JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

20 September 2007 *

In Case T-136/05,

EARL Salvat père & fils, established in Saint-Paul-de-Fenouillet (France),

Comité interprofessionnel des vins doux naturels et vins de liqueur à appellations contrôlées (CIVDN), established in Perpignan (France),

Comité national des interprofessions des vins à appellation d'origine (CNIV), established in Paris (France),

represented by H. Calvet and O. Billard, lawyers,

applicants,

* Language of the case: French.

supported by

French Republic, represented by G. de Bergues, acting as Agent,

intervener,

v

Commission of the European Communities, represented by C. Giolito and A. Stobiecka-Kuik, acting as Agents,

defendant,

ACTION for annulment of Article 1(1) and (3) of Commission Decision 2007/253/EC of 19 January 2005 on the Rivesaltes plan and CIVDN parafiscal charges operated by France (OJ 2007 L 112, p. 1),

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

composed of M. Vilaras, President, F. Dehousse and D. Šváby, Judges,

Registrar: K. Pocheć, Administrator,

having regard to the written procedure and further to the hearing on 16 November 2006,

gives the following

Judgment

Background to dispute

1 Following a complaint, in July 1999 the Commission questioned the French authorities about various wine-production conversion measures known as the 'Rivesaltes Plan'. Since the measures were applied without prior authorisation from or notification to the Commission, they were entered in the register of non-notified aid under the number NN 139/2002.

2 By letter dated 21 January 2003, the Commission informed the French Republic of its decision to initiate the procedure laid down in Article 88(2) EC in respect of that aid. By a notice published in the *Official Journal of the European Union* on 5 April 2003, the Commission invited interested parties to submit comments, pursuant to Article 88(2) EC (OJ 2003 C 82, p. 2). The French authorities sent their comments by letters of 16 and 18 June 2003, and 10 September 2004, the last in response to observations of the complainant.

Decision

3 By decision of 19 January 2005 on the Rivesaltes Plan and the parafiscal charges of the Comité interprofessionnel des vins doux naturels and vins de liqueur à appellations contrôlées (inter-branch committee for natural sweet wines and liqueur wines with a registered designation of origin) (CIVDN) operated by France, the Commission ruled on the lawfulness of the various measures taken by the French Republic in relation to natural sweet wines in the Eastern Pyrenees region ('the decision').

Measures concerned

4 Following difficulties in marketing the 'Rivesaltes' designation of origin (the appellation contrôlée 'AOC'), a plan of that name was developed in 1996. The objective of that conversion plan, according to recital 6 of the preamble to the decision, was to replace, by grubbing up and replanting with quality wine varieties, part of the production of natural sweet wines of the region concerned. In order to implement that plan, producers had access, until August 2000, to two types of aid, namely a 'set-aside premium' and 'conversion aid'. 'Initiatives for promotion and publicity and for operating [AOCs]' were also introduced.

— Set-aside premium

5 By Decision 96-1 of 9 July 1996, the CIVDN introduced an inter-branch contribution to finance the Rivesaltes Plan. The contribution, which amounted to FRF 50 per hectolitre produced in the region concerned, was intended to finance payment of a set-aside premium for any plot of land which, having produced 'Rivesaltes' or 'Grand Roussillon' wine in 1995, would produce table wine or 'vin de pays' from the 1995 to the 2000 harvests inclusive. The 'set-aside premium' was in effect granted to producers undertaking not to claim the registered designations of

origin (AOC) 'Rivesaltes' or 'Grand Roussillon' for a period of five years. The premium did not imply stopping or reducing production, but was merely compensation for producing without the registered designation of origin. The amount of the set-aside premium was FRF 5 000 a year per hectare which was 'set aside' (recitals 8 to 11 of the preamble to the decision).

— Conversion aid

6 The Rivesaltes plan, as adopted in 1996, also provided for aid of FRF 25 000 per hectare for conversion to the AOC 'Muscat de Rivesaltes' and FRF 40 000 per hectare for conversion to the AOC 'Côtes du RoussillonVillages' and 'vin de pays' (Recital 15 of the preamble to the decision). That aid was partly financed from public funds (Recital 17 of the preamble to the decision).

— Initiatives for promotion and publicity and for operating AOCs

7 By Decision 97-9 of 29 December 1997, the CIVDN introduced, as from 1 January 1998, an inter-branch contribution to finance advertising campaigns and for operating the AOCs 'Rivesaltes', 'Grand Roussillon', 'Muscat de Rivesaltes' and 'Banyuls' (recital 19 of the preamble to the decision). Those contributions varied, according to AOC, from FRF 25 per hectolitre to FRF 50 per hectolitre (Recital 20 of the decision). In addition, by Decision 98-1 of 10 July 1998 CIVDN introduced, as from 1 September 1998, the same type of inter-branch contribution to finance advertising campaign and for operating AOCs 'Rivesaltes', 'Grand Roussillon' and 'Maury' (Recital 22 of the preamble to the decision). Those two contributions were reapealed by decision 99-1 of 17 December 1999, by which the CIVDN introduced an inter-branch contribution to finance publicity and promotion initiative and for operating the following AOCs: 'Banyuls', 'Banyuls Grand Cru', 'Muscat-de-

Rivesaltes', 'Rivesaltes', 'Grand Roussillon' and 'Maury' (recital 25 of the preamble to the decision). That contribution was continued, with slight modifications, by Decision 00-1 (recital 28 of the preamble to the decision).

Legal analysis in the decision

8 In its legal analysis, the Commission examines first whether there is a selective advantage financed by State resources. The Commission considers that the contributions in the present case are parafiscal charges, that is, public resources (recital 74 of the preamble to the decision).

9 As a result of that examination, the Commission concludes that the measures in question constitute 'a financial advantage financed by public resources allocated to them which is not available to other operators, which distorts or has the potential to distort competition by favouring certain undertakings and productions, [and] thereby is likely to affect trade between Member States'. The Commission concludes that those measures are aid within the meaning of Article 87(1) EC (recital 82 of the preamble to the decision).

10 In its assessment of whether the aid is compatible, the Commission first rules out the possibility of applying derogations, provided for in Article 87(2) and (3) EC, to the general principle that State aid is incompatible with the Treaty, to the present case (recitals 83 to 86 of the preamble to the decision).

11 The Commission then finds that since the measures implemented by the French Republic contain elements of State aid, they constitute new aid, not notified to the Commission and therefore unlawful under the Treaty (recital 88 of the preamble to the decision).

12 Then, before coming to its conclusion, the Commission analyses each measure in the light of the applicable rules, in particular those governing the common organisation of the market in question, and those governing the financing of aid (recitals 95 to 127 of the preamble to the decision).

The operative part of the decision

13 The operative part of the decision is as follows:

'*Article 1*

1. The State aid operated by [the French Republic] in the form of "set-aside premiums" granted to French wine producers undertaking not to claim the registered designation of origin (AOC) "Rivesaltes" or "Grand Roussillon" from the 1996 harvest to the 2000 harvest inclusive is incompatible with the single market.

2. The State aid operated by [the French Republic] in the form of the conversion plan for the AOC "Rivesaltes" vineyards from the 1996 harvest to the 2000 harvest inclusive, that was granted in individual cases to exceed 30% of the actual costs and/or the EUR 5 030.82/ha (FRF 33 000/ha) ceiling is incompatible with the single market.

3. The State aid operated by [the French Republic] between 1 January 1998 and 31 December 2000 in the form of advertising and operating aid to the "Rivesaltes" "Grand Roussillon" "Muscat de Rivesaltes" and "Banyuls" AOCs is compatible with the single market under Article 87(3)(c) of the Treaty.

Article 2

1. [The French Republic] shall take all necessary measures to recover the incompatible aid referred to in Article 1(1) and (2) from the beneficiaries.

Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. It is to be calculated at the Commission's reference rate, laid down by the method for setting the reference and discount rates.

2. For the purpose of the recovery of incompatible aid referred to in Article 1(1), [the French Republic] shall inform the Commission of the overall amount of aid granted under this measure and its financing, including the overall amount of receipts from the inter-branch contribution introduced for this purpose, and the number of hectares for which the "set-aside premium" was received.

