Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

28 February 2013 *

(Appeal — Non-contractual liability of the European Union — Finding of irregularities in the refunds for beef and veal exported to Jordan — OLAF investigation — Communication of OLAF's findings to the national authorities — Provision of guarantees — Claim for the reimbursement of the related costs — Causal link — Cross-appeal — Limitation period — Point from which time starts to run)

In Case C-460/09 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 18 November 2009,

Inalca SpA – Industria Alimentari Carni,established in Castelvetro (Italy),

Cremonini SpA,established in Castelvetro,

represented by C. D'Andria and F. Sciaudone, avvocati,

appellants,

the other party to the proceedings being:

European Commission,represented by V. Di Bucci and P. Rossi, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, E. Levits, J-J. Kasel (Rapporteur) and M. Safjan, Judges,

Advocate General: N. Jääskinen,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 9 February 2012,

after hearing the Opinion of the Advocate General at the sitting on 18 October 2012,

gives the following

* Language of the case: Italian.

Judgment

1 By their appeal, Inalca SpA – Industria Alimentari Carni ('Inalca') and Cremonini SpA ('Cremonini') seek to have set aside the order of 4 September 2009 in Case T-174/06 *Inalca and Cremonini* v *Commission* ('the order under appeal'), by which the Court of First Instance of the European Communities (now 'the General Court') dismissed their action for damages in respect of the loss which they had purportedly suffered following the communication to the Italian authorities of the findings of an investigation implicating them which was carried out by the European Anti-Fraud Office (OLAF) with a view to establishing whether certain refunds for beef and veal exported to Jordan were lawful.

Background to the dispute

2 The background to the dispute, as set out in paragraphs 1 to 20 of the order under appeal, may be summarised as follows.

3 Inalca and Cremonini form part of a group of companies active in the production and distribution of goods for restaurant and catering services, as well as in the provision of those services.

4 Following an investigation carried out in Jordan in February and March 1998 in connection with the export refund system for agricultural products, the Unit for the Coordination of Fraud Prevention (UCLAF), the precursor of OLAF, informed the Italian authorities by letter of 6 July 1998 that, out of a total of 37 978 tonnes of beef and veal exported outside the European Community without any customs declaration for placing the meat on the Jordanian market, 2 272 tonnes had been exported from Italy. In that letter, UCLAF, inter alia, called upon the Italian authorities to find out the name of the exporter in order to commence proceedings for the recovery of the export refunds and, if concerted practices could be established, criminal proceedings.

5 By letters of 15 January 1999, the competent Italian authorities notified Inalca and Cremonini of the decisions to recover the refunds relating to the export transactions at issue, decisions against which Inalca and Cremonini brought administrative appeals. Those administrative appeals were dismissed by decisions of 7 March 2000.

6 On 16 February 1999, the results of UCLAF's investigation were communicated by the Italian Ministry of Finance to the Italian judicial authorities and criminal proceedings were commenced against the legal representatives of Inalca and Cremonini.

7 On 30 November 1999, Inalca and Cremonini took out two insurance policies guaranteeing payment in order to bring about the suspension of the procedure for the recovery of the sums to be repaid.

8 The complaint on which the criminal investigation was based was withdrawn on 18 December 2002. By judgment of 16 January 2004, the Tribunale civile di Roma (Rome Civil District Court) held that the complaints made against Inalca in the recovery decision of 15 January 1999 were unfounded and that Inalca was not liable to pay the sum in respect of which reimbursement was sought. By judgment of 27 April 2005, that court made the same finding as regards Cremonini.

9 By letters dated 22 and 23 March 2004 respectively, Inalca's application for withdrawal of the recovery decision of 15 January 1999 against it was upheld and the insurance policy guaranteeing payment which it had taken out was cancelled. Similarly, by letters dated 22 and 23 December 2004 respectively, Cremonini's application for withdrawal of the recovery decision of 15 January 1999 against it was upheld and the insurance policy guaranteeing payment which it had taken out was also cancelled.

10 By letter of 27 January 2005, Inalca called upon the Commission of the European Communities to compensate it for the loss which it purported to have suffered as a result of the investigation launched by UCLAF and the communication by UCLAF to the Italian authorities of the findings of that investigation. By letter of 15 April 2005, the Director General of OLAF informed Inalca that it could not allow its claim for damages on the ground that any right to compensation was, in any event, 'time-barred pursuant to Article 46 of the Statute of the Court of Justice'.

11 By letter of 9 March 2006, Inalca and Cremonini submitted to the Commission a claim for compensation in respect of the losses which they had suffered, assessed at EUR 2 861 000 in total. The Commission did not allow that claim.

12 By Decision 2006/678/EC of 3 October 2006 on the financial treatment to be applied, in the context of clearance of expenditure financed by the European Agricultural Guidance and Guarantee Section, in certain cases of irregularity by operators (OJ 2006 L 278, p. 24), the Commission withdrew the irregularities in relation to export refunds on beef and veal exported to Jordan, notified to the Italian Republic, from the list of notifications concerning irregularities.

The action before the General Court and the order under appeal

13 By document lodged at the Registry of the General Court on 27 June 2006, Inalca and Cremonini brought an action before that Court by which they sought a finding of non-contractual liability on the part of the Community and an order requiring the Commission to provide compensation for the losses suffered, assessed at EUR 2 861 000, and to pay compensatory interest thereon as well as any default interest which might be due.

14 By separate document dated 18 September 2006, the Commission raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the General Court, contending that the action was inadmissible on the ground that it was time-barred under Article 46 of the Statute of the Court of Justice.

