ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
31 January 1994 *

In Cases T-278/93 R and T-555/93 R,

David Alwyn Jones and **Mary Bridget Jones,** of Llandeilo (United Kingdom), represented by E. H. Pijnacker Hordijk, of the Amsterdam Bar, and H. J. Bronkhorst, Advocaat at the Hoge Raad der Nederlanden, instructed by Burges Salmon, Solicitors, Bristol, with an address for service in Luxembourg at the Chambers of Luc Frieden, 62 Avenue Guillaume,

applicants,

v

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

and

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, and Christopher Docksey, a member of its Legal Service, acting as Agents,

* Language of the case: English.

with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Legal Service, Wagner Centre, Kirchberg,

defendants,

and T-280/93 R,

Brian Stephen Garrett, of Motcombe (United Kingdom), represented by Martin Rawstorne, Solicitor, Yeovil, Somerset, with an address for service in Luxembourg at the Chambers of Berna et associés, 16A Boulevard de la Foire,

applicant,

v

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

and

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, and Xavier Lewis, a member of its Legal Service, acting as Agents, with an

address for service in Luxembourg at the office of Georgios Kremlis, a member of the Legal Service, Wagner Centre, Kirchberg,

defendants,

and T-541/93 R,

Norman McCutcheon, of Aldoghal (United Kingdom), and the 246 other milk producers whose names and addresses are set out in an annex, represented by James O'Reilly, Senior Council, and Philippa Watson, Barrister, instructed by Oliver Ryan-Purcell, Solicitor, Lisheen, Emly, Tipperary, with an address for service in Luxembourg at the Fyfe Business Centre, 29 Rue Jean-Pierre Brasseur,

applicants,

v

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

defendant,

APPLICATION:

— in Cases T-278/93 R, T-555/93 R and T-541/93 R, first, for an order suspending the operation of Council Regulation (EEC) No 2187/93 of 22 July 1993 providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade (Official Journal 1993 L 196, p. 6) and in particular the fourth paragraph of Article 14 thereof and, secondly, for an order that the Council and the Commission take all appropriate steps to ensure that the applicants receive the flat-rate compensation provided for in the said regulation, without having to relinquish their claims in the main proceedings; and

— in Case T-280/93 R for an order that the Council and the Commission, first, reach an agreement with the applicant within one month on compensation in respect of his two holdings, failing which the procedure in the main proceedings be recommenced and, secondly, make an immediate payment to him of UK £329 000 on account of compensation,

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

makes the following

Order

Facts

1 By an application lodged at the Registry of the Court of Justice on 18 May 1992 (Case C-202/92), David Jones and Mary Jones brought an action against the

Council and the Commission under Articles 178 and 215, second paragraph, of the EEC Treaty seeking compensation for the damage which they consider they have suffered as a result of the application of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (hereinafter 'Regulation No 857/84', Official Journal 1984 L 90, p. 13).

2 By order of the Court of Justice of 14 September 1993 the proceedings in that case were stayed until delivery of the final judgment in Joined Cases C-104/89 *Mulder and Others* v *Council and Commission* and C-37/90 *Heinemann* v *Council and Commission* [1992] ECR I-3061 which concern the same subject-matter and challenge the validity of the same measures.

3 By order of 27 September 1993 the Court of Justice referred the action to the Court of First Instance pursuant to Article 47 of the Protocol on the Statute of the Court of Justice of the EEC (hereinafter 'the Statute') and in accordance with Article 3 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (Official Journal 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (Official Journal 1993 L 144, p. 21). The case was registered at the Court of First Instance under number T-278/93.

4 By an application lodged at the Registry of the Court of First Instance on 29 October 1993, those applicants, together with 25 other milk producers who had previously brought proceedings for compensation concerning the same subject-matter, brought an action against the Council, under Article 173 of the EEC Treaty, for the annulment of Article 8(2)(a) and Article 14, fourth paragraph, of Regulation (EEC) No 2187/93 of the Council 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 (hereinafter 'Regulation No 2187/93', Official Journal 1993 L 196, p. 6).

5 By a separate application lodged at the Registry of the Court of First Instance on the same day, the applicants David Jones and Mary Jones made an application for interim measures requesting, in substance, that the Court of First Instance order the Council and the Commission to take all appropriate steps to ensure that they receive the flat-rate compensation provided for in Regulation No 2187/93, without the applicants being obliged to withdraw the actions brought by them before the Court of First Instance.

