JUDGMENT OF THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)
22 October 1996 *

In Case T-154/94,

Comité des Salines de France, a national professional association governed by French law, established in Paris,

and

Compagnie des Salins du Midi et des Salines de L'Est SA, a company governed by French law, established in Paris,

represented by Dominique Voillemot, of the Paris Bar, and Peter Verloop, of the Amsterdam Bar, with an address for service in Luxembourg at the Chambers of Jacques Loesch, 11 Rue Goethe,

applicants,

supported by

Salt Union Ltd, a company governed by English law, established in Cheshire (United Kingdom), represented by Jonathan Scott and Craig Pouncey, Solicitors, with an address for service in Luxembourg at the Chambers of Georges Baden, 8 Boulevard Royal,

and

Südwestdeutsche Salzwerke AG, a company governed by German law, established in Heilbronn (Germany),

* Language of the case: French.

and **Verein Deutsche Salzindustrie eV,** an association governed by German law, established in Bonn (Germany),

represented by Thomas Jestaedt and Bärbel Altes, Rechtsanwälte, Düsseldorf, and Walter Klosterfelde and Karsten Metzlaff, Rechtsanwälte, Hamburg, with an address for service in Luxembourg at the Chambers of Philippe Dupont, 8-10 Rue Mathias Hardt,

interveners,

v

Commission of the European Communities, represented initially by Giuliano Marenco, Principal Legal Adviser, and Jean-Paul Keppenne of its Legal Service, then by Giuliano Marenco and Paul Nemitz, 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,

defendant,

supported by

Frima BV, a company governed by Netherlands law, established in The Hague (Netherlands), represented by Tom Ottervanger and Gerrit Vriezen, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of Carlos Zeyen, 67 Rue Ermesinde,

intervener,

APPLICATION for annulment of the decision allegedly contained in a letter addressed by the Commission on 7 February 1994 to Comité des Salines de France concerning aid granted to Frima BV by the Netherlands authorities,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Third Chamber, Extended Composition),

composed of: C. P. Briët, President, B. Vesterdorf, P. Lindh, A. Potocki and J. D. Cooke, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 2 July 1996,

gives the following

Judgment

Facts

1 By letter of 24 September 1990, the Netherlands Government notified to the Commission, pursuant to Article 93(3) of the EEC Treaty, a general regional aid scheme for the period 1991 to 1994, called 'Subsidieregeling regionale investeringsprojecten 1991' (hereinafter 'the Netherlands scheme'). After carrying out an examination, the Commission informed the Netherlands Government, by letter of 27 December 1990, that it considered the Netherlands scheme to be compatible with the common market by virtue of Article 92(3)(c) of the Treaty (hereinafter 'the approval decision').

2 A summary of the approval decision was published in the *XXth Report on Competition Policy* (paragraph 330) in the following terms:

'In December the Commission also reached a decision on the overall plans of the Dutch Government in regional policy for the period 1991-94, which provide for a decrease in the rate of aid and in the coverage of assisted areas or regions eligible for investment aid.

The Commission agreed to investment aid of up to 20% gross throughout the entire four-year period for the provinces of Groningen, and Friesland, and for Lelystad. In the case of the south-east of Drenthe, however, the Commission's approval is restricted to two years; the situation in that region will be reviewed in 1992.'

3 In May 1991, the Netherlands company Frima BV (hereinafter 'Frima') requested the Netherlands authorities to grant it HFL 12.5 million of aid under the Netherlands scheme, that is to say 10% of the eligible costs, for the construction of a new salt plant in Harlingen, in the province of Friesland. During 1993 and at the beginning of 1994, Frima supplied details relating to its application for aid.

4 As a result of the publicity given to that application, the Commission received various complaints and requests for information, including a letter of 6 December 1993, written by the President of the Comité des Salines de France (hereinafter 'CSF') to K. Van Miert, the member of the Commission responsible for competition policy.

5 That letter states:

'[...] The Comité des Salines de France is a professional organization comprising salt producers established in France. On that basis, it is one of the federations affiliated to the French national employers' council. It is also empowered to take action to protect the common interests of its members.

Through the medium of the press those members have learned that a certain company called Frima, incorporated in the Netherlands, is shortly to be granted various forms of aid by the public authorities [...] for the purpose of setting up a new salt production unit with an annual capacity of 1.2 million tonnes.