15 The General Court referred, in paragraph 45 of the order under appeal, to the case-law according to which it follows from Article 288 EC and Article 46 of the Statute of the Court of Justice that the incurring of non-contractual liability by the Community and the right to compensation for harm suffered depend on the satisfaction of a number of conditions relating to the existence of an unlawful measure adopted by the Community institutions, actual damage and a causal relationship between them (Joined Cases 256/80, 257/80, 265/80, 267/80 and 5/81 *Birra Wührer and Others* v *Council and Commission* [1982] ECR 85, paragraph 9).

16 The General Court also pointed out, in paragraph 46 of the order under appeal, that it follows from well-established case-law that the limitation period for bringing an action against the Community to establish non-contractual liability begins to run when all the preconditions for the existence of an obligation to make good the damage are satisfied and, in particular, once the damage to be made good has materialised (order in Case C-136/01 P *Autosalone Ispra dei Fratelli Rossi* v *Commission* [2002] ECR I-6565, paragraph 30, and judgment in Case C-282/05 P *Holcim (Deutschland)* v *Commission* [2007] ECR I-2941, paragraph 29).

17 In that regard, the General Court pointed out, in paragraph 47 of the order under appeal, that, in cases where the Community's liability has its origin in a legislative measure, the limitation period begins to run as soon as the injurious effects of the measure have come about (Case C-282/05 P *Holcim (Deutschland)* v *Commission*, paragraph 29). The General Court added that, similarly, in disputes arising from individual measures, as in the present case, the limitation period does not begin until the damage has actually materialised (Case C-282/05 P *Holcim (Deutschland)* v *Commission*, paragraphs 30 to 33).

18 The General Court concluded, in paragraph 49 of the order under appeal, that it was necessary to determine the precise moment in time at which the purported injurious effects materialised vis-à-vis Inalca and Cremonini by examining successively the various types of damage in respect of which Inalca and Cremonini claimed compensation.

19 As regards the material damage, the General Court first of all found, in paragraph 51 of the order under appeal, that the damage linked to the taking-out of the payment guarantee policies with an insurance company arose with certainty on 30 November 1999, the date on which Inalca and Cremonini took out those policies. However, the General Court stated, in paragraphs 59 and 64 of the order under appeal, that the damage resulting from the expense of taking out the payment guarantee policies was ongoing in nature and that the action for damages in respect of that loss was admissible in so far as it related to the contracts renewed after 27 June 2001.

20 Next, as regards the expenses incurred for legal advice and assistance and the staff costs generated by the management of the files in question, the General Court found, in paragraphs 71 and 73 of the order under appeal, that the loss resulting from those expenses had been instantaneous in nature and that, consequently, the action for damages was time-barred in so far as it related to them.

21 Lastly, in so far as the claim for compensation in respect of the damage purportedly sustained in the form of loss of profits because of the reduction in financial resources resulting from the payment of the premiums for the insurance policies guaranteeing payment and the cost of legal advice and assistance and staff costs lacked precision, the General Court held, in paragraph 74 of the order under appeal, that that claim had to be dismissed as inadmissible.

22 As regards the non-material damage, the General Court held, in paragraph 77 of the order under appeal, that the action was time-barred in that respect in so far as the purported damage had materialised when the national proceedings were initiated in 1999 and in 2000, that is to say, more than five years before the action was brought before the General Court. In paragraph 78 of the order under appeal, the General Court rejected the argument put forward by Inalca and Cremonini that that damage was ongoing in nature and had continued until delivery of the judgment of 27 April 2005. The General Court added, in paragraph 79 of that order, that, in any event, Inalca and Cremonini had done no more than allege damage to their commercial reputation, without providing any evidence whatsoever in that respect.

23 The Court concluded, in paragraph 81 of the order under appeal, that the action was therefore admissible solely in so far as it sought compensation for the loss arising from the payment of the premiums linked to the insurance policies guaranteeing payment after 27 June 2001.

24 As to the substance, the General Court stated, in paragraph 85 of the order under appeal, that, since one of the three conditions for Community liability was not satisfied, the claims for damages had to be dismissed without there being any need to consider whether the other two conditions were satisfied.

25 Having stated that the Community Courts were not required to examine the various conditions in any particular order, the General Court took the view that it was appropriate to examine first the condition relating to the existence of a causal link.

26 In paragraph 90 of the order under appeal, the General Court found, without ruling on the question whether the loss caused by the recovery decisions of 15 January 1999 could be imputed to the Community, that the loss arising from the taking-out of the payment guarantee insurance policies had not been directly caused by UCLAF's letter of 6 July 1998.

27 From this the General Court inferred, in paragraph 94 of the order under appeal, that, in so far as it was admissible, the claim for damages brought by Inalca and Cremonini had to be rejected as manifestly lacking any foundation in law.

Procedure before the Court

28 On 18 November 2009, Inalca and Cremonini brought an appeal before the Court.

29 On 11 February 2010, the Commission lodged a cross-appeal in its response.

Forms of order sought

30 Inalca and Cremonini submit that the Court should:

— set aside the order under appeal and refer the case back to the General Court; and

— order the Commission to pay the costs of the proceedings at first instance and on appeal.

31 The Commission contends that the Court should:

— ruling on the cross-appeal, set aside the order under appeal in so far as it declares that the action at first instance is partially admissible and dismiss that action as being wholly inadmissible;

— in the alternative, dismiss the appeal as unfounded;

— in the further alternative, in the event of the partial annulment of the order under appeal, dismiss the action brought at first instance; and

— in any event, order Inalca and Cremonini to pay the costs of both sets of proceedings.

The appeals

32 Inalca and Cremonini raise seven grounds in support of their appeal, which relate essentially to substantive issues.

33 In the context of its cross-appeal, the Commission raises a single ground of appeal concerning the admissibility of the original action.

