

ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)

21 February 1995 ^{*}

In Case T-117/94,

Associazione agricoltori della provincia di Rovigo, Associazione polesana coltivatori diretti di Rovigo, Consorzio cooperative pescatori del Polesine, Cirillo Brena, Mauro Girello and Greguoldo Daniele, all represented by Ivone Cacciavillani, of the Venice Bar, with an address for service in Luxembourg at the Chambers of Alain Lorang, 51 Rue Albert 1^{er},

applicants,

v

Commission of the European Communities, represented by Lucio Gussetti, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision of 15 October 1993 in so far as it grants financial assistance to the Veneto region to carry out actions in the Po delta area, and for the annulment of the ensuing contract between the Commission and the Italian Ministry for the Environment,

^{*} Language of the case: Italian.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: K. Lenaerts, President, R. Schintgen and R. García-Valdecasas,
Judges,

Registrar: H. Jung,

makes the following

Order

Facts

- 1 By Regulation (EEC) No 1973/92 of 21 May 1992 (OJ 1992 L 206, p. 1), the Council established a financial instrument for the environment, known as 'LIFE', the objective of which is to contribute to the development and implementation of Community environmental policy and legislation essentially by financing priority actions in the Community. The fields of action defined in the annex to the regulation are eligible for financial assistance if they are of Community interest, contribute significantly to the implementation of Community environmental policy and meet the conditions for implementing the polluter-pays principle.
- 2 As regards the protection of habitats and nature, Article 2(2) of Regulation No 1973/92 provides that the assistance must in particular contribute to the co-financing of measures necessary for the maintenance or restoration, at a favourable conservation status, of priority natural habitat types and priority species on the sites concerned, as listed in Annex I and Annex II respectively to Council

Directive 92/43/EEC of 21 May 1992 on the conservation of natural and semi-natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

3 At the end of 1992 the Italian Republic submitted to the Commission, in accordance with Article 9(1) of Regulation No 1973/92, two proposals for actions relating to the Po delta area for which it sought financing. The area to which the proposed actions relate straddles two regions: Emilia-Romagna and Veneto. A regional park of the Po delta was established in Emilia-Romagna by Regional Law No 87 of 2 July 1988. The Veneto region has not adopted any particular protection measure. Nevertheless, Article 35(4) of Law No 394 of 6 December 1991, a framework law on protected areas, provides that the regions concerned are — with the agreement of the Ministry for the Environment — to proceed with the establishment of an inter-regional natural park of the Po delta within two years of the Law's entry into force. The same provision stipulates that if no such measures are taken, central government will take steps to establish a national park in the area in question.

4 Since the actions concerned related to the conservation of priority natural habitats, the Commission first submitted a proposal pursuant to Articles 3, 8 and 21 of Directive 92/43 for the co-financing of a single draft measure resulting from the amalgamation of the two proposals, entitled 'Conservation programme for the geographical area of the Po delta' (hereinafter 'the Po delta programme'), to the committee provided for in Article 20 of that directive. The amount earmarked in the draft measure for the initial phase was ECU 1.5 million. The committee unanimously approved the draft on 30 April 1993.

- 5 The Commission then submitted to the committee set up by Article 13 of Regulation No 1973/92 a draft breakdown of the amounts available in the budget for actions carried out pursuant to that regulation, including the Po delta programme. The committee unanimously approved that draft on 16 July 1993.
- 6 On 15 October 1993 the Commission officially adopted the framework decision, to which the various actions approved by the Commission — including the Po delta programme — were annexed, and the breakdown of appropriations as between those actions. The decision adopted the draft measure approved by the aforesaid two committees.
- 7 In the meantime the Commission had negotiated the procedures for implementing the Po delta programme with the parties involved in drawing up the draft measure to be financed. On 3 and 4 June 1993, a meeting was organized at Ferrara; apart from the Commission, representatives attended from the Italian Ministry for the Environment, the Italian Ministry for the Coordination of Agricultural, Food and Forestry Policies, the Veneto region, the region of Emilia-Romagna, the provinces concerned and the Lega Italiana Protezione Uccelli (Italian Society for the Protection of Birds, hereinafter referred to as 'LIPU').
- 8 On 31 December 1993 the contract provided for in Article 9(5)(b) of Regulation No 1973/92 was signed. The two main parties to the contract were the Commission and the Italian Ministry for the Environment, acting as the responsible agency. The Italian Ministry for the Coordination of Agricultural, Food and Forestry Policies, the Veneto region and LIPU were associated with the Environment Ministry.
- 9 It was in those circumstances that, by application received at the Court Registry on 23 March 1994, the applicants brought these proceedings.

10 By decision taken by the Court of First Instance on 7 July 1994 after hearing the parties' observations, the case was referred to Fourth Chamber, composed of three judges.