6 The Council and the Commission submitted their written observations on the application for interim measures on 18 and 19 November 1993 respectively.

7 By an application lodged at the Registry of the Court of Justice on 10 August 1992 (Case C-337/92) Brian Garrett brought an action against the Council and the Commission, under Articles 178 and 215, second paragraph, of the EEC Treaty, seeking compensation for the damage which he considers he has suffered as a result of the application of Regulation No 857/84.

8 By order of the Court of Justice of 14 September 1993 the proceedings in that case were stayed until delivery of the final judgment in Joined Cases C-104/89 *Mulder and Others* v *Council and Commission* and C-37/90 *Heinemann* v *Council and Commission* which concern the same subject-matter and challenge the validity of the same measures.

9 By order of 27 September 1993, the Court referred the action to the Court of First Instance pursuant to Article 47 of the Statute and in accordance with the decisions of 24 October 1988 and 8 June 1993, cited above. The case was registered at the Court of First Instance under number T-280/93.

10 By a separate application lodged at the Registry of the Court of First Instance on 26 November 1993, the applicant made an application for interim measures

seeking, in substance, an order that the Council and the Commission, first, reach an agreement with him within one month on compensation in respect of his two holdings, failing which the proceedings in the main action would be recommenced and, secondly, to make an immediate payment of UK £329 000 on account of compensation.

11 The Council and the Commission submitted their written observations on that application for interim measures on 9 and 10 December 1993 respectively.

12 By an application lodged at the Registry of the Court of First Instance on 14 October 1993, Norman McCutcheon and 246 other milk producers brought an action against the Council, under Article 173 of the EEC Treaty, seeking the annulment of Regulation No 2187/93 and, in particular, Articles 8 and 14 thereof. The case was registered under number T-541/93. All those producers had also brought actions against the Council and the Commission, under Articles 178 and 215, second paragraph, of the EEC Treaty, seeking compensation for the damage which they consider they have suffered as a result of the application of Regulation No 857/84.

13 By a separate application lodged at the Registry of the Court of First Instance on 19 November 1993 Norman McCutcheon and the other 246 applicants in Case T-541/93 sought, by way of interim measures, first, an order suspending the operation of Regulation No 2187/93 and in particular the fourth paragraph of Article 14 thereof, and, secondly, a declaration that the applicants may accept the flat-rate compensation provided for by Regulation No 2187/93 without being obliged to withdraw their actions for damages presently before the Court of First Instance.

14 The Council submitted its written observations on that application for interim measures on 9 December 1993.

15 By an application lodged at the Registry of the Court of First Instance on 5 January 1993 the Commission sought leave to intervene in Case T-541/93 R in support of the form of order sought by the Council. The application for leave to intervene was served on the parties to the main proceedings in accordance with Article 116(1) of the Rules of Procedure of the Court of First Instance.

16 The parties presented oral argument at the hearing on 6 January 1994.

17 At that hearing the President of the Court of First Instance requested the parties to present their oral observations on a possible joinder of the present cases for the purposes of the interim order, and also on the Commission's application for leave to intervene in Case T-541/93 R. The parties raised no objection to such joinder or to the Commission's intervention in support of the Council in Case T-541/93 R.

18 Since Cases T-278/93 R, T-555/93 R, T-280/93 R and T-541/93 R concern the same subject-matter, they should be joined for the purposes of the interim order. In those circumstances, the Commission must also be considered to have an interest in intervening in support of the form of order sought by the Council in Case T-541/93 R.

19 Before considering the validity of the applications made to the Court of First Instance, it is appropriate briefly to set out the context of the present cases and, in particular, the main facts underlying the actions before the Court of First Instance as they appear from the pleadings lodged by the parties and the oral argument presented at the hearing.

20 In its judgments in Case 120/86 *Mulder* v *Minister van Landbouw en Visserij* [1988] ECR 2321 ('*Mulder I*') and Case 170/86 *von Deetzen* v *Haupzollampt*

Hamburg-Jonas [1988] ECR 2355 the Court of Justice declared Regulation No 857/84, as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984, laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (hereinafter 'Regulation No 1371/84', Official Journal 1984 L 132, p. 11) invalid in so far as those regulations did not provide for the allocation of a reference quantity to producers who, pursuant to an undertaking entered into under Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (Official Journal 1977 L 131, p. 1), did not deliver milk during the reference year adopted by the Member State concerned.

