Roma held essentially that the claims put forward by the cooperatives intervening in support of DAI were unfounded, stating in particular that Regulation No 2499/82 was easy to interpret,

like the contractual clauses concerning the security provided by Assedile in favour of AIMA, and that therefore it was not necessary to refer a question to the Court of Justice for a preliminary ruling. Having ruled out any alleged right of those cooperatives to receive the amount of the security provided by Assedile, the Tribunale civile di Roma held that DAI's insolvency proceedings constituted the appropriate framework within which the cooperatives could obtain payment of their debts.

17 On 27 September 1989 the Cantine, with the exception of Cantina sociale del Vermentino Soc. Coop. arl Monti-Sassari, appealed against that judgment to the Corte d'appello di Roma (Court of Appeal, Rome) (Italy). By judgment of 19 November 1991 that court held that the appeal was inadmissible on the grounds that the applicants had notified lodgement of the appeal, not to DAI's official receiver, but to DAI itself, which was then in insolvency, and that they had not subsequently effected proper notification within the time-limit imposed on them.

18 In the meantime, on 16 January 1990, Assedile paid the sums owing to AIMA.

19 By judgment of 28 November 1994, the Corte suprema di cassazione (Supreme Court of Cassation) (Italy) dismissed the appeal brought by the Cantine, with the exception of Cantina sociale del Vermentino Soc. coop. arl Monti-Sassari, against the judgment of the Corte d'appello di Roma.

20 The Cantine duly registered their claims among DAI's liabilities in the context of the insolvency proceedings that had been brought against it and, at the conclusion of those proceedings in 2000, took part in the distribution of assets as preferential creditors. Under that distribution they obtained payment of 39% of the acknowledged debts owed to them by DAI.

21 By letter of 22 January 1996 the Cantine called on AIMA to honour the debts owed to them by DAI, contending that AIMA had benefited from unjust enrichment through receipt of the security provided by Assedile. AIMA rejected that complaint, pointing out that it was entitled to the security and that the producers had no right

to bring a direct action against it for payment of the debts owed to them by DAI. On 16 February 1996, the Cantine brought an action before the Tribunale civile di Cagliari (Civil District Court, Cagliari) (Italy), against AIMA on the ground of unjust enrichment, which was, however, subsequently stayed in order to enable the parties to reach an amicable agreement.

22 On 13 November 1996 the Cantine lodged a complaint with the Commission in which they alleged that AIMA had infringed Community legislation, in particular Regulation No 2499/82, and requested the Commission, inter alia, to call on AIMA and the Italian Republic to pay them the amounts which they had not received by way of Community aid for the 1982/1983 wine year.

23 By letter of 25 June 1997, the Commission indicated to the Cantine that Assedile had paid the amount of security provided by it, plus interest, to AIMA on 16 January 1990. Subsequently, by letter of 8 December 1997, it informed them of the fact that AIMA had redeemed that security in February 1991 and had entered that amount into the accounts of the European Agricultural Guidance and Guarantee Fund (EAGGF) in the course of the 1991 financial year.

24 By letter of 23 January 1998, which reached the Commission on 5 February 1998, the Cantine requested the Commission to pay them the sum corresponding to the amount of the debts owed to them by DAI on the ground that the security acquired by AIMA had been refunded to the EAGGF. They argued that it was clear from the purpose of Regulation No 2499/82, which was to benefit wine producers, that the latter should be regarded as the actual and sole recipients of the aid provided for in that regulation.

25 By letter of 31 July 1998, signed by the Director-General of the Commission's Directorate-General for Agriculture, which reached the Cantine on 14 August 1998, the Commission rejected that request. It maintained that, in the present case, the aid was primarily for the benefit of the distiller in order to enable it to offset the high buying-in price of the wine. The security was provided by Assedile for the benefit of AIMA, and the producers could not claim any rights to that security.

26 In that letter, the Commission also pointed out that the approval by AIMA of the contracts entered into between the Cantine and DAI did not alter the private-law nature of those contracts, with the result that the Commission's alleged obligations towards the applicants were of a non-contractual nature. Consequently, any action against the Community was henceforth time-barred, under Article 46 of the Statute of the Court of Justice, as the amount of the security provided by Assedile was paid to AIMA on 16 January 1990 and refunded to the EAGGF during the 1991 financial year.

