OPINION OF ADVOCATE GENERAL TIZZANO

delivered on 25 January 2001 [1]

1. The Verwaltungsgericht (Administrative Court), Frankfurt am Main, Federal Republic of Germany, has referred a number of questions to the Court pursuant to Article 177 of the EC Treaty (now Article 234 EC) for a preliminary ruling on the interpretation of Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 and the second paragraph of Article 288 EC) and 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 (hereinafter: 'Regulation No 2187/93'). [2]

Legal background

2. The national proceedings giving rise to this order for reference are part of the well-publicised litigation concerning implementation of the milk quota scheme set up under the common organisation of the markets in milk and milk products. It is appropriate, therefore, to consider briefly the complex EC legislation on the subject.

3. As you will be aware, the existence of surpluses in the market for milk products led the Council to adopt 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. [3] The Regulation provided for payment of a premium to producers who undertook not to market milk or milk products from their holdings for a period of five years.

4. However, those measures soon proved unsuitable for dealing with production surpluses, leading the Council to introduce the scheme known as the 'additional levy': firstly with 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, [4] and, subsequently, with Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c

1 — Original language: Italian.
2 — OJ 1993 L 196, p. 6.
3 — OJ 1977 L 131, p. 1.
4 — OJ 1984 L 90, p. 10.

of Regulation No 804/68 in the milk and milk products sector. [5] The levy was payable by each producer for quantities of milk marketed which exceeded the quota allocated to him ('reference quantity'), the quota being equivalent to the amount produced by each producer during the course of a reference year, which for Germany was 1983. Producers who had not transferred milk during the reference year, in accordance with a non-marketing undertaking under Regulation No 1078/77, were excluded from the system of quotas.

5. In its judgments in *Mulder* [6] and *von Deetzen* [7] of 28 April 1988 the Court ruled that Regulation No 857/84 was invalid in so far as it did not provide for the allocation of a reference quantity to that category of producers, because it breached the principle of legitimate expectations.

6. To comply with those judgments, the Council accordingly adopted Regulation (EEC) No 764/89 of 20 March 1989 amending Regulation No 857/84 adopting general rules for the application of the levy referred to in Article 5c of Regulation No 804/68 in the milk and milk products sector. [8] In particular, it inserted in that Regulation a new Article 3a which allowed milk producers who had not delivered milk during the reference year, on the basis of undertakings given under Regulation No 1078/77, to obtain a specific temporary reference quantity equal to 60% of the quantity of milk sold by the producer during the twelve months preceding the registration of the application for a non-marketing premium (the SLOM I system).

7. However, that regulation was also axed by the Court of Justice: in its judgments of 11 December 1990 in *Spagl* [9] and *Pastätter*, [10] the Court annulled the Regulation (once again) for failing to observe the principle of legitimate expectations, because it limited the specific reference quantity to only 60% of the quantity of milk delivered or 60% of the quantity of milk sold by the producer during the twelve-month period preceding registration of the application for a non-marketing or conversion premium.

8. In the light of that case-law the Council, in Regulation (EEC) No 1639/91 of 13 June 1991 amending Regulation No 857/84 adopting general rules for the application of the levy referred to in Article 5c of Regulation No 804/68 in the milk and milk products sector, [11] once again amended Article 3a to allow a specific reference quota to be allocated also to producers who had previously been excluded (the SLOM II system).

5 — OJ 1984 L 90, p. 13.
6 — Case 120/86 [1988] ECR 2321.
7 — Case 170/86 [1988] ECR 2355.
8 — OJ 1989 L 84, p. 2.
9 — Case C-189/89 [1990] ECR I-4539.
10 — Case C-217/89 [1990] ECR I-4585.
11 — OJ 1991 L 150, p. 35.

9. The Court of Justice then intervened in this complex legislation, ruling, on 19 May 1992 in the second *Mulder* case, that the Community was liable for loss caused to those milk producers who, by reason of the application of Regulation No 857/84 had been excluded from the allocation of a reference quantity because, in carrying out an undertaking given under Regulation No 1078/77, they had not delivered milk during the reference year taken into consideration by the Member State concerned. [12] The Court held that any producer who had been prevented from selling milk solely on the basis of his undertaking concerning non-marketing or reconversion was, as a rule, entitled to compensation for damages.

10. The complexity of the issue and the large number of producers affected by that judgment led the Council and the Commission to publish Communication 92/C 198/04. [13] They announced their intention of adopting practical compensation criteria for producers affected and undertook, until the criteria were adopted, not to invoke expiry of the period of limitation pursuant to Article 43 of the EC Statute of the Court against producers entitled to compensation. This, however, was on condition that that entitlement was not already time-barred on the date of publication of the Communication or the date when the producer had applied to one of the two institutions.

