

JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)  
23 September 1994<sup>\*</sup>

In Case T-461/93,

**An Taisce — The National Trust for Ireland**, established in Dublin, and

**WWF UK (World Wide Fund for Nature)**, established in Surrey (United Kingdom),

represented initially by Gerard Bohan, Solicitor, and subsequently by Georg Berisch, Rechtsanwalt, Hamburg, with an address for service in Luxembourg at the Chambers of Turk and Prum, 13 B Avenue Guillaume,

applicants,

v

**Commission of the European Communities**, represented by Carmel O'Reilly and Xavier Lewis, of its Legal Service, acting as Agents, with an address for service in

<sup>\*</sup> Language of the case: English.

Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Service, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission decision of 7 October 1992 by which the Commission decided not to suspend or withdraw the allocation of IR £2.7 million of Community structural funds for financing the interpretative centre for visitors at Mullaghmore (Ireland) and for damages from the European Community for the harm which the applicants have suffered and will suffer as a result of the Commission's above decision,

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

composed of: J. L. Cruz Vilaça, President, C. P. Briët, A. Kalogeropoulos, D. P. M. Barrington and A. Saggio, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the oral procedure on 1 June 1994,

gives the following

## Judgment

### Facts and Procedure

1 In March and June 1989 the Irish Government submitted its regional development plans to the Commission pursuant to Article 8(4) of Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9) ('Regulation No 2052/88').

2 Those plans included a description of the main priorities for action and an indication of the uses to which assistance under the various Community funds would be put. On 31 October 1989 the Commission decided, in accordance with Article 8(5) of Regulation No 2052/88, to establish a Community support framework for Community structural operations in Ireland in pursuance of Objective 1 for the period from 1989 to 1993. That decision envisaged Community assistance totalling ECU 3 672 million, to which were to be added ECU 2 454 million from Irish public funds and ECU 2 274 million from the private sector.

3 On 21 December 1989 the Commission approved the Operational Programme for Tourism submitted by Ireland (which did not address specific projects but merely analysed in general terms a number of sub-programmes on infrastructure, plant, training and marketing) and allocated to it for the period from 1 January 1989 to 31 January 1993 the sum of ECU 188.6 million, of which ECU 152 million came

from the European Regional Development Fund and ECU 36.6 million from the European Social Fund. That sum covered the entire programme, with no specific amounts being allocated to individual projects.

- 4 On 22 April 1991 the Minister of State at the Irish Department of Finance announced a plan for the construction of an interpretative centre for visitors at Mullaghmore (Ireland). On 21 June 1991 the applicant WWF UK (World Wide Fund for Nature) ('WWF UK') lodged a complaint against this project with the Commission and was subsequently joined in its complaint by the other applicant, An Taisce — The National Trust for Ireland ('An Taisce').
- 5 The applicant WWF UK is a non-governmental organization concerned with the conservation of nature and natural resources on an international scale. The applicant An Taisce is a voluntary, non-profit-making company financed by private donations and membership subscriptions which is concerned with protecting environmental quality for the benefit of the Irish nation. It is a prescribed body under the Local Government (Planning and Development) Acts 1963-1992 and is entitled in that capacity, *inter alia*, to receive copies of draft development plans and notice of decisions on all planning applications accompanied by environmental impact assessments.
- 6 On 23 August 1991 an official of the Commission's Directorate-General for the Environment, Nuclear Safety and Civil Protection (DG XI) wrote to the applicants, informing them that no decision authorizing Community financing of the Mullaghmore centre would be taken until an environmental impact assessment had been carried out by the Irish authorities in accordance with 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) ('Directive 85/337').

7 At the Commission's request the Office of Public Works ('OPW') commissioned an environmental impact assessment. That assessment, published in February 1992, was criticized by environmental organizations and was the subject of a critical review by the Institute of Environmental Assessment carried out at the request of the applicant WWF UK. Subsequently, a further report was produced at the request of OPW which introduced changes to the original plan, in particular the system of waste-water treatment. That report was also criticized by the applicant WWF UK. All the reports and criticisms were passed on to the Commission.

8 On 19 June 1992 the Director-General of DG XI wrote to the Irish Permanent Representative to state that he was recommending to the Commission that it should initiate the procedure provided for in Article 169 of the EEC Treaty with respect to the Mullaghmore centre.

9 On 7 October 1992 the Commission decided not to initiate a procedure, with respect to the Mullaghmore centre, against Ireland for failure to fulfil its obligations and issued a press release on the matter:

'IP/92/797

*Ireland Environment:*

*Visitor Centre at Mullaghmore, Burren*

The Commission not to open infringement proceedings

The Commission today decided to close the file concerning the construction of a visitor centre at Mullaghmore (Clare, Ireland).

