JUDGMENT OF THE COURT (Sixth Chamber)
29 April 2004 *

In Joined Cases C-162/01 P and C-163/01 P,

Edouard Bouma, residing at Rutten (Netherlands),

Bernard M. J. B. Beusmans, residing at Noorbeek (Netherlands), represented by E.H. Pijnacker Hordijk, advocaat,

applicants,

APPEALS against the judgments of the Court of First Instance of the European Communities (Fourth Chamber) of 31 January 2001 in Case T-533/93 *Bouma* v *CouncilandCommission* [2001] ECR II-203, and Case T-73/94 *Beusmans* v *Counciland Commission* [2001] ECR II-223, seeking to have those judgments set aside,

* Language of the case: Dutch.

the other parties to the proceedings being:

Council of the European Union, represented by A.-M. Colaert, acting as Agent,

and

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

defendants at first instance,

THE COURT (Sixth Chamber),

composed of V. Skouris, acting for the President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and N. Colneric (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 September 2003,

gives the following

Judgment

1 By two separate applications lodged at the Court Registry on 13 April 2001, Mr Bouma and Mr Beusmans brought appeals under Article 49 of the EC Statute of the Court of Justice against the judgments of the Court of First Instance in Case T-533/93 *Bouma* v *Council and Commission* [2001] ECR II-203 ('*Bouma*'), and Case T-73/94 *Beusmans* v *Council and Commission* [2001] ECR II-223 ('*Beusmans*'), respectively, (jointly 'the judgments under appeal') by which the Court of First Instance dismissed their actions for non-contractual liability against the Community 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).

Legal framework

2 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 (OJ 1977 L 131, p. 1) provided for the payment of a

non-marketing premium or a conversion premium to producers who undertook to cease marketing milk or milk products for a non-marketing period of five years or to cease marketing milk or milk products and to convert their dairy herds to meat production for a conversion period of four years.

3 Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products (OJ 1984 L 90, p. 10) and 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) introduced from 1 April 1984 an additional levy on quantities of milk delivered beyond a reference quantity to be determined per purchaser within a guaranteed total quantity for each Member State. The reference quantity to be exempt from the additional levy was equal to the quantity of milk or milk equivalent, either delivered by a producer or purchased by a dairy, as decided by the Member State, during the reference year, which in the case of the Netherlands was 1983.

4 The detailed rules for applying the additional levy were laid down 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).

5 Producers who did not deliver any milk during the reference year adopted by the Member State concerned, pursuant to an undertaking entered into under Regulation No 1078/77, were excluded from the allocation of a reference quantity.

6 In the judgments in Case 120/86 *Mulder* [1988] ECR 2321 ('*Mulder I*') and Case 170/86 *von Deetzen* [1988] ECR 2355 ('*von Deetzen*') the Court ruled that Regulation No 857/84, as supplemented by Regulation No 1371/84, was invalid in so far as it did not provide for the allocation of a reference quantity to producers who, pursuant to an undertaking entered into under Regulation No 1078/77, did not deliver any milk during the reference year adopted by the Member State concerned.

7 Following the judgments in *Mulder I* and *von Deetzen*, on 20 March 1989 the Council adopted Regulation (EEC) No 764/89 amending Regulation No 857/84 (OJ 1989 L 84, p. 2), which entered into force on 29 March 1989, in order to enable the category of producers referred to in those judgments to be granted a special reference quantity representing 60% of their production during the twelve months preceding their undertaking to cease marketing or to convert given under Regulation No 1078/77. The producers concerned by that regulation are commonly known as 'SLOM producers'.

8 Article 3a(1)(b) of Regulation No 857/84, as amended by Regulation No 764/89, provided in particular that a reference quantity could be granted only where the producers 'establish in support of their request ... that they are able to produce on their holding up to the reference quantity requested'.

9 Article 3a(1), first indent, referred to producers 'whose period of non-marketing or conversion, pursuant to the undertaking given under Regulation (EEC) No 1078/77, expires after 31 December 1983, or after 30 September 1983 in Member States where the milk collection in the months April to September is at least twice that of the months October to the March of the following year'.

10 Article 3a(3) of Regulation No 857/84, as amended by Regulation No 764/89, provides:

'If, within two years from 29 March 1989, producers can prove to the satisfaction of the competent authority that they have actually resumed direct sales and/or deliveries, and that such direct sales and/or deliveries have attained during the previous 12 months a level equal to or greater than 80% of the provisional reference quantity, the special reference quantity shall be definitively allocated to the producers. Should this not prove to be the case, the provisional reference quantity shall be returned in its entirety to the Community reserve. ...'.

11 In its judgment in Case C-189/89 *Spagl* [1990] ECR I-4539 ('*Spagl*'), the Court held that Article 3a(1), first indent, of Regulation No 857/84, as amended by Regulation No 764/89, was invalid in so far as it excluded from the grant of a special reference quantity under that provision producers whose period of non-marketing or conversion, pursuant to an undertaking given under Regulation No 1078/77, expired before 31 December 1983 or, in some cases, before 30 September 1983. Those producers, whose period of non-marketing expired before the dates declared invalid, are commonly known as 'SLOM 1983 producers' if their undertaking to cease marketing under Regulation No 1078/77 expired in 1983.