The proceedings before the Court of First Instance and the judgment under appeal

27 By application lodged at the Registry of the Court of First Instance on 12 October 1998, the Cantine brought an action seeking, first, annulment of the Commission's letter of 31 July 1998 under Article 173 of the EC Treaty (now, after amendment, Article 230 EC), second, a declaration that the Commission's failure to adopt a decision regarding the grant of the Community aid to the Cantine which should have been paid to them by DAI was an unlawful failure to act contrary to Article 175 of the EC Treaty (now Article 232 EC) and, third, an order that the Commission pay to the Cantine, on the ground of unjust enrichment and/or pursuant to Article 178 of the EC Treaty (now Article 235 EC), compensation equivalent to the outstanding amounts owed to them by DAI.

28 The Commission contended that the action should be dismissed as being inadmissible and, in the alternative, as unfounded.

29 By the judgment under appeal, the Court of First Instance, in paragraphs 80 and 83 thereof respectively, dismissed as inadmissible the Cantines' requests for annulment of the Commission's letter of 31 July 1998 and for a declaration that the Commission had unlawfully failed to act. It also rejected, in paragraph 84 of that judgment, the request that the Court find against the Commission on the basis of unjust enrichment.

30 On the other hand, the Court of First Instance found, in paragraph 150 of the judgment under appeal, that the claim for compensation under Article 235 EC was admissible and held, in paragraph 1 of the operative part of the judgment, that '[t]he Commission is required to make good the damage sustained by the [Cantine] following the bankruptcy of [DAI], as a result of the absence of a procedure that would guarantee, under the system introduced by Article 9 of Regulation [No 2499/82], payment to the producers concerned of the Community aid provided for in that regulation.'

31 In particular, with regard to the admissibility of the claim under Article 235 EC, the Court of First Instance, in the context of the plea raised by the Commission alleging that the proceedings against the Community for non-contractual liability were time-barred, first stated, in paragraph 129 of the judgment under appeal, that the limitation period laid down by Article 46 of the Statute of the Court of Justice could not begin to run before all the requirements governing the obligation to make good the damage had been satisfied, namely the existence of unlawful conduct on the part of the Community institutions, the fact of the damage alleged and the existence of a causal link between that conduct and the damage claimed.

32 The Court of First Instance then stated, in paragraph 130 of the judgment under appeal, that in cases in which the Community's liability stemmed from a legislative measure, as in this instance, the limitation period could not begin to run before the injurious effects of the measure had been produced and hence before the time at which the persons concerned had suffered certain damage.

33 The Court of First Instance then held, in paragraph 131 of the judgment under appeal, that, in the case under examination, the limitation period had begun to run when the damage resulting from the total or partial absence of payment of Community aid had been suffered for certain by the Cantine. It observed, in paragraph 132 thereof, that it was not disputed in the case that the last deliveries of wine by the Cantine took place in March 1983 and that DAI should have paid them the minimum buying-in price for wine under Article 9(1) of Regulation No 2499/82 not later than 90 days after the entry of the wine into the distillery, that is to say, not later than the end of June 1983.

34 In paragraph 133 of the judgment under appeal, the Court of First Instance held, however, that, in the specific circumstances of the case, the damage suffered by the Cantine at the end of June 1983 due to the total or partial absence of payment of the minimum buying-in price within the time-limit laid down could not be regarded as being certain, that is to say, imminent and foreseeable from that date on.

35 The Court of First Instance added, in paragraphs 136 and 145 of the judgment under appeal, that, in order to assess whether damage was certain, it was necessary to take account of the proceedings brought by DAI before the Italian courts specifically concerning the fate of the security provided by Assedile, in light of the complexity of the system introduced by Regulation No 2499/82 and the exceptional circumstances of the case, in which it was extremely difficult for a prudent and well-informed economic operator to be certain, before the outcome of those proceedings, that he could not obtain payment of the aid concerned by means of that security before a national court.

36 In paragraph 146 of the judgment under appeal, the Court of First Instance held that, in the case before it, the beneficiary of the security provided by Assedile was not finally decided by the national courts until after the Corte suprema di Cassazione had delivered its judgment on 28 November 1994 and that, therefore, the damage suffered by the Cantine could not have been certain before that date.

37 The Court of First Instance concluded, in paragraph 147 of the judgment under appeal, that the five-year limitation period provided for in Article 46 of the Statute of the Court of Justice could not have begun to run before 28 November 1994, with the result that the action under Article 235 EC brought in 1998 could not be considered to be out of time. It therefore stated, in paragraph 148 of the judgment under appeal, that the Commission's plea that the action was time-barred had to be dismissed and, in paragraph 150 of that judgment, ruled that the claim for compensation was admissible.