34 As it is necessary to examine the main appeal only if the Court dismisses the Commission's cross-appeal, the cross-appeal must be examined first.

The cross-appeal

Arguments of the parties

35 The single ground raised by the Commission alleges an error of law on the part of the General Court, in paragraphs 46 and 47 of the order under appeal, in the determination of the date on which time starts to run for the purpose of bringing claims for damages.

36 Primarily, the Commission points out that, in the case where the liability of the Community has its origin in a legislative measure, and where the resulting loss subsequently arises in respect of individuals, the Court, by its judgment in *Birra Wührer and Others* v *Council and Commission*, has laid down exceptional rules vis-à-vis those resulting from Article 46 of its Statute. Although the Commission adds that only one other attenuating change has been rightly made to Article 46 of the Statute of the Court of Justice, in respect of the calculation of the limitation period in relation to the victim who was able only belatedly to become aware of the event giving rise to the damage (Case 145/83 *Adams* v *Commission* [1985] ECR 3539, paragraphs 50 and 51), it takes the view, however, that the case-law on the matter is inconsistent and requires clarification in the context of the present appeal.

37 The General Court has both restricted the application of the exceptional rules laid down in *Birra Wührer and Others* v *Council and Commission* to cases where the liability had its origin in a legislative measure (order in Case T-124/99 *Autosalone Ispra dei Fratelli Rossi* v *Commission* [2001] ECR II-53) and extended it to other cases (Case T-28/03 *Holcim (Deutschland)* v *Commission* [2005] ECR II-1357, paragraph 59, and order in Case T-140/04 *Ehcon* v *Commission* [2005] ECR II-3287, paragraph 39).

38 The Court, for its part, has, according to the Commission, stated that those exceptional rules apply only in cases where the liability has its origin in a legislative measure (see Case C-51/05 P *Commission* v *Cantina sociale di Dolianova and Others* [2008] ECR I-5341, paragraph 54), whereas, in other cases, it has referred, *obiter*, to the solution adopted in *Birra Wührer and Others* v *Council and Commission* (see Case C-136/01 P *Autosalone Ispra dei Fratelli Rossi* v *Commission*, paragraphs 29 and 30; Case C-282/05 P *Holcim (Deutschland)* v *Commission*, paragraphs 29 and 30, and judgment of 11 June 2009 in Case C-335/08 P *Transports Schiocchet – Excursions* v *Commission*, paragraph 33).

39 The Commission considers that the Court has failed to provide adequate and sufficient reasons for applying the exceptional rules to disputes arising from individual measures, not to mention to other cases, as in the present case, in which the alleged loss has its origin in a letter sent by UCLAF to national authorities.

40 According to the Commission, such an extension of that rule derived from case-law risks depriving the essentially clear provisions of Article 46 of the Statute of the Court of Justice of all substance.

41 In the alternative, the Commission submits that the General Court erred in law by holding, in paragraph 47 of the order under appeal, that the action for damages before it concerned a dispute relating to individual measures within the meaning of the judgment in Case C-282/05 P *Holcim (Deutschland)* v *Commission*, even though the letter sent to the national authorities did not involve any individual measure that produced obligations for its addressee. In support of that line of argument, the Commission relies on the judgment in Case C-476/93 P *Nutral* v *Commission* [1995] ECR I-4125, paragraph 30, concerning an analogous case which shows that the letters sent by the Commission to the competent national authorities simply constituted recommendations or opinions having no legal effect.

42 In the further alternative, the Commission submits that the General Court erred in law by arbitrarily changing the criteria adopted in Case C-282/05 P *Holcim (Deutschland)* v *Commission*. Even if it were to be accepted that this is a dispute relating to individual measures, the General Court was wrong to hold, in paragraphs 46 and 47 of the order under appeal, that the limitation period began to run only on the date on which the loss actually materialised instead of the date on which the harmful event occurred or even only on the date on which Inalca and Cremonini became aware of this.

43 Inalca and Cremonini take the view that the Court's case-law on this issue is clear and they dispute the Commission's reading of the judgments cited in the context of the cross-appeal. They point out, however, that the solution adopted by the General Court can be criticised for reasons set out more extensively in the first ground which they raised in the main appeal.

Findings of the Court

44 In order to determine whether the Commission's cross-appeal is well founded, it is necessary to examine whether the General Court erred in law in applying to the facts of the present case the rules on the limitation period for actions seeking to establish non-contractual liability.

45 It should be noted, at the outset, that, under Article 46 of the Statute of the Court of Justice, proceedings against the European Union in matters arising from non-contractual liability are barred after a period of five years from the occurrence of the event giving rise thereto.

46 As the General Court pointed out in paragraphs 45 and 84 of the order under appeal, without being contradicted by the Commission in that regard, the non-contractual liability of the Community and the exercise of the right to compensation for damage suffered under the second paragraph of Article 288 EC depend on the satisfaction of a number of conditions relating to the unlawfulness of the conduct of which the institutions are accused, the fact of damage and the existence of a causal link between that conduct and the damage complained of (see, inter alia, *Birra Wührer and Others* v *Council and Commission*, paragraph 9; Case 26/81 *Oleifici Mediterranei* v *EEC* [1982] ECR 3057, paragraph 16; Joined Cases C-120/06 P and C-121/06 P *FIAMM and Others* v *Council and Commission* [2008] ECR I-6513, paragraph 106; and Case C-419/08 P *Trubowest Handel and Makarov* v *Council and Commission* [2010] ECR I-2259, paragraph 40).