The project which was the subject of the file was proposed by the Office of Public Works in Ireland. It consisted of the construction of an interpretative centre for visitors in the Burren National Park. In addition, the project involved the construction of a new access road and a waste water treatment plant.

The latter are covered by the Directive on environmental impact assessment (Annex II of Directive 85/337/EEC). The Office of Public Works carried out, at the Commission's request, an impact study in 1991 and undertook public consultations. The Commission considers that the guarantees given by this procedure are equivalent to those provided for by the Directive. As a result, an infringement procedure is not justified.

The application of the Directive on groundwater (80/68/EEC) requires prior investigation and authorization for the disposal of certain substances which may lead to indirect groundwater discharges.

Although Ireland has not yet transposed this Directive into its national law, it has undertaken to honour fully the spirit and the substance of the Directive in the execution of this project. Moreover, Ireland has undertaken not to discharge effluent into groundwater in advance of the issue of the authorization provided for by the Directive. The Commission therefore decided not to open infringement proceedings.

Mr Van Miert, referring to the Directive on habitats (92/43/EEC), indicated that this Directive would only enter into force in 1994 and therefore the Commission could not at this stage pronounce on the application of the Directive to this project.

The Commissioner took note of the undertakings given by Ireland. He underlined that in a case such as this the Commission can only decide on the conformity of

the project with Community law. It does not have the authority to judge on the advisability of the exact site of this project from an environmental point of view.'

10 Those are the circumstances in which the applicants, by application lodged at the Registry of the Court of Justice on 4 December 1992, brought an action under Article 173 of the EEC Treaty seeking, in substance, the annulment of the decisions which, in their opinion, the Commission had taken on 7 October 1992 not to suspend or withdraw the allocation of IRL 2.7 million from Community structural funds for the financing of the interpretative centre at Mullaghmore and not to initiate a procedure against Ireland under Article 169 of the Treaty for failure to fulfil obligations. The applicants applied at the same time under Articles 178 and 215 of the EEC Treaty for an order for damages against the European Community for the harm suffered and to be suffered by the applicants as a result of the Commission's abovementioned decisions. They also sought the reimbursement by Ireland to the European Community of the sum of IR £2.7 million or, in the alternative, the 'reallocation' of that sum to the Operational Programme for Tourism in Ireland submitted by the Irish Government to the Commission on 6 March 1989. The case was registered at the Registry of the Court of Justice under number C-407/92.

11 By a separate document lodged at the Registry of the Court of Justice on 23 December 1992, the applicants applied for suspension of the operation of the Commission's abovementioned decisions of 7 October 1992 and for interim measures suspending the use of structural funds from the Tourism Programme for the Mullaghmore centre until the Court of Justice had delivered judgment in the main action. The case was registered at the Registry of the Court of Justice under number C-407/92 R. By letter lodged at the Registry of the Court of Justice on 21 June 1993, the applicants informed the Court that they were withdrawing their application for interim measures. By an order of the President of the Court of Justice of 6 July 1993, Case C-407/92 R was removed from the court Register.

12 By a separate document lodged at the Registry of the Court of Justice on 8 February 1993, the Commission raised an objection of inadmissibility in respect of the applications lodged by the applicants.

- 13 By an order of 27 September 1993 the Court of Justice transferred the present case to the Court of First Instance, in accordance with Article 3 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21). The case was registered at the Court of First Instance under number T-461/93.

### Forms of order sought by the parties

- 14 The applicants claim in their application that the Court of First Instance should:
- (i) annul the Commission decisions, dated 7 October 1992, to the extent to which the Commission has decided:
    - (a) not to suspend or withdraw the use of IRL 2.7 million of Community structural funds for an interpretative centre for visitors at Mullaghmore;
    - (b) not to initiate a procedure against Ireland, under Article 169 of the EEC Treaty, for infringement of the Treaty in relation to the application of certain Community directives on the environment, namely Council Directive 85/337/EEC and Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ 1980 L 20, p. 43) ('Directive 80/68');
    - (c) not to initiate such a procedure against Ireland to the extent to which this has resulted in the effective release of IRL 2.7 million of Community structural funds for the interpretative centre at Mullaghmore;
  - (ii) order that the said amount of IRL 2.7 million be reimbursed by Ireland to the European Community or, alternatively, that that sum be reallocated to the Operational Programme for Tourism in Ireland submitted by the Irish Government to the Commission on 6 March 1989;

- (iii) order the European Community to make good the damage suffered and to be suffered by An Taisce and WWF UK as a result of the Commission's abovementioned decisions;
- (iv) award interest on the amount of such damages;
- (v) order the Commission to pay the costs.