12 Following *Spagl* the Council adopted on 13 June 1991 Regulation (EEC) No 1639/91 amending Regulation No 857/84 (OJ 1991 L 150, p. 35). That regulation added, in particular, to Article 3a(1) of Regulation No 857/84, as amended by Regulation No 764/89, a subparagraph allowing a special reference quantity to be granted to producers whose undertaking to cease marketing or to convert expired in 1983.

13 By an interim judgment 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 ruled that the Community was liable for the damage suffered by certain milk producers who had given undertakings under Regulation No 1078/77 and had subsequently been prevented from marketing milk as a result of the application of Regulation No 857/84. The Court called upon the parties to agree on the amounts of damages payable.

14 Following that judgment the Council and the Commission published Notice 92/C 198/04 in the *Official Journal of the European Communities* of 5 August 1992 (OJ 1992 C 198, p. 4). They set out the implications of *Mulder II* and stated their intention to make practical arrangements to compensate the producers concerned in order to give full effect to that judgment.

15 The Council subsequently 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).

16 In the cases which were the subject of *Mulder II* the Court ruled on the amount of compensation sought by the applicants in its judgment in Joined Cases C-104/89 and C-37/90 [2000] ECR I-203 ('*Mulder III*').

Background to the case

A – *Case C-162/01 P*

17 The background to the appeal brought by Mr Bouma is set out as follows in paragraphs 14 to 17 of *Bouma*:

'14 The applicant is a milk producer in the Netherlands. In the context of Regulation No 1078/77, the applicant's father gave a non-marketing undertaking, which expired on 20 April 1983. Before that date he transferred his farm to the applicant, who himself agreed to comply with the non-marketing undertaking.

15 The applicant did not resume milk production when his undertaking expired.

16 Following the adoption of Regulation No 1639/91, the applicant applied to be allocated a provisional reference quantity, which was allocated by decision of 28 October 1991.

17 On 22 March 1993, the Algemene Inspectiedienst (General Inspectorate Service) carried out an inspection to check the circumstances in which the applicant had resumed milk production. Following the report made by that service, the competent Netherlands authority, by decision of 4 May 1993, withdrew the provisional reference quantity allocated to the applicant'.

B – *Case C-163/01 P*

18 The background to the appeal brought by Mr Beusmans is set out as follows in paragraphs 14 to 16 of *Beusmans*:

'14 The applicant is a milk producer in the Netherlands and, in the context of Regulation No 1078/77, gave a non-marketing undertaking which expired on 23 December 1983. Following the expiry of his undertaking, he continued to rear and fatten cattle, which he had begun to do while the undertaking was in force.

15 Following the adoption of Regulation No 1639/91, the applicant applied to be allocated a provisional reference quantity, which was allocated by decision of 25 November 1991.

16 The Algemene Inspectiedienst (General Inspectorate Service) carried out an inspection to check the circumstances in which the applicant had resumed milk production. Following the report made by that service, the competent Netherlands authority, by decision of 19 April 1993, withdrew the provisional reference quantity allocated to the applicant.'

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

19 By applications lodged at the Registry of the Court of First Instance on 30 September 1993 and 14 February 1994 respectively, Mr Bouma and Mr Beusmans each brought an action against the Council and the Commission for non-contractual liability on the part of the Community under Article 178 and the second paragraph of Article 215 of the Treaty.

20 Both sets of proceedings were suspended by orders of 31 August 1994 until the Court of Justice had delivered its final decision in Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission*, cited above. The proceedings were resumed under orders of the President of the Fourth Chamber of the Court of First Instance (Extended Composition) of 11 March 1999.

21 Mr Bouma and Mr Beusmans claimed, respectively, that the Community should pay Mr Bouma the sum of NLG 376 511 and Mr Beusmans the sum of NLG 379 729 by way of compensation for damage they suffered between 1 April 1984 and the day on which they resumed milk production, together with default interest at the rate of 8% per annum from 19 May 1992.

22 In the alternative, they asked that the Community be ordered to pay such amounts as the Court deemed appropriate, being not less than NLG 149 032 in the case of Mr Bouma and NLG 110 502 in the case of Mr Beusmans, which corresponded to the sums payable pursuant to Regulation No 2187/93, together with default interest at the rate of 8% per annum from 19 May 1992.

23 By the judgments under appeal the Court of First Instance dismissed the applications and ordered Mr Bouma and Mr Beusmans to pay the costs.

24 The Court summarised in paragraph 39 of *Bouma* (paragraph 38 of *Beusmans*) the general conditions relating to Community liability. It went on to explain in paragraphs 40 to 42 of *Bouma* (paragraphs 39 to 41 of *Beusmans*) that the Community is liable to SLOM producers on the basis of infringement of the principle of legitimate expectations.

25 Quoting paragraph 13 of *Spagl*, cited above, the Court observed in paragraph 43 of *Bouma* (paragraph 42 of *Beusmans*):

'Furthermore, it follows from *Spagl* that the Community could not without infringing the principle of protection of legitimate expectations automatically preclude from the grant of quotas all producers whose non-marketing or conversion undertakings had expired in 1983, in particular those who, like Mr Spagl, had been unable to resume production for reasons connected with their undertaking. The Court of Justice thus held in paragraph 13 of that judgment:

'the Community legislature was able validly to set a cut-off date by reference to the expiry of the period of non-marketing or conversion of the persons concerned, with a view to excluding from the benefit [of the provisions on the allocation of a special reference quantity] those producers who had not delivered milk during the whole or part of the reference year for reasons unconnected with the undertaking as to non-marketing or conversion. On the other hand, by virtue of the principle of the protection of legitimate expectations, as interpreted in the cases cited above, the cut-off date cannot be set in such a way that it has the effect of also excluding from the benefit [of those provisions] producers whose failure to deliver milk for the whole or part of the reference year derives from the fulfilment of an undertaking given under Regulation No 1078/77.'