Forms of order sought before the Court of Justice

38 The Commission claims that the Court should:

— set aside the judgment under appeal in so far as it upholds the claim for compensation against it;

— by giving final judgment in the matter, dismiss the appeal as inadmissible; and

— order the Cantine to pay the costs of the present proceedings and of those incurred before the Court of First Instance.

39 The Cantine contend that the Court should:

— dismiss the appeal;

— in the alternative, if the appeal is allowed, uphold the judgment under appeal in so far as it orders the Commission to pay compensation for damage by dismissing the objection of limitation raised by the latter; and

— order the Commission to pay the costs.

The appeal

40 In support of its appeal the Commission raises a single plea alleging infringement, in paragraphs 129 to 150 of the judgment under appeal, of Article 46 of the Statute of the Court of Justice and of the principle of legal certainty.

Arguments of the parties

41 The Commission submits that the settled case-law of the Court of Justice and the Court of First Instance lays down the principle that the five-year limitation period for proceedings against the Community for non-contractual liability provided for in Article 46 of the Statute of the Court of Justice does not begin to run until the damage to be made good has materialised. If that liability has its origin in a legislative measure, the limitation period can begin to run only once the persons concerned were bound to have incurred damage which was certain in character.

42 In particular, the Commission criticises the Court of First Instance for failing to take account, in the judgment under appeal, of the fact that since 1983 Regulation No 2499/82 had caused actual damage to the Cantine by failing to provide for the possibility of Community aid being paid directly to the producer if the distiller became insolvent. The point at which that limitation period began to run should therefore have been fixed as the day on which, because of DAI's insolvency, the Cantine were unable to obtain payment of that aid within the 90-day period after the entry of the wine into the distillery provided for by that regulation.

43 According to the Commission, the Court of First Instance based its judgment, to the contrary, on the perception that the Cantine had suffered harmful effects from Regulation No 2499/82. In that regard, it submits that the Court of First Instance, which considered as being insufficient the fact that the Cantine knew that they had suffered damage stemming from the application of that regulation, held that a wholly subjective element was required, namely that the Cantine should be aware that they

could obtain redress only by way of an action for compensation brought against the Commission after the failure in this case of their attempts to obtain in the national courts payment of the Community aid by means of the attribution to them of the security provided by Assedile.

44 The Commission also submits that the judgment under appeal does not even comply with the principles laid down in Case 145/83 *Adams* v *Commission* [1985] ECR 3539. It takes the view that the Cantine cannot rely on that judgment since it takes account of involuntary ignorance of the event giving rise to the damage. As held in paragraphs 139 and 140 of the judgment under appeal, there is no doubt that the Cantine were aware of the procedure under Regulation No 2499/82.

45 The Commission also claims that the Court of First Instance failed to respect, in the judgment under appeal, the requirement of legal certainty necessary for the application of limitation periods. Linking the determination of the point at which the five-year limitation period laid down in Article 46 of the Statute of the Court of Justice starts to run to the subjective perception that any interested party may have of the certainty of the harm suffered would amount to leaving it up to the injured party to decide when the action for compensation would be finally time-barred. The Commission adds, in that connection, that the appeal proceedings brought by the Cantine could not, moreover, have had any influence on their conviction as to the certainty of the damage.

46 The Commission also submits that the Court of First Instance vitiated its judgment by a contradiction in the grounds thereof. First, it refused to consider the exhaustion of domestic remedies as a condition for admissibility of the action for compensation brought by the Cantine against the Commission and, second, it linked the point from which the limitation period applicable to that action started to run to the date of a definitive judgment delivered at national level, in this case the judgment of the Corte suprema di cassazione of 28 November 1994.

47 For their part, the Cantine submit that the appeal is unfounded and that the Court of First Instance correctly held in the judgment under appeal that the conditions

for bringing proceedings against the Commission on the ground of non-contractual liability were not satisfied until the action brought before the national courts was settled by the judgment of the Corte suprema di cassazione.

48 The Cantine take the view that it was necessary for them to await the outcome of the litigation at national level before referring the matter to the Community authorities, taking account, in particular, of the absence in this case of any provision regulating the position of the insolvent distiller. In that connection, they add that the Court of First Instance would undoubtedly have dismissed their action claiming liability on the ground that the domestic rights of action had not been exhausted. The Cantine submit that the action is therefore not time-barred because the limitation period for proceedings against the Commission for non-contractual liability began to run only when the Corte suprema di cassazione dismissed their appeals, thereby rendering the judgment of the Tribunale civile di Roma *res judicata*.