21 In its judgment of 19 May 1992 in Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061 ('*Mulder II*') the Court held that the Council and the Commission were obliged to make good the damage suffered by the applicants as a result of the application of Regulation No 857/84, as supplemented by Regulation No 1371/84.

22 In a communication published in the Official Journal on 5 August 1992 (Official Journal C 198, p. 4), the Council and the Commission recognized that the judgment of the Court of Justice in *Mulder II*, cited above, applied to all persons in a comparable situation to that of the applicants in Joined Cases C-104/89 and C-37/90, cited above, and, pending the adoption of the measures necessary to give effect to the judgment of the Court, undertook in the case of applications made after 5 August 1992 not to rely on the provisions of Article 43 of the Statute pursuant to which proceedings against the Community in matters arising from non-contractual liability are barred after a period of five years from the occurrence of the event giving rise thereto.

23 It was under those circumstances that on 22 July 1993 the Council, on a proposal by the Commission and after obtaining the opinions of the European Parliament and the Economic and Social Committee, adopted Regulation No 2187/93 which provides for an offer of flat-rate compensation to certain producers of milk and

milk products temporarily prevented from carrying on their trade and lays down the detailed rules and conditions for the grant of that compensation.

24 A certain number of producers affected, including the applicants, considering that they were adversely affected by certain provisions of Regulation No 2187/93, in particular those concerning the limitation period, brought actions before the Court of First Instance for the partial annulment of that regulation, in conjunction with these applications for interim measures.

Law

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

26 Article 104(2) of the Rules of Procedure of the Court of First Instance provides that the applications for interim measures referred to in Articles 185 and 186 of the EEC Treaty are to state the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measures applied for. The measures applied for must be of a provisional nature in the sense that they must not prejudge the decision to be given in the main proceedings.

27 Under Article 8(1) of Regulation No 2187/93 the flat-rate compensation is offered only for the period for which the right to compensation is not time-barred. Article 8(2)(a) provides that the five-year time bar set by Article 43 of the Statute for proceedings against the Community in matters arising from its non-contractual liability is considered to have been interrupted either on the date of an application

addressed to a Community institution by the producer who considers he has suffered damage, or the date on which the application is entered in the Register of the Court of Justice, or the date of the communication of 5 August 1992, cited above.

28 Under Article 10(1) and (2) of Regulation No 2187/93 the application for compensation had to be addressed to the competent authority designated for that purpose in each Member State by 30 September 1993 at the latest. Under the first paragraph of Article 14 that authority then had a maximum period of four months from the receipt of the application to make, in the name and on behalf of the Council and the Commission, an offer of compensation to the producer, accompanied by a receipt in full and final settlement.

29 According to the third paragraph of Article 14 of Regulation No 2187/93, failure to accept the offer within two months of its receipt means that it is not binding in the future on the Community institutions concerned, that is to say the Council and the Commission. In addition, under the fourth paragraph of Article 14, acceptance of the offer by the return, to the competent national authority within the two-month period, of the duly approved and signed receipt implies the relinquishment of any claim of whatever nature against the Community institutions in respect of the loss which is the subject of the offer of compensation.

Arguments of the parties

30 The arguments of the parties, relevant to the decision on the present applications for interim measures, may be summarized as follows.

31 With regard to the pleas of fact and law establishing a *prima facie* case for the interim measures applied for, the applicants Jones and McCutcheon claim, in

substance, that the Council's application of Article 43 of the Statute in the context of Article 8(2)(a) of Regulation No 2187/93 is unlawful because it is, first, wrong in law and, secondly, infringes the principles of the protection of legitimate expectations and of equality.