11. Acting on that Communication and, in particular, in order to give effect to the judgment in *Mulder II* and to meet the specific requirement on the EC to compensate the loss suffered by producers of milk or milk products in the situations described above, the Council shortly afterwards adopted Regulation No 2187/93. In particular, it set up a proper system of flat-rate compensation which is described below.

12. It provides, firstly, that producers affected should present an application for compensation, in accordance with the criteria set out in Articles 2 to 5 of the Regulation, to the authority designated by each Member State pursuant to Article 10.

The tenth recital of the Regulation states that, 'the competent authorities of the Member States shall act, on behalf of the Community and the Commission by virtue of a mandate, which has to do only with the execution, in compliance with the provisions of this Regulation, of the administrative tasks necessary for its implementation'.

Article 6 provides that the national authority is to determine the annual quantity in

12 — Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061, hereinafter '*Mulder II*'.

13 — OJ 1992 C 198, p. 4.

respect of which compensation is due; that authority, under Article 11, is to check the accuracy of the information provided by the producer and is to calculate the amount of the compensation on the basis of the quantity and the period in respect of which compensation is due, using the amounts specified in the Annex.

Under Article 14,

'Within four months of receipt of an application the competent authority referred to in Article 10 shall, in the name and on behalf of the Council and the Commission, make an offer of compensation to the producer, accompanied by a receipt in full and final settlement.

...

Failure to accept the offer within two months of its receipt shall mean that it shall not be binding in the future on the Community institutions concerned.

Acceptance of the offer by the return to the competent authority of the duly approved and signed receipt shall imply the relinquishment of any claim of whatever nature against Community institutions in respect of any loss within the meaning of Article 1.'

The financing of the payments made pursuant to the Regulation is deemed, under Article 16, to be intervention within the meaning of Article 3 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy. [14]

Proceedings before the national court

13. The national proceedings giving rise to this case arose against the background of the scheme described above. Three sets of proceedings were brought before the Verwaltungsgericht, Frankfurt am Main, by a number of milk producers who had received and promptly accepted an offer of compensation from the Bundesanstalt für Landwirtschaft und Ernährung (hereinafter: 'the BLE') in the name and on behalf of the Council and the Commission in accordance with Regulation No 2187/93. Despite that offer, they were then refused payment of the amount agreed, in whole or in part, because the BLE, when subsequently reviewing entitlement to compensation, concluded that in these cases not all the conditions set out in the Regulation were met.

14 — OJ 1970 L 94, p. 13.

14. More specifically, the BLE held in *Flemmer* (C-80/99) and *Leitensdorfer* (C-82/99) that the definitive special reference quantity had been wrongly allocated from the outset.

The BLE held, in the first case, that the conditions under Article 3a of Regulation 857/84 had not been met, because, on further examination of the facts, it was discovered that the milk delivered on the basis of a provisional special reference quantity for delivery had not been produced in the holding of the applicant and that, therefore, the applicant had been wrongly allocated a definitive special reference quantity. By letter of 27 June 1996, therefore, the BLE terminated the compensation agreement with immediate effect, within the meaning of the first sentence of Paragraph 60 of the Verwaltungsverfahrensgesetz (Law on Administrative Procedure, 'the VwVfG') by reason of the fact that the basis for the measure no longer existed. The applicant contested the decision before the national court, maintaining that he personally was a producer and that he had been allocated a definitive special reference quantity by irrevocable decision of the Hauptzollamt (Principal Customs Office).

15. In *Leitensdorfer*, the BLE also claimed that the conditions under Article 3a cited above had not been met because the former milk producer had resumed production too late. The facts were as follows. The applicant, Mrs Leitensdorfer, had inherited a holding from Mrs Wurm who, in turn, had inherited the holding from her late husband Mr Wurm. The latter, however, had in turn undertaken not to sell milk and was therefore no longer a producer. The definitive special reference quantity allocated on 9 November 1992 to Mrs Wurm (and subsequently transferred from her to the other tenant on 1 April 1993) was consequently withdrawn by the competent Principal Customs Office from 1 April 1996. The applicant brought an appeal (still pending) against that decision in the Finanzgericht (Finance Court), Munich, Bavaria. In the meantime, by letter of 5 February 1996, the BLE terminated the compensation agreement concluded with the applicant Mrs Leitensdorfer with immediate effect, in accordance with the first sentence of Paragraph 60 of the VwVfG, on the grounds that the former producer (Mrs Wurm) had delayed resumption of milk production, but the applicant contested that decision, claiming that the grounds for the termination of the agreement (delayed resumption of production) were already known to the BLE before the conclusion of the agreement.

