ORDER OF THE PRESIDENT OF THE FIRST CHAMBER (EXTENDED COMPOSITION) OF THE COURT OF FIRST INSTANCE

1 December 1994 *

In Joined Cases T-158/93 and the other cases set out in the annex hereto,

Detlef Brandt, of Manhagen (Federal Republic of Germany), and the other milk producers set out in the annex hereto, represented by Detlef Hansen and Stephan Vieregge, Rechtsanwälte, Lübeck, with an address for service in Luxembourg at the Chambers of Marc Baden, 24 Rue Marie-Adelaïde,

applicants,

v

Commission of the European Communities, represented by Dierk Booß, of its Legal Service, acting as Agent, and Hans-Jürgen Rabe, Rechtsanwalt, Hamburg, with an address for service in Luxembourg at the office of Georgios Kremlis, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: German.

APPLICATION under Article 178 and the second paragraph of Article 215 of the EEC Treaty for damages on account of the Community's non-contractual liability as a result of the adoption of certain regulations in the milk and milk products sector,

THE PRESIDENT OF THE FIRST CHAMBER (EXTENDED COMPOSITION) OF THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

makes the following

Order

1 By applications lodged at the Registry of the Court of Justice between 5 May and 20 July 1992 the applicants brought actions against the Commission under Article 178 and the second paragraph of Article 215 of the EEC Treaty claiming compensation for the damage caused to them 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 5(c) of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13). By order of the Court of Justice of 27 September 1993 the cases were referred to the Court of First Instance.

2 By applications lodged at the Registry of the Court of First Instance between 19 and 30 September 1994 the applicants, who in the meantime had accepted the offer of compensation made to them on the basis of Council Regulation (EEC) No 2187/93 of 22 July 1993 providing for an offer of compensation to certain produc-

ers of milk and milk products temporarily prevented from carrying on their trade (OJ 1993 L 196, p. 6), withdrew from the proceedings. The applicants make no application for costs.

3 Having regard to the withdrawals from the proceedings, the Commission has applied for an order that the applicants pay the costs of the proceedings in accordance with the first sentence of the first subparagraph of Article 87(5) of the Rules of Procedure. The Commission contends that, in the absence of a separate application for costs by the applicants made in connection with the withdrawal from the proceedings, and in view of the Commission's application for costs, the decision as to costs is made mandatory in the first sentence of the first subparagraph of Article 87(5) and there is no room for a decision as to costs under the second sentence of the first subparagraph of Article 87(5) or under the third subparagraph of Article 87(5). Arguments to the effect that the Commission has given cause for bringing the proceedings should only be relevant for a decision as to costs, if an applicant has made an application for costs under the second sentence of the first subparagraph of Article 87(5).

4 Under Article 87(5) of the Rules of Procedure the party who withdraws from proceedings is to be ordered to pay the costs if they have been applied for in the other party's pleadings. However, upon application by the party who withdraws from the proceedings, the costs are to be borne by the other party, if this appears justified by the conduct of that party. If costs are not claimed in the written pleadings, the parties are to bear their own costs.

5 It must first be observed that, when the actions were brought, the Council and the Commission had not yet acknowledged their liability in the communication in the Official Journal of the European Communities of 5 August 1992 (OJ 1992 C 198, p. 4) and, having regard to a proposed overall solution, waived application of the time-bar. The bringing of proceedings was accordingly justified in order to pursue the applicants' claims, which have in the meantime been acknowledged by the offer of compensation.

6 Although under Article 87(5) of the Rules of Procedure an order that a party bear the costs of the other party is only possible if the other party has made an application to that effect, the third subparagraph of Article 87(5) provides that an order that a party is to bear its own costs can also be made even without an application by the other party. If an applicant withdraws his action without making an application for costs, it may be inferred that he is waiving any claim that the defendant should bear his own costs, but not that he is prepared to pay the defendant's costs as well. A decision on the removal of a case from the register in the event of a withdrawal and, as the case may be, on an application by the defendant under the first sentence of the first subparagraph of Article 87(5) is to be made without any further procedural step. The applicant does not receive any express opportunity to contest that application for costs. Whether or not the applicant's obligation to bear the defendant's costs is well founded must therefore if necessary be assessed *ex officio*, in so far as the circumstances permit. If in so doing it is apparent that the applicant had reason to bring an action because of the defendant's conduct and therefore an obligation on the applicant to bear the defendant's costs is not justified, then the application of the defendant for an order as to costs cannot be granted even where the applicant, when withdrawing from the proceedings, has not himself made an application for costs. In such a case, the parties must bear their own costs.

7 It follows that the Commission's application for an order that the applicants bear all the costs of the proceedings should not be allowed and that the parties should be ordered to bear their own costs. That decision is made notwithstanding the flat-rate amount in respect of costs pursuant to Regulation No 2187/93 laid down in Commission Regulation (EEC) No 2648/93 laying down detailed rules for the application of Regulation 2187/93 (OJ 1993 L 243, p. 1), which is not to be taken into account in the present proceedings.

On those grounds,

THE PRESIDENT OF THE FIRST CHAMBER (EXTENDED COMPOSITION) OF THE COURT OF FIRST INSTANCE

hereby orders:

1. **Cases T-158/93, T-161/93, T-163/93, T-175/93, T-176/93, T-177/93, T-186/93, T-203/93, T-206/93, T-208/93, T-209/93 and T-216/93 shall be removed from the Register of the Court of First Instance.**

2. **The parties shall bear their own costs.**

Luxembourg, 1 December 1994.

H. Jung
Registrar

J. L. Cruz Vilaça
President