26 In paragraphs 44 and 45 of *Bouma* (paragraphs 43 and 44 of *Beusmans*) the Court inferred from *Spagl* that:

'44 Contrary to what the applicant claims, that judgment can be read only in the light of the facts of the case before the national court. Mr Spagl was a farmer who, upon expiry of his undertaking on 31 March 1983, was not in a

position to resume milk production immediately because he lacked capital to buy a new dairy herd. Instead, he bought dairy calves and raised them himself, resuming production with 12 cows in May or June 1984 (see the Opinion of Advocate General Jacobs in *Spagl*, at [1990] ECR I-4554, paragraph 2). Furthermore, it is clear from the Report for the Hearing that while milk production was suspended he carried out maintenance work on the buildings and machinery used for milk production ([1990] ECR I-4541, point I 2).

45 It is therefore a reasonable inference from that judgment that producers whose undertaking expired in 1983 can validly base their actions for compensation on infringement of the principle of the protection of legitimate expectations where they show that their reasons for not resuming milk production during the reference year are connected with the fact that they stopped production for a certain time and that they were unable, for reasons to do with the organisation of that production, to resume production immediately.'

27 In paragraph 46 of *Bouma* (paragraph 45 of *Beusmans*), the Court referred to *Mulder II* as follows:

'Furthermore, it follows from *Mulder II*, and more specifically from paragraph 23, that Community liability is subject to the condition that the producers clearly manifested their intention to resume milk production upon expiry of their non-marketing undertaking. In order for the illegality which led the Court of Justice to declare the regulations giving rise to the situation of the SLOM producers invalid to entitle those producers to damages, the producers must have been prevented from resuming milk production. That means that the producers whose undertaking expired before the entry into force of Regulation No 857/84 resumed production or at least took steps to do so, such as making investments or repairs, or maintaining the equipment necessary for such production (see on that subject the Opinion of Advocate General Van Gerven in *Mulder II* at [1992] ECR I-3094, point 30).'

28 With regard to the position of each of the two applicants, the Court first of all made the following observation in paragraph 48 of *Bouma* (paragraph 47 of *Beusmans*):

'As the applicant did not resume milk production between the date on which his non-marketing undertaking expired, [20 April 1983 in the case of Mr Bouma and 23 December 1983 in the case of Mr Beusmans], and the date on which the quota scheme entered into force, 1 April 1984, he must show, in order for his claim for compensation to be well founded, that he had the intention of resuming milk production upon the expiry of his non-marketing undertaking and that he found it impossible to do so owing to the entry into force of Regulation No 857/84.'

29 The Court went on to consider in the judgments under appeal the evidence adduced by Mr Bouma and Mr Beusmans and held that it was insufficient.

Forms of order sought

30 Mr Bouma and Mr Beusmans claim that the Court should:

— set aside the judgments delivered by the Court of First Instance on 31 January 2001 in Case T-533/93 and Case T-73/94 respectively;

— refer the cases back to the Court of First Instance;

— order the Council and the Commission to pay the costs of the proceedings before both Courts.

31 The Council contends in both cases that the Court should:

— dismiss the appeal as being partly inadmissible and in any case wholly unfounded;

— order the appellant to pay the costs.

32 The Commission contends in both cases that the Court should:

— declare the appeal unfounded;

— order the appellant to pay the costs of the proceedings.

The pleas in support of the claim to have the judgments set aside

33 Mr Bouma and Mr Beusmans submit five pleas in support of their claim for the judgments under appeal to be set aside.

34 Their first three pleas allege breach of the principles of equal treatment, protection of legitimate expectations, legal certainty and of the obligation to provide an adequate statement of reasons, inasmuch as the Court of First Instance:

— incorrectly assessed the compensation entitlement of SLOM 1983 producers in the light of *Spagl*;

— when assessing the appellant's compensation claims attached significance to the fact that they did not resume milk production between 31 December 1983 and 1 April 1984;

— incorrectly assessed the compensation claims of SLOM 1983 producers in the light of *Mulder II*.

35 In their fourth plea Mr Bouma and Mr Beusmans submit that the Court of First Instance incorrectly allocated the burden of proof, or at least imposed on them a burden of proof that was legally inadmissible.

36 Lastly, by their fifth plea they complain that the Court of First Instance set out and assessed the relevant facts in such an erroneous and biased manner that its judgment cannot be regarded as consistent with the obligation to provide reasons or the principle of objectivity.

The appeals

37 After the parties and the Advocate General had been heard the two cases were joined, on account of the connection between them, for the purposes of oral procedure and of the final judgment, by order of the President of the Sixth Chamber of 20 June 2003, in accordance with Article 43 of the Rules of Procedure.