49 Furthermore, the Cantine reply to the Commission that its argument that the judgment under appeal contains a contradiction as regards the admissibility of the action against the Commission for non-contractual liability and the time from which the limitation period applicable to that action starts to run is, in any event, unfounded inasmuch as it is based on the juxtaposition of two parts of that judgment dealing with distinct legal concepts and events.

50 If the Court accepts the Commission's arguments that the proceedings against the Commission for non-contractual liability are time-barred, and if it were to set another point from which the limitation period for those proceedings began to run, the Cantine submit that such a limitation period cannot start to run against them before the unjust enrichment of the Community occurred by virtue of AIMA's reassignment in 1991 to the EAGGF of the security provided by Assedile. The Cantine submit that they learned of that reassignment to the EAGGF, and therefore of the unjust enrichment of the Community, only after receiving the Commission's letter of 8 December 1997. The limitation period for those proceedings should therefore start to run from that date.

51 The Cantine rely, in that connection, on the settled case-law of the Court of Justice and, in particular, *Adams* v *Commission*, according to which the expiry of a limitation period cannot constitute a valid defence to a claim by a person who has suffered damage where that person only belatedly became aware of the event giving rise to that damage and thus could not have had a reasonable time in which to bring an action. The Cantine also state that they did not cease to safeguard their rights by applying to AIMA to obtain payment of the debts owed to them by DAI by way of the security provided by Assedile, and subsequently to the Commission in order to make a complaint concerning the irregularity committed by AIMA. No culpable delay can therefore be attributed to them in this case.

Findings of the Court

52 It must be recalled, as a preliminary point, that the right to bring an action before the Community Courts can be exercised only under the conditions laid down in that regard by the provisions governing each specific action, in this case, an action for damages under Article 235 EC. As a consequence, that right will have been properly exercised before the Court of First Instance only if the latter correctly applied, in particular, the provisions governing the limitation rules specific to that action (see, to that effect, order in Case C-136/01 P *Autosalone Ispra dei Fratelli Rossi* v *Commission* [2002] ECR I-6565, paragraph 26).

53 In accordance with Article 46 of the Statute of the Court of Justice, proceedings against the Community in matters relating to non-contractual liability are barred after a period of five years from the occurrence of the event giving rise thereto.

54 The five-year limitation period referred to in that provision cannot begin to run until all the requirements governing the obligation to provide compensation for damage are satisfied and, in particular, until the damage to be made good has materialised. Therefore, in cases where, as in this instance, the liability of the Community has its origin in a legislative measure, that period of limitation does not begin until the damaging effects of that measure have arisen and, therefore, until the time at which the persons concerned were bound to have suffered certain damage (see, in

particular, Joined Cases 256/80, 257/80, 265/80, 267/80 and 5/81 *Birra Wührer and Others* v *Council and Commission* [1982] ECR 85, paragraph 10, and Case C-282/05 P *Holcim (Deutschland)* v *Commission* [2007] ECR I-2941, paragraph 29).

55 In the present case the Court of First Instance held, in paragraph 131 of the judgment under appeal, that the limitation period began to run when the damage resulting from the total or partial absence of payment of Community aid was suffered for certain by the Cantine. It also stated, in paragraph 132 thereof, that it was not contested that DAI should have paid them the minimum buying-in price for wine not later than the end of June 1983 under Article 9(1) of Regulation No 2499/82. However, in the specific circumstances of the case, the Court of First Instance held, in paragraph 133 of the judgment under appeal, that the damage suffered by the Cantine at the end of June 1983 could not be regarded as being certain, that is to say, imminent and foreseeable, from that date on.

56 In order to assess whether the damage was certain, the Court of First Instance found, in paragraphs 136 and 145 of the judgment under appeal, that it was necessary to take into consideration the proceedings brought by DAI before the Italian courts specifically concerning the fate of the security provided by Assedile, in the light of the complexity of the system introduced by Regulation No 2499/82 and the exceptional circumstances of the case, in which it was extremely difficult for a prudent and well-informed trader to be certain, before the outcome of those proceedings, that he could not obtain payment of the aid concerned by way of that security before a national court.

57 The Court of First Instance accordingly held, in paragraphs 145 to 147 of the judgment under appeal, that it was only after the judgment of the Corte suprema di cassazione of 28 November 1994 that the Cantine could have become aware that they would not obtain payment of the aid in question by way of that security and that the damage which they had suffered could therefore not have been certain before that date, with the result that the five-year limitation period laid down in Article 46 of the Statute of the Court of Justice could not have begun to run before that date.