Article 3

[The French Republic] shall inform the Commission, within two months of notification of this Decision, of the measures that it has taken to comply therewith.

Article 4

This Decision is addressed to the French Republic.'

Procedure and forms of order sought by the parties

14 By application filed at the registry of the Court of First Instance on 30 March 2005, the agricultural civil limited liability farming partnership (societé civile d'exploration agricole á responsabilité limitée — EARL) Salvat père & fils ('Salvat'), the CIVDN and the Comité national des interprofessions des vins d'appellation d'origine (national inter-branch committee for wines with an appellation of origin) (CNIV) brought an action against the decision.

15 The applicants claim that the Court should:

— annul Article 1(1) and (3) of the decision;

— order the Commission to pay the costs.

16 By separate document of 29 June 2005, the Commission raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the Court of First Instance. It asks for the action to be dismissed, considering the substance of the case, and for the applicants to be ordered to pay the costs.

17 By order of 22 September 2005 of the President of the Fifth Chamber of the Court, the French Republic was granted leave to intervene in support of the claims of the applicants. By letter of 26 October 2005, the French Government stated that it did not wish to comment on admissibility and that it would not lodge, at that stage, a statement in intervention in this case.

18 By order of the Court of 13 December 2005, the decision on the application for a ruling on admissibility was joined with the substance of the case and the decision on costs was reserved for the final judgment.

19 In its statement in defence, the Commission contends that the Court should:

— dismiss the action as inadmissible and, in the alternative, dismiss it as unfounded;

— order the applicants to pay the costs.

20 The French Republic did not lodge a statement in intervention on the substance within the prescribed period. When informed by the Registrar of the Court of the date of the hearing, it informed the Court, by letter of 25 October 2006, that it would not attend.

21 The parties presented oral argument and replied to the Court's questions at the hearing held on 16 November 2006.

Admissibility

22 The Commission pleads first of all, the CIVDN's lack of interest in bringing proceedings against the two contested provisions, because of its dissolution. The

Commission contends that the applicants have no legal interest in bringing proceedings against Article 1(3) of the decision. Thirdly, the Commission denies that the applicants are directly and individually concerned by Article 1(1) of the decision.

The CIVDN's interest in bringing proceedings against parts of the decision the contested due to its dissolution

Arguments of the parties

23 According to the Commission, the CIVDN was wound up and dissolved by a decision of its general assembly of 20 December 2000 and was replaced by the Conseil interprofessionnel des vins de Roussillon (inter-branch council of Roussillon wines) (CIVR). The Commission states that it was informed of that dissolution by letters of 14 December 2000 and 6 December 2001 (recital 48 of the preamble to the decision).

24 The CIVDN submits that it was established by Law No 200 of 2 April 1943, which remains in force today. It is true that Order 2005-554 of 26 May 2005 (JORF (Journal of the French Republic) No 122 of 27 May 2005) provides that the CIVDN is to be wound up in circumstances established by ministerial decree. The applicant adds, however, that while it is true that the interministerial decree of 9 August 2005 (JORF No 201 of 30 August 2005) initiated the winding-up procedure and appointed a liquidator, the fact remains that the CIVDN continues to exist as a legal person until it has been wound up. In any event, Order 2005-554 and the interministerial decree of 9 August 2005 cannot retroactively divest the CIVDN of its legal personality, which it could not have lacked at the time when the present action was brought, namely 30 March 2005.

Findings of the Court

25 The Court finds that the minutes of the general assembly of the CIVDN which took place on 20 December 2000 records that, given that the CIVR would replace the former inter-branch associations as from 1 January 2001, it was appropriate to make provision for the circumstances in which the CIVDN would be wound up by setting out for a timetable of detailed procedures for that purpose.

26 However, it is clear from the documents produced by the applicant, which are not challenged by the Commission, show that the CIVDN was not, in any event, dissolved in December 2000, since provision for its dissolution was made in Order 2005-554 and the interministerial Decree of 9 August 2005 laid down the detailed procedures for that dissolution. Even in those circumstances, the CIVDN has not yet lost its capacity to be a party to legal proceedings.

27 It follows that, at the time when the present action was instituted, the CIVDN was a legal person with the capacity to bring legal proceedings and there is nothing to show that it has since lost that capacity. Accordingly, the Commission's challenge to the CIVDN's legal standing due to its dissolution is unfounded.

The applicants' lack of interest in bringing proceedings against Article 1(3) of the decision

Arguments of the parties

28 The Commission contends that Article 1(3) of the decision cannot adversely affect the applicants since the declaration that the aid is compatible with the common

market is in their favour. In support of its argument, the Commission relies on the order in Case C-164/02 *Netherlands* v *Commission* [2004] ECR I-1177, paragraphs 18 to 25, and the judgment in Case T-141/03 *Sniace* v *Commission* [2005] ECR II-1197, paragraph 25 et seq.

29 According to that analysis, the action brought by the CIVDN, an association whose mission is the defence of the collective interests of its members, is manifestly inadmissible, since that body represents recipients of aid which has been declared compatible. As regards the CNIV, it is even less affected by a decision which is favourable to producers of natural sweet wines.

30 The Commission also submits that the decision does not specifically refer to the contributions as such and is in no way intended to equate them with aid.

31 The applicants consider, for their part, that they do have an interest in bringing legal proceedings against that part of the decision. The case-law relied on by the Commission cannot provide any basis for a general rule of inadmissibility of an action for annulment brought by a recipient of aid against a decision which declares that aid compatible with the common market. The declaration of compatibility does not relieve the Court of its duty to consider whether the Commission's assessment produces, in the particular circumstances, legal obligations such as to affect the interests of the applicants. As distinct from the situation of the applicant in *Sniace* v *Commission*, cited in paragraph 28 above, the applicants in the present case can refer to legal proceedings already pending before national courts.

32 According to the applicants, the CIVR, the successor to the CIVDN, has been obliged to bring legal proceedings against a wine producer, the SCEA Marty, seeking an order that the latter pay to it the voluntary contributions which it is liable to pay

to the CIVR. In its defence pleadings, the company in question asks the national court to rule that the 'compulsory voluntary contributions, payment of which is claimed by the CIVR, constitute State aid within the meaning of Articles 87 and 88 EC'. Consequently, the risk of legal disputes relating to the classification of State aid has in this case proved genuine.

33 The CIVDN therefore has an interest of its own in bringing legal proceedings against Article 1(3) of the decision, since it directly prevents it from acting as it intends within its own areas of competence. The same is true of the CNIV, since the classification of the financing of inter-branch initiatives by means of compulsory voluntary contributions as aid is likely to destabilise seriously the operation of inter-branch organisations in the wine-production sector which are its members. This is also true of Salvat, which, as a member of an inter-branch organisation in the wine-production sector, benefits from all the inter-branch initiatives financed by those contributions which are classified as State aid.

Findings of the Court

34 In relation to consideration of the admissibility of this action, the Court has consistently held that only a measure the legal effects of which are binding on the applicant and are capable of affecting his interests by bringing about a distinct change in his legal position is an act or decision which may be the subject of an action for annulment under Article 230 EC (see order in *Netherlands* v *Commission*, cited in paragraph 28 above, paragraph 18, and case-law cited). Furthermore, an action for annulment brought by a natural or legal person is not admissible unless the applicant has an interest in seeing the contested measure annulled. That interest must be vested and present and is evaluated as at the date on which the action is brought (see *Sniace* v *Commission*, cited in paragraph 28 above, paragraph 25, and case-law cited).

35 In support of their positions, the parties each rely on *Sniace* v *Commission*, cited in paragraph 28 above.

36 However, it must be observed that in that judgment, in order to rule that the action was inadmissible, the Court did not base itself solely on the fact that the decision declared the aid compatible with the common market. On the contrary, the Court examined the specific facts of the applicant's situation. Moreover, in Case T-212/00 *Nuove Industrie Molisane* v *Commission* [2002] ECR II-347, paragraph 38, the Court held that the mere fact that the decision challenged declares the notified aid compatible with the common market and thus, in principle, does not have an adverse effect on the applicant does not dispense the Court from examining whether the Commission's finding has binding legal effects such as to affect the applicants' interests.