Forms of order sought by the parties

11 The applicants claim that the Court should:

(i) annul the Commission's Decision of 15 October 1993 and the ensuing contract of 31 December 1993 between the Commission and the Italian Ministry for the Environment and every other measure connected with and/or based on that decision;

(ii) order the defendant to pay the costs.

The Commission claims that the Court should:

(i) declare the application inadmissible in its entirety;

(ii) order the applicants to pay the costs.

Pleas and arguments of the parties

12 The applicants rely on three pleas in support of their application. The first plea alleges 'an *ultra vires* act having a defective basis' and lack of competence. The second alleges that the third subparagraph of Article 2(2) of Regulation No 1973/92

has been infringed. The third plea alleges that the second paragraph of Article 1 of Regulation No 1973/92 has been infringed and that there has been a misuse of power.

- 13 In connection with those pleas, the applicants argue essentially that, by submitting the project in question to the Commission, the Italian Government disregarded Italian law and the principle of sound administration, and that, by granting financial assistance for the project, the Commission disregarded Regulation No 1973/92, more specifically Article 2(2) thereof, in so far as it requires actions financed to 'contribute significantly to the implementation of Community environmental policy'. Since this case concerns actions for the protection of habitats and nature, the third subparagraph of Article 2(2) requires the assistance in particular to 'contribute to the co-financing of measures necessary for the maintenance or restoration, at a favourable conservation status, of priority natural habitat types and priority species on the sites concerned as listed in Annex I and Annex II respectively to Council Directive 92/43/EEC'. The applicants also claim that the Commission thereby disregarded the objectives of Community environmental policy as they emerge from the Treaty, Regulation No 1973/92, Directive 92/43, Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), the Community programme of policy and action in relation to the environment and sustainable development, which was the subject of Resolution 93/C 138/01 of the Council and the Representatives of the Governments of the Member States meeting within the Council, of 1 February 1993 (OJ 1993 C 138, p. 1, hereinafter 'the Fifth Environment Action Programme'), and various resolutions of the European Parliament.
- 14 The Commission has raised an objection of inadmissibility with regard to the application, on the ground that the contested measures are not of direct and individual concern to the applicants, to whom they are not addressed.
- 15 It argues that the natural persons are concerned by the measures merely by virtue of their objective status as landowners carrying out an economically relevant

activity in the same manner as any other trader who is, or might be in the future, in the same situation. As for the applicant associations, they are affected by the measures in question only in their capacity as representatives of the category of traders whose general interests are affected by the said measures.

- 16 In addition, the Commission argues that the measures contested by the applicants are not of direct concern to them, since they simply make a mere facility available to the Italian Republic and do not create rights for their benefit.
- 17 The applicants maintain that the application is admissible in respect of all of them, since the contested measures are of direct and individual concern to them all. They were all entitled to take part in the procedure by which the action planned and financed by the contested measure was drawn up and shaped. That entitlement ensued from the second paragraph of Article A of the Treaty on European Union, Articles 1 and 2 of Regulation No 1973/92 and the preparatory work for that regulation, the Fifth Environment Action Programme, tables Nos 10 and 18, the third recital in the preamble to Directive 92/43, the European Parliament's resolution of 10 July 1987 on the establishment and conservation of Community nature reserves (OJ 1987 C 246, p. 121) and Article 7 of the proposal for a regulation COM(91) 0028 establishing a financial instrument for the environment (OJ 1991 C 267, p. 211). In addition, they argue that, in accordance with the case-law of the Court of Justice (Case C-313/90 *Comité International de la Rayonne et des Fibres Synthétiques (CIRFS) and Others v Commission* [1993] ECR I-1125), they have an interest of their own which is separate from that of their members, which stems from the Italian Constitution, more specifically Article 2 thereof, which enshrines the role of 'social groupings', read in conjunction with Articles 18, 49 and 97.
- 18 The applicants add that the contested measures are of direct concern to them in so far as they constitute authorization to finance a project whose content and beneficiaries have already been determined. It is clear from the contested decision that there is a direct functional link between the co-financing and the Po delta programme. By seeking the Community contribution, the Italian Republic expressly committed itself to carrying out the actions described in that programme.

Consequently, it no longer has any discretion, especially since it thereby informed the Community authorities in advance of the conduct which it would adopt with regard to the Community provisions concerned (judgment of the Court of Justice in Case 62/70 *Bock v Commission* [1971] ECR 897).

