

JUDGMENT OF THE COURT
29 February 1996 *

In Case C-122/94,

Commission of the European Communities, represented by Xenophon Yataganas, Legal Adviser, and Ben Smulders, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Council of the European Union, represented by Ramon Torrent, Director of the Legal Service, and Diego Canga Fano, of the same service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

French Republic, represented by Catherine de Salins, Head of Section in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Jean-Louis Falconi, Foreign Affairs Secretary in the same ministry, acting as Agents, with an address

* Language of the case: French.

for service in Luxembourg at the French Embassy, 9 Boulevard du Prince-Henri,

and by

Italian Republic, represented by Professor Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs of the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg in the Italian Embassy, 5 Rue Marie-Adélaïde,

interveners,

APPLICATION for annulment of two Council Decisions of 21 February 1994 under the third subparagraph of Article 93(2) of the EC Treaty relating to the grant of special aid for the distillation of certain wines in Italy and France,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris and D. A. O. Edward (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, P. J. G. Kapteyn (Rapporteur), C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm and L. Sevón, Judges,

Advocate General: G. Cosmas,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 19 September 1995, at which the Commission was represented by Gérard Rozet, Legal Adviser, and Ben Smulders, the Council by Ramon Torrent and Diego Canga Fano, the French Government by Gautier Mignot, Foreign Affairs Secretary in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent, and the Italian Government by Maurizio Fiorilli, Avvocato dello Stato,

after hearing the Opinion of the Advocate General at the sitting on 22 November 1995,

gives the following

Judgment

- 1 By application lodged at the Registry of the Court of Justice on 25 April 1994, the Commission of the European Communities brought an action under Article 173 of the EC Treaty for annulment of two Council Decisions of 21 February 1994 adopted under the third subparagraph of Article 93(2) of the EC Treaty relating to the grant of special aid for the distillation of certain wines in Italy and France.
- 2 In the case of Italy, the Council authorized the grant of supplementary aid for compulsory distillation, made available under Article 39 of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine (OJ 1987 L 84, p. 1), for a maximum quantity of 3 million hectolitres of table wine and wine suitable for producing table wine, produced in the 1993/94 wine year in Italy and a maximum amount equal to the difference between the minimum purchase price of preventive distillation (ECU 2.06/% vol/hl) and that for compulsory distillation (ECU 0.83/% vol/hl).

- 3 In the case of France, the Council authorized the grant of supplementary aid for preventive distillation, initiated under Article 38 of Regulation No 822/87, of a maximum of 3 million hectolitres of table wine and wine suitable for producing table wine, produced in the 1993/94 wine year in France, of a maximum amount equal to the difference between FF 24/% vol/hl and the minimum community price (ECU 2.06/% vol/hl), converted at the rate applicable to the contracts in question, paid to producers whose output does not exceed 9 hl/ha and who deliver to preventive distillation, limited in the case of each producer concerned to 9 hl/ha.

- 4 According to the preamble to those decisions, the Italian and French Governments, acting in accordance with Article 93(3) of the Treaty, notified the planned aid to the Commission, which in both cases considered that the aid envisaged was not compatible with the common market. However, in the two contested decisions, the Council took the view, on the basis of the third subparagraph of Article 93(2), that there were exceptional circumstances so that the aid, subject to the conditions laid down in the decisions, was compatible with the common market.

- 5 By order of the President of the Court of 9 September 1994, the Italian Republic was granted leave to intervene in support of the Council.

- 6 By order of the President of the Court of 24 October 1994 the French Republic was granted leave to intervene in support of the Council.

- 7 By its first plea the Commission claims that the Council lacked the right power and that it committed a misuse of procedure by relying on the third subparagraph of Article 93(2) in order to derogate from the rules relating to the common organization of the market in wine. It observes in particular that national aid which, as in the case of Italy, equalizes the prices to be paid to producers for the two types of distillation or which, as in the case of France, brings the price of preventive

distillation to the level of the market price not only distorts competition between producers within the meaning of Article 92(1) of the EC Treaty but also introduces a price support level higher than that of the common organization of the market, thus destroying the dissuasive effect related to the distillation system which is necessary for controlling production and at the same time making the Commission's task of management impossible.

- 8 As regards first of all the issue of lack of power, the Commission maintains that, according to the letter of the third subparagraph of Article 93(2), the Council may derogate only from the provisions of Article 92 or the regulations provided for in Article 94 of the EC Treaty and not from other rules of Community law.

- 9 The third subparagraph of Article 93(2) provides in fact that, on application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant is to be considered to be compatible with the common market, in derogation from the provisions of Article 92 or from the regulations provided for in Article 94, if such a decision is justified by exceptional circumstances.

- 10 The third subparagraph of Article 93(2) indisputably forms part of Chapter 1, entitled 'Rules on competition', of Title V of the Third Part of the EC Treaty.

- 11 Moreover, according to Article 42 of the same Treaty, the Council has the power to decide, in accordance with the procedure laid down in Article 43(2) and (3), account being taken of the objectives set out in Article 39, the extent to which the provisions of the chapter relating to rules on competition are to apply in the agricultural sector.