37 Consequently, although Article 1(3) of the decision declares compatible with the common market the State aid which the French Republic implemented in the form of advertising and operating aid from certain AOCs, it is necessary to examine whether that part of the decision affects of the applicants interests.

38 First, it is clear that, contrary to the applicants' assertions, the decision does not categorise as State aid the funding of the initiatives in question by means of inter-branch contributions. It emerges very clearly from the operative part of the decision, and from its underlying reasoning, that it is the initiatives in question which are categorised as State aid and not the contributions.

39 The nature of the contributions is examined in the decision by reference to their possibly being as State resources. In recital 74 of the preamble to the decision, the Commission concludes its examination by holding that the present case involves parafiscal charges, i.e. public resources.

40 It is true that, in recital 134 of the preamble to the decision, reference is made to the principle set out in Joined Cases C-261/01 and C-262/01 *Van Calster and Others* [2003] ECR I-12249, paragraphs 53 and 54, to the effect that, where an aid measure of which the method of financing is an integral part has been implemented in breach of the obligation to notify, national courts must in principle order reimbursement of charges or contributions levied specifically for the purpose of financing that aid. The Commission does not however examine whether the conditions for application of that rule are met in this case. In that regard, it must be borne in mind that, for a tax to be regarded as forming an integral part of an aid measure, it must be hypothecated to the aid measure under the relevant national rules, in the sense that the revenue from the tax is necessarily allocated to the financing of the aid. If there is such hypothecation, the revenue from the tax has a direct impact on the amount of the aid and, consequently, on the assessment of the compatibility of that aid with the common market (see Joined Cases C-266/04 to C-270/04, C-276/04 and C-321/04 to C-325/04 *Casino France and Others* [2005] ECR I-9481, paragraph 40, and case-law cited). The decision does not state, however, that in the present case there is such a hypothecation between the revenue from the contributions and the amount of the aid paid out, and there is nothing in the decision to demonstrate such hypothecation. Nor have the applicants put forward any detailed argument to prove the existence of such hypothecation.

41 Secondly, as regards judicial proceedings already pending before national courts, it must be stated that, while the applicants suggest that there are many such proceedings, they refer only to one, namely an action brought on 6 December 2004 before the tribunal d'instance of Perpignan (Perpignan district court) by the CIVR against the SCEA Marty.

42 The Court notes that those proceedings relate to non-payment of compulsory voluntary contributions according to a statement drawn up on 29 September 2004 and not the payment of aid in the form of advertising and operating aid between 1 January 1998 and 31 December 2000 referred to in Article 1(3) of the decision. Nor has it been established that the contributions referred to are linked to the payment of such aid.

43 The applicants have accordingly not shown that there is a genuine risk that their legal position will be affected by legal proceedings relating to the State aid implemented between 1 January 1998 and 31 December 2000 in the form of advertising and operating aid.

44 Thirdly, and lastly, as regards the argument of legal uncertainty produced by these disputes, on the ground that they cause a complete destabilisation of the whole operation of the inter-branch organisations in the sector, that argument has no cogency in respect of either the past or the future.

45 As regards the past, the applicants have referred only to the legal proceedings involving the CIVR and SCEA Marty, which involves the contributions of that undertaking to the association but cannot by itself destabilise the entire sector, even supposing that it has some connection to the decision. The applicants have not, in any event, adduced any evidence to show that the consequence of categorising the advertising and operating in question as State aid was that their inter-branch organisation was destabilised or endangered.

46 As was stated by the Commission at the hearing, and formally noted by the Court, the decision does not specifically categorise the contributions as State aid, and accordingly the decision does not create any obligation to repay the contributions to the contributors. The Commission declared its readiness to send a letter in those terms to the applicants.

47 As regards the possible future destabilisation of inter-branch initiatives, the applicants cannot rely upon uncertain future circumstances to establish their interest in applying for annulment of the contested act (see, to that effect, *Sniace* v *Commission*, cited in paragraph 28 above, paragraph 26).

48 It follows from all of the foregoing that the applicants have not demonstrated that they have an interest which is vested and present to bring proceedings against Article 1(3) of the decision. Their action must therefore be held to be inadmissible in so far as it seeks to annul Article 1(3) of the decision.

The applicants' legal interest in bringing proceedings against Article 1(1) of the decision

Arguments of the parties

49 According to the Commission, the applicants also have no 'direct and individual interest in bringing proceedings' against Article 1(1) of the decision. In the present case, there can be no doubt that the decision is addressed to the French State and not to the applicants, and it must therefore be determined whether the contested measure, formally addressed to a Member State, can be considered to be of direct and individual concern to each of the three applicants.

50 The Commission states that, in order to establish in what circumstances actions for annulment brought by natural or legal persons are admissible, a distinction must be made between measures of general application and measures of individual application. In the present case, the decision is a measure of general application, since it relates to an aid scheme which applies to an indeterminate and indeterminable number of undertakings, subject to the single condition that they belong to a rather broad category of undertakings which produce natural sweet wines.

51 The Commission takes the view that the decision is not of individual concern to Salvat. Since the decision is general in nature, it can not be of individual application to Salvat unless Salvat is able to rely on personal attributes or particular factual circumstances capable of differentiating it from any other person. That is not the

case, however. The decision has had an impact on the situation of any undertaking which received the set-aside premium. The decision has not infringed rights which are specific to certain undertakings and distinct from the rights of other undertakings which have received aid.

52 This approach is borne out in various judgments of the Court and of the Court of First Instance and (it is argued) is not affected by the judgments in Joined Cases C-15/98 and C-105/99 *Italy and Sardegna Lines* v *Commission* [2000] ECR I-8855 ('*Sardegna Lines*'), and Case C-298/00 P *Italy* v *Commission* [2004] ECR I-4087 ('*Alzetta*').

53 Nor are the contested provisions of the decision of direct concern to Salvat. The only provision capable of directly affecting the applicants, and Salvat in particular, is Article 2, which obliges the French Republic to recover the aid held to be incompatible referred to in Article 1. However, none of the applicants challenge Article 2 of the decision.

54 In conclusion, the Commission states that Salvat does not have any attributes which are specific to it and its factual circumstances are not such as to differentiate it from any other actual or potential beneficiary of the aid scheme implemented by the French Republic. Salvat therefore does not meet the conditions laid down in the fourth paragraph of Article 230 EC for bringing proceedings before the Court.

55 As regards the CIVDN, its action is said to be inadmissible in any event, given its manifest lack of individual interest. The Commission states that it is settled case-law that an association of undertakings to which a contested decision is not addressed has *locus standi* only when it has an interest of its own in bringing legal proceedings, inter alia, where its negotiating position has been affected by the measure in question, or when the association has taken the place of one or more of the members

which it represents, in so far as the members themselves are in a position to bring admissible proceedings. However, the CIVDN has not put forward any ground of its own which differs from those put forward by its members. In particular, it is common ground that that committee played no role in the administrative proceedings. Moreover, its members, like Salvat, have no standing to bring proceedings; consequently nor can the CIVDN acquire that standing by substitution, for the same reasons.

56 As to the CNIV, the Commission states that it is a grouping of wine-production inter-branch organisations which are private bodies recognised by the State. According to the Commission, the arguments put forward in support of the thesis that the CIVDN's action is inadmissible apply *mutatis mutandis* and *a fortiori* to the CNIV. In fact, the CNIV does not have any members who are recipients of aid paid out in the decision who could individually bring an action for annulment.

57 The applicants assert that the contested decision is of direct and individual concern to them.

58 Salvat claims that it is directly concerned because the order for recovery which was given to the French Republic in Article 2 of the decision affects its legal situation. According to Salvat, since the French State has no discretion, it must obtain from the undertaking repayment of the individual aid granted to that undertaking. However, while it is true that the presence in the decision of that order for recovery addressed to the French Republic gives rise to a direct link between Salvat's situation and the decision, that fact does not imply that unless Salvat contests Article 2 of the decision its action is inadmissible. The order for recovery contained in the decision is addressed solely to the Member State concerned. Moreover, Salvat adds, it is primarily the classification of the measures in question as aid which affects its legal situation and if Article 1(1) of the decision were to be annulled, no obligation to recover under Article 2 would remain.