Findings of the Court

- 19 According to Article 114(1) of the Rules of Procedure, if a party so requests, the Court is to decide on admissibility without hearing argument on the substance on the terms laid down in Article 114(3) and (4). In this case, the Court considers that, since its examination of the documents in the case-file has provided it with sufficient information, there is no need to open the oral procedure.
- 20 According to the second paragraph of Article 173 of the EEC Treaty, which is now the fourth paragraph of Article 173 of the EC Treaty, the admissibility of an application brought by a natural or legal person against a decision not addressed to that person is dependent on the decision's being of direct and individual concern to the applicant.
- 21 Since none of the natural persons and none of three applicant associations is an addressee of the contested decision, it is necessary to consider whether that decision is of direct and individual concern to them.
- 22 According to the case-law of the Court of Justice (see Case 25/62 *Plaumann v Commission* [1963] ECR 95), third parties can be individually concerned by a

decision addressed to another person only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed.

23 The object of the contested decision is to grant financial assistance in respect of actions for the protection of habitats and nature. It was addressed to all the Member States at that time, with the exception of the Kingdom of Belgium and the Grand Duchy of Luxembourg. Among the actions in respect of which financial assistance is granted is the Po delta programme. The total cost of the project is estimated at ECU 3 million, of which 50% is to be borne by the Community.

24 As far as concerns the three applicants who are natural persons — as well as all persons carrying on activities in the area concerned — the contested decision is therefore a measure of general scope which applies to situations determined objectively and has legal effects with regard to categories of persons viewed generally and in the abstract in so far as it grants financial assistance to the Italian Po delta programme.

25 It follows that the decision in question concerns the applicants who are natural persons merely by virtue of their objective capacity as agriculturalists operating in the Po delta area in the same manner as any other agriculturalist who is, or might be in the future, in the same situation (judgment of the Court of Justice in Case 231/82 *Spijker v Commission* [1983] ECR 2559, paragraph 9).

- 26 It should further be considered whether the three applicant associations — assuming that they represent all the agriculturalists in the region concerned — are individually concerned by the contested decision.
- 27 In that connection, it appears from the case-law of the Court of Justice that it cannot be accepted as a principle that an association, in its capacity as the representative of a category of traders, is individually concerned by a measure affecting the general interests of that category (order in Case 60/79 *Fédération nationale des producteurs de vins de table et vins de pays v Commission* [1979] ECR 2429 and judgment in Case 282/85 *DEFI v Commission* [1986] ECR 2469, paragraph 16).
- 28 In this case the applicant associations are not affected by the contested decision, which affects the general interests of the category of traders which they represent, otherwise than in their capacity as representatives of that category.
- 29 Nevertheless, both the applicants who are natural persons and those which are associations, maintain that they are individually concerned by the contested decision on the ground that the Commission was under a duty to consult them before adopting the decision, which is sufficient to distinguish them.
- 30 The Court finds in this connection that none of the provisions mentioned by the applicants (see paragraph 17 above) puts the Commission under a duty, before granting financial assistance pursuant to Regulation No 1973/92, to take account of the particular situation of each of the agriculturalists carrying on activities in the areas concerned by the programme of actions financed or to take account of the particular situation of each of the associations representing them, or to consult them.

- 31 The absence of any duty on the Commission to take account of the particular situation of the various applicants or to consult them before adopting the contested decision is corroborated by the fact that none of the applicants relied, in support of its application, on pleas alleging that the Commission is in breach of any obligation to consult them, whilst the Commission averred, without being contradicted by any of the applicants, that the latter had not been consulted in any way before the contested decision was adopted.
- 32 It follows from the foregoing that none of the natural persons and none of the associations is individually concerned by the Commission's decision of 15 October 1993 to grant financial assistance to the programme for the conservation of the geographical area of the Po delta. Consequently, the application for its annulment is admissible in respect of none of them (judgments of the Court of Justice in Case 11/82 *Piraiki-Patraiki v Commission* [1985] ECR 207 and in Case C-152/88 *Sof-rimport v Commission* [1990] ECR I-2477, paragraphs 11, 12 and 13).
- 33 This Court takes the view that that reasoning applies *a fortiori* to the contract concluded between the Commission and the Italian Republic which determines the procedures for the grant of Community financial assistance and the conditions to be complied with by the recipient of that assistance. The applicants are not parties to that contract and it is no more of individual concern to them than the decision of 15 October 1993, of which, moreover, it constitutes merely an implementing measure, as the applicants seem to admit when they state that 'since the contract constitutes merely a measure implementing the contested decision which is confined to laying down the procedures for the deployment of the Community financing instrument LIFE, the fact that the contested contract is unlawful follows from the fact that the decision is unlawful and the contract is therefore devoid of any logical or legal basis' (applicants' observations on the objection of inadmissibility, p. 13).
- 34 It follows from all the foregoing that the application must be declared inadmissible.

Costs

- ³⁵ Under Article 87(2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

- 1. The application is dismissed as inadmissible.**
- 2. The applicants are ordered jointly and severally to pay the costs.**

Luxembourg, 21 February 1995.

H. Jung

Registrar

K. Lenaerts

President