32 In the applicants' opinion, it follows from Article 43 of the Statute, as interpreted by the Court in its judgments of 27 January 1982 in Joined Cases 256/80, 257/80, 265/80, 267/80 and 5/81 *Birra Wührer and Others* v *Council and Commission* [1982] ECR 85, and of 13 November 1984 in Joined Cases 256/80, 257/80, 265/80, 267/80, 5/81, 51/81 and 282/82 *Birra Wührer and Others* v *Council and Commission* [1984] ECR 3693 ('Birra Wührer II') that the period of limitation which applies to proceedings in matters arising from the non-contractual liability of the Community cannot begin to run before all the requirements governing the obligation to provide compensation for damage are satisfied and, in particular, before the damage to be made good has materialized. In the circumstances of the present case, the applicants consider that it was only on 28 April 1988, namely the date of the delivery of the judgment in *Mulder I*, cited above, that the requirements giving rise to the obligation to provide compensation were satisfied, since before that date none of the milk producers concerned could have known that he was entitled to a reference quantity.

33 The applicants also consider that, in this case, reliance upon Article 43 of the Statute disregards the basic principle of the protection of legitimate expectations in so far as neither the Council nor the Commission raised the time bar in *Mulder II*, when the claim for compensation of one of the applicants in that case partly related to a period — of a little more than two months — which was subject to the time bar. In those circumstances, the applicants consider that the Council and the Commission should be deemed to have waived their rights to rely on limitation with respect to the claims for compensation brought by all the milk producers concerned.

34 According to the applicants, the application of Article 43 of the Statute also infringes the basic principle of equality of treatment since it gives rise to discrimination between, on the one hand, producers whose non-marketing or conversion schemes ended in 1983 or 1984 and, on the other hand, those whose schemes ended in 1987, the latter producers being hardly affected by the time bar.

35 With regard to urgency, the applicants claim that they will suffer serious and irreparable harm if the interim relief sought is not obtained. In that respect, they state that the choice given to them by the contested regulation is between either accepting the flat-rate compensation, and therefore relinquishing their rights to compensation for the whole of the damage suffered, or rejecting the offer of flat-rate compensation and, accordingly, having to wait several years until the Court of First Instance, and possibly the Court of Justice in the event of an appeal, give judgment in the cases now pending. However, the applicants also claim that they cannot await the outcome of those proceedings, since the very existence of their holdings is now imperilled owing to the fact that their creditors are preparing to take possession of, and sell, those holdings. The applicants therefore consider that in either case they will suffer serious and irreparable harm which only the adoption of the interim measures sought can remedy, since under the first and third paragraphs of Article 14 of Regulation No 2187/93 the offer of compensation is to be made to them by 31 January 1994 at the latest, and will have to be accepted within two months of its receipt.

36 The applicant, Brian Garrett, claims that in the absence of the interim measures sought and taking into account the fact that the flat-rate compensation provided for in Regulation No 2187/93 is approximately half the sum owed by him to his banks, the latter will take possession of the parts of his holdings which are subject to a charge and, as a result, he will lose not only the flat-rate compensation relating to those parts, but also the reference quantities which have been or will be allocated to him under Article 4 of Council Regulation (EEC) No 3950/92 establishing an additional levy in the milk and milk products sector (Official Journal 1992 L 405, p. 1).

37 For their part, the Council and the Commission consider, above all, that the applications for interim measures should be rejected as inadmissible, since the applicants are not directly and individually concerned by Regulation No 2187/93. The defendants contend that the contested provisions are of concern to the applicants only in their objective capacity of milk producers who have taken part in a non-marketing scheme, and that the contested regulation does not produce binding legal effects for the persons concerned since it does not change their legal situation without their consent. The Council and the Commission state that the offer of

flat-rate compensation provided for in the regulation is in no way binding, since the persons concerned are free to accept or reject it.

38 The Council and the Commission consider that the applicants' pleas of fact and law seeking to establish a *prima facie* case for the interim measures applied for are totally unfounded. With respect to the plea based on the wrongful application of Article 43 of the Statute, the defendants contend that the rules relating to the time bar in Article 8(2)(a)(b) of Regulation No 2187/93 are exactly the same as those set out by the Court of Justice in its judgment in *Birra Wührer II* and that, consequently, the defendants cannot be alleged to have acted in a manner inconsistent with the case-law of the Court of Justice.

39 Furthermore, the Council and the Commission dispute that there has been any breach of the principle of legitimate expectations, above all when, contrary to the applicants' allegations, the plea of limitation could not have been raised in the *Mulder II* case, since the applicant in that case made an application to the Council pursuant to Article 43 of the Statute three months before bringing his action before the Court of Justice and, therefore, interrupted the limitation period. In any case, the Council believes that since the plea is one which may be invoked in each individual case at the discretion of the defendant, it must retain the option of invoking limitation in any subsequent proceedings, or of applying it when adopting a legislative measure of general scope, as in the present case.