On their behalf, CSF expresses surprise that such aid [...] could be granted to a private undertaking in order to create a new and powerful production plant in a sector facing serious over-capacity in which each part of the market is either stagnant or in recession. Its impact on employment would be utterly negative.

According to the Treaty of Rome, such aid is likely to distort competition and is accordingly as a rule prohibited. Nevertheless, by a decision taken in December 1990 the Commission of the European Communities has authorized a specific aid scheme designed to promote the development of the province of Friesland. CSF wishes to obtain a copy of that decision in order to be better able to assess this project to which it was important that your attention should be drawn.

Thank you for the action you take in response to this request [...]'.

6 By letter of 7 February 1994 Mr Van Miert replied:

'[...] My staff have obtained the following clarification from the Netherlands authorities [concerning the aid in question].

Frima, the undertaking benefiting from the aid, did indeed request aid of 10% of eligible costs, that is HFL 12.5 million, under the regional development aid scheme "Subsidieregeling regionale investeringsprojecten 1991". As you requested, I annex hereto a copy of the letter to the Netherlands Government by which the Commission approved the scheme in question [...] Application of that scheme in favour of Frima BV would not need to be the subject of specific approval by the Commission [...].'

Procedure

7 By application lodged at the Registry of the Court of First Instance on 15 April 1994 the applicants brought the present action.

8 By order of 10 February 1995, the Court (Third Chamber, Extended Composition) decided to grant Frima leave to intervene in support of the form of order sought by the Commission. It also granted the companies Salt Union Ltd and Südwestdeutsche Salzwerke AG (hereinafter 'SWS'), and the association Verein Deutsche Salzindustrie eV (hereinafter 'VDS') leave to intervene in support of the form of order sought by the applicants. In the same order, it also allowed in part the applicants' request for confidential treatment.

9 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. It did, however, put a written question to the applicants and the parties intervening in their support. The parties concerned answered the question within the period prescribed by the Court.

10 The parties presented oral argument and answered the Court's questions at the hearing on 2 July 1996.

Forms of order sought

11 The applicants claim that the Court should:

— declare the approval decision illegal for infringement of the Treaty, of the rules in implementation thereof and of essential procedural requirements;

— annul the decision of the Commission of 7 February 1994 on the same grounds, inasmuch as it decided that the grant of aid of HFL 12.5 million to Frima 'would not need to be the subject of specific approval by the Commission';

— order the Commission to pay the costs.

12 Salt Union, SWS and VDS support in its entirety the form of order sought by the applicants.

13 The Commission contends that the Court should:

— dismiss the application as inadmissible or, in the alternative, as unfounded;

— order the applicants to pay the costs.

14 Frima contends that the Court should:

— dismiss the application as inadmissible or, in the alternative, as unfounded;

— order the applicants to pay the costs, including those incurred in its intervention.

The claim for a declaration that the approval decision is illegal

15 In their first head of claim, the applicants ask the Court to declare the approval decision illegal. They plead that the decision is illegal pursuant to Article 184 of the EC Treaty, in order to obtain annulment of the decision allegedly contained in the Commission's letter of 7 February 1994.

16 The possibility afforded by Article 184 of the Treaty of pleading the inapplicability of a measure of general application forming the legal basis of the contested decision does not constitute an independent right of action and recourse may be had to it only as an incidental plea. More specifically, Article 184 may not be invoked in the absence of an independent right of action (Case 33/80 *Albini* v *Council and Commission* [1981] ECR 2141, paragraph 17, and Joined Cases 87/77, 130/77, 22/83, 9/84 and 10/84 *Salerno and Others* v *Commission and Council* [1985] ECR 2523, paragraph 36).

17 In the circumstances of this case, the applicants may invoke Article 184 of the Treaty only if the second head of claim seeking annulment of the alleged decision of the Commission in the letter of 7 February 1994 is admissible. That being so, the admissibility of that second head of claim must be considered first.

The admissibility of the claim for annulment of the Commission decision allegedly contained in the letter of 7 February 1994

Summary of the parties' main arguments

18 The Commission considers that the claim for annulment of the decision allegedly contained in the letter of 7 February 1994 is inadmissible. It maintains that the letter is not an actionable measure for the purposes of the fourth paragraph of Article 173 of the Treaty, since it is not a decision. First, the letter merely supplied information and did not in any way alter the applicants' legal position. Second, the context in which the letter was written was one in which the Commission could not take any decision.