47 At paragraph 46 of the order under appeal, the General Court noted that it follows, according to well-established case-law, that the limitation period for actions for non-contractual liability begins to run once the requirements governing the obligation to provide compensation for damage are satisfied and, in particular, once the damage to be made good has materialised (see *Birra Wührer and Others* v *Council and Commission*; Case C-282/05 P *Holcim (Deutschland)* v *Commission*, paragraph 29; *Commission* v *Cantina sociale di Dolianova and Others*, paragraph 54; and Case C-469/11 P *Evropaïki Dynamiki* v *Commission* [2012] ECR, paragraph 34).

48 Again relying on the established case-law of the Court of Justice, the General Court noted, in paragraph 47 of the order under appeal, that where the liability of the Community has its origin in a legislative measure, the limitation period does not begin until the damaging effects of that measure have arisen (see *Birra Wührer and Others* v *Council and Commission*, paragraph 10; Case C-282/05 P *Holcim (Deutschland)* v *Commission*, paragraph 29) and that, similarly, in disputes arising from individual measures, the limitation period does not begin until the damage has actually materialised (Case C-282/05 P *Holcim (Deutschland)* v *Commission*, paragraph 30; *Transports Schiocchet – Excursions* v *Commission*, paragraph 33; and *Evropaïki Dynamiki* v *Commission*, paragraph 38).

49 On the basis of those principles, the General Court decided that the starting point for the limitation period was the moment at which the injurious effects alleged by Inalca and Cremonini materialised.

50 In that regard, the Commission claims, primarily, that the case-law is not consistent and that clarification by the Court of Justice is necessary.

51 On the assumption that such an argument is admissible in the context of the present appeal, although it is not specifically directed against a particular paragraph in the order under appeal, it is sufficient to state that the order in Case T-124/99 *Autosalone Ispra dei Fratelli Rossi* v *Commission*, relied on by the Commission in support of its line of argument, has been criticised by the Court of Justice. The Court

of Justice held that the General Court had erred in law in determining the starting point of the limitation period by reference to the event giving rise to the damage (order in Case C-136/01 P *Autosalone Ispra dei Fratelli Rossi* v *Commission*, paragraph 34).

52 Consequently, contrary to the Commission's submissions, the decisive criterion for determining the starting point for the limitation period is not the occurrence of the act giving rise to the damage, since, inter alia, it may not be claimed, as against the applicant, that the limitation period began before the date on which those injurious effects were produced (*Birra Wührer and Others* v *Council and Commission*, paragraph 11).

53 In addition, it must be pointed out that, on the basis of *Commission* v *Cantina sociale di Dolianova and Others*, in order to maintain that the rules laid down by *Birra Wührer and Others* v *Council and Commission* apply only in cases where the liability has its origin in a legislative measure, the Commission misinterprets that judgment.

54 The dispute in the present case arose from a legislative measure of the Commission and the Court was therefore not required to follow its reasoning as regards cases involving non-contractual liability in disputes arising from an individual measure. Contrary to what the Commission alleges, it does not follow from *Commission* v *Cantina sociale di Dolianova and Others* that the Court excluded the application of the case-law resulting from *Birra Wührer and Others* v *Council and Commission* in those cases where the liability of the Community has its origin in an individual measure.

55 The Court has also recently confirmed that, in the case of disputes arising from individual measures, the limitation period begins to run as soon as the decision has produced its effects vis-à-vis the persons concerned by it (see, to that effect, *Evropaïki Dynamiki* v *Commission*, paragraph 38).

56 As regards the alternative argument put forward by the Commission, based on the judgment *Nutral* v *Commission*, to the effect that the letter sent to the national authorities does not constitute an individual measure producing binding effects vis-à-vis Inalca and Cremonini, it must be stated that that judgment deals with the conditions governing the admissibility of actions for annulment and that the information regarding the legal classification of the disputed act cannot be transposed to the context of the determination of the starting point of the limitation period in respect of an action seeking to establish non-contractual liability.

57 Therefore, in the context of the determination of the starting point for the limitation period in the present dispute, it is irrelevant whether the letter sent to the national authorities is capable of having binding legal effects such as to bring about a distinct change in the position of Inalca and Cremonini.

58 In any event, and in so far as it follows from paragraph 49 of the present judgment that the General Court did not err in law in taking the view that the limitation period runs from the moment at which the injurious effects alleged by Inalca and Cremonini actually materialised, the individual or legislative nature of a measure is not conclusive.

59 As regards the Commission's further alternative argument, according to which the General Court ought to have held the starting point of the limitation period to be the date on which the harmful event occurred, it is important to point out that the General Court did not err in law by finding, in paragraph 49 of the order under appeal, that it was necessary to determine the precise time at which the injurious effects alleged in that letter actually materialised vis-à-vis Inalca and Cremonini.

60 Contrary to what is alleged by the Commission, the limitation period does not begin to run on the date on which the harmful event occurred, but from the moment at which the decision produces its effects vis-à-vis the persons concerned by it, namely as soon as the loss actually materialises in relation to those persons (see judgment in Case C-282/05 P *Holcim (Deutschland)* v *Commission*, paragraph 30).

61 It follows from all of the foregoing that the cross-appeal brought by the Commission must be dismissed as unfounded.

The main appeal

The first ground of appeal

– Arguments of the parties

62 The first ground of appeal raised by Inalca and Cremonini alleges that the statement of reasons for the order under appeal is contradictory and that the order is at variance with Community case-law, since the General Court did not take account, in paragraph 55 of the order under appeal, of Decision 2006/678, even though, until that decision was adopted, Inalca and Cremonini had been in a state of legal uncertainty as to the existence and amount of the loss suffered, which was evident on a daily basis but materialised definitively only in the course of 2006.