59 Salvat also states that the decision is of individual concern to it as an undertaking which has in fact received individual aid, which was granted under the aid scheme in relation to which recovery was ordered. Its situation is identical to that of Sardegna Lines, whose action was held by the Court to be admissible (*Sardegna Lines*, cited in paragraph 55 above). According to Salvat, in the judgments relied on by the Commission in support of its arguments, the Court's ruling of inadmissibility stemmed from the particular facts of those cases, in which the decision in question contained no order to recover the aid already paid. Salvat claims that the distinction drawn by the Commission between actions for annulment relating to individual aid, which are admissible, and those relating to aid schemes, which are inadmissible, is wholly contrived and has no basis in the case-law relied on by the Commission.

60 The CIVDN asserts that it has an interest of its own in bringing proceedings. Proof that an organisation has an interest of its own in bringing proceedings is not dependent on or restricted to whether it is a negotiator. The contested decision directly concerns the inter-branch initiatives implemented by the CIVDN and financed through contributions established by it, and prevents it from acting within its own sphere of competence.

61 The CIVDN also claims that it has an interest in bringing proceedings to defend the collective interests of those of its members to which the decision is of direct and individual concern. An action for annulment of the decision brought by them individually, as actual recipients of aid which the Commission has ordered to be recovered, would be admissible.

62 The CNIV, a not-for-profit association governed by the Law of 1 July 1901, states that it obviously has an interest of its own in bringing proceedings, as a representative of inter-branch organisations in the wine-production sector and defender of their collective interests. It states that, in the wording of its statutes, its objectives include 'ensuring representation of the [AOC] wines inter-branch organisations' in legal proceedings.'

Findings of the Court

63 Under the fourth paragraph of Article 230 EC, any natural or legal person may institute proceedings against decisions addressed to that person or against decisions which, although in the form of a regulation or decision addressed to another person, are of direct and individual concern to the former.

64 According to settled case-law, persons other than those to whom a decision is addressed can claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them, or by reason of factual circumstances which differentiate them from all other persons and thereby distinguish them individually in the same way as the person addressed (Case 25/62 *Plaumann* v *Commission* [1963] ECR English Special Edition p. 95; Case C-321/95 P *Greenpeace Council and Others* v *Commission* [1998] ECR I-1651, paragraphs 7 and 28; and *Sardegna Lines*, cited in paragraph 52 above, paragraph 32).

65 In the present case, it is common ground that the decision is addressed to the French Republic and not to the applicants. The Court must therefore determine whether the measure concerned is of direct and individual concern to each of them.

66 The Court finds it appropriate, first, to examine whether Salvat is individually and directly concerned by Article 1(1) of the decision.

67 The Court has held that an undertaking cannot, as a general rule, contest a decision of the Commission which prohibits a sectoral aid scheme if it is concerned by that decision solely by virtue of belonging to the sector in question and being a potential beneficiary of the scheme. Such a decision is, vis-à-vis the applicant undertaking, a

measure of general application covering situations which are determined objectively and entails legal effects for a class of persons envisaged in a general and abstract manner (see *Alzetta*, cited in paragraph 52 above, paragraphs 36 and 37, and case-law cited).

68 It is clear that the decision does not identify the recipient undertaking or undertakings of the aid in question. Article 1(1) declares incompatible with the common market the State aid which the French Republic operated in the form of the set-aside premium 'granted to French wine-producers undertaking not to claim the registered designations of origin (AOC) "Rivesaltes" or "Grand-Roussillon" from the 1995 harvest to the 2000 harvest inclusive'. It is clear from recitals 9 to 11 of the preamble to the decision that the set-aside premium of FRF 5 000 a year per hectare set aside was paid 'for any plot which, having produced "Rivesaltes" or "Grand-Roussillon" wine in 1995, would produce table wine or "vins de pays" from the 1995 to the 2000 harvests inclusive'. The decision therefore applies to situations which are determined objectively and entails legal effects for a class of persons envisaged in a general and abstract manner, within the meaning of the case-law cited above.

69 It must, however, be borne in mind that, in paragraphs 34 and 35 of *Sardegna Lines*, cited in paragraph 52 above, the Court held that, since the undertaking Sardegna Lines was concerned by the decision at issue in that case not only as an undertaking in the shipping sector in Sardinia and a potential beneficiary of the aid scheme for Sardinian ship owners but also as an actual recipient of individual aid granted under that scheme, recovery of which had been ordered by the Commission, it was individually concerned by that decision and its action brought against the decision was admissible (see also, to that effect, *Alzetta*, cited in paragraph 52 above, paragraphs 38 and 39).

70 Accordingly, it is appropriate to determine whether Salvat is an actual recipient of individual aid granted under a sectoral aid scheme, recovery of which has been ordered by the Commission.

71 Salvat provides, in the annex to its application, a statement of transfer payments headed 'Set-aside premium — Rivesaltes Plan', certified by the accountant of the CIVDN, which shows that Salvat received a total of FRF 91 041.50 by way of set-aside premium. That document shows that the amounts granted vary between undertakings and are therefore adjusted individually according to the particular characteristics of each undertaking. Salvat is accordingly an actual recipient of individual aid granted under a sectoral aid scheme.

72 It is also clear from Article 2 of the decision that the Commission has ordered recovery of the aid in question.

73 Salvat is accordingly individually concerned by Article 1(1) of the decision.

74 This finding is not refuted by the case-law relied on by the Commission in support of its argument. Analysis of that case-law illustrates how much the circumstances of those cases differ from those of the present case, particularly in the absence, in the vast majority of those cases, of a request for recovery of the aid.

75 As to the question whether Salvat is directly concerned, since Article 2 of the decision obliges the French Republic to take the measures necessary to recover the aid held to be incompatible with the common market, in particular, aid referred to in Article 1(1), and since Salvat has received such aid and will have to repay it, Salvat must be held to be directly concerned by those parts of the decision (see, to that effect, *Sardegna Lines*, cited in paragraph 52 above, paragraph 36).

76 The two criteria of direct concern which emerge from the case-law are, first, the fact that the measure in question must produce directly effects on the individual's legal situation and, secondly, the fact that the measure must not allow any discretion to the addresses of the measure, who must implement it. It is common ground that those two criteria are met in the present case.

77 The fact, put forward by the Commission, that the applicants have not challenged the part of the decision which orders the French Republic to recover the aid in question does not affect this finding. For the applicant to be directly concerned both the above criteria must be satisfied; whether or not the applicant contests the order for recovery given to the French Republic is irrelevant in that regard.

78 Furthermore, the decision links Article 2 to Article 1(1) and (2); and consequently, they cannot be considered separately. Annulment of Article 1(1), as requested by the applicant, would thus extinguish the order for recovery.

79 Accordingly, Salvat's action against Article 1(1) of the decision must be held to be admissible, without its being necessary to consider whether the other applicants are directly and individually concerned.

80 In the light of all of the foregoing, the action must be held to be inadmissible in so far as it is directed against Article 1(3) of the decision and admissible in so far as it is directed against Article 1(1) of the decision.

Substance

81 The applicants rely on two pleas in law in support of their action against Article 1(1) of the decision. The first alleges failure to state reasons and the second infringement of Article 87(1) EC.

The first plea: failure to state reasons

Arguments of the parties

82 The applicants claim that the assessment in the light of Article 87 EC made by the Commission of the nature of the inter-branch contributions to finance the set-aside premium and the advertising campaigns and for operating certain AOCs is not accompanied by an adequate statement of reasons. The Commission therefore failed to state reasons as required by Article 253 EC, which is particularly specific as regards State aid.