19 In support of its contention that its letter of 7 February 1994 merely supplied information, the Commission refers to the words of CSF's letter of 6 December 1993 (see paragraph 5 above). It is clear from simply reading the letter that CSF wished only to obtain a copy of the approval decision in order to satisfy itself that

the aid at issue was covered by that decision. The Commission points out that CSF did not request it to take any decision at all. In his reply of 7 February 1994, Mr Van Miert merely confirmed CSF's assumption that the disputed aid was covered by the approval decision. The letter therefore constituted information, and not a decision, with the result that the claim in question is inadmissible.

20 With regard to the context in which the letter of 7 February 1994 was written, the Commission contends, first of all, that the letter cannot contain a decision rejecting a complaint, because, in the absence of any provisions creating the status of complainant in the field of State aid, that category of decision does not exist in that field. According to the Commission, the judgments in Joined Cases 166/86 and 220/86 *Irish Cement* v *Commission* [1988] ECR 6473 and Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125 cannot be interpreted as meaning that the Community judicature has recognized a category of decisions rejecting complaints.

21 The Commission next refers to the judgment in Case C-47/91 *Italy* v *Commission* [1994] ECR I-4635, paragraphs 24 and 25 ('*Italgrani*'), and observes that the aid in issue was granted in pursuance of a previously authorized general regional aid scheme, with the result that the aid was existing aid which no longer required notification. It follows that the Commission had indeed no power to take a decision of any kind, whether positive or negative, relating to the disputed aid.

22 Moreover, referring to point 36 of Advocate General Darmon's Opinion in the *Irish Cement* case, the Commission points out that the applicants could have contested the decision of the Netherlands authorities to grant Frima the aid at issue before the national courts and that they could in that context have called in question the validity of the approval decision.

23 Frima endorses the arguments put forward by the Commission. It adds that a further indication that the letter of 7 February 1994 is not a decision is given by the fact that, in accordance with the judgment in the *Italgrani* case (paragraph 21), the disputed aid, as a measure merely implementing the Netherlands scheme, has been examined in the light of the same assessment criteria as those applied by the Commission when it adopted the approval decision. Accordingly, the Commission did not take a decision in the letter of 7 February 1994, but simply confirmed the application of the same assessment criteria as those it applied when examining the Netherlands scheme.

24 Frima also refers to the judgment in Case T-83/92 *Zunis Holding and Others* v *Commission* [1993] ECR II-1169, paragraph 31, and asserts that the claim in question would be admissible only if the act which the Commission refuses to withdraw, namely the approval decision, could have been challenged by the applicants. Since the applicants are not directly and individually concerned by the approval decision, it is not open to them to introduce an action for annulment of that decision. In the circumstances, the present claims are equally inadmissible.

25 Finally, Frima considers that the claims in question must be declared inadmissible in order to avoid breach of the legitimate expectations which it entertains as a result of the approval decision. In support of that assertion, it refers more particularly to Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraph 14, and *Italgrani*, paragraph 24.

26 The applicants observe first of all that if the letter in question was intended for information only, it would not have been signed in person by the member of the Commission responsible for competition policy. Next, they refer to the *Irish Cement* and *CIRFS* cases, maintaining that the disputed letter constitutes a decision not to initiate the procedure under Article 93(2) of the Treaty in response to the complaint lodged by CSF by letter of 6 December 1993. In their view, the

letter is a decision rejecting a complaint which thus has definitive legal effects and is, accordingly, amenable to review under Article 173 of the Treaty (Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraphs 9 and 10).

27 They maintain that *Italgrani* is not relevant to the circumstances of this case, since in that case the issue was whether the aid in question was existing aid or new aid, so as to determine to what extent the Commission could suspend payment of the aid. They submit that in the instant case, by contrast, the issue is whether the Commission loses all power to review aid granted under a general regional aid scheme such as the Netherlands scheme once it has approved that aid scheme. Furthermore, this case, unlike *Italgrani*, does not concern a measure merely implementing a general scheme, since the Commission's approval decision did no more than authorize the 'overall plans' of the Netherlands scheme.