63 Inalca and Cremonini also claim that the General Court erred in law in basing its reasoning, in paragraph 55 of the order under appeal, on the order in Case T-124/99 *Autosalone Ispra dei Fratelli Rossi* v *Commission* in order to conclude that there was confusion between the procedural criterion relating to the commencement of the limitation period and the finding that the conditions for liability were satisfied. However, unlike the event which was held in that order to determine the starting point of that period, Decision 2006/678 did not affect solely their subjective sphere.

64 The Commission, relying on the judgment in Case C-282/05 P *Holcim (Deutschland)* v *Commission*, points out that it is irrelevant, as regards the commencement of the period of limitation, whether the unlawful conduct on the part of the European Union was established by a ruling of a court or recognised by the alleged perpetrator of the damage.

– Findings of the Court

65 It must be noted that, in paragraph 53 of the order under appeal, the General Court drew attention to the case-law pursuant to which the limitation period begins to run only on the date on which the financial loss actually materialised, that is, as regards, in particular, the provision of bank guarantees, from the time at which the costs connected with the provision of such guarantees were generated.

66 The General Court found, in paragraph 54 of that order, that it is apparent from the file that the costs connected with the two policies guaranteeing payment were generated from the date on which those contracts were concluded, namely 30 November 1999, the first annual premium falling due on that same date.

67 That being the case, the General Court rejected the argument of Inalca and Cremonini that the harmful effects arose with certainty only upon the adoption of Decision 2006/678, by which the Commission noted that the export refunds at issue had not been unduly paid to them.

68 The General Court added that the fact that Inalca and Cremonini took the view, before the adoption of Decision 2006/678, that they did not yet have all the evidence required to prove to the requisite legal standard in judicial proceedings that the Community was liable is not relevant, as otherwise it would create confusion as to the commencement of the limitation period and the finding that the substantive conditions for that liability had been satisfied.

69 It follows from the foregoing that the argument of Inalca and Cremonini consisting in the complaint that the General Court failed to take into account Decision 2006/678 must be rejected as unfounded.

70 As regards the General Court's alleged distortion of the order in Case T-124/99 *Autosalone Ispra dei Fratelli Rossi* v *Commission*, suffice it to note that the Court held that specific and detailed awareness by the victim of the facts is not one of the conditions which must be met in order for the limitation period to begin running (order in Case C-136/01 P *Autosalone Ispra dei Fratelli Rossi* v *Commission*, paragraph 31; *Evropaïki Dynamiki* v *Commission*, paragraph 37). Similarly, the subjective appraisal of the reality of the damage by the victim cannot be taken into consideration for the purpose of determining the moment at which the limitation period begins to run in proceedings brought against the European Union for non-contractual liability (*Commission* v *Cantina sociale di Dolianova and Others*, paragraph 61; *Evropaïki Dynamiki* v *Commission*, paragraph 37).

71 Furthermore, in so far as it has been held that it is irrelevant, as regards the commencement of the limitation period, that the Community's unlawful conduct was established by a judicial decision (judgment in Case C-282/05 P *Holcim (Deutschland)* v *Commission*, paragraph 31), the fact that an institution itself recognises that its conduct was unlawful also cannot affect the determination of the point in time at which the limitation period starts to run.

72 Consequently, the argument alleging a distortion of the order in Case T-124/99 *Autosalone Ispra dei Fratelli Rossi* v *Commission* must also be rejected as unfounded.

73 It follows from the foregoing that the first ground of appeal must be rejected as unfounded.

The second ground of appeal

– Arguments of the parties

74 The second ground of appeal raised by Inalca and Cremonini alleges that the statement of reasons given for the order under appeal is contradictory and illogical, and that the General Court failed to respect Community case-law as regards the prescription of their action in relation to the costs which they had incurred for legal advice and assistance and for staff.

75 Inalca and Cremonini criticise the General Court on the ground that it infringed the general principle relating to damage which is ongoing, as set out in paragraphs 56 and 57 of the order under appeal, by holding, in paragraphs 71 and 72 of that order, that the damage in question was not ongoing in nature. The General Court's reasoning is, they claim, contradictory in so far as it recognised itself that the damage in question could not be definitively quantified at the time when the proceedings in question were initiated. Inalca and Cremonini refer to the case-law of the General Court on the taxation of costs, which, they submit, determines the amount of those costs by reference to the number of hours worked and thus recognises that the provision of legal advice is not instantaneous.

76 In the Commission's view, the second ground of appeal is unfounded. According to the Commission, firstly, Inalca and Cremonini have confused the definitive quantification of the amount of the damage alleged with the assessment of the continuous nature of that damage. Secondly, the reference made to the case-law on the taxation of costs is, it submits, inappropriate.

– Findings of the Court

77 As regards the ongoing damage, the General Court pointed out, in paragraph 56 of the order under appeal, that where the damage was not caused instantaneously, but continued over a certain period, entitlement to compensation relates to consecutive periods.

78 In paragraph 71 of the order under appeal, the General Court held that, in the present case, the loss constituted by expenses incurred for legal advice and assistance and staff costs was instantaneous in nature, in so far as it had occurred on the date of the initiation of each of the sets of national proceedings at issue.

79 The General Court added, in paragraph 72 of the order under appeal, that, even though the damage alleged could not be quantified definitively at the time of the initiation of the national proceedings, it arose with certainty from the initiation of these proceedings.

80 However, contrary to the allegations of Inalca and Cremonini, damage is considered to be ongoing in nature due to the fact that the amount of the alleged damage increases in proportion to the number of days which have elapsed (Case C-282/05 P *Holcim (Deutschland)* v *Commission*, paragraph 35).