83 Recital 74 of the preamble to the decision sets out very succinctly the identifying features for a finding of State aid. Those superficial considerations do not elucidate the grounds which led the Commission to find that the criteria laid down by the Court's case-law relating to State aid are satisfied in the present case. The decision does not even reproduce the content of the rules of law laid down by the case-law of the Court.

84 The applicants argue that the Commission ought to have identified each of the measures considered as aid and stated the reasons why each of the four conditions for the application of Article 87 EC was satisfied. In the decision, however, the Commission did not, at the stage of assessment in the light of Article 87(1) EC, even take the trouble to distinguish the various measures in question.

85 The applicants add that the statement of reasons in the decision as to whether there is a selective advantage is even based on a straightforward reversal of the burden of proof, with the Commission apparently satisfied that 'there is no proof that the beneficiaries of aid are always those liable to the corresponding charges'.

86 The Commission refers to the relevant case-law on the obligation to state reasons, including the points that it is sufficient to set out the facts and the legal considerations which have decisive importance in the context of the decision and that the reasons for a decision which fits into a well-established line of decisions may be stated in a summary manner.

87 According to the Commission, it is clear from the relevant passages of the decision that the statement of reasons is sufficient in law. In that regard the Commission refers to recitals 38 to 40, 74 — with footnote No 12 to which that recital refers — and 121 of the preamble to the decision.

88 The Commission considers that it was not obliged to analyse in greater depth the reasons why the criteria laid down by the case-law cited were not satisfied. In its view it is quite clear from the aid scheme at issue, first, that the State, through the intermediary of the CIVDN, had the power freely to make use of the resources in question and, secondly, that the financing of the measures referred to in Article 1 of the decision was not attributable solely to members of the trade association in question, but was clearly part of a State policy.

89 The Commission adds that, in the application, the assertion of failure to state adequate reasons was limited to the inter-branch contributions. However, the Commission submits that it took no decision on this point, since the nature of the inter-branch contributions was not part of the operative part of the decision.

90 In any event, and in the alternative, the Commission considers that this plea is inadmissible, since the applicants have not explained how the overall statement of reasons the decision relating to the existence of State aid, as set out in recitals 71 to 82 of the preamble to the decision, is insufficient in light of the requirements of Article 253 EC.

Findings of the Court

91 According to settled case-law, the question whether the statement of the grounds for a decision meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and all the legal rules governing the matter in question. While the Commission, in the statement of reasons for a decision, is not required to discuss all the issues of fact and law raised by interested parties during the administrative procedure, it must none the less take account of all the circumstances and all the relevant factors of the case so as to enable the Community judicature to review its lawfulness and make clear both to the Member States and to the persons concerned the circumstances in which the Commission has applied the Treaty (see Joined Cases T-371/94 and T-394/94 *British Airways and Others and British Midland Airways* v *Commission* [1998] ECR II-2405, paragraph 94, and case-law cited).

92 For the purposes of examining whether the obligation to state reasons was satisfied in the present context, it must be pointed out that the procedure for reviewing State aid is a procedure initiated in respect of the Member State responsible for granting

the aid and that the parties concerned within the meaning of Article 88(2) EC, which include the recipient of the aid, cannot themselves seek to debate the issues with the Commission in the same way as may the abovementioned Member State (see Case T-198/01 *Technische Glaswerke Ilmenau* v *Commission* [2004] ECR II-2717, paragraph 61, and case-law cited there).

93 It is in the light of the foregoing that the court must determine whether the statement of the reasons in the decision satisfy the requirements of Article 253 EC.

94 In the decision, the Commission begins its assessment (part V.1) by citing Article 87(1) EC (recital 71). The Commission then examines (part V. 1.1, recitals 73 to 76) the 'existence of a selective advantage financed by State resources'. Those recitals are read as follows:

'73. Measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions are regarded as aid.

74. The Commission notes that the type of contributions in this case required the adoption of an act by a public authority for their full impact to be felt and that the resources they generated served as a tool to implement a State-supported policy. In addition, there is no proof that the beneficiaries of aid are always those liable to the corresponding charges. For these reasons, the contributions do not meet the criteria for derogations from Article 87(1) of the Treaty, as proposed by Court of Justice case-law. Consequently, the Commission considers that this is a case of parafiscal charges, i.e. public resources.

75. Moreover, according to ECJ case law, measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in character and have the same effect are also considered to be aid.

76. The existence and type of the aid must be established for the potential beneficiaries of the Rivesaltes Plan and of the inter-branch contributions for publicity and promotion and for operating and financing certain AOCs. In the case in point, the support given did favour certain undertakings since the aid was only granted to AOC producers operating in certain specific regions.'

95 Recital 74 of the preamble to the decision refers to footnote No 12, which contains a reference to Case C-345/02 *Pearle and Others* [2004] ECR I-7139), and recital 75 of the preamble to the decision refers, in footnote No 13, to Case C-355/00 *Freskot* [2003] ECR I-5263.

96 Then, under the heading 'Effects on trade' (part V.1.2), the decision devotes five recitals (77 to 81) to the criteria of effect on trade.

97 Lastly, under the heading 'Conclusions regarding the nature of the "aid" under Article 87(1) of the Treaty' (part V.1.3), the decision states the following, in recital 82;

'In the light of the above explanations, the Commission considers that the measures in favour of producers of AOC wines operating in certain specific regions constitute a financial advantage financed by public resources allocated to them which is not available to other operators, which distorts or has the potential to distort

competition by favouring certain undertakings and productions, thereby is likely to affect trade between Member States. It is therefore aid within the meaning of Article 87(1) of the Treaty.'

98 First, it is clear that, as regards the nature of the inter-branch contributions financing, including, the set-aside premium, recital 74 of the preamble to the decision contains a clear statement of reasons. The contributions in question 'required the adoption of an act by a public authority for their full impact to be felt' and 'the resources they generated served as a tool to implement a State-supported policy'. It was a case of 'parafiscal charges i.e. public resources'. Moreover, recital 29 of the preamble to the decision elaborates on the arguments put forward by the Commission at the opening stage of the examination procedure and adds clarification in respect the nature of the contributions.

99 Secondly, while it is true that the decision does not specify the criteria laid down by the Court in its case-law as to when a situation is not caught by the prohibition laid down in Article 87(1) EC, it does cite that article (recital 71) as well as the case-law defining which actions should be considered as aid (recitals 73 and 75) and sets out the reasons why that article and case-law apply to the present case (recitals 74 and 76 to 82). The Commission was bound to state the reasons why the measures in question came within the scope of Article 87(1) EC rather than why they did not. The fact that the Commission merely refers to *Pearle and Others*, cited in paragraph 95 above, and does not go into detail to prove the contrary cannot be regarded as being a failure to state reasons.

100 Thirdly, as regards the alleged requirement that reasons must be stated separately for each of the measures in question, it cannot be inferred from Case T-93/02 *Confédération nationale du Crédit mutuel* v *Commission* [2005] ECR II-143 that, for

each measure considered by the Commission to constitute aid there must be separate reasons given for each of the four conditions for the application of Article 87 EC.

101 In that case, the starting point of the Court was the finding that the designation of the aid in the operative part of the contested decision was not sufficient to enable the persons concerned and the Court to ascertain which measure or measures were found, in that case, to constitute aid (paragraph 73). In paragraph 122, the Court added that the contested decision did not state sufficient reasons in regard to the identification of the measures treated as aid.

102 That is not the situation in the present case, quite the contrary. The operative part of the decision classifies as State aid the set-aside premiums, the conversion plan and the advertising and operating aid and devotes a paragraph to each measure. The parties concerned and the Court are therefore able without difficulty to ascertain which measures are considered, in the present case, to be aid within the meaning of Article 87(1) EC. The Court observes moreover that, since the action is admissible only to the extent that it relates to annulment of Article 1(1) of the decision, the assessment must be restricted to the statement of reasons for the set-aside premium.