16. In *Christoffel* (Case C-81/99), the BLE had verified that, from 1 January 1992, the applicant had leased part of her holding, whilst transferring the relevant reference quantity to the tenant, however, instead of returning it to the national reserve. Although the applicant claimed that absorption into the national reserve was out of the question in that she had retained all the areas given over to milk production in the former SLOM holding, the competent authority refused to transfer the pro-

portional reference quantity to the national reserve on the grounds of the protection of legitimate expectations of the applicant and of the tenant to whom the reference quantity had meanwhile been transferred. The BLE therefore held that the conditions set out in the Regulation for compensation to be granted were no longer met and refused payment, making a new offer to Mrs Christoffel for a greatly reduced sum.

Questions for preliminary ruling

17. The Verwaltungsgericht, Frankfurt am Main, held that all three cases outlined above raised questions of Community law requiring a preliminary ruling by the Court. In brief, the particular question about which the Verwaltungsgericht was unsure was whether the disputes outlined above came under the jurisdiction of the Court of Justice or the national court, and whether the answer given might have consequences (and if so, which consequences) as regards the law to be applied.

18. The national court bases the grounds set out on this matter in the order for reference on the premiss that Regulation No 2178/93 provides producers with a procedure for supplementary, alternative compensation to legal proceedings in the form of an action for damages under Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 and the second paragraph of Article 288 EC respectively).

In support of that argument, the referring court recalls in particular the judgment of the Court of First Instance of 16 April 1997 which states that, in adopting Regulation No 2187/93, 'the Council has in fact opened up a new avenue for compensation to producers entitled to compensation', and that the regulation 'as far as producers are concerned... is in the nature of a proposal by way of settlement, acceptance of which is optional, and constitutes an alternative to judicial resolution of the dispute'. [15]

Therefore, if a milk producer accepts before the deadline an offer of compensation communicated to him in the name and on behalf of the Council and the Commission by the national competent authority, the national court believes that a contract, or a compensation agreement, has been made between the producer concerned and the Community institutions, an agreement defined as subject to public law.

19. On that basis, the Verwaltungsgericht has therefore come to the conclusion that if there are disputes between the parties about

15 — Case T-541/93 *Connaughton and Others* v *Council* [1997] ECR II-549, paragraphs 34 and 35.

the force of that agreement, the national court should have jurisdiction and rule on the basis of its own national law.

We have here a case of contractual liability of the Community institutions which, under the first paragraph of Article 215 of the EC Treaty (now the first paragraph of Article 288 EC), — and in the absence of a specific arbitration clause under Article 181 of the EC Treaty (now Article 238 EC) — accordingly falls within the jurisdiction of the national court.

20. However, a ruling given by the Court of First Instance with reference to Regulation No 2187/93 caused the Verwaltungsgericht to suspect that that solution was not in accordance with Community law.

In *Dethlefs* the Court of First Instance stated that 'in so far as the compensation arrangements laid down therein [Regulation No 2187/93] were intended to discharge the obligations arising from the findings made against the Community institutions in *Mulder*, application of the Regulation falls within the domain of the Community's non-contractual liability.' [16]

16 — Case T-112/95 [1998] ECR II-3819, paragraph 55.

21. In the light of the statements above, which seemed to throw into question the previous reasoning of the *Verwaltungsgericht*, it decided therefore, after joining the three sets of proceedings for the purpose of this reference for preliminary ruling, to submit the following questions to the Court:

'(a) Is the second paragraph of Article 215 of the EC Treaty and Article 178 of the EC Treaty, in conjunction with the provisions of Regulation (EEC) No 2187/93, to be interpreted as meaning that the Court of Justice also has jurisdiction in disputes which derive from a contract concluded by the competent national authority in the name and on behalf of the Council and Commission in accordance with Council Regulation (EEC) No 2187/93 providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade?

(b) If that question is answered in the negative and if the case falls within the first paragraph of Article 215 of the EC Treaty, thus giving the national courts jurisdiction under Article 183 of the EC Treaty, the further question arises as to whether the provisions of national procedural law or the general principles of law common to the legal systems of the Member States are to be applied to such a contract, in so far

as Regulation (EEC) No 2187/93 makes no provision.

(c) If the general principles of law are applicable, the question then arises as to whether and under what conditions the competent national authority may set aside in whole or in part a contract concluded in the name and on behalf of the Council and Commission if it subsequently transpires that the conditions to be fulfilled under Council Regulation (EEC) No 2187/93 for the making of an offer of compensation were in whole or in part not met, or if the conditions for the making of an offer of compensation are met only because the competent national authorities consider that they are precluded, for reasons of the protection of legitimate expectations, from annulling the definitive allocation of a special reference quantity which is a precondition for granting compensation.'

Legal analysis

The first question

Preliminary considerations

22. It is clear from the order for reference that the question whether disputes regarding compensation agreements concluded under Regulation No 2187/93 fall within the jurisdiction of the national court or that of the Court of Justice must be answered before the second and third questions and that answer will affect the answers to be given to them.