40 The Council and the Commission submit that the plea based on the breach of the principle of equality of treatment is completely unfounded, since the different treatment of the producers concerned is simply the automatic result of their objectively different factual situations in the light of Article 43 of the Statute.

41 With respect more particularly to the application for interim measures made by the applicant, Mr Garrett, the defendants contend, first, that it is manifestly unfounded, since the applicant has not demonstrated that the alleged damage is the consequence of illegal action by the Community, and, secondly, that the interim measures applied for prejudge the outcome of the main proceedings in so far as

they seek the advance payment of damages as compensation for a loss, the existence of which must be established in the main proceedings. Moreover, the defendants point out that the applicant is seeking payment, by way of interim measures, of an amount more than twice as much as the loss which he appears to be claiming in the main proceedings, namely UK £136 000.

42 With regard to urgency, the Council and the Commission consider, in substance that not only are the applicants not faced by an impossible choice, but they also do not run the risk of suffering grave and irreparable harm. According to the defendants, if the applicants accept the offer of flat-rate compensation, that would be sufficient to resolve their current financial difficulties. Moreover, in the opinion of the Council and the Commission, if the Court of First Instance and, at last instance, the Court of Justice, were to find in proceedings which are not withdrawn that the time-bar provisions provided for in Article 8 of Regulation No 2187/93 are illegal, the applicants would also not necessarily lose all their rights to compensation for the whole period for which they consider themselves to be entitled. In such a case, an entirely new situation would arise, since the compensation would then be payable in principle for the whole period in question. However, the defendants state that that compensation might no longer be calculated on the basis of a generous flat-rate assessment, but on the basis of actual losses.

43 The Council and the Commission also consider that the applicants would not incur the risk of serious and irreparable harm if they rejected the offer of flat-rate compensation. In so far as the applicants satisfy the conditions for the grant of flat-rate compensation under Regulation No 2187/93, they undoubtedly have a right to damages for their loss, together with interest thereon at the rate of 8% per annum. According to the defendants, that right to damages, which, in principle, must correspond at least to the amount of flat-rate compensation to which the applicants would have been entitled if they had accepted the offer, could, if appropriate, be assigned to their banks as collateral for their loans.

Appraisal of the application

44 In the light of the arguments submitted by the parties, it should first be examined, whether in the absence of the interim measures sought there is, in this case, a risk of serious and irreparable harm such as to justify the adoption of such measures.

45 It has been consistently held (see in particular the Order of the President of the Court of First Instance of 13 May 1993 in Case T-24/93 *CMBT* v *Commission* [1993] ECR II-544) that the urgency of an application for interim measures must be assessed in relation to the necessity for an order granting interim relief in order to prevent serious and irreparable damage to the party requesting the interim measure. It is for the party requesting suspension of the contested decision to prove that he cannot await the outcome of the main proceedings without suffering harm which would involve serious and irreparable consequences.

46 With regard to the applications of the applicants Jones and McCutcheon, it should be observed that their main argument is an assertion that, in the absence of the interim measures applied for, they will suffer serious and irreparable damage both if they were to accept the offer of flat-rate compensation made to them — because they would then have to relinquish any claim against Community institutions to obtain compensation for the whole of the damage which they have suffered — and also if they were to reject that offer — because their financial situation does not allow them to await the outcome of the main proceedings.

47 In those circumstances, it is appropriate to examine whether the choice to be made by the applicants regarding the acceptance or rejection of the offer of flat-rate compensation necessarily gives rise to the serious and irreparable consequences to which they refer.

48 With regard, first, to the possibility of rejecting the offer of flat-rate compensation, it should be noted that, although it is true that in so doing the applicants would, in principle, retain all their chances of obtaining damages for the whole of the period during which they consider they have suffered a loss, it is nevertheless the case that the applicants have demonstrated *prima facie* that they cannot await the outcome of the main proceedings, having regard to their serious financial difficulties and the imminent seizure of their holdings by their respective creditors.