81 Consequently, there is no contradiction in the General Court's reasoning in holding that the damage alleged, constituted by the expenses incurred for legal advice and assistance and the staff costs entailed for the management of the files in question, was not ongoing in nature. Even though the damage in question was not yet definitively determined at the time of the initiation of each of the sets of national proceedings at issue, it must be held that the amounts of that damage increased, not in proportion to the number of days which elapsed, but by reason of the various sets of legal proceedings undertaken.

82 In that context, the reference made by Inalca and Cremonini to the case-law on the taxation of costs must also be rejected. The mere fact that the amount of the costs is determined by reference to the number of hours worked cannot affect the nature of the damage constituted by the provision of legal advice.

83 It follows from the foregoing that the second ground of appeal must be rejected as unfounded.

The third ground of appeal

– Arguments of the parties

84 The third ground of appeal raised by Inalca and Cremonini alleges a distortion of the arguments submitted and an infringement of Article 44(1)(c) of the Rules of Procedure of the General Court with regard to the claim for compensation of damage suffered in the form of a loss of profits.

85 Inalca and Cremonini take the view that the General Court erred in holding, in paragraph 74 of the order under appeal, that there was a lack of precision as regards the claim for compensation of the damage sustained in the form of loss of profits by reason of the reduction in their financial resources resulting from payment of the premiums for the insurance policies guaranteeing payment and the cost of legal advice and assistance as well as staff costs.

86 Reiterating the arguments submitted in the context of their application at first instance, Inalca and Cremonini argue that they did not merely assert in general terms that the sums lost could have been used to participate in invitations to tender requiring payment of security, but that they had provided the General Court with various items of evidence pertaining thereto. They rely on case-law pursuant to which the Court can rely on mean statistical values in so far as it may be difficult, even impossible, for the claimant to place an exact figure on the loss which it claims to have sustained (Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [2000] ECR I-203, paragraphs 63 to 65).

87 The Commission contends that the third ground of appeal is unfounded. Inalca and Cremonini, it argues, failed to indicate from which invitations to tender they were excluded and how the taking-out of insurance policies guaranteeing payment caused them to be excluded from those invitations to tender. Furthermore, the reference made to *Mulder and Others* v *Council and Commission* is irrelevant.

– Findings of the Court

88 It must be noted that the General Court analysed, in paragraph 74 of the order under appeal, the claim for compensation in respect of the damage purportedly sustained in the form of loss of profits by reason of the reduction in financial resources attributable to payment of the premiums for the insurance policies guaranteeing payment and the cost of legal advice and assistance as well as staff costs. Given that Inalca and Cremonini merely asserted in general terms that the sums thus lost could have been used to participate in invitations to tender requiring payment of a security, the General Court concluded that the claim was abstract in character and rejected it as inadmissible pursuant to Article 44(1)(c) of its Rules of Procedure.

89 In so far as it is apparent from the present ground of appeal that it amounts to a mere reformulation of the arguments already presented at first instance in relation to the damage purportedly sustained in the form of loss of profits, it must be held that Inalca and Cremonini are in fact seeking to challenge the assessment of the General Court in that regard.

90 It follows from settled case-law that the General Court has exclusive jurisdiction, first, to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, second, to assess those facts. That appraisal thus does not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice (see, inter alia, the judgment of 3 May 2012 in Case C-289/11 P *Legris Industries* v *Commission*, paragraph 51 and case-law cited).

91 In the present case, the basis of the claims made by Inalca and Cremonini is not that there was any substantive inaccuracy in the findings made by the General Court or that there was any distortion of the evidence which was submitted to it. On the contrary, they criticise the assessment, as such, made by the General Court of those items of evidence and the arguments put forward by the latter when it ruled that the claim for compensation in respect of the damage purportedly sustained in the form of loss of profits was not sufficiently precise.

92 In that regard, the judgment in *Mulder and Others* v *Council and Commission*, invoked by Inalca and Cremonini, is irrelevant, in so far as the paragraphs cited do not make any reference whatsoever to the applicants' obligation, under Article 44(1)(c) of the Rules of Procedure of the General Court, to specify the precise extent of the damage in the application and to state the amount of the compensation sought, but deal with the principles which must govern the method of calculating the loss of income, more particularly in respect of hypothetical income and alternative income.

93 It follows from the foregoing that the third ground of appeal must be rejected as being in part inadmissible and in part unfounded.

The fifth ground of appeal

– Arguments of the parties

94 The fifth ground of appeal raised by Inalca and Cremonini, which must be analysed before the fourth ground of appeal, alleges an infringement of Article 44(1)(c) of the Rules of Procedure of the General Court, non-compliance with the case-law on non-material damage and the manifestly illogical nature of the grounds stated.

95 Inalca and Cremonini claim that the General Court erred in holding, in paragraph 79 of the order under appeal, that the claim for non-material damage lacked precision. Firstly, they submit, the document instituting the proceedings contained all the evidence necessary. Secondly, by reason of the characteristics of non-material damage, which, by definition, is impossible to quantify, Inalca and Cremonini made themselves subject to the equitable assessment of the General Court. By rejecting that request, the General Court infringed the case-law which applies in this area (see Case T-203/96 *Embassy Limousines & Services* v *Parliament* [1998] ECR II-4239, paragraph 108).

96 In addition, the reference made in paragraph 79 of the order under appeal to the case-law cited in paragraph 69 of that order constitutes a further error in law. The principles laid down in those cases in respect of material damage cannot be transposed to the present issue, which relates exclusively to compensation for non-material damage.