23. Before dealing with the question in greater depth, however, I should set out the actual terms in which it is couched. During the proceedings it emerged that both the Commission and the applicants in the main proceedings appear to take the view that, on the matter at issue, it does not matter in principle which solution is chosen, and that the choice might in practice be made on the basis of arbitrary considerations.

24. There are undoubtedly certain differences between the position of the Commission and that of the applicants, but the conclusion which they reach appears to me to be the same. The Commission, after setting out the arguments which, in its opinion, support one solution or the other, acknowledges that the acceptance of the jurisdiction of the national courts is more consistent with the system established by the relevant articles of the EC Treaty. It concludes, however, by espousing the opposite solution, essentially for the sake of expediency, in other words because that solution is the most practical or convenient. Indeed that solution has the merit of

providing a single legal remedy, offering a single means of redress both for those disputes concerning compensation agreements concluded under Regulation No 2187/93 and those concerning the non-contractual liability of the EC, which, to a certain extent, is the basis for the system of compensation.

25. The applicants in the main proceedings are also in favour of jurisdiction being awarded to the national court. However, observing that that approach is allegedly inconsistent with *Dethlefs*, cited above, they suggest that the party concerned should be given the option of bringing proceedings in either the European Court of Justice or the national court, as either may, in principle, be considered to have jurisdiction.

26. Therefore, the substance of both the Commission's and the applicants' arguments, is, in the final analysis, the same: that is, that we have two courts, which in theory, *both have jurisdiction*, and that the choice of one or the other should be made according to the criterion of practical expediency, as the Commission wishes, or left to the parties concerned, as the applicants suggest.

27. It seems to me that such criteria are not only too empirical, but also unreliable. For example, it might be agreed that in a complex dispute that it is preferable to rely on a single court, but it can equally be said that to resolve disputes between an individual and the national authorities, the individual might find it easier and more convenient to bring proceedings before the national courts than the Court of Justice. These are very subjective arguments and therefore do not offer a safe, objective guide.

28. That aside, however, it is, in my view, of paramount importance to bear in mind that under the Treaties, the jurisdiction of the European Court of Justice is available, in principle, as an alternative to the national court, and that the jurisdiction of one court or the other in a dispute may not depend on arbitrary, discretionary choices, but arises from the general rules of the system. It must, therefore, be assessed objectively on the basis of the relevant rules and principles.

29. If this is the case, as I firmly believe it to be, it is necessary, therefore, to identify, not on the basis of random criteria of convenience, but on the basis of those rules and principles, which court (the Court of Justice or the national court) has jurisdiction in disputes concerning compensation agreements concluded by the national authorities in the name and on behalf of the Community under Regulation No 2187/93.

Purpose and aims of Regulation No 2187/93

30. With this in mind, and given that we are dealing with disputes brought by individuals against the actions of national authorities implementing an EC Regulation, I shall simply recall the principle cited on a number of occasions by the Court according to which 'a review of administrative acts of Member States in applying Community law is primarily a matter for national courts without prejudice to their power to refer questions for a preliminary ruling to the Court under Article 177 of the EEC Treaty.' [17]

31. This, I believe, is the proper approach with regard to the question referred, but before stating so definitively, I feel I should take into account the doubts raised by the referring court and by the Commission with regard to the specific nature of the situation at issue in the present case, this specific nature being cited in particular by the Commission as one of the principal arguments in favour of the jurisdiction of the Court of Justice.

That jurisdiction is derived notably from the fact that the adoption of Regulation No 2187/93 follows from and is a consequence of the recognition of the EC's non-contractual liability. Whilst, therefore, recognising the autonomy of compensation agreements entered into pursuant to that Regulation, the Commission points out that disputes in that connection always in the end arise over the enforcement of the compensation requirement, following establishment of the EC's non-contractual liability. On the basis of this close connection and at the same time envisaging a very broad interpretation of the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC), the Commission concludes that those disputes should also be within the jurisdiction of the EC, notably the exclusive jurisdiction which Article 178 of the EC Treaty (now Article 235 EC) assigns to the Court in disputes on EC non-contractual liability. The Commission and the German court claim that this conclusion is all the more compelling since, according to both parties, under Regulation No 2187/93 the national authorities act in the name and on behalf of the EC institutions.

32. In my analysis of those arguments, I would point out from the outset that I do not in any way intend to deny the correlation between Regulation No 2187/93 and the EC's non-contractual liability. As emphasised in the preamble, the purpose of the Regulation, in the wake of *Mulder II*, is to enforce the requirement to compensate losses incurred as a result of the original legislation on the additional levy scheme (see first and second recitals of the Regulation).

17 — Case 133/79 *Sucrimex* [1980] ECR 1299, paragraph 24, and Case 217/81 *Interagra* [1982] ECR 2233, paragraph 10.