15 For its part, the Commission contends that the Court of First Instance should:

- (i) dismiss the application as inadmissible;
- (ii) order the applicants to pay the costs.

16 In their observations on the objection of inadmissibility raised by the Commission, the applicants claim that the Court should dismiss the Commission's objection as unfounded and declare the application admissible. They also state that they are not contesting, as such, the Commission's decision not to initiate a procedure against Ireland under Article 169 of the Treaty, but rather the decision taken by the Commission on 7 October 1992 not to suspend or withdraw the allocation of structural funds for building the visitor centre at Mullaghmore. Finally, the applicants argue that the request that the Court order the reimbursement by Ireland to the European Community of the amount of IRL 2.7 million or, in the alternative, that that amount be reallocated to the Operational Programme for Tourism in Ireland does not in fact constitute a separate application but is quite simply the consequence which would follow under Article 176 of the EEC Treaty from the annulment of the decision of 7 October 1992.

- 17 Upon hearing the Report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to accede to the Commission's request that it rule on the objection of inadmissibility without examining the case on the merits. The Court also decided at the same time to ask the Commission to reply to a number of written questions. In a document registered at the Court on 6 May 1994 the Commission replied to the questions put by the Court. The parties submitted oral argument and replied to the oral questions put by the Court at the hearing on 1 June 1994.
- 18 At the conclusion of the hearing the President announced the closure of the oral procedure on the objection of inadmissibility.

## Law

- 19 The Court notes at the outset that the applicants have clearly indicated, both in their reply to the objection of inadmissibility and at the hearing on 1 June 1994, that they are not contesting the Commission's decision not to initiate a procedure against Ireland under Article 169 of the Treaty and also that the request that the Court order the reimbursement by Ireland to the European Community of the amount of IRL 2.7 million or, in the alternative, that that amount be reallocated to the Operational Programme for Tourism in Ireland does not constitute a separate application but is quite simply the consequence which would follow under Article 176 of the EEC Treaty from the annulment of the decision of 7 October 1992.
- 20 In those circumstances, the Court takes the view that the applicants have withdrawn those heads of claim and that consequently they merely seek in the present case the annulment of the decision allegedly taken by the Commission on 7 October 1992 not to suspend or withdraw the use of IRL 2.7 million of Community structural funds for the interpretative centre at Mullaghmore and an order that the European Community make good the damage which An Taisce and WWF UK have suffered and will suffer by reason of the contested decision.

*The admissibility of the application for annulment*

## Arguments of the parties

- 21 In its objection of inadmissibility the Commission denies that it took a decision not to suspend or withdraw the allocation of structural funds to Ireland in connection with the Mullaghmore project; furthermore, it argues that no such decision has been identified by the applicants. In any event, such a decision would, in the Commission's view, be separate from a decision to initiate a procedure under Article 169 of the Treaty for failure to fulfil obligations, since the procedure under Article 24 of Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1) ('Regulation No 4253/88') and the procedure for a declaration of failure to fulfil obligations are independent of each other.
- 22 The defendant notes that in any event its decision of 21 December 1989 to contribute funds to the Operational Programme for Tourism merely affords the Irish authorities the opportunity to build certain projects of their choice with Community assistance. In those circumstances, only the decision of the Member State, and not that of the Commission, can be of concern to the applicants.
- 23 In its replies to the written questions addressed to it by the Court, the Commission points out, *inter alia*, that, following a ruling of the Irish Supreme Court of 26 May 1993, work on the Mullaghmore centre was stopped and the OPW must once again go through the whole procedure of obtaining planning permission. In those circumstances, the Commission asks whether the present application for annulment is ultimately without effect and purpose, since the project may be modified and the eligibility of expenditure incurred or to be incurred is seriously in doubt. The defendant points out in this regard that, pursuant to Article 5 of the

decision of 21 December 1989, Community aid concerns, in principle, only expenditure for which legally binding arrangements have been made in the Member State and for which Community finance has been specifically allocated not later than 31 December 1993.

24 In their reply to the objection of inadmissibility the applicants argue in the first place that the Community cannot disclaim all responsibility for the possible environmental effects of projects which it finances, especially since most projects financed by Community structural funds would not be carried out by the Member States without such financing. They add that if the Court were to hold that individuals cannot be directly and individually concerned by a Commission decision to fund a certain project with structural funds, there would be no judicial control whatsoever of the Commission's practice in that area.