28 According to the applicants, the Commission's statement that it was unable to take action with regard to aid granted under a general scheme contradicts the terms of the Council Resolution of 20 October 1971 (OJ, English Special Edition, Second Series II, Vol. IX, p. 57), according to which 'the Commission can use the procedure laid down in Article 93(2) of the Treaty ... should the need arise, particularly where the application of general systems of aid gives rise to well-founded complaints from a Member State'. The reference only to complaints made by a Member State is explained by the fact that in 1971 the idea of individual complaints in the sphere of State aid had not yet gained acceptance.

29 The applicants challenge Frima's claim that the disputed aid was examined in the light of the same assessment criteria as those applied when the Netherlands scheme was examined. They refer to Case C-305/89 *Italy* v *Commission* (*'Alfa Romeo'*) [1991] ECR I-1603, paragraph 26, and observe that, taking account of the overcapacity in the salt sector, the disputed aid should have been particularly strictly dealt with within the framework of a separate examination.

30 As regards the *Zunis Holding* case, they claim that it is established that an action against a Commission decision refusing to initiate the procedure under Article 93(2) of the Treaty is admissible, without any need to refer to the case-law on 'negative' acts. Article 93(2) gives to the persons concerned procedural guarantees, and the implication of complying with the procedure is that applicants may challenge before the Community courts a decision by the Commission not to initiate that procedure (Case C-198/91 *Cook* v *Commission* [1993] ECR I-2487, paragraphs 23 and 24, and Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraphs 17 and 18).

31 The applicants deny that Frima's alleged legitimate expectations affect the admissibility of their action. They observe that, in any case, in the judgments cited by Frima the principle of the protection of legitimate expectations was not taken into account when admissibility was considered. In their view, moreover, the alleged legitimate expectations of a beneficiary of State aid cannot affect in any way the right of the parties to bring an action against an act which causes them damage.

32 Finally, the applicants claim that if, on the one hand, a Commission decision authorizing a general aid scheme, such as the Netherlands scheme, did not constitute an actionable measure and if, on the other hand, acts of the Commission concerning individual aid granted under such a scheme were not actionable measures either, the Community judicature could never review the legality of aid such as that in dispute. They assert that there is no domestic legal remedy available to them since, according to settled case-law, only Article 93(3) of the Treaty, which requires the notification of planned aid, has direct effect while, according to the Commission, individual aid granted under an approved general scheme no longer need be notified.

33 SWS and VDS support every point of the applicants' arguments. They add that under Article 16(f) of the Netherlands scheme the Minister for Economic Affairs may not grant aid pursuant to that scheme where there are circumstances which 'mean that the plan is incompatible with the intended structure of the sector

concerned' (translation). They refer to the commentary accompanying the Netherlands scheme, according to which Article 16(f) covers a situation 'of evident over-capacity in a given sector' (translation). Consequently, pursuant to the scheme as notified to and approved by the Commission, they maintain that aid cannot be granted if there is evident over-capacity in the sector concerned. By granting the disputed aid, the Netherlands authorities have, they submit, paid aid in a sector facing over-capacity and have thereby breached the actual provisions of their scheme.

34 The interveners note that what is in issue in this case is not a minor modification of an aid measure approved by the Commission, as it was in Case C-44/93 *Namur-Les Assurances du Crédit* v *OND* [1994] ECR I-3829. Consequently, they consider that if the Netherlands Government wished to grant aid in a sector with obvious over-capacity, it should have notified it as a new State aid in accordance with Article 93(3) of the Treaty. In the light of Article 16(f) of the Netherlands scheme, the Commission ought at least to have initiated the procedure under Article 93(2) of the Treaty with regard to the disputed aid.

35 The Commission considers that the argument based by the interveners on Article 16(f) of the Netherlands scheme is inadmissible because the scheme is autonomous. It claims that the argument is in any event unfounded. The general and imprecise wording of Article 16(f), especially the expression 'intended structure' employed therein, shows that the Netherlands authorities enjoy a wide power of assessment in applying that article. The situation of 'evident over-capacity' is cited only as an example. According to the Commission, given the monopoly prevailing in the Netherlands salt production sector, it was perfectly reasonable to consider the creation of a new competing producer compatible with the structure of the sector concerned. Furthermore, the interveners have not put forward any figures as regards over-capacity in the Netherlands salt market, although such figures are the only relevant factor in applying the national legislation.