Having recognised the significance of that correlation, however, it is still important to consider whether it is sufficient to justify the conclusion that disputes concerning compensation agreements concluded between producers and national authorities fall within the jurisdiction of the Court of Justice under Article 178 and the second paragraph of Article 215 of the EC Treaty (now, respectively, Article 235 EC and the second paragraph of Article 288 EC).

Judgment of the Court of First Instance in the case of *Dethlefs*

33. Authoritative support for this conclusion is apparently found — and this was in any case taken into consideration by more than one of the parties — in *Dethlefs*, in which the Court of First Instance stated that, 'in so far as the compensation arrangements laid down therein [in Regulation No 2187/93] were intended to discharge the obligations arising from the findings made against the Community institutions in *Mulder*, application of the Regulation falls within the domain of the Community's non-contractual liability' (paragraph 55).

34. In my view, however, it is clear that that precedent is much less important for present purposes than has been claimed, given the difference between the situations concerned.

In *Dethlefs*, proceedings were brought directly against the Council and the Commission by a number of producers to obtain compensation for losses caused to them by the institutions. In particular, the applicants complained that the Commission had refused payment of the interest due for the period between acceptance of the offer made by the national authority and the actual withdrawal of the actions for damages under the second paragraph of Article 215 of the EC Treaty brought by the operators concerned before Regulation No 2187/93 came into force.

The case concerned, therefore, — and the citation from the judgment given above must be considered in this light — a question regarding application of the Regulation by the Community institutions *in respect of their liability* in so far as it affected the 'interpretation of [the Regulation] and its effects' (paragraph 32) and therefore the functioning of the system which the institutions had established.

In that case, as the Court of First Instance stressed, the applicants were not pleading any wrongful act on the part of the national authorities, but were directly and exclusively contesting the liability of the Community institutions. On this basis, the Court of First Instance rejected the plea of inadmissibility of the proceedings raised by the Council, based on the allocation of

responsibility under Regulation No 2187/93, claiming that the responsibility for applying the Regulation lay with the national authorities and not the Community institutions (paragraph 34).

In contrast, in these proceedings we are not in any way concerned with the actions of those institutions, but merely with the actions of the national authorities, and their jurisdiction.

Implementation of Regulation No 2187/93 in the light of division of functions between the Community and the Member States

35. So, having established what I see as the correct scope of the precedent cited, I can now resume consideration of the question whether, as the Commission submits, the close link between the duties of the national authorities under Regulation No 2187/93 and the non-contractual liability of the Community is sufficient for those duties to be subsumed under the Community's liability, *inter alia* for the purposes of determining which court has jurisdiction.

36. In order to reach that conclusion, it would, in my view, be necessary to work from a questionable premiss in this case: that is to say that, from a general standpoint, the compensation system established by Regulation No 2187/93 does not form part of the normal division of responsibilities between the Community and Member States for the enforcement of Community law. It is true that the Regulation itself defines that system precisely, but that can be explained by the difficult situation which the Community faces. As the large number of individuals potentially entitled to compensation made individual consideration of each case problematic, a solution of a general nature had to be found, based on flat-rate payments and on mechanisms defined in detail in the Regulation itself. It imposed limitations on the autonomy of the national authorities whilst conferring on them responsibility for the implementation and practical operation of the system (see fourth recital).

37. Despite the specific characteristics indicated, the system set up remains part of the framework of decentralised management under Community law which characterises so many other sectors of Community action. Moreover, as the tenth recital of the Regulation reads,

'when this Regulation is implemented the competent authorities of the Member States shall act, on behalf of the Community and the Commission by virtue of a mandate, which has to do only with the execution, in compliance with the provisions of this Regulation, of the administrative tasks necessary for its implementation'.

There is no reason, therefore, to believe that, although limited in this way, these responsibilities are outside the traditional implementation of Community law by the Member States. Nor, consequently, is there reason to believe that their execution is outside the jurisdiction of the national court and within the jurisdiction of the Court of Justice instead, notwithstanding the general principles outlined above (see paragraph 30).

38. The Court of First Instance, moreover, rejected that conclusion in *Laga* and *Landuyt*, [18] in which it ruled out its jurisdiction to review the legality of a measure adopted by the competent French authority in which the applicant was denied the right to an offer of compensation under Regulation No 2187/93. Making extensive reference to the settled case-law of the Court, according to which it is for Member States 'to ensure that Community regulations, particularly those concerning the common agricultural policy, are implemented within their territory', the Court of First Instance concludes from this, as an initial finding of a general nature, that 'acts adopted by the national authorities in the context of the implementation of that policy are normally subject, therefore, to review by the national courts'. More specifically, it later held it did not have jurisdiction to review the legality of the measure of the national authority, as the applicant's claims sought 'to call in question the validity of a decision taken by the national bodies responsible for implementing certain measures within the framework of the common agricultural policy'.