- 12 Thus, by Article 76 of Regulation No 822/87, the Council, under Article 42 of the Treaty, made Articles 92, 93 and 94 applicable to production of and trade in wines and musts.
- 13 It follows that the power granted to the Council by the third subparagraph of Article 93(2) is to apply in the wine sector, within the limits indicated by that provision, namely the existence of exceptional circumstances.
- 14 As regards the issue of misuse of procedure, the Commission maintains that the Council decisions undermine the common organization of the market in wine and, in so far as they modify it, that the Council ought to have complied with the rules of procedure laid down in Article 43(2) and (3).
- 15 In this regard, it is sufficient to state that the reference in Article 76 of Regulation No 822/87 to Articles 92, 93 and 94 of the Treaty does not provide for any conditions other than those set out in those provisions. Consequently, the Commission's argument that the aids in question undermine the common organization of the market in wine may be examined only to the extent to which the Commission can demonstrate that the Council has exceeded the limits of its discretionary powers under the third paragraph of Article 93(2).
- 16 It follows that the first plea must be dismissed.
- 17 By its second plea the Commission argues that, by adopting the decisions in question, the Council committed a manifest error in taking the view that exceptional circumstances, within the meaning of the third subparagraph of Article 93(2), existed.

- 18 In this regard it must be observed first of all that when the implementation by the Council of the Community's agricultural policy necessitates the evaluation of a complex economic situation, the discretion which it has does not apply exclusively to the nature and scope of the measures to be taken but also to some extent to the finding of the basic facts inasmuch as, in particular, it is open to the Council to rely if necessary on general findings. In reviewing the exercise of such a power the Court must confine itself to examining whether it contains a manifest error or constitutes a misuse of power or whether the authority in question did not clearly exceed the bounds of its discretion (see the judgment in Case 138/79 *Roquette Frères v Council* [1980] ECR 3333, paragraph 25).
- 19 In the present case, the very wording of the third subparagraph of Article 93(2) shows that the Council, when deciding that exceptional circumstances justify an aid being considered as compatible with the common market, thus derogating from Article 92, is called upon to carry out an assessment of a complex economic situation.
- 20 In support of its plea, the Commission maintains first of all that the 1993/94 wine year was not exceptional in that it was a continuation of previous wine years and the monetary differences referred to had also existed in the past and, secondly, the situation prevailing in other common market organizations, in particular those for milk products, beef and veal and fruit and vegetables is even worse.
- 21 It must be observed in this regard that, although the situation on the wine market was comparable to that in previous wine years, the Council cannot be regarded as having committed a manifest error of assessment in taking the view, in the fourth recital of the preamble to the two contested decisions, without being contradicted

by the Commission, that the imbalance on the Community wine market at the beginning of the 1993/94 wine year could indeed, owing to the continued existence of such a situation, entail in Italy's case the risk of serious economic and social repercussions, in particular for small producers and cooperative wine cellars, and, in the case of France, the risk of engendering a critical situation.

- 22 Each of the common organizations of the market embodies features specific to each organization (see the judgment in Joined Cases 292/81 and 293/81 *Lion and Loiret & Hoentjens v FIRS* [1982] ECR 3887, paragraph 24) and, as the Commission points out in its reply, the organization of the wine market has, for a number of years, been characterized by a permanent structural imbalance which is in the process of being reformed.
- 23 Finally, the Commission observes that the aid in question is mainly intended to guarantee wine producers income beyond the price provided for by the common organization of the wine market, thus giving priority, amongst the aims laid down in Article 39 of the Treaty, to protecting farmers' incomes, which has the result of attenuating the dissuasive effect related to the distillation system, which is necessary for controlling production.
- 24 It must be borne in mind in this regard that in pursuing the various aims laid down in Article 39 of the Treaty the Community institutions must constantly reconcile any conflicts between those aims taken individually and, where necessary, give any one of them the temporary priority which the facts or circumstances, in view of which their decisions are made, require (see the judgment in Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863,

paragraph 32, and the judgment in Case C-280/93 *Germany v Council* [1994] ECR I-4973, paragraph 47).

- 25 Consequently, the Council committed no manifest error of assessment when deciding, in giving particular attention to the aim of guaranteeing wine producers a fair income, that the aid in question was to be considered to be compatible with the common market since they had not thereby caused a real and lasting disturbance in the functioning of the common organization of the wine market. Moreover, in the final recital of the preamble to the two decisions, the Council considered that the aid was, by derogation, compatible with the common market to the extent and for the period strictly necessary for restoring the situation of imbalance found to exist.
- 26 Consequently, the second plea must be dismissed.
- 27 By its third plea the Commission contends that the reasoning of the two contested decisions is brief, incomplete and wrong.
- 28 It need only be stated in this regard that the Commission's second plea, concerning an alleged manifest error committed by the Council in considering that exceptional circumstances, within the meaning of the third subparagraph of Article 93(2) existed, has been dismissed. Consequently, the third plea needs to be examined only in so far as it alleges incomplete reasoning.

29 Although the reasoning required by Article 190 of the EC Treaty must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure so as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court to exercise its review (see the judgment in Case C-466/93 *Atlanta Fruchthandelsgesellschaft and Others v Bundesamt für Ernährung und Forstwirtschaft* [1995] ECR I-3799, paragraph 16), it is not required to go into every relevant point of fact and law. The question whether a statement of reasons satisfies those requirements must be assessed with reference not only to its wording but also to its context and the whole body of legal rules governing the matter in question. Consequently, if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for each of the technical choices made by the institution.

30 Consequently, although succinct, the reasoning of the contested decisions makes clear that, contrary to what the Commission contends, the Council took the view that exceptional circumstances allowed the aid to be considered, by way of derogation, compatible with the common market to the extent and for the period strictly necessary.

31 The third plea must therefore be dismissed as well.

32 It follows from the foregoing that the application must be dismissed in its entirety.

Costs

33 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for. Since the Commission has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the application;
2. Orders the Commission to pay the costs

Rodríguez Iglesias

Kakouris

Edward

Mancini

Schockweiler

Kapteyn

Gulmann

Murray

Jann

Ragnemalm

Sevón

Delivered in open court in Luxembourg on 29 February 1996.

R. Grass

G. C. Rodríguez Iglesias

Registrar

President