The first plea

Arguments of the appellants

38 Mr Bouma and Mr Beusmans challenge the interpretation of *Spagl* in paragraphs 43 to 45 of *Bouma* and 42 to 44 of *Beusmans* and the conclusions which the Court of First Instance draws from that interpretation with regard to their rights.

39 They contend that paragraphs 39 to 42 of *Bouma* and 38 to 41 of *Beusmans* have no independent significance because, on the one hand, the judgments cited do not relate to the particular position of the SLOM 1983 producers and, on the other hand, *Spagl* concerns specifically the particular position of those producers with regard to those same general principles.

40 The Court of First Instance's interpretation of the judgment in *Spagl* means that not all SLOM 1983 producers can claim compensation, only those who show that they have been unable to resume milk production for particular reasons. Mr Bouma and Mr Beusmans consider that that interpretation of earlier judgments of the Court of Justice is incomprehensible and incorrect. It amounts

to a serious infringement of the principles of legitimate expectations and equal treatment in respect of SLOM producers in their situation who did not resume milk production during the 1983 calendar year or before 1 April 1984.

41 Mr Bouma and Mrs Beusmans put forward seven complaints in the context of their first plea, which are considered in paragraphs 48 to 79 and 97 to 102 of the present judgment.

42 In conclusion, they note that the fact that they did not resume milk production fully before 1 April 1984 does not affect their right to compensation and that, on those grounds, the judgments under appeal cannot be upheld.

Findings of the Court

— Preliminary comment

43 By way of a preliminary remark, it should be noted that the Court of First Instance rightly pointed out in paragraph 39 of *Bouma* (paragraph 38 of *Beusmans*) that the Community may incur non-contractual liability only if three conditions, namely the illegality of the conduct of the Community complained of, the occurrence of actual damage and the existence of a causal link between the unlawful conduct and the harm alleged, are fulfilled. The case of producers who have given a non-marketing undertaking in pursuance of Regulation No 1078/77 and have therefore been unable to seek allocation of a reference quantity cannot escape that rule.

44 The Court of First Instance therefore rightly made reference to the conditions referred to in paragraph 39 of *Bouma* (paragraph 38 of *Beusmans*) in order to consider the Community's non-contractual liability with regard to SLOM 1983 producers.

45 As regards more particularly the condition relating to the illegality of the conduct of the Community complained of, it is clear from *Mulder II* (paragraphs 15 and 16) that the Community legislature manifestly and gravely disregarded the limits of its discretionary power by preventing groups of milk producers who had given an undertaking under Regulation No 1078/77 from delivering milk pursuant to Regulation No 857/84. Since those producers could legitimately expect to be able to resume the marketing of milk after their non-marketing undertaking had expired the legislature infringed to a sufficiently marked extent the principle of the protection of legitimate expectations, which is designed to protect individuals.

46 It was on the same ground of infringement of their legitimate expectation that they would be able to resume production after their undertakings pursuant to Regulation No 1078/77 expired that, in *Mulder I* and *von Deetzen*, the Court of Justice declared the original version of Regulation No 857/84 invalid with regard to SLOM producers whose non-marketing undertaking expired after 1 April 1984.

47 The Court of First Instance was therefore right to refer in paragraphs 40 to 42 of *Bouma* (paragraphs 39 to 41 of *Beusmans*), to that case-law in order to consider the Community's liability in respect of SLOM 1983 producers.

— First complaint

48 In their first complaint Mr Bouma and Mr Beusmans allege that the Court of First Instance incorrectly interpreted *Spagl* in paragraph 43 of *Bouma* and paragraph 42 of *Beusmans*. They consider that in paragraph 13 of *Spagl* the Court held that the setting of a cut-off date is unlawful where that date is set in such a way that the producers have not delivered any milk 'for the whole or part of the reference year' in fulfilment of a non-marketing undertaking. The passage in question relates to all SLOM 1983 producers since all those producers were unable to deliver milk for the whole or part of the calendar year.

49 According to the appellants there is nothing to show that the Court of Justice wished to limit the annulment of Regulation No 857/84, as the Court of First Instance considers, to cases in which the SLOM producers in question had been unable to resume production during the reference year 1983 on the expiry of their non-marketing undertaking, which had ended in the meantime.

50 In that regard, it should be pointed out that, in the first sentence of paragraph 13 of *Spagl*, cited above, the Court of Justice held that the Community legislature was able validly to set a cut-off date by reference to the expiry of the period of non-marketing with a view to excluding from the benefit of Article 3a of Regulation No 857/84, as amended by Regulation No 764/89, those producers who had not delivered milk during the whole or part of the reference year in question, namely 1983, for reasons unconnected with the non-marketing undertaking.

51 It is only in respect of producers who could assert their legitimate expectation of resuming their production that the Court of Justice objected to a cut-off date of this type being set in such a way that it has the effect of excluding from the benefit

of Article 3a of Regulation No 857/84, as amended by Regulation No 764/89, producers whose failure to deliver milk for the whole or part of the reference year derived from the fulfilment of an undertaking given under Regulation No 1078/77.

52 Therefore, since those producers who had given an undertaking under Regulation No 1078/77 and were therefore automatically excluded from the allocation of quotas could validly assert their legitimate expectation of milk production resuming on the expiry of their non-marketing undertakings, *Mulder I* invalidated Regulation No 857/84 in its original version for the benefit of SLOM producers, and *Spagl* invalidated the same regulation as amended by Regulation No 764/89 for the benefit of SLOM 1983 producers, whose non-marketing or conversion undertakings expired during 1983.