18 — Case T-93/95 *Laga* v *Commission* [1998] ECR II-195, paragraph 33 et seq., and Case T-94/95 *Landuyt* v *Commission* [1998] ECR II-213, paragraph 33 et seq.

The nature of the relationship between the national authorities and the Community institutions

39. In support of the argument in favour of jurisdiction of the Court of Justice, both the Verwaltungsgericht and the Commission rely, moreover, on a further aspect of the role played by the national authorities within the framework of the compensation system created by Regulation No 2187/93, namely the fact that those authorities are required, in that context, to carry out an activity which is typically contractual in nature. It will be recalled that the system of compensation is based on an agreement concluded between the authority and the individual operator setting out the amount of the compensation due to the individual.

40. The national court and the Commission attach particular importance to the fact that, under Article 14 of Regulation No 2187/93, the national authorities act for these purposes 'in the name and on behalf of' the Council and the Commission. They maintain that, for this reason, the relationship between the national authorities and the Community institutions mentioned should be deemed that of agent and principal, with the result that the contractual relationship arising from the offer of

compensation by the national authorities and acceptance of that offer by the producer should, in reality, be considered as being directly between the producer on the one hand, and the Council and the Commission on the other.

41. I do not wish to explore this argument in detail here. It is important at this juncture merely to note that, even if one takes the view that the national authorities are acting as an agent or representative for the Community institutions and that compensation agreements concluded by the national authorities under Regulation No 2187/93 are between the institutions and individual producers, that should not rule out jurisdiction of the national courts in disputes concerning those agreements.

It is well known that, under the first paragraph of Article 215, and under Articles 183 and 181 of the EC Treaty (now, respectively, the first paragraph of Article 288 EC, Articles 240 EC and 238 EC), disputes concerning contractual matters to which the Community is a party fall, as a rule, within the jurisdiction of the national courts. As the Court stated in its ruling of 21 May 1987,[19] '[a]ccording to Article 183 of the EEC Treaty, the national courts or tribunals are to have jurisdiction in disputes to which the Community is a party, with the exception of those in respect of which exclusive jurisdiction is conferred on the Court of Justice'. Examination of that provision in conjunction with Article 181 of the EC Treaty under which the Court has jurisdiction to give judgment pursuant to any arbitration clause in disputes concerning contracts governed by public or private law agreed by the Community or on behalf of the Community, reveals that, as a general rule, disputes concerning contracts to which the Community is a party, or in which one of the contracting parties acts as an agent of the Community, fall within the jurisdiction of the national court.

19 — Joined Cases 133/85 to 136/85 *Rau* v *BALM* [1987] ECR 2289.

Extent of Community jurisdiction in the area of non-contractual liability

42. In support of the view that the Court of Justice has jurisdiction, I need only elaborate on an argument already cited (see paragraph 31). It is necessary to demonstrate that the jurisdiction assigned to the Court under Article 178 and the second paragraph of Article 215 of the EC Treaty (now, respectively, Article 235 EC and 288(2) EC) in cases of non-contractual liability of the Community also encompasses disputes concerning contractual claims regarding the discharge of compensation obligations after liability has been established.

As we have seen, this is the view which the Commission is attempting to assert, extending, as outlined above, the scope of Article 178 of the EC Treaty in so far as it assigns jurisdiction to the Court in disputes relating to compensation for losses provided for in the second paragraph of Article 215.

43. However, I must point out that there is no hint of such an interpretation in the provisions of the Treaty cited, and that the interpretation reflects neither the letter nor the spirit of those provisions.

44. As we have seen above, the Treaty makes a clear distinction between disputes relating to non-contractual liability of the Community, which fall within the jurisdiction of the Court of Justice (Article 178 and the second paragraph of Article 215 of the EC Treaty), and contractual disputes where the national courts have jurisdiction, except where the Court has jurisdiction pursuant to an arbitration clause (Article 181 of the EC Treaty). As a general rule, therefore, and subject to the powers assigned to the Court, the Treaty recognises the jurisdiction of the national courts in disputes to which the Community is a party (Article 183 of the EC Treaty). It is clear from this that any derogations from that basic system of division of powers between the Court of Justice and the national courts cannot be inferred on the basis of assumptions regarding interpretation, but should be expressly and unequivocally stated.

45. Nor can the Commission's argument outlined above be justified on account of the particular nature of the relationships being dealt with in the main proceedings, that is to say on account of their close connection with the non-contractual liability of the Community to which I have referred more than once above (see, in particular, paragraph 31).