58 In that regard it must be stated that, in proceeding in that manner, the Court of First Instance adopted a subjective approach to the question whether the conditions giving rise to the non-contractual liability of the Community had been established, according to which the damage caused by an unlawful legislative act cannot be regarded as certain as long as the allegedly injured party does not perceive it as such. In the judgment under appeal, the Court of First Instance made the assessment of whether the damage caused to the Cantine was certain contingent on their becoming aware that they would not obtain compensation for their damage before the national courts.

59 The conditions to which the obligation to make good the damage referred to in the second paragraph of Article 288 EC is subject, and, therefore, the rules on limitation periods which govern actions for compensation in respect of that damage may be based only on strictly objective criteria. If it were otherwise, there would be a risk of undermining the principle of legal certainty on which the rules on limitations periods specifically rely and which require that legal rules be clear and precise in order that interested parties can ascertain their position in situations and legal relationships governed by Community law (see, inter alia, Case C-63/93 *Duff and Others* [1996] ECR I-569, paragraph 20).

60 Furthermore, it must be observed that preventing the limitation period for proceedings against the Community for non-contractual liability from starting to run as long as the party who has allegedly been harmed is not personally convinced that he has suffered damage has the result that the point in time at which those proceedings become time-barred varies according to the individual perception that each party may have as to the reality of the damage, something which is at variance with the requirement of legal certainty necessary for the application of limitation periods.

61 In that connection, it must also be observed that the Court has rejected the argument that the limitation period referred to in Article 46 of the Statute of the Court of Justice cannot begin to run until the victim has specific and detailed knowledge of the facts of the case, since knowledge of the facts is not one of the conditions which must be met in order for the limitation period to begin running (see order in *Autosalone Ispra dei Fratelli Rossi* v *Commission*, paragraph 31). The subjective appraisal of the reality of the damage cannot therefore be taken into consideration in order to determine the moment at which the limitation period begins in proceedings being brought against the Community for non-contractual liability.

62 It follows that, in the judgment under appeal, the Court of First Instance was unable to establish whether the damage caused to the Cantine was certain and therefore it could not determine the time at which the limitation period for their action for compensation began to run by relying on the perception of the Cantine with regard to the harmful effects of Regulation No 2499/82. The Court of First Instance ought, on the contrary, to have based itself for that purpose on exclusively objective criteria.

63 It is on precisely such criteria that the Court has already relied for the purpose of determining the date on which the limitation period provided for in Article 46 of the Statute of the Court of Justice begins to run. As is clear from paragraph 33 of *Holcim (Deutschland)* v *Commission*, the Court has held that that limitation period begins to run from the moment at which the financial loss suffered by the victim actually materialised. It follows therefore that the start of that period is linked to the objective loss actually caused to the assets of the party which claims to have suffered harm.

64 In the present case, the Court of First Instance ought therefore, in the judgment under appeal, to have made the five-year limitation period for the action for compensation brought before it by the Cantine under Article 235 EC start to run from the date on which the damage caused by Regulation No 2499/82 objectively materialised in the form of an adverse impact on their assets.

65 The Court of First Instance ought, in particular, to have held that the limitation period had started to run when the application of the unlawful system for payment of Community aid provided for in Article 9 of Regulation No 2499/82 had actually and objectively caused damage to the Cantine by failing to guarantee them direct payment of the Community aid at the time of DAI's insolvency. That time should therefore have been fixed as the day on which the Cantine were unable to obtain that payment within 90 days from the entry of the wine into the distillery referred to in that provision, that is, at the end of June 1983, as is clear in particular from paragraph 132 of the judgment under appeal.

66 By holding, in paragraph 147 of the judgment under appeal, that the limitation period laid down in Article 46 of the Statute of the Court of Justice could not have begun to run before 28 November 1994 and therefore, in paragraph 150 thereof, declaring

admissible, on the ground that it was not out of time, the action for compensation brought before it on 12 October 1998, that is to say, more than 15 years after the damage actually occurred, the Court of First Instance misapplied the provisions governing the rules on limitation contained in that article.

67 Furthermore, the Cantines' argument based on *Adams* v *Commission*, in which the Court held that the expiry of a limitation period cannot constitute a valid defence to a claim by a person who has suffered damage where that person could only belatedly have become aware of the event giving rise to it, must be rejected. Unlike the case which gave rise to the *Adams* judgment, the Cantine cannot claim in the present case that they were not aware, from the end of June 1983, of the event giving rise to their damage, as they knew perfectly well from that time that Article 9 of Regulation No 2499/82 did not provide them with any guarantee whatsoever of direct payment of the Community aid in question in the event of the distiller's insolvency.