36 Salt Union has not submitted specific observations on the admissibility of the action.

Findings of the Court

37 According to settled case-law, any measure which produces binding legal effects and is such as to affect the interests of an applicant by bringing about a distinct change in his legal position is an act or decision which may be the subject of an action under Article 173 for a declaration that it is void (*IBM* v *Commission*, paragraph 9; Case T-64/89 *Automec* v *Commission* [1990] ECR II-367, paragraph 42, and Case T-3/93 *Air France* v *Commission* [1994] ECR II-121, paragraph 43).

38 In order to ascertain whether the Commission's letter of 7 February 1994 is such a measure, it is necessary first of all to establish the purpose of CSF's letter of 6 December 1993 to which the letter of 7 February 1994 was the reply.

39 In its letter of 6 December 1993 (see paragraph 5 above), CSF stated that it had learned from the press that Frima was to receive aid from the Netherlands public authorities, including the aid at issue. CSF expressed 'surprise' that such aid could be granted to an undertaking in the salt sector, which was facing serious over-capacity, and claimed that the impact of the aid on employment 'would be utterly negative'. It then stated that, according to the Treaty, such aid is likely to distort competition and is accordingly 'as a rule' prohibited. It noted, nevertheless, that by

a decision taken in December 1990 the Commission authorized a general aid scheme designed to promote the development of the province of Friesland. In those circumstances, CSF wished to obtain 'a copy of that decision in order to be better able to assess this project'.

40 The letter of 6 December 1993 was thus a request for information. After some preliminary observations, CSF asked the Commission to provide it with a copy of the approval decision. It is also clear from the last paragraph of the letter, in which CSF thanked the member of the Commission for the action he was to take in response 'to this request', that the letter was concerned with obtaining a copy of the approval decision, that is to say it was a request for information. As the Commission has correctly pointed out, CSF wished to obtain a copy of the approval decision, in order to satisfy itself that the aid to Frima was covered by that decision. Furthermore, study of the letter shows that CSF did not call upon the Commission to take any decision whatsoever.

41 Next, the Commission's letter of 7 February 1994 (see paragraph 6 above) should be considered. In that letter, the Commission responded to CSF's request by sending it a copy of the approval decision and informing it that Frima had 'indeed' requested aid, the aid in issue here, from the Netherlands Government. Furthermore, it told CSF that the aid fell within the Netherlands scheme, as endorsed by the approval decision. Lastly, it pointed out that application of the Netherlands scheme in favour of Frima BV 'would not need to be the subject of specific approval by the Commission'.

42 Accordingly, the object of the letter of 7 February 1994 was to answer the request made by CSF in its letter of 6 December 1993. It is plain that the mere sending by the Commission at CSF's request of a copy of the approval decision cannot produce binding legal effects such as to affect the interests of the applicants within the meaning of the case-law cited above (paragraph 37). Moreover, by informing CSF that Frima had 'indeed' requested aid from the Netherlands Government, the

Commission was only confirming information which CSF already possessed. Nor, therefore, can that information be regarded as producing binding legal effects such as to affect the interests of the applicants.

43 As regards the Commission's statement that the disputed aid fell within the Netherlands scheme endorsed by the approval decision, it is noteworthy that neither in its letter of 6 December 1993, nor in its application, nor in its reply, has CSF claimed that the disputed aid was not covered by the Netherlands scheme. Accordingly, that statement by the Commission does not produce binding legal effects such as to affect the interests of the applicants either.

44 Moreover, the argument put forward by the interveners SWS and VDS that the disputed aid was not covered by the Netherlands scheme (paragraphs 33 and 34 above) cannot retrospectively determine the import of the letter of 7 February 1994. Furthermore, since that argument falls entirely outside the scope of this dispute, as defined by its subject-matter, it cannot be taken into consideration. It is settled case-law that the subject-matter of the proceedings cannot be changed while the action is in progress (*Automec* v *Commission*, paragraph 69, and Case T-398/94 *Kahn Scheepvaart* v *Commission* [1996] ECR II-477, paragraph 20).