In formal terms, an offer of compensation by the competent national authority to the producer and its corresponding acceptance by the producer are seen as factors which constitute an autonomous legal relationship, even where its purpose is to satisfy and pre-empt claims on the part of the producer for compensation by the Community. That relationship must be seen as having contractual status as the Court of First Instance recognised in *Connaughton* when it stated, '[a]ccordingly, as far as producers are concerned, Regulation No 2187/93 is in the nature of a proposal by way of settlement, acceptance of which is optional, and constitutes an alternative to judicial resolution of the dispute.' [20]

46. On the other hand, the notion of the autonomy of the contractual relations under discussion seems to me to be more consistent with the system established by Regulation No 2187/93. Article 14 of the Regulation provides that acceptance of the offer by the return to the competent authority of the duly approved and signed receipt is to imply the relinquishment of any claim of whatever nature against Community institutions in respect of any loss. Conversely, the fifteenth recital of the Regulation states that 'failure by the producer to accept the offer made by the competent authority of the Member State in accordance with the provisions of this Regulation would amount to refusal of the Community offer;... any legal proceedings continued or initiated thereafter by the producer would fall within the Community's jurisdiction'. Here there is thus no legal relationship between the producer and the national authorities, yet the case remains

20 — Cited above, paragraph 35, and Case T-554/93 *Saint and Murray* v *Council and Commission* [1997] ECR II-563, paragraph 41.

entirely within the ambit of the Community and of the relationship between the producer and the Community institutions arising from the establishment of the non-contractual liability of the institutions. Naturally, therefore, disputes arising in this connection fall within the jurisdiction of the Court of Justice within the meaning of 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). Where, however, the offer is accepted, an autonomous legal relationship is established with the national authorities, which, as long as it remains in force, has an independent existence and, as such, cannot but come within the jurisdiction of the national courts.

47. However, I think that the proof of my argument so far derives in the main from a teleological interpretation of Article 178 and of the second paragraph of Article 215 of the EC Treaty. As the Court has had reason to state on a number of occasions, '[The purpose of] the action for damages provided for in Articles 178 and 215 of the Treaty... is not to enable the Court to examine the validity of decisions taken by national agencies responsible for the implementation of certain measures within the framework of the common agricultural policy or to assess the financial consequences resulting from any invalidity of such decisions'.[21] The Court of First Instance rightly concluded from the case-law cited in *Laga* and *Landuyt*, that, since the refusal on the part of the competent national authority to make the applicant an offer of compensation under the circumstances specified in Regulation No 2187/93 resulted from the outcome of the checks carried out by the national authorities, 'the event giving rise to the loss for which the applicant claims reparation is an act adopted by the national authorities in the exercise of their own powers. It follows that the conditions which must be satisfied for the matter to be brought before the Court under Article 178 and the second paragraph of Article 215 of the Treaty are not fulfilled'.[22]

48. In the light of the arguments presented above, I can only conclude that the national court has jurisdiction in disputes relating to enforcement of Regulation No 2187/93 by the national authorities, in particular where these are, as here, disputes concerning compensation agreements concluded between those authorities and the individual producers concerned.

The second question

49. A reply in the negative to the first question requires me to consider the second question since, in the event of such a reply, the Verwaltungsgericht requested a ruling as to whether the provisions of national procedural law or general principles of law

21 — See in particular Case 12/79 *Hans-Otto Wagner* v *Commission* [1979] ECR 3657, paragraph 10; Case 175/84 *Krohn* v *Commission* [1986] ECR 753, paragraph 18.

22 — *Laga* v *Commission* and *Landuyt* v *Commission*, cited above, paragraph 47 of both.

common to the legal systems of the Member States should be applied to compensation agreements in implementing Regulation No 2187/93.

50. In my opinion, the reply to the second question is to some extent implied by the reply to the first question. It has long been settled case-law of the Court that if implementation of Community law is the responsibility of the authorities of the Member States, it must take place in accordance with national law. The Court, in fact, states that where 'the implementation of a Community Regulation is a matter for the national authorities subject to review by the national courts, implementation must comply with the procedural and formal rules prescribed by the national law of the Member State concerned. However, as the Court has already emphasised in a number of consistent decisions, recourse to rules of national law is possible only in so far as it is necessary for the implementation of provisions of Community law and in so far as the application of those rules of national law does not jeopardise the scope and effectiveness of that Community law'. [23]

51. That precedent, in my view, can be relied on in the context of the question under consideration, and the reply to the Verwaltungsgericht should therefore be that, in so far as Regulation No 2187/93 makes no provision to this effect, provisions of national procedural law apply to compensation agreements concluded under that Regulation, as long as application of those rules does not jeopardise the scope and effectiveness of Community law.