25 According to the applicants, the Commission did in fact adopt two decisions on 7 October 1992. They argue that on that date the Commission not only decided not to initiate a procedure against Ireland for failure to fulfil obligations with regard to the construction of the Mullaghmore centre, but also decided that the construction of the centre was in conformity with Article 7(1) of Regulation No 2052/88, with the result that structural funds allocated to Ireland under the Programme for Tourism could be used to finance the project. This, they argue, is confirmed by the fact that the OPW delayed construction of the Mullaghmore centre pending the Commission's decision and did not start the work until 16 November 1992.

26 The applicants add that it is the Commission decision of 21 December 1989 approving the Operational Programme for Tourism which itself declares that '... where the Commission has evidence that for a given operation or operations Community policies have not been or are not being observed, the Commission will withhold payment of Community funds to the operation or operations in question and notify the authority in the Member State responsible for implementation of the programme...'. The applicants argue that the Commission has already in the past

suspended or withdrawn the use of funds allocated to a specific project under an operational programme for breach of the relevant environmental rules.

- 27 In the applicants' opinion the situation in this case is analogous to that which gave rise to the judgment of the Court of Justice in Case C-313/90 *CIRFS and Others v Commission* [1993] ECR I-1125, in which the Court of Justice held that a decision not to initiate the procedure under Article 93(3) of the EEC Treaty was a decision having legal effects which could be challenged by the parties individually and directly concerned.
- 28 The applicant An Taisce regards itself as being individually concerned by the contested decision in several respects. First, it is one of the very few neighbouring landowners. Second, it was treated as a party at the time of the Commission's investigation. Finally, its rights are affected in its capacity as a body responsible for protection of the environment. For its part, the applicant WWF UK also considers itself to be individually concerned by the contested decision, not only because it was actively and strongly involved in the procedure which led to the adoption of the contested decision, but also because of its direct and active involvement in environmental matters, which distinguishes it from other persons and organizations. WWF UK draws attention to the fact that it organizes a number of activities concerning environmental protection in cooperation with the Commission, that it is a member of the Standing Committee of the Bern Convention, and that its position in the present case is for that reason analogous to the position of CIRFS in Case C-313/90 *CIRFS and Others v Commission*, cited above.
- 29 The applicants rely in this connection on the judgment of the Court of Justice in Case 11/82 *Piraiiki-Patraiki and Others v Commission* [1985] ECR 207 and consider that the contested decision is of direct concern to them inasmuch as, contrary to the Commission's assertions that withdrawal or suspension of the funds would not prevent the Irish authorities from constructing the centre, the likelihood of

their so doing if Community financing were to be suspended is purely theoretical. That, they argue, is confirmed both by the fact that the Irish authorities delayed the start of building work on the centre until they had obtained confirmation from the Commission that there was no obstacle to financing the project with the assistance of structural funds, and by the fact that the very purpose of those funds is to enable works to be carried out which Member States would not be in a position to undertake on their own.

### Findings of the Court

- 30 It is apparent in this case from the documents before the Court that, following the complaint made by the applicants, the Commission decided on 7 October 1992 not to initiate against Ireland a procedure for failure to fulfil obligations. The applicants consider that, by so deciding, the Commission also necessarily took the decision not to suspend or reduce the Community funds for the construction of the visitor centre at Mullaghmore and that such a decision is of direct and individual concern to the applicants.
- 31 The Court considers that, even before examining whether individuals have *locus standi* to contest a Commission decision not to suspend or reduce Community financial aid for a national operation, it is necessary to determine whether the Commission did in fact take such a decision on 7 October 1992 as the applicants allege.
- 32 In the circumstances of this case, this amounts to examining whether the fact that the Commission did not initiate, with respect to the construction of the Mullaghmore centre, a procedure against Ireland for failure to fulfil obligations, also constitutes a decision not to suspend or reduce the financial assistance for the operation concerned.

33 It should first be observed in that regard that under Article 7(1) of Regulation No 2052/88 'Measures financed by the Structural Funds or receiving assistance from the EIB or from another existing financial instrument shall be in keeping with the provisions of the Treaties, with the instruments adopted pursuant thereto and with Community policies, including those concerning the rules on competition, the award of public contracts and environmental protection.'

34 Second, it should be borne in mind that under Article 24 of Regulation No 4253/88 the Commission may suspend or reduce assistance in respect of the operation or measure concerned if, after having conducted a suitable examination of the case in the framework of a partnership with the authorities of the Member State concerned, it finds that there has been an irregularity and in particular a significant change affecting the nature or conditions of the operation or measure for which the Commission's approval has not been sought.