97 The Commission points out that the claim for compensation in respect of non-material damage was declared inadmissible not only because it was time-barred but also because it did not meet the requirements set out in Article 44(1)(c) of the Rules of Procedure of the General Court. The fifth ground of appeal, it submits, is consequently unfounded.

– Findings of the Court

98 It is appropriate to point out that, as regards non-material damage in the form of damage to the commercial reputation of Inalca and Cremonini as a result of their involvement in administrative, civil and criminal proceedings, the General Court noted, in paragraph 77 of the order under appeal, that that damage occurred in 1999 and 2000, when those proceedings were instituted and that, consequently, the action relating to these is time-barred.

99 In so doing, the General Court rejected the argument of Inalca and Cremonini that that damage was ongoing in nature until the delivery of the judgment of the Tribunale civile di Roma in 2005. It stated that the non-material damage alleged, even if it were accepted that it continued up to that date, materialised in full when Inalca and Cremonini and their directors were implicated in those proceedings in 1999 and in 2000. Referring to the characteristics that damage must possess in order to be classified as 'ongoing damage', as set out in paragraphs 56 and 57 of the order under appeal, the General Court held that the non-material damage alleged could not be treated as ongoing damage.

100 The General Court added, in paragraph 79 of the order under appeal that, 'in addition, and in any event, … the claim for compensation in respect of non-material damage lacks the necessary precision and must, in any case, be declared inadmissible pursuant to Article 44(1)(c) … of [the General Court's] Rules of Procedure'.

101 It follows that the rejection by the General Court of the claim for compensation in respect of the non-material damage alleged is based on two separate grounds.

102 As regards the second ground challenged in the context of the fifth ground of appeal, concerning the abstract character of the application, the General Court, correctly and without acting contrary to the case-law, pointed out that the application must contain information which makes it possible to identify the damage alleged and to assess the extent and the nature of that damage.

103 In that regard, the argument of Inalca and Cremonini that the minimum requirements of the application, under Article 44(1) of the Rules of Procedure of the General Court, are applicable only in respect of material damage and therefore do not apply in the case of non-material damage must be rejected as entirely unfounded. That argument is not based on any legal factor which is capable of calling into question the solution reached by the General Court.

104 As regards the argument of Inalca and Cremonini that it is impossible to quantify the non-material damage, it must be pointed out that the Court has, it is true, acknowledged that, in certain cases, particularly where it is difficult to express the alleged loss in figures, it is not absolutely necessary to particularise its exact extent in the application or to calculate the amount of the compensation claimed (see, inter alia, Case 90/78 *Granaria* v *Council and Commission* [1979] ECR 1081, 1090, and Case C-150/03 P *Hectors* v *Parliament* [2004] ECR I-8691, paragraph 62). However, Inalca and Cremonini have not established, or even alleged, that there were special circumstances justifying the omission to calculate that head of damage in the application.

105 It follows from the foregoing that the fifth ground of appeal must be rejected as unfounded.

The fourth ground of appeal

– Arguments of the parties

106 The fourth ground of appeal raised by Inalca and Cremonini alleges non-compliance with Community case-law and that the statement of reasons given by the General Court was manifestly illogical in that the General Court held that the non-material damage suffered by Inalca and Cremonini had fully materialised in 1999 and 2000 and that it could not therefore be treated as ongoing damage.

107 Inalca and Cremonini claim that the General Court accords no importance to the special characteristics of non-material damage and overlooks the fact that, by its nature, non-material damage does not come to an end at the moment in which it occurs, but continues until that damage is made good. In that regard, Inalca and Cremonini refer in particular to the judgment in Case T-48/05 *Franchet and Byk* v *Commission* [2008] ECR II-1585, paragraphs 400 to 411, and the judgment of the Civil Service Tribunal in Case F-23/05 *Giraudy* v *Commission* [2007] ECR I-A-1-00121 and II-A-1-657 paragraph 203).

108 They add that the reference made in paragraph 78 of the order under appeal to the case-law cited in paragraphs 56 and 57 thereof constitutes a further error in law. The principles laid down in those cases in respect of material damage cannot be transposed to the present question, which relates to the ongoing nature of non-material damage.

– Findings of the Court

109 It must be pointed out, as is apparent from paragraphs 100 and 101 of the present judgment, that the rejection by the General Court of the claim for compensation in respect of the non-material damage alleged is based on two separate grounds.

110 As regards the arguments concerning the fourth ground of appeal, suffice it to state that these are directed against the first ground on which the General Court relied in rejecting the claim for compensation in respect of the non-material damage alleged on the ground that the action relating thereto was time-barred.

111 Even on the assumption that those arguments are well founded, it is necessary to reject them at the outset in so far as they are not capable of calling into question the conclusion reached by the General Court in paragraph 79 of the order under appeal, declaring, pursuant to Article 44(1)(c) of its Rules of Procedure, the claim for compensation in respect of non-material damage to be inadmissible.

112 Consequently, the fourth ground of appeal must be rejected as ineffective.

The sixth ground of appeal

– Arguments of the parties

113 The sixth ground of appeal raised by Inalca and Cremonini alleges an error in law concerning the condition of causality in so far as the General Court held that there was no causal link between the operative event for which the Commission is reproached and the alleged loss.

114 Inalca and Cremonini claim that the General Court did not take into consideration the fact that they had merely complied with one of the two alternative obligations derived from the recovery decisions of 15 January 1999. The existence of a causal link is, they argue, confirmed by the fact that, once it was established that there were no debts owed to the Commission, the national authorities immediately released the securities.

115 Furthermore, Inalca and Cremonini dispute the preliminary argument expressed by the General Court in paragraph 93 of the order under appeal that it was not established that the intervention of the Italian authorities was not capable of breaking the direct causal link between the conduct complained of and the damage alleged.