53 Paragraph 43 of *Bouma* (paragraph 42 of *Beusmans*) therefore contains no error in that regard.

54 The first complaint cannot therefore be accepted.

— The second and seventh complaints

55 The second complaint, which divides into two parts, and the seventh complaint, which is closely linked to the first part of the second complaint, should be considered together.

56 In the first part of the second complaint, Mr Bouma and Mr Beusmans claim that the Court of First Instance's interpretation corresponds to the defence plea made by the institutions in *Spagl* and rejected by the Court of Justice. That plea alleged that the legal possibility of producing milk precludes infringement of legitimate expectations. In their seventh complaint Mr Bouma and Mr Beusmans state that that interpretation fails to take into account the judgment in Joined Cases T-195/94 and T-202/94 *Quiller and Heusmann* v *Council and Commission* [1997] ECR II-2247 ('*Quiller*'). In paragraph 97 of that judgment the defence plea alleging that the applicant, Quiller, could have obtained an original reference quantity if it had resumed deliveries in 1983, after the expiry of the non-marketing undertaking, was rejected on the same substantive grounds as those given previously, in particular by Advocate General Jacobs in his Opinion in *Spagl*.

57 It should be pointed out, however, that contrary to the assertion made by Mr Bouma and Mr Beusmans the Court of First Instance did not interpret *Spagl* as meaning that the mere legal possibility for a producer to produce milk precludes him from claiming infringement of his legitimate expectations.

58 As regards the complaint alleging that the interpretation of the judgment in *Spagl* given in *Bouma* and *Beusmans* failed to take account of the judgment in *Quiller*, Mr Bouma and Mr Beusmans do not specify how that argument can show that the Court of First Instance misinterpreted *Spagl*. That complaint is derived from a judgment which is not intended as an interpretation of the judgment in *Spagl* and which does not have the force of *res judicata* in relation to the present cases (see to that effect Case C-248/99 P *France* v *Monsanto and Commission* [2002] ECR I-1, paragraph 37).

59 The first part of the second complaint must therefore be rejected as unfounded and the seventh complaint as having no bearing on the issue.

60 In the second part of their second complaint, Mr Bouma and Mr Beusmans object to the interpretation by the Court of First Instance which, in their opinion, amounts to giving retrospective effect to the cut-off date set in Article 3a of Regulation No 857/84, as amended by Regulation No 764/89. The Advocates General in their Opinions in *Mulder I* and *Spagl* stated their objection to such retrospective effect. There is nothing in the *Spagl* judgment to indicate that the Court of Justice sought to depart from their assessment. The interpretation which the Court of First Instance gives to that judgment should therefore be rejected as being inconsistent.

61 The Court notes, first of all, that in his Opinion in *Spagl* Advocate General Jacobs expressed the view that the cut-off date referred to in Article 3a of Regulation No 857/84, as amended by Regulation No 764/89, had been imposed retrospectively, which had the effect that producers whose undertakings had not expired by that date had not been warned of the need to resume production as quickly and as fully as possible and could not foresee that by failing to do so they would be excluded from the market for good.

62 The Court of First Instance merely inferred from *Spagl*, in paragraph 45 of *Bouma* (paragraph 44 of *Beusmans*), that producers whose undertaking expired in 1983 must show that their reasons for not resuming milk production during the reference year are connected with the fact that they stopped production for a certain time and that they were unable, for reasons to do with the organisation of that production, to resume production immediately.

63 There is no error in that interpretation of *Spagl*.

64 The second part of the second complaint is therefore unfounded.

65 It is clear from the above considerations that the second and seventh complaints must be rejected.

— The third complaint

66 Mr Bouma and Mr Beusmans complain that the Court of First Instance relied heavily in its interpretation on the facts of the dispute in the main proceedings in *Spagl*, cited above. In their view there is nothing to indicate that those facts, which the Court of First Instance held to be essential, had any special impact on the findings of the Court of Justice. They also consider that those 'facts' were considerably less unequivocal than the Court of First Instance sought to make out. In particular, it did not appear that Mr Spagl had been faced with the 'objective' impossibility of producing between 31 March 1983 and 1 April 1984.

67 In that regard, it must be remembered that in the context of a reference for a preliminary ruling the need to provide an interpretation of Community law which will be of use to the national court makes it necessary for the referring court to define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 6, and Joined Cases C-421/00, C-426/00 and C-16/01 *Sterbenz and Haug* [2003] ECR I-1065, paragraph 20). The information supplied in the decision making the reference thus serves to enable the Court to give useful answers (see, in particular, the order of 28 June 2000 in Case C-116/00 *Laguillaumie* [2000] ECR I-4979, paragraph 14).

68 Consequently, in the case of a reference for a preliminary ruling, as in *Spagl*, cited above, the Court of Justice formulates its answers in the light of the facts which the referring court has submitted to it. More specifically, there is nothing to show that in *Spagl* the Court did not rule on the validity of Article 3a of Regulation

No 857/84, inserted by Regulation No 764/89, in the light of the facts pertaining to Mr Spagl's situation upon expiry of his non-marketing undertaking.