45 The Commission's observation that the disputed aid did not need to be the subject of 'specific approval' by the Commission is also mere information without binding legal effects such as to affect the interests of the applicants. In giving that information, the Commission was simply describing its practice, according to which individual aid covered by a general aid scheme is existing aid and does not have to be notified to it, unless the Commission has expressed reservations about it in the approval decision.

46 The Court of Justice expressly approved that practice in *Italgrani* (paragraph 21). It follows moreover from that judgment (paragraphs 24 and 25) that if the applicants had challenged the legality of the disputed aid, the Commission would not even have had the power to take a specific decision as to the legality of that aid, since its initial examination had shown that the disputed aid was covered by the Netherlands scheme, a general aid scheme already approved by it.

47 Last, the mere fact that the member of the Commission responsible for competition policy signed the letter of 7 February 1994 himself cannot influence the import of that letter.

48 It follows that the Commission's letter of 7 February 1994 is not a measure producing binding legal effects such as to affect the interests of the applicants by bringing about a distinct change in their legal position. The applicants' claim for annulment of the alleged Commission decision in that letter is therefore directed against a measure which is not amenable to review under Article 173 of the Treaty.

49 In order to support the admissibility of that claim, the applicants further maintain that the letter of 7 February 1994 constitutes a refusal by the Commission to initiate the procedure under Article 93(2) of the Treaty with respect to the disputed aid and that they are, therefore, entitled to challenge that decision. The Court finds that there was nothing in the Commission's letter of 7 February 1994 to indicate that it had or had not refused to initiate the procedure under Article 93(2). Nor moreover could it even initiate that procedure, since its initial examination had established that the disputed aid was covered by a previously approved general aid scheme (*Italgrani*, paragraph 24). It follows that since it was impossible for a decision to be adopted, the applicants' argument cannot render the claim in question admissible either.

50 In addition, the applicants assert that their claims are admissible on the ground that the letter of 7 February 1994 is the rejection of a complaint. In this respect, it is clear from examining CSF's letter of 6 December 1993 (see paragraphs 39 and 40 above) that it cannot be described as a complaint since it simply asks for information. Consequently, the Commission's letter of 7 February 1994 cannot be described as the rejection of a complaint. In any case, therefore, this argument cannot render the claim in question admissible either.

51 Furthermore, according to settled case-law, the mere fact that a letter is sent by a Community institution to its addressee in response to a request made by the latter is not enough for it to be treated as a decision within the meaning of Article 173 of the Treaty, thereby entitling its recipient to bring an action for its annulment (Case T-277/94 *AITEC* v *Commission* [1996] ECR II-351, paragraph 50).

52 It follows that the applicants' claim for annulment of the Commission decision allegedly contained in its letter of 7 February 1994 must be dismissed as inadmissible. Since that claim is inadmissible, the claim for a declaration that the approval decision is illegal is likewise inadmissible (see paragraphs 16 and 17 above).

53 Finally, the Court notes that it was open to the applicants to contest the legality of the disputed aid before the Netherlands courts. In their answer to the Court's written question and at the hearing they stated that they had in fact done so, but

that before the College van Beroep voor het Bedrijfsleven they had challenged the legality of the disputed aid in the light of national law only. Since they did not see fit to call in question before the national court the validity of the approval decision in the light of Community law, they chose not to ask that court to refer a question concerning such validity to the Court of Justice for a preliminary ruling under Article 177 of the Treaty. Accordingly, and contrary to the assertions of the applicants (paragraph 32 above), the outcome of this case does not in itself deprive them of the opportunity to subject the legality of the disputed aid to judicial review.

54 It follows from all the foregoing that the action must be declared inadmissible in its entirety.

Costs

55 Under Article 87(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must, having regard to the Commission's pleadings, be ordered to pay the costs, including those incurred by Frima, which applied for costs in its pleadings. Salt Union, SWS and VDS are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)

hereby:

1. **Dismisses the action as inadmissible;**

2. **Orders the applicants to pay the costs, including those incurred by Frima BV;**

3. **Orders Salt Union Ltd, Südwestdeutsche Salzwerke AG, and Verein Deutsche Salzindustrie eV to bear their own costs.**

Briët Vesterdorf Lindh

Potocki Cooke

Delivered in open court in Luxembourg on 22 October 1996.

H. Jung B. Vesterdorf

Registrar President