103 In addition, in the present case, and in contrast to the decision challenged in *Confédération nationale du Crédit mutuel* v *Commission*, cited in paragraph 100 above, a distinction is generally drawn in the reasons for the decision between the three measures under consideration. Thus, under point II, entitled 'Description', the decision describes in turn the system of the set-aside premium (part II.1.1), conversion aid (part II.1.2) and inter-branch contributions for publicity and promotion (part II.2). Then, again, in the discussion of the points raised by the Commission in the context of initiating the examination procedure (part II.3), the decision distinguishes between the set-aside premium (recitals 30 to 32), the conversion costs (recitals 33 to 37) and the aid for advertising (recitals 38 and 39). Similarly, in part IV, on the observations submitted by the French Republic, that distinction is again found, namely the set-aside premium (part IV.1.1), conversion

aid (part IV.1.2) and initiatives for publicity and promotion (part IV.2). Lastly, in the analysis of the compatibility of the aid (part V.2), the decision again distinguishes between the three measures, with recitals 95 to 106 covering the set-aside premium, recitals 107 to 118 the conversion aid, and recitals 119 to 123 the aid for publicity and promotion.

104 It is true that, in its examination of the conditions laid down by Article 87(1) EC, under the headings 'Existence of a selective advantage financed by State resources' and 'Effects on trade', the decision does not distinguish between the three measures. That examination clearly applies to the three measures covered. Nevertheless, it enables the persons concerned to ascertain how the Commission has applied the Treaty and enables the Court to exercise its power of review. Unlike the *Le Levant* case (Case T-34/02 *Le Levant 001 and Others* v *Commission* [2006] ECR II-267, paragraphs 109 to 132), relied on by the applicants, the decision does state how the conditions laid down in Article 87(1) EC for a finding of incompatibility with the common market are met in the present case. The fact that the decision does so in a global fashion cannot in itself be considered to be an infringement of the obligation to state reasons, especially since the measures in question are all part of the same course of action.

105 It follows that the first plea in law must be dismissed, without its being unnecessary to consider the argument put forward in the alternative by the Commission in its rejoinder.

The second plea: infringement of Article 87(1) EC

106 One part of the applicants' argument is that the inter-branch contributions cannot be described as State resources and a second part is that they cannot be imputed to the State. However, since the parties' written pleadings often address those two parts of this plea together, they can be dealt with together.

Arguments of the parties

107 The applicants submit that, in accordance with settled case-law, before the measures in question can be classified as State aid, they must cumulatively meet four conditions. However, one condition is lacking in the present case, namely that the measures must have their origin in the State, that is, they must be financed through State resources and must be imputable to the State.

108 The applicants rely on the case-law of the Court to the effect that a measure which is made obligatory by the public authority but which is financed by private undertakings, while the public authority has at no time power of disposal of the funds in question, does not involve any direct or indirect transfer of State resources (Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 59).

109 According to the applicants, it is clear from the case-law that the determining criterion is whether there exists sufficient power of disposal of the funds which have served to finance the measure. In the decision, however the Commission inferred that the contributions are State resources from the mere fact that they had required the adoption of an act by a public authority for their full impact to be felt. The Commission thus did not carry out the analysis required by the case-law.

110 The applicants submit that, in the area of inter-branch contributions, where a private initiative undertaken by members of a trade association is undertaken, the action of the State is restricted to approving the contributions for the purpose of making their payment mandatory by all the members of the inter-branch organisation. The public authority merely carries out a check of proper accounting after the fact; and at no time does it have any control over the funds. The CIVDN enjoyed complete autonomy as regards both the funding and operation of the advertising and for operating certain AOCs and the set-aside premium.

111 A merely general approach to how the CIVDN operates does not take account of the reality of how it is run. A specific, functional approach is in any event preferable.

112 According to the applicants, the recent orders of the French Minister for Economic Affairs of 31 March 2006 relating to procedures whereby the State may exercise economic and financial control over agricultural inter-branch organisations are evidence that the State has no ability to make use of funds collected by the inter-branch organisations through the trade contributions.

113 The applicants assert that the Commission is manifestly in error when it claims that the set-aside premium is financed principally by means of a parafiscal charge amounting to FRF 50 per hectolitre produced in the Pyrenees region. Rather, a specific trade contribution is levied to finance the set-aside plan, as evidenced by Decision 96-1 of the CIVDN. The parafiscal charge in question is a marginal element in the CIVDN's resources, since it is reserved for its operations.

114 As to the assessment of whether inter-trade contributions intended to finance advertising and for operating certain AOCs are imputable to the State, the applicants assert that, for a private person such as an inter-branch organisation, the decisive criterion is whether or not the organisation in question can take the measure in question without taking account of any requirements of public authorities. It cannot be disputed that those initiatives, unlike those at issue in connection with the Rivesaltes Plan, in no way form part of a State policy. On the contrary, in their view, the measures were taken solely to further an objective set previously by trade circles. By concluding that those initiatives could be classified as State aid in Article 1(3) of the decision, the Commission thus erred in law and manifestly infringed Article 87(1) EC.

115 The Commission takes the view that mere examination of Law No 200 of 2 April 1943 on the creation of the CIVDN, as amended by Decree No 55-1064 of 20 October 1956, is sufficient to demonstrate that the measures at issue cannot stem from anything other than an act imputable to the State and that those measures are financed from State resources. In its view, it is clear from that law that the CIVDN includes on an equal footing both producers and public authorities (Article 2) and that its executive board consists largely of representatives of the State (Article 4). The Commission also refers to Article 7 of that law, which provides that proposals from the CIVDN or its executive board become mandatory for all members of the trades concerned as soon as they receive approval from either the Minister for Agriculture or the Government commissioner, as the case may be. The Commission also refers to Article 14 of that law, which provides that the budget is to be submitted for approval by the Ministers for Agriculture and Finance and that expenses relating to management costs of the CIVDN or the implementation of its trade objectives are to be covered by charges levied either on the sale of goods or by other means. Lastly, the Commission states that Article 15 of that law provides that the financial management of the CIVDN is subject to review by the State. In those circumstances, the Commission considers that resources involved are clearly State resources and the measures are imputable to the State.

116 That interpretation of the dominant role of the State is largely supported by Decision 04-D-35 of the French competition authority of 23 July 2004 relating to practices implemented in the market of natural sweet wines of the 'Rivesaltes' AOC.

117 According to the Commission, although it is true that Decision 96-1 of the CIVDN of 5 July 1996 provided that revenue from the inter-trade contribution was intended solely for payment of the set-aside premium to producers entitled to it, it proved to be insufficient for that purpose. Accordingly the general council provided special aid of FRF 2 million. In addition, the general assembly of the CIVDN of 20 December 2000 decided to merge the set-aside account and the CIVDN's general account, which enhanced that organisation's ability, subject to State control, to make use of paid-in resources irrespective of their origin.

118 The Commission states that the set-aside premium was financed principally by means of a genuine parafiscal charge, in the amount of FRF 50 per hectolitre produced in the Pyrenees region. There can therefore be no doubt that that parafiscal charge was imposed directly by the State and that there was no question of a voluntary sectoral contribution.

119 The Commission emphasises that the contributions were examined in the decision solely in order to determine whether they constituted State resources intended to finance the three measures covered by the decision. On the other hand, the contributions as such were not classified as State aid within the meaning of Article 87 EC. Accordingly the Commission maintains that the applicant's second plea, as contained in the application, is inadmissible and devoid of purpose, since the Commission never examined and did not have to examine whether the contributions were themselves State aid.

120 The Commission states that at no point can the decision be construed to the effect that there is hypothecation within the meaning of the case-law between the revenue from the contributions and the amount of the aid paid in respect of the three measures covered. The aid scheme at issue established, irrespective of the revenue from the contributions, the amount of the aid which was then paid solely according to the personal situation of the recipients.

121 In its rejoinder, the Commission infers from the fact that the applicants confirmed that their action was 'limited to contesting imputability to the State solely of the inter-trade contributions in question under Article [1(3)] of the operative part of the decision' that the action does not relate to the three measures referred to in Article 1 of the decision. The Commission adds however that the subsequent wording of paragraph 86 of the reply might suggest that the applicants challenge the finding that the contributions constitute State resources in so far as they were intended to finance advertising and operations. However, according to the Commission, the applicants succumb to the same confusion in the last paragraph of their reply when they conclude that the Commission was wrong to find that, since the contributions

financed the advertising and operating certain AOCs, they could be classified as State aid. On the basis of this lack of clarity and because it is not in a position to defend itself on the point, the Commission contends that the plea must be held to be inadmissible. The Commission contends in the alternative that the plea is unfounded.