69 The Court of First Instance was entitled, in paragraph 44 of *Bouma* (paragraph 43 of *Beusmans*), to reconstruct the facts on the basis of the information contained in the Opinion and in the Report for the Hearing in *Spagl*. It cannot be criticised for any error in that regard.

70 The third complaint is therefore unfounded.

— The fourth complaint

71 Mr Bouma and Mr Beusmans complain in essence that the Court of First Instance adopted an approach directly at odds with the interpretation given by those who did and those who did not agree with the judgment in *Spagl*. In the light of that judgment the Council and the Commission recognised the rights of SLOM 1983 producers to be allocated a milk quota and compensation in the same way as SLOM 1984 producers such as the applicants in *Mulder II*. The additional conditions referred to by the Court of First Instance in the judgments under appeal were not included in either Regulation No 1639/91 or Regulation No 2187/93.

72 In that regard, it should be stated that the conditions that must be met in order for Mr Bouma and Mr Beusmans to be able to claim compensation in their capacity as SLOM 1983 producers can only stem from the interpretation which the Court has given to the rules on that subject. Regulation No 1639/91 amends Article 3a of Regulation No 857/84, as amended by Regulation No 764/89, with regard to the grant of a special reference quantity, but does not stipulate the conditions under which a SLOM 1983 producer can claim compensation. Compensation

under Regulation No 2187/93 remains a separate issue since the system set up by that regulation constitutes an alternative to the settlement of disputes by the courts and offers an additional means of making damage good (Joined Cases C-80/99 to C-82/99 *Flemmer and Others* [2001] ECR I-7211, paragraph 47).

73 The fourth complaint must therefore be rejected as having no bearing on the issue since the regulations in question do not lay down the conditions for the award of compensation.

— The fifth complaint

74 Mr Bouma and Mr Beusmans consider that the Court of First Instance failed to recognise in the judgments under appeal the fact that *Spagl* was a test case in which the rights and obligations of SLOM 1983 producers were dealt with as a whole. They contend that, by attempting, over 10 years after the event, to restrict the scope of *Spagl* by giving a speculative gloss to the significance of the facts, the Court of First Instance failed to have regard for the judicial function of the Court of Justice and jeopardised the principle of legal certainty.

75 In that regard, it must be borne in mind that the Court of First Instance did not err in interpreting *Spagl* in the light of the facts set out in the Report for the Hearing and the Opinion of the Advocate General. The fact that a case is, according to the appellants, a test case cannot exempt the Court of First Instance from hearing and determining that case and interpreting a judgment already delivered according to the general rules of interpretation.

76 It is therefore irrelevant whether or not a case is a test case.

77 The fifth complaint must therefore be rejected.

— The sixth complaint

78 Mr Bouma and Mr Beusmans claim that the Court of First Instance laid down an additional condition in requiring SLOM 1983 producers to produce evidence that they had taken specific steps to resume milk production on the expiry of their non-marketing undertaking. That requirement is not in accordance with what the Court of Justice held in *Mulder II*. In that case, which concerned SLOM 1984 producers, the Court did not lay down any condition in that regard. It was therefore not for the Court of First Instance to introduce those conditions exclusively for SLOM 1983 producers.

79 That complaint partly overlaps with the fourth plea, and will therefore be considered together with it.

The third plea

Arguments of the appellants

80 By their third plea, which should be examined in second place, Mr Bouma and Mr Beusmans contend that paragraph 46 of *Bouma* (paragraph 45 of *Beusmans*) states an incorrect legal assumption.

81 In that paragraph, for which inadequate reasons are given, the Court of First Instance attempted to derive from *Mulder II*, and from the Opinion of Advocate General Van Gerven in that case, an additional basis for its argument concerning the obligation to resume production or at least to take steps to do so.

82 According to the appellants, paragraph 23 of *Mulder II* only shows that the four SLOM producers concerned manifested sufficiently clearly their intention to resume milk production. There is nothing to indicate that the Court of Justice wished to provide an exhaustive list of ways in which that intention should be manifested.

83 As regards the passages from the Opinion of Advocate General Van Gerven cited by the Court of First Instance, Mr Bouma and Mr Beusmans observe that, according to the Advocate General, what determines whether a SLOM producer is regarded as having suffered damage following a refusal to allocate him a special reference quantity is whether the producer had already ceased production for good at the time his non-marketing undertaking expired.

84 They contend that that Opinion does not support the idea that failure to resume milk production before 1 April 1984 could create a legal presumption that, unless there is evidence to the contrary, the producer in question is regarded as having ceased milk production for good. Such an idea is, moreover, wholly incompatible with the judgments in *Mulder I* and *Spagl*. The Court of Justice rejected the argument that in general SLOM producers had indicated their wish to cease milk production for good by entering into a non-marketing undertaking, so that they could not rely on the principle of the protection of legitimate expectations.

85 Mr Bouma and Mr Beusmans point out that in *Spagl* the Court rejected the defence plea that failure by SLOM 1983 producers to resume milk production before 1 April 1984 should prevent them from relying upon the principle of legitimate expectations.

86 They consider that the only inference that can be made from the Opinion of the Advocate General is that institutions may not be deprived of the right to demonstrate in particular situations that the SLOM producer ceased milk production for good on the expiry of his non-marketing undertaking and that he has therefore not suffered any damage. Mr Bouma and Mr Beusmans point out, however, that the burden of proof should lie with the institutions in that regard.