116 The Commission takes the view that this ground of appeal is entirely unfounded.

– Findings of the Court

117 It must be pointed out that the General Court observed, in paragraph 88 of the order under appeal, that the loss must be a sufficiently direct consequence of the conduct complained of and that such conduct must be the determinant cause of that loss.

118 The General Court also noted, in paragraph 91 of the order under appeal, that, when a decision requiring the payment of a fine is coupled with the option of lodging a security intended to ensure that payment along with interest on late payment, pending the outcome of an action brought against that decision, the loss consisting of the guarantee fees results, not from that decision, but from the interested party's own choice to lodge a security rather than to fulfil its repayment obligation immediately.

119 The General Court found, in paragraph 92 of the order under appeal, that, in the present case, the recovery decisions of 15 January 1999 did not contain any obligation to lodge securities, but left that choice to the discretion of Inalca and Cremonini. The General Court added, as the Advocate General has also noted in point 72 of his Opinion, that if Inalca and Cremonini had chosen to reimburse the export subsidies immediately, they would have avoided the costs involved in taking out those insurance policies.

120 Consequently, in paragraph 93 of the order under appeal, the General Court was correctly able to deduce that, even if the intervention of the Italian authorities had not been capable of breaking the causal link between the conduct complained of on the part of the Commission and the damage alleged, there is no direct causal link between that conduct and the damage alleged.

121 The conclusion reached by the General Court cannot be called into question either by the argument of Inalca and Cremonini that they had merely complied with one of the two alternative obligations provided for by the recovery decisions of 15 January 1999 or by the fact that the securities were immediately released once it had been established that there were no outstanding debts.

122 As regards the argument directed against paragraph 93 of the order under appeal, it must be held that the General Court's reasoning set out in that paragraph proceeds on the basis of the premise that the intervention of the Italian authorities was not such as to sunder the causal link between the conduct complained of on the part of the Commission and the damage alleged.

123 In that connection, it is irrelevant whether the premise must be regarded as established, as suggested by Inalca and Cremonini in the context of the present ground of appeal, or as not established, as was held by the General Court. Any argument regarding that premise must be classified as ineffective in so far as it is appropriate, in any event, to conclude that there was no causal link between UCLAF's letter of 6 July 1998 and the payment of the fees relating to the policies guaranteeing payment.

124 The sixth ground of appeal must therefore be rejected as being partially inadmissible and partially unfounded.

The seventh ground of appeal

– Arguments of the parties

125 By the seventh and final ground of appeal, Inalca and Cremonini request the Court to set aside the order under appeal on the ground that the General Court infringed the principle that a case must be disposed of within a reasonable period of time. Not only did the proceedings at first instance last more than three years, but, in particular, the General Court confined itself to ruling on the issue of the admissibility of the action.

126 Inalca and Cremonini argue, principally, that, given the factual and procedural origins of the present appeal, it is not necessary to show that the excessive duration of the proceedings had an effect on the outcome of the dispute. In the alternative, they submit, firstly, that the order under appeal is vitiated by several errors of law. They further add that, embarrassed at having taken more than three years to resolve only the issue of the admissibility of the action, the General Court felt obliged to rule also on the substance of the dispute, thereby depriving itself of important procedural instruments which would have enabled it to reach conclusions free from any error of law. Finally, Inalca and Cremonini reserve their right to bring an action for compensation in view of the harm suffered as a result of the excessive duration of the proceedings before the General Court.

127 The Commission contends that this ground of appeal must also be rejected. It adds that the reference made to a possible action for compensation in respect of the harm caused by the excessive duration of the proceedings before the General Court confirms that such an action does not come within the scope of the present appeal.

– Findings of the Court

128 It must be pointed out that, where there is no indication that the length of the proceedings affected the outcome of the dispute in any way, a plea that the proceedings before the General Court did not satisfy the requirements concerning conclusion within a reasonable period cannot, as a general rule, lead to the setting aside of the decision delivered by the General Court (see, to this effect, *FIAMM and Others* v *Council and Commission*, paragraph 203).

129 As regards the indications on which Inalca and Cremonini rely, it must be held that the order under appeal is not vitiated by any error of law and that the various procedural instruments had no impact on the solution reached by the General Court.

130 In any event, as noted by the Advocate General in point 79 of his Opinion, and as envisaged by Inalca and Cremonini themselves, the failure of the General Court to give judgment within a reasonable period of time is liable, if established, to give rise to a claim for damages by way of an action brought against the European Union under Article 268 TFEU and the second paragraph of Article 340 TFEU.

131 The seventh and final ground of appeal must therefore be rejected as unfounded.

132 As none of the grounds of appeal raised by Inalca and Cremonini has been successful, the appeal must be dismissed in its entirety.

Costs

133 In accordance with Article 184(2) of its Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those Rules, which apply to the procedure on appeal by virtue of Articles 184(1) and Article 190(1) thereof, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the Commission has applied for the costs to be awarded against Inalca and Cremonini, and as the latter have been unsuccessful in their grounds of appeal, Inalca and Cremonini must be ordered to pay the costs of the main appeal. As Inalca and Cremonini have applied for the costs of the cross-appeal to be awarded against the Commission, and as the latter has been unsuccessful, the Commission must be ordered to pay the costs of that cross-appeal.

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

1. **Dismisses the main appeal and the cross-appeal;**

2. **Orders Inalca SpA – Industria Alimentari Carni and Cremonini SpA to pay the costs relating to the main appeal;**

3. **Orders the European Commission to pay the costs relating to the cross-appeal.**

[Signatures]