Findings of the Court

122 Since the Commission disputes, in its rejoinder, the admissibility of this plea, it is appropriate to begin examination of this plea with that issue.

— The admissibility of the plea alleging infringement of Article 87(1) EC

123 In the rejoinder, the Commission contends that it cannot present a defence because of the lack of clarity in the applicants various written pleadings.

124 While the applicants' arguments in their written pleadings may in certain respects lead to confusion, it is nevertheless evident that the essence of the plea is clear from the application. The applicants allege an error of law and infringement of Article 87(1) EC. They divide that plea into two parts, the first alleging that the contributions are not State resources and the second that the inter-branch contributions intended to finance the advertising and for operating certain AOCs

cannot be imputed to the State. Further, the summary of the pleas in law and principal arguments relied on in the application contains the following:

'The Court is asked to annul the decision ... on the grounds that:

...

— the decision entails an infringement of Article 87(1) EC in that it classifies the contributions made by trades referred to in Article 1(1) and (3) of the operative part, as State aid.'

125 To that extent and in those terms, the plea in question must be held to be admissible. The applicants cannot however later change the content and scope of that plea in law to the point of making it a new plea in law and infringing the rights of the defence. Article 48 of the Rules of Procedure provides that no new pleas in law may be introduced in the course of proceedings unless they are based on matters of law or of fact which come to light in the course of the procedure. However, a plea which amplifies a plea put forward previously, whether directly or by implication, in the original application, and which is closely connected therewith, must be declared admissible (Case T-252/97 *Dürbeck* v *Commission* [2000] ECR II-3031, paragraph 39).

126 First, it is clear from the application that the applicants contest the classification of the trade contributions as State aid, inter alia because those contributions are not in the nature of State resources. In that context, they state that the State cannot make use of the contributions in question. Secondly, they argue that it cannot be imputed to the State is restricted very clearly to the inter-branch contributions intended to

finance the advertising and for operating certain AOCs. The applicants state in that regard in their reply that their action is 'limited to contesting imputability to the State solely of the inter-branch contributions in question under Article [1(3)] of the operative part of the decision'.

127 The Commission cannot claim that it has not been able to present a defence on these points. Paragraphs 59 to 77 of its defence and 52 to 60 and 67 of its rejoinder are, moreover, evidence to the contrary.

128 The plea alleging infringement of Article 87(1) EC is accordingly admissible.

— The substance of the plea alleging infringement of Article 87(1) EC

129 According to settled case-law, for advantages to be capable of being categorised as aid within the meaning of Article 87(1) EC, they must, first, be granted directly or indirectly through State resources, and, second, be imputable to the State (see Case C-482/99 *France* v *Commission* ('*Stardust*') [2002] ECR I-4397, paragraph 24, and case-law cited).

130 It is clear from the case-law of the Court that only advantages granted directly or indirectly through State resources are held to be aid within the meaning of Article 87(1) EC. The distinction made in that provision between aid granted 'by a Member State' and aid granted 'through State resources' does not signify that all advantages granted by a State, whether financed through State resources or not, constitute aid,

but is intended merely to bring within that definition both advantages which are granted directly by the State and those granted by a public or private body designated or established by the State (see *PreussenElektra*, cited in paragraph 108 above, paragraph 58, and case-law cited).

131 It must be stated at the outset that, to the extent that, in accordance with various arguments put forward by the applicants in the application and in the reply as well as in the summary contained in the application, the aim of this plea is to contest the classification of the contributions in question as State aid, it must be rejected.

132 In fact, nowhere does the decision classify those contributions as State aid (see also, in relation to the admissibility of the action, paragraphs 38 and 40 above). As is clear from the operative part, it is the measures implemented in the form of the set-aside premium, the conversion plan conversion and the advertising and operating certain AOCs which are classified as State aid. In recital 74 of the preamble to the decision, the contributions in question are considered by the Commission to be parafiscal charges, that is, public resources. Since the contributions in question serve to finance the measures referred to, the decision draws the inference that the criterion of financing by public resources is satisfied.

133 For the sake of completeness the answer would not be different if the written pleadings of the applicants were to be interpreted as meaning that the measures in question are not State aid because they are not financed from public resources and, because some of them are not imputable to the State.

134 As regards the latter issue, it is clear from the formulation of the second part of this plea and from the clarifications added by the applicants in their reply that they do not contest the imputability to the State of the inter-branch contributions intended to finance the advertising and operating certain AOCs.

135 Since it is not open to the applicants to challenge the section of the operative part of the decision relating to those initiatives (see paragraphs 34 to 48 above), the argument pursued on this part of the plea cannot succeed.

136 In addition, the applicants do not contest the imputability to the State of the set-aside premium. Accordingly there remains to be determined only the question whether the Commission was entitled to find in the decision that the set-aside premium was an advantage financed by State resources.

137 In support of their opposing arguments, the applicants and the Commission each rely principally on one judgment of the Court. The former base their case on *Pearle and Others*, cited in paragraph 95 above, and claim, by analogy, that the measure in question was not 'funded by resources made available to the national authorities'. The Commission, for its part, draws on *Stardust*, paragraph 129 above, and contends that the CIVDN's resources 'fell within the control of the State and were therefore at its disposal', the State being 'perfectly capable, by exercising its dominant influence over [the undertaking], of directing the use of [its] resources'.

138 It must be observed as a preliminary point that the applicants challenge the scope which the Commission seeks to attribute to *Stardust*, since in their opinion the Court's analysis in that case is made 'in a context peculiar to the facts of the case, which is distinguished by the fact that the bodies which granted the financial assistance to Stardust were public undertakings'. The applicants observe that the CIVDN is a legal person governed by private law.

139 However, according to settled case-law, it is not appropriate to distinguish between cases in which aid is granted directly by the State and those in which it is granted by a public or private body designated or established by that State (Case 57/86 *Greece* v *Commission* [1988] ECR 2855, paragraph 12; *PreussenElektra*, cited in paragraph 108

above, paragraph 58; Case C-126/01 *GEMO* [2003] ECR I-13769, paragraph 23). As is shown in *Stardust*, paragraph 129 above, and *Pearle and Others*, cited in paragraph 95 above, the status of the body or undertaking in question is not regarded as a determining factor for the application of the rules of the Treaty on State aid. The mere fact that a public body is involved does not entail the automatic application of Article 87 EC, just as the fact that the measures are taken by a private body does not preclude its application.

140 As regards the set-aside premium, a contribution was established by Decision 96-1 of the CIVDN of 5 July 1996 with a view to financing it. In order to determine whether the Commission was entitled to classify that contribution as a public resource on the ground, in particular, that it required the adoption of an act by a public authority for its full impact to be felt, the role of the State in that committee must be examined.

141 An examination of Law No 200 of 2 April 1943 on the creation of an inter-branch committee for natural sweet wines and liqueur wines with a registered designation of origin, as amended by Decree No 55-1064 of 20 October 1956, confirms the predominant role of the State in that committee.

142 Article 3, replaced by Article 2 of Decree 56-1064, provides that the CIVDN consists, firstly, of 14 representatives of trade unions and trade organisations who are the most representative of wine producers and cooperatives involved in wine-making, wine storage and wine distribution and, secondly, of 14 representatives of trade unions and trade organisations who are the most representative of wholesale merchants. Its members are appointed for three years by order of the Secretary of State for Agriculture, on the nomination of the trade unions and bodies concerned.

143 A certain number of representatives of the State may participate at deliberative proceedings without having the right to vote.

144 It is clear from Article 4, now Article 3 of Decree 56-1064, that the State, through its representative, occupies alternatively the post of president or vice-president of the executive board.

145 The director is appointed and relieved of office by order of the Secretary of State for Agriculture (Article 5, now Article 4 of Decree 56-1064).