68 It should also be added that the fact that the Cantine were interveners in the proceedings relating to the security brought by DAI before the Italian courts did not prevent them from bringing parallel proceedings to establish liability before the Court of Justice under Article 235 EC. That provision specifically confers exclusive jurisdiction on the Community Courts to hear actions for compensation under the second paragraph of Article 288 EC brought against the Community (see, inter alia, Joined Cases 106/87 to 120/87 *Asteris and Others* [1988] ECR 5515, paragraph 15).

69 Lastly, it must be noted, as is clear from the very wording of Article 46 of the Statute of the Court of Justice, that an action brought before a national court cannot constitute an interruption of the limitation period for an action for damages under Article 235 EC (see, to that effect, *Autosalone Ispra dei Fratelli Rossi* v *Commission*, paragraph 56). Likewise, it follows that the commencement of proceedings at national level cannot defer the point at which the limitation period for that action begins to run.

70 It follows from all the foregoing that the judgment under appeal must be set aside in so far as it declared admissible the action for non-contractual liability brought by the

Cantine and ordered the Commission to make good the damage which they suffered, following the insolvency of DAI, by reason of the absence of a procedure capable of guaranteeing, under the system introduced by Article 9 of Regulation No 2499/82, payment to the producers concerned of the Community aid provided for by that regulation.

The action before the Court of First Instance

71 Under the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice, the latter may, where the decision of the Court of First Instance has been quashed, itself give final judgment in the matter, where the state of the proceedings so permits. That is the case here.

72 As regards the claim by the Cantine that the Commission should be ordered to pay them compensation in amounts equivalent to the outstanding amounts still owed to them by DAI, this cannot be accepted for the reasons set out in paragraphs 63 to 66 of the present judgment.

73 As is clear in particular from paragraph 65 of this judgment, the five-year limitation period provided for in Article 46 of the Statute of the Court of Justice began to run at the end of June 1983, with the result that the action for compensation under Article 235 EC brought in 1998 must be regarded as time-barred and, therefore, must be dismissed as being inadmissible.

74 Accordingly, since, in the judgment under appeal, the Court of First Instance has already dismissed as inadmissible the Cantines'claims that the Commission's letter of 31 July 1998 be annulled, that a declaration be made that the Commission unlawfully failed to act, and that the Commission be found guilty of unjust enrichment, the action brought by the Cantine must be dismissed in its entirety.

Costs

75 Under Article 122 of the Rules of Procedure, where the appeal is well founded and the Court of Justice itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 69(2) of those Rules, which applies to appeals by virtue of Article 118, 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 applied for costs to be awarded against the Cantine, and since the latter have been unsuccessful, the Cantine must be ordered to pay the costs of the present proceedings and of those brought before the Court of First Instance.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Annuls the judgment of the Court of First Instance of the European Communities of 23 November 2004 in Case T-166/98 *Cantina sociale di Dolianova and Others* v *Commission* to the extent to which it declared admissible the action to establish non-contractual liability brought by Cantina sociale di Dolianova Soc. coop. arl, Cantina Trexenta Soc. coop. arl, Cantina sociale Marmilla — Unione viticoltori associati Soc. coop. arl, Cantina sociale S. Maria La Palma Soc. coop. arl and Cantina sociale del Vermentino Soc. coop. arl Monti-Sassari and ordered the Commission of the European Communities to make good the damage suffered by them as a result of the insolvency of Distilleria Agricola Industriale di Terralba by reason of the absence of a procedure capable of guaranteeing, under the system introduced by Article 9 of Commission Regulation (EEC) No 2499/82 of 15 September 1982 laying down provisions concerning preventive distillation for the 1982/1983 wine year, payment to the producers concerned of the Community aid provided for by that regulation;**

2. **Dismisses the action in Case T-166/98;**

3. **Orders Cantina sociale di Dolianova Soc. coop. arl, Cantina Trexenta Soc. coop. arl, Cantina sociale Marmilla — Unione viticoltori associati Soc. coop. arl, Cantina sociale S. Maria La Palma Soc. coop. arl and Cantina sociale del Vermentino Soc. coop. arl Monti-Sassari to pay the costs of the present proceedings and of those brought before the Court of First Instance of the European Communities.**

[Signatures]