Nor do I consider that this reply can be challenged on the basis of the concerns expressed by the Commission that it would give rise to a non-uniform application of Community law in the national legal systems. It is reasonable to respond that Article 177 of the EC Treaty (now Article 234 EC) makes provision for the preliminary ruling procedure precisely in order to prevent the non-uniform application of Community law which would compromise equality of treatment of economic operators in all Member States. It is well known that the procedure allows national courts to refer to the Court, in cases such as those under consideration here, any question concerning the interpretation and validity of relevant Community law. [24]

The third question

52. In the third and final question referred for a preliminary ruling, the Verwaltungs-

23 — Joined Cases 146/81, 192/81 and 193/81 *Bay Wa* v *BALM* [1982] ECR 1503, paragraph 29; see also Case 265/78 *Ferwerda* [1980] ECR 617, paragraph 10; Joined Cases 205/82 to 215/82 *Milchkontor* [1983] ECR 2633, paragraph 15 et seq., and Joined Cases 89/86 and 91/86 *Étoile commerciale and CNTA* v *Commission* [1987] ECR 3005, paragraph 12.

24 — *Sucrimex*, cited above, paragraph 24.

gericht asks the Court about the implications of certain general principles of law, in particular the principle of the protection of legitimate expectations, in disputes arising from the compensation agreements under consideration. More particularly, the national court wishes to know whether that principle prevents national authorities which have concluded a compensation agreement in the name and on behalf of the Community institutions, from later annulling it (and, if this is the case, on what terms) if they find that the conditions for an offer of compensation to be made have not been met or where they find that these conditions are only met because the national authorities, for reasons pertaining solely to the protection of legitimate expectations in each case, have no influence on the fulfilment of the preconditions for payment of the compensation.

53. Here too, in my view, the answer may be found in the Court's case-law. On this question, I shall refer simply to *Milchkontor*. In this case, concerning the recovery of aids unduly paid, the Court primarily confirmed an unequivocal trend in its case-law, ruling that the principles of the protection of legitimate expectations and of legal certainty are an integral part of the Community legal order. That being the case, the Court went on to make clear that one cannot consider it inconsistent with that legal order if a national legal system guarantees respect for those principles where, by reason of a breach of Community rules, it is necessary to withdraw administrative measures or to require reimbursement of payments made by the authorities, as long as the application of those principles is in accordance with the conditions and the procedures laid down for purely national legal relationships, and the interests of the Community are taken fully into account. [25]

On the same matter, moreover, the Court also had occasion to stress that 'a wrongful act on the part of the Commission or its officials, and likewise a practice of a Member State which does not conform with Community rules, is not capable of giving rise to legitimate expectations on the part of an economic operator who benefits from the situation thereby created...' [26] It follows that the principle of the protection of legitimate expectations cannot be relied upon against a precise provision of Community law, and that the conduct of a national authority responsible for applying Community law, which acts in breach of that law, cannot give rise to legitimate expectations on the part of an economic operator that he will benefit from treatment which is contrary to Community law'. [27] In similar cases, as Advocate General Mancini points out in that case, the aggrieved party always has the possibility of bringing an action for compensation before the national courts against the authorities responsible for the error which, in its view, caused it loss. [28]

25 — *Milchkontor*, cited above, paragraph 27 et seq.

26 — See Case 188/82 *Thyssen* [1983] ECR 3721 and Case 5/82 *Maizena* [1982] ECR 4601.

27 — Case 316/86 *Hauptzollamt Hamburg-Jonas* v *Krucken* [1988] ECR 2213, paragraph 24.

28 — Opinion of Advocate General Mancini in Case 316/86, cited above, p. 2231.

54. It is for the national court to assess whether and how those precedents are applicable in the specific cases referred to it. I believe that, following those precedents, the Court may simply reply to the Verwaltungsgericht that Community law does not prevent the authorities of a Member State from taking into account the principle of legitimate expectations in considering any failure to observe terms imposed by Community legislation, as long as that principle is applied in accordance with the conditions and procedures laid down for purely national legal relationships and the interests of the Community are taken fully into account.

Conclusions

55. On the basis of the above arguments, I therefore propose the following answers to the questions referred by the Verwaltungsgericht, Frankfurt am Main:

(1) The national courts do, in principle, have jurisdiction in disputes concerning the validity and voidability of compensation agreements concluded by the national competent authorities with producers of milk or milk products implementing the system of compensation provided for by 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 (OJ 1993 L 196, p. 6).

(2) The provisions of national procedural law are applicable to compensation agreements concluded pursuant to the Regulation in so far as the Regulation makes no provision to that effect, as long as application of those provisions does not jeopardise the scope and effectiveness of Community law.

(3) Community law does not preclude the authorities of a Member State from taking into account the principle of legitimate expectations in deciding whether there has been any breach of conditions imposed by Community legislation, as long as that principle is applied in accordance with the conditions and the procedures laid down for purely national legal relationships, and as long as the interests of the Community are taken fully into account.