Findings of the Court

87 The third plea relates to the causal link between the unlawful refusal to grant a reference quantity and the alleged damage in the form of loss of income from milk deliveries. It is clear from paragraph 23 of *Mulder II* that the damage must be regarded as having resulted from the application of the 1984 Community rules. This cannot be the case where the loss of income is the consequence of freely deciding to give up milk production at the time the non-marketing undertaking expired. The damage must be the consequence of Regulation No 857/84, which does not permit a reference quantity to be granted to SLOM producers.

88 The Court of Justice inferred from the actions taken by the producers in *Mulder II* and referred to in the first sentence of paragraph 23 of *Mulder II* that they had manifested in an appropriate manner their intention to resume milk production. It concluded that the loss of income from milk deliveries could not be regarded as being the consequence of the applicants' freely deciding to give up milk production.

89 Contrary to what Mr Bouma and Mr Beusmans argue, the Court of First Instance could draw the general conclusion from this, in paragraph 46 of *Bouma* (paragraph 45 of *Beusmans*), that Community liability is subject to the condition that the producers must have clearly manifested their intention to resume milk production upon expiry of their non-marketing undertaking.

90 As a result, it was permissible for the Court of First Instance, in paragraph 46 of *Bouma* (paragraph 45 of *Beusmans*), to require a SLOM 1983 producer to manifest upon expiry of his non-marketing undertaking under Regulation No 1078/77, his intention to resume milk production either by producing milk again or, at the very least, like SLOM I producers, by taking steps to do so, such as making investments or repairs, or maintaining the equipment necessary for such production.

91 The third plea must therefore be rejected as unfounded.

Second and fourth pleas

92 In those two pleas Mr Bouma and Mr Beusmans challenge the reasons stated by the Court of First Instance in paragraph 48 of Bouma and paragraph 47 of *Beusmans.*

93 The second plea submitted by Mr Bouma and Mr Beusmans is that in the present case there was no milk production once the reference year had ended. A producer who resumed milk production between 31 December 1983 and 1 April 1984 would not have been in a position to build up a normal reference quantity. The Court of Justice has already expressly held in paragraphs 15 to 19 of *Mulder I*

that the mere existence of a theoretical possibility that such a producer could be granted a limited reference quantity under one of the optional conditions of Regulation No 857/84 did not prevent the Community rules from being unlawful.

94 Mr Bouma and Mr Beusmans point out that the Court of Justice rejected the argument concerned, which the institutions have attempted to gain acceptance for on several occasions, in *Spagl*, cited above, *Mulder II* and *Quiller*.

95 In that regard, it should be stated that the wording of paragraph 48 of *Bouma* (paragraph 47 of *Beusmans*) shows that the Court of First Instance took into account the period between the date on which their non-marketing undertakings expired (20 April 1983 and 23 December 1983 respectively) and the date of the entry into force of the quota system (1 April 1984). It did not stop at the period from 31 December to 1 April 1984. It is clear that the Court of First Instance relied on the argument of whether production had been resumed during the period from the date of the expiry of the non-marketing undertaking until 31 March 1984, and not solely during the period from 31 December 1983 to 1 April 1984, in order to establish whether Mr Bouma and Mr Beusmans intended to resume milk production. For the Court of First Instance it was not a matter of considering whether the appellants could still build up a reference quantity by recommencing milk production between 31 December 1983 and 1 April 1984.

96 The second plea must therefore be rejected as being unfounded.

97 In their fourth plea, which coincides with the sixth complaint put forward as part of the first plea, Mr Bouma and Mr Beusmans allege that the Court of First Instance imposed on them in paragraph 48 of *Bouma* and paragraph 47 of

Beusmans respectively, the burden of proof as regards their intention to resume milk production upon the expiry of their non-marketing undertakings and the fact that it was impossible for them to do so owing to the entry into force of Regulation No 857/84.

98 That reversal of the burden of proof cannot be justified merely by the fact that they had not resumed milk production on 1 April 1984. In *Quiller*, the Court of First Instance recognised that such a reversal of the burden of proof would mean that they would be faced retrospectively with the effects of the entry into force of Regulation No 857/84. Before the entry into force of that regulation a SLOM producer in their situation would not have been able to presume that failure to resume production before that date would result in jeopardising once and for all his right to a special reference quantity or to compensation.

99 Mr Bouma and Mr Beusmans also consider that the description in the judgments under appeal of the extent of the burden of proof imposed on them is inconsistent and, for that reason, unacceptable. Comparing paragraphs 46 to 48 of *Bouma* and paragraphs 45 to 47 of *Beusmans* respectively, they claim that all they can be required to show is that they had not yet stopped production for good at the time their non-marketing undertaking expired and that they were in a position to resume milk production.

100 In that regard, it is appropriate to point out that, as the Advocate General stated in point 125 of her Opinion, the way in which the Court of First Instance apportioned the burden of proof in the judgments under appeal is in accordance with the established case-law that it is for the applicant to show that the various conditions relating to non-contractual liability on the part of the Community are met. Since the Community may be held so liable only where a producer proves his

intention to resume the marketing of milk, either by resuming production after the expiry of his non-marketing undertaking, or by other manifestations of that intention, it is for the person claiming compensation to prove the genuineness of that intention.