35 Next, it is important to note that the procedure for the suspension or reduction of Community financial assistance for national operations is independent of the procedure whose aim is to obtain a declaration that the conduct of a Member State is in breach of Community law and to put an end to that conduct. Neither the initiation of a procedure under Article 169 of the Treaty for failure to fulfil obligations nor even a declaration by the Court of Justice that there has been such a failure can automatically entail the suspension or reduction of Community financial assistance. For that, it is necessary that the Commission should adopt a decision suspending or reducing Community financing on the basis of Article 24(2) of Regulation No 4253/88. Unlike the initiation of a procedure for failure to fulfil obligations, such a decision suspending or reducing Community financing constitutes

a measure adversely affecting the person to whom it is addressed and may be the subject of an action before the Community courts.

36 Similarly, the fact that the Commission decides not to initiate a procedure for a declaration of failure to fulfil obligations or to discontinue such a procedure already initiated cannot imply that it is prevented from suspending or reducing Community assistance for a national operation, particularly where one or more of the conditions to which the Community financing has been made subject have not been satisfied. The Commission may take such a decision at any time, including after the completion of the work, as is borne out by Article 23(2) and (3) of Regulation No 4253/88, according to which the Commission may carry out checks with regard to funded operations and is entitled, for a period of three years following the last payment in respect of any operation, to have access to all supporting documents regarding expenditure on the operation. Furthermore, Article 24(3) of Regulation No 4253/88 provides that any sum received unduly and to be recovered must be repaid to the Commission.

37 It should be noted in this case that, as may be seen from the Commission's press release (see paragraph 9 above), the Commission decided on 7 October 1992 not to initiate a procedure against Ireland, in respect of the construction of the Mullaghmore centre, for infringement of the Treaty, in view of the fact that it considered that the procedure followed by the OPW provided guarantees equivalent to those laid down by Directive 85/337 and in the light of the undertakings given by the Irish authorities regarding compliance, during the execution of the project, with the provisions of Directive 80/68, which Ireland had not yet transposed into national law.

38 Nothing, however, can justify the conclusion that the Commission also decided at that time not to make use of the possibility given it by Regulation No 4253/88 to

suspend or reduce the use by the Irish authorities of Community funds for the construction of the Mullaghmore centre. Such a possibility is open to the Commission at all times if it should transpire that there are irregularities, in particular if significant changes affect the implementation of the operation. That is especially true in this case since, as pointed out above, work on the centre is at present suspended and has thus only partially been the subject of Community financing.

- 39 In those circumstances, and without its even being necessary to determine whether individuals have *locus standi* to contest a Commission decision not to suspend or reduce Community financing for a national operation, it must be held that the Commission did not, on 7 October 1992, take any decision not to suspend or reduce Community financing for the construction of the interpretative centre for visitors at Mullaghmore and that for that reason the application for annulment must be dismissed as inadmissible.

*The admissibility of the application for damages*

Arguments of the parties

- 40 The Commission considers that the application for damages submitted by the applicants must also be declared inadmissible. It argues that the applicants have not pointed to any loss occasioned to them by the decision of 7 October 1992 and that the damage which they allege, assuming that it exists, would in any event be attributable to the decision taken by the Irish authorities as to the site for the construction of the centre.

- 41 For their part, the applicants consider that they have demonstrated the existence of a causal link between the contested decision and the decision of the Irish authorities to begin construction of the centre, and they argue that the situation in this case is analogous to that which gave rise to the judgment of the Court of Justice in Joined Cases C-104/89 and C-37/90 *Mulders and Others v Council and Commission* [1992] ECR I-3061.

### Findings of the Court

- 42 It must be noted in that regard that the applicants not only do not put forward any argument to demonstrate the existence of a link between the contested measure and the damage alleged to be caused, on the one hand, to the environment of Mullaghmore and its neighbourhood and, on the other hand, to the applicant An Taisce as an owner of adjoining land, but also in no way quantify the damage alleged. They confine themselves to claiming that continuation of construction work on the Mullaghmore centre will give rise to serious and irreparable damage.
- 43 In those circumstances, the application must also be declared inadmissible in so far as it is based on Articles 178 and 215 of the Treaty.

### Costs

- 44 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful and the Commission has applied for costs, the applicants must be ordered jointly and severally to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. Dismisses the application as inadmissible;
2. Orders the applicants jointly and severally to pay the costs.

Cruz Vilaça      Briët      Kalogeropoulos      Barrington      Saggio

Delivered in open court in Luxembourg on 23 September 1994.

H. Jung

J. L. Cruz Vilaça

Registrar

President