49 With regard, on the other hand, to the possibility of accepting the offer of flat-rate compensation, it should be stated that such compensation would enable, the applicants Jones and McCutcheon at least, to avoid the seizure of their holdings by their respective creditors. The damage to them would therefore consist in the mandatory relinquishment of their right to compensation for the period which, by virtue of Article 8 of Regulation No 2187/93, is subject to the time bar.

50 In that respect it must be pointed out that the Council and the Commission have stated in their written observations that acceptance by the applicants of the offer of flat-rate compensation, and therefore their relinquishment of any claim of whatever nature against the Community institutions in respect of their losses does not necessarily entail the loss of all their rights to compensation for the whole period for which they consider themselves to be entitled, in the event that the Court of First Instance or the Court of Justice were to find, in one of the cases still pending before them, that the time-bar provisions in Article 8 of Regulation No 2187/93 were illegal. In those circumstances, the defendants consider that an entirely new situation would arise and that compensation would then be payable, in principle, for the whole period, although that compensation might be calculated on the basis of actual losses, rather than on the basis of a flat-rate assessment such as that provided for in Regulation No 2187/93.

51 In reply to questions put to them by the President at the hearing on 6 January 1994 regarding the scope of the statements made on page 16 of their respective written observations, the Agents of the Council and the Commission made the following declaration which, with the consent of the defendants, was included in the

minutes of the interlocutory hearing: 'The Agents of the Council and the Commission declared at the hearing that if the Court of First Instance and at last instance the Court of Justice should decide that Regulation (EEC) No 2187/93 had not correctly applied Article 43 of the Protocol on the Statute of the Court of Justice, this would constitute a new situation as the period for which compensation would be paid would, then, in principle, be calculated without taking into account the effect of the time bar. In such a case, in the opinion of the Agents, the flat-rate basis on which compensation is calculated could be reconsidered in favour for example, of actual losses.'

52 In those circumstances it must be concluded that if, in the actions for the annulment of certain provisions of Regulation No 2187/93 — it having been accepted by the parties at the hearing that a certain number of those actions will, in principle, not be withdrawn — the Court of First Instance and, as the case may be, the Court of Justice were to declare the time-bar provisions in Article 8 of that regulation to be illegal, the acceptance of the offer of flat-rate compensation by the producers concerned and the consequent withdrawal of their actions before the Court of First Instance could not signify the permanent loss of their right to obtain compensation for the whole of the period for which they consider themselves to be entitled.

53 The question whether, in such a case, the compensation would be calculated on the basis of actual losses or on the basis of a flat-rate estimate is not relevant to the assessment of the existence of a risk of serious and irreparable harm to the applicants. The fact that if Article 8 of Regulation No 2187/93 is annulled, the defendant institutions might decide to provide for compensation on the basis of actual losses suffered by the producers concerned instead of flat-rate compensation, as is presently the case, cannot, in principle, be considered to impair the applicants' right to receive compensation for the whole of the period during which they

consider they have suffered damage. Accordingly, the applicants' acceptance of the offer of flat-rate compensation provided by Regulation No 2187/93 is not, in itself, of such a nature as to cause them serious and irreparable harm.

54 With regard, in particular, to the application for interim measures made by the applicant, Mr Garrett, it should first be stated, that even assuming urgency were established, the resumption of the main proceedings could not preclude the risk of imminent damage invoked by the applicant. Secondly, it must be observed that the application for an order that the defendants make an advance payment to the applicant of the sum of UK £329 000 amounts to an application to grant, at an interim stage, the form of order sought in the main proceedings, and is a measure which, if granted, would prejudge the outcome of the main proceedings. Finally, it should be stated that, in any event, the applicant has not demonstrated, even *prima facie*, the existence of a direct link between the damage alleged, but not quantified, in the main action which, it is claimed, results from illegal action by the Community such as to render it liable, and the harm which he says he will suffer if the interim measures sought are not granted, namely the imminent seizure of part of his holdings due to the fact that it is not possible to repay two mortgage loans.

55 In view of all the foregoing, and without its being necessary at this stage to examine the arguments of the defendants regarding admissibility or the legally arguable nature of the pleas relied on by the applicants in their applications in the main proceedings, it must be held that the legal conditions for the grant of the interim measures applied for are not satisfied and that the applications must therefore be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The application for interim measures is dismissed;

2. Costs are reserved.

Luxembourg, 31 January 1994.

H. Jung — Registrar

J. L. Cruz Vilaça — President