101 As regards the complaint that Mr Bouma and Mr Beusmans could not presume the consequences that failure to resume production before 1 April 1984 would have, it should be pointed out that they should have expected, like any operator seeking to begin milk production, to be subject to any rules of market policy adopted in the meantime. They could not therefore legitimately expect to be able to resume production under the same conditions as those which applied previously (see to that effect *Mulder I*, paragraph 23).

102 This plea and the sixth complaint under the first plea must therefore be rejected as unfounded.

The fifth plea

Arguments of the appellants

103 Mr Bouma and Mr Beusmans state that the fifth plea includes a number of complaints against the statement of reasons for the assessment of the facts, an assessment which they regard as so incomprehensible and flawed that it infringes the obligation to provide a statement of reasons.

104 The Court of First Instance, for no reason, completely failed to take into account a statement made by Mr Bouma and Mr Beusmans under oath before a notary. It assessed the evidence adduced by Mr Bouma and Mr Beusmans of their intention to resume milk production in a way that was so flawed that the assessment cannot be upheld.

105 Mr Bouma and Mr Beusmans claim that they demonstrated satisfactorily that they had not ceased their operations for good in 1983 and that they were in a position to resume milk production. They each submit two complaints in support of their plea.

106 In his first complaint Mr Bouma criticises paragraph 14 of the judgment under appeal, which supposedly provides a summary of the 'relevant facts', but which in his opinion gives an incorrect and biased view of those facts which are actually relevant. He regards as established the fact that in autumn 1983 he re-sowed grass on his land that had been previously used for crops, in order to resume milk production. In that regard, he refers to the statement made under oath to that effect and submitted to the Court of First Instance.

107 Mr Bouma considers that, in view of the content of that statement and of the subsequent clarifications supplied by his lawyer it can only be inferred from paragraph 49 of the judgment under appeal that the Court of First Instance completely ignored the evidence he had adduced.

108 Mr Beusmans makes the same complaint as Mr Bouma with regard to paragraph 14 of the judgment under appeal.

109 He regards as established the fact that, on expiry of his non-marketing undertaking, he had converted to rearing dairy and beef cattle, that is to say, cows producing both milk and beef. He states that he had an adequate number of cows to resume milk production in full. It is also established that in summer 1983 he had arranged for his cows to calve and produce milk. In doing so he acted rationally from the economic point of view: at that time, not to use his cows for beef production would have amounted to pure destruction of capital. Mr Beusmans points in that regard to the statement under oath submitted to the Court of First Instance. In that statement he explained in particular that the cows cannot be used for milk production unless they calve again and that the calf is immediately taken away from the cow.

110 In their second complaint Mr Bouma and Mr Beusmans regard the assessment of the facts made by the Court of First Instance in paragraph 49 of *Bouma* and paragraph 48 of *Beusmans* that they had not formally applied for a reference quantity in 1984 as incomprehensible and incorrect. In their view, that allegation gives an incorrect idea and assessment of the facts.

Findings of the Court

111 In their complaints, Mr Bouma and Mr Beusmans are in fact challenging the Court of First Instance's assessment of the facts. The fifth plea relates only to the presentation of the facts in paragraph 14 et seq. of the judgments under appeal and the assessment of the facts and the statements made under oath which the Court of First Instance gave in paragraph 48 of *Bouma* and paragraph 47 of *Beusmans*, respectively.

112 However, under Article 225 EC and the first paragraph of Article 58 of the Statute of the Court of Justice an assessment of the facts does not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice in the context of an appeal (see in particular the order of 21 February 2002 in Joined Cases C-486/01 P-R and C-488/01 P-R *Front National and Jean-Claude Martinez* v *Parliament* [2002] ECR I-1843, paragraphs 83 to 85).

113 The Court of Justice therefore has no jurisdiction to establish the facts or, in principle, to consider the evidence which the Court of First Instance accepted in support of those facts. Where the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the Court of First Instance alone to assess the value which should be attached to the evidence produced to it (see in particular the order of 17 September 1996 in Case C-19/95 P *San Marco* v *Commission* [1996] ECR I-4435, paragraph 40).

114 That assessment does not constitute, save where that evidence is distorted, a question of law which is subject, as such, to review by the Court of Justice (Case C-121/01 P *O'Hannrachain* v *Parliament* [2003] ECR I-5539, paragraph 35).

115 As Mr Bouma and Mr Beusmans have not submitted any evidence to show that the Court of First Instance distorted the facts, the fifth plea must be rejected as inadmissible.

116 It follows from all the above considerations that the appeals must be dismissed.

Costs

117 The first paragraph of Article 122 of the Rules of Procedure provides that where the appeal is unfounded the Court is to make a decision as to costs. Under Article 69(2) of those Rules, applicable to appeal proceedings under Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

118 Since the appeals have been dismissed, and the Council and the Commission applied for costs against the appellants and the latter have been unsuccessful, Mr Bouma and Mr Beusmans must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby

1. Dismisses the appeals;

2. Orders Mr Bouma and Mr Beusmans each to pay their costs.

Skouris Cunha Rodrigues Puissochet

Schintgen Colneric

Delivered in open court in Luxembourg on 29 April 2004.

R. Grass V. Skouris

Registrar President