146 Article 6 of Decree 56-1064 states :

'A government commissioner, designated by the Secretary of State for Agriculture and Food Supplies shall attend all deliberative proceedings.

If proposals submitted to him by the [CIVDN] or by its executive board have been adopted by two-thirds of the members present, the commissioner may, in accordance with guidelines he will have received, either immediately approve the proposed decisions, or submit them for approval to the Secretary of State for Agriculture and Food Suppli
es.'

147 Article 7 of Decree 56-1064 provides:

'Proposals of the [CIVDN] or of its executive board shall become mandatory for all members of the trades concerned as soon as they have received, as appropriate, the approval of Secretary of State for Agriculture and Food Supplies or of the government commissioner.

...

They shall become enforceable as soon as they have been officially notified to the corporate bodies of the trades which are members of the [CIVDN].

When the national interest is at stake, the Secretary of State for Agriculture and Food Supplies shall, if he deems it necessary, take in the place and stead of the [CIVDN] the decisions which the latter has refused to take, after having received the request to do so notified by the government commissioner.'

148 Article 8 of Decree 56-1064 provides that the mission of the CIVDN is to take, in accordance with government guidelines, a number of general measures listed there, including the organisation and control of the production of wines in specified vineyards.

149 Under Article 10 of Decree 56-1064, in the event of non-compliance with decisions of the CIVDN, various penalties may be imposed, as appropriate, by the prefect of the department where the offender resides or by the Minister for Agriculture, upon proposal by the prefect, namely fines, withdrawal of the 'carte professionnelle' (trade licence), or confiscation by the State of all or part of the goods.

150 In the case of the general measures referred to in Article 8, Article 11 authorises the Minister of Agriculture, on the proposal of the government commissioner, to take the place of the executive board and to impose on it a decision the board has refused to take, despite a due request to do so having been notified to it by the government commissioner.

151 Article 14 provides that the CIVDN's budget is to be submitted for the approval by the same minister. It also states the 'the costs relating to administrative expenses of the [CIVDN] or the achievement of its trade objectives shall be covered by charges levied either on the sale of goods, or by other means. The [CIVDN] may collect those charges only after being authorised to do so [by] an order of the Secretary of State for Agriculture and Food Supplies and of the Secretary of State for Economic Affairs and Finance'.

152 Article 15 of Decree 56-1064 provides that financial management is subject to the control of the State and that the funds available are to be deposited at the Treasury or at the (regional branch of the agricultural mutual credit fund crédit agricole) where the CIVDN has its head office.

153 Lastly, the CIVDN's internal rules and regulations are subject to the approval of the Minister for Agriculture.

154 It follows from the above that, in addition to the State presence in the committee and in its executive board, all the essential acts of the CIVDN must be authorised by the State. In particular, the CIVDN cannot either collect contributions or charges or make use of their revenue without State agreement. The State can even impose its own decisions on CIVDN.

155 The provisions of that law do not substantiate the argument, put forward by the applicants, that the management of CIVDN is solely trade managed and that the action of the State is limited to 'a subsequent power of review of the regularity of the CIVDN's financial management'.

156 Even if it were established that, as claimed by the applicants, 'in reality the role of government is limited to giving mandatory force to decisions taken by the trades', the fact remains that, as a matter of law, the powers of the State extend much further. In recital 74 of the preamble to the decision states correctly that, in the present case, the contributions 'required the adoption of an act by a public authority for their full impact to be felt'. In the context of this case, as stated in *Stardust*, cited in paragraph 129 above, the State is perfectly capable, by exercising its dominant influence over the CIVDN, of directing the use of its resources in order, as occasion arises, to finance specific advantages in favour of certain undertakings.

157 In that regard it must be added that, irrespective of their content, the orders of the French Minister for Economic Affairs of 31 March 2006 relied on by the applicants cannot prove in this case that the State had no opportunity to make use of the funds collected by the inter-branch organisations. Those orders post-date both the facts at issue and the decision.

158 Further, *Pearle and Others*, cited in paragraph 95 above, on which the applicants rely, is of no assistance as it cannot be applied to the present case.

159 First, it is true that initially the funds used by the CIVDN in order to pay the set-aside premium had to be collected from its members by means of an inter-branch contribution (see Decision 96-1 of 5 July 1996). The revenue from that contribution had to be earmarked in a special fund managed by the CIVDN and was intended solely for payment of the set-aside premium to the producer entitled to it (Article 5 of that decision).

160 However, it is clear from the declarations of the complainant to be found in recitals 43 and 44 of the preamble to the decision, confirmed in the transcript of proceedings at the CIVDN's general assembly of 20 December 2000, produced by the Commission as an annex to its defence, that, first, in 1999, the set-aside

premium was paid using a subsidy of FRF 2 million from the general council of the Eastern Pyrenees and, secondly, the set-aside premium was financed from funds which did not come solely from the collection of the contribution provided for, but were also, in part, debited from the CIVDN's general budget. Those facts have, moreover, not been disputed by the applicants. As in Case 78/76 *Steinike & Weinlig* [1977] ECR 595, referred to in paragraph 38 of *Pearle and Others*, cited in paragraph 95 above, aid has been granted directly by the State.

161 Accordingly, it is not possible in the present case to declare, following *Pearle and Others*, that since the costs incurred by the organisation were offset in full by the levies imposed on the undertakings benefiting therefrom, the CIVDN's action did not tend to create an advantage which would constitute an additional burden for the State or that organisation (see, to that effect, *Pearle and Others*, cited in paragraph 95 above, paragraph 36).

162 Secondly, as stated in recital 74 of the preamble to the decision, in the present case, contrary to the situation in *Pearle and Others*, it has not been demonstrated that the beneficiaries of the aid are always those liable to pay the charges. It is clear from Decision 96-1 of the CIVDN of 5 July 1996 that the contribution was calculated according to the volumes of 'Rivesaltes' and 'Grand-Roussillon' wine marketed in 1995 (Article 2), whereas the amount of the set-aside premium was FRF 5 000 per annum and per hectare set aside (Article 6). Certain undertakings might therefore make substantial contributions, but might not receive the slightest set-aside premium.

163 Thirdly, contrary to the situation in *Pearle and Others*, cited in paragraph 95 above, nor does it follow from the case file that the initiative for the organisation and implementation of the set-aside premium was attributable to some private association and not to the CIVDN, which 'served merely as a vehicle for the levying and allocating of resources collected' (see, to that effect, *Pearle and Others*, cited in paragraph 95 above, paragraph 37). It must be borne in mind that the applicants do not contest the imputability of the set-aside premium to the State.

164 Lastly, as to the idea that, in relation to the set-aside premium, the resources were, as in the situation in *Pearle and Others*, cited in paragraph 95 above, collected 'for a purely commercial purpose' which 'had nothing to do with a policy determined by the ... authorities' (*Pearle and Others*, cited in paragraph 95 above, paragraph 37), the applicants themselves declare the contrary to be the case. In paragraph 112 of their reply, they maintain that 'it cannot seriously be disputed that the establishment of the contributions which financed the publicity and promotion initiatives ... are in no way, unlike in this respect the measures in question under the Rivesaltes Plan, part of a policy pursued by the State'. The applicants accordingly acknowledge that the set-aside premium did form part of a policy suggested by the State.

165 All the foregoing considerations lead the Court to conclude that the Commission was correct to hold that the set-aside premium was financed from State resources.

166 Accordingly, even taking the applicants' written pleadings to mean that they claim that the measures in question were not financed through State resources, the second plea must also be rejected.

167 The action must therefore be dismissed as in part inadmissible and, for the remainder, unfounded.

Costs

168 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicants have been unsuccessful and the Commission has applied for costs, the applicants must be ordered to bear both their own costs and to pay those incurred by the Commission.

169 Pursuant to Article 87(4) of the Rules of Procedure, the French Republic is to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Dismisses the action;

2. Orders the applicants to pay the costs;

3. Orders the French Republic to bear its own costs.

Vilaras Dehousse Šváby

Delivered in open court in Luxembourg on 20 September 2007.

E. Coulon M. Vilaras

Registrar President