

ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
27 October 1999 *

In Case T-106/99,

Karl L. Meyer, a farmer, residing in Uturoa (Island of Raiatea, French Polynesia), represented by Jean-Dominique des Arcis, of the Papeete Bar, with an address for service in Luxembourg at the office of Horst Pakowski, Ambassador of the Federal Republic of Germany, 20-22 Avenue Émile Reuter,

applicant,

v

Commission of the European Communities, represented by Ulrich Wölker and Xavier Lewis, of its Legal Service, acting as Agents, with an address for service at the office of Carlos Gómez de la Cruz, also of the Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

APPLICATION for, first, the annulment of the Commission's decision of 30 March 1999 refusing a request by the applicant for information, and, secondly, a declaration holding the Commission liable,

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

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

- 1 The applicant is a tropical-fruit farmer on the island of Raiatea in French Polynesia.

- 2 Between 1986 and 1992, he took out various loans from a local bank, the Socredo, the interest rates on which varied between 7 and 12%

- 3 According to the applicant, he discovered in 1997 that the Socredo had privileged relations with the European Investment Bank (EIB) which, in the context of the implementation of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1), was granting the Socredo loans at reduced rates of interest, intended to finance projects for the economic development of French Polynesia. The applicant asked the EIB to inform him of the level of those interest rates for the period between 1986 and 1992.

- 4 By fax message of 7 April 1997, the EIB informed the applicant that he was not listed as the beneficiary of any loan granted through the intermediary of the Socredo.

- 5 By fax message of 9 April 1997, the applicant asked the EIB to send his file to a Commission official whom he was due to meet in Luxembourg on 17 April 1997.

- 6 By fax message of 13 April 1997, replying to a letter from the EIB of 10 April 1997, the applicant stated that an employee of the Socredo, who had been handling his account since 1990, had confirmed to him that the loans granted to him between 1986 and 1989 had been granted with funds from the EIB. The absence of any precise earmarking of those funds explained the inability of the EIB to trace those loans. Taking the view that the EIB still had to answer his questions, the applicant asked for the opportunity to meet a representative of the EIB on his next visit to Luxembourg.

- 7 On 4 October 1998, the applicant asked the EIB to inform him whether the interest rates mentioned in Article 156(c) of Decision 91/482 had been changed since 1991, and, if so, on what date.

- 8 By fax message of 5 October 1998, the EIB suggested to the applicant that he should address his request to the Commission, and supplied him with the details of the department concerned.
- 9 By fax message dated the same day, the applicant asked the Commission, first, to tell him what interest rates had actually been applied to risk capital in the form of loans in French Polynesia since 1991 pursuant to Article 156(c) of Decision 91/482 and Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482/EEC (OJ 1997 L 329, p. 50), and, secondly, to confirm to him that no amendment had been made to Article 157(b) of Decision 91/482.
- 10 On 3 November 1998, the applicant met Commission representatives in Brussels.
- 11 On 13 November 1998, the Commission sent a fax message to the applicant, suggesting that he should put his question to the EIB.
- 12 On 28 December 1998, the applicant once again submitted his request for information to the EIB, invoking Council Decision 93/731/EC of 20 December 1993 on public access to Council documents (OJ 1993 L 340, p. 43; 'Decision 93/731'). Having obtained no reply, he attempted a number of times to contact the EIB by telephone. He states that, in one telephone conversation, he was given the answer that the subject-matter of his request was covered by banking secrecy and that only the Commission could provide him with the information.
- 13 On 8 March 1999, pursuant to Article 175 of the EC Treaty (now Article 232 EC), the applicant formally called upon the Commission to provide him with the

information sought, pointing out that, under Article 234 of Decision 91/482, it was for the Commission, and not the EIB, to implement that decision.

- 14 By fax message of 30 March 1999, the Commission told the applicant that it had been informed by the EIB that the latter had already replied in writing to his enquiry and that it had nothing to add, as it had already told him in a fax message of 2 March 1999.
- 15 By application lodged at the Registry of the Court of First Instance on 30 April 1999, the applicant brought this action.
- 16 By separate document, received at the Registry of the Court of First Instance on 7 June 1999, the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance. The applicant submitted his observations on that objection on 14 July 1999.

Forms of order sought by the parties

- 17 The applicant claims that the Court should:

- hold all his claims admissible and declare them well founded;
- declare that the Commission's Directorate-General VIII — Development (external relations and development cooperation with Africa, the Caribbean

and the Pacific — Lomé Convention) infringed several provisions concerning public access to documents held by the institutions;

- direct the Commission to send him the information requested, namely the interest rates applied to loans granted by way of risk capital in French Polynesia from 1986 to 1989 and from 1995 to 1998, pursuant to the Council decisions concerning the association of overseas countries and territories with the Community;

- declare that the Commission has incurred liability with respect to him for failing to comply with the provisions on public access to documents held by the institutions;

- order the Commission to pay him the sum of FRF 20 000 in respect of irrecoverable costs which he was forced to incur in defending his interests.

18 The Commission contends that the Court should:

- dismiss the action for annulment as inadmissible;

- order the applicant to pay the costs.

19 In his observations on the objection of inadmissibility, the applicant contends that the Court should:

— grant the form of order sought by him, save for his application that the Commission be directed to supply the information on interest rates, that information having been obtained after the commencement of the action;

— dismiss the Commission's objection of inadmissibility.

The claim for an order directing that information be supplied

20 In his observations on the objection of inadmissibility raised by the Commission, the applicant has stated that he maintains his claims, save for the third, erroneously described as the 'second', seeking an order directing the Commission to provide him with the information he seeks.

21 There is therefore no further need to rule on that claim, which should in any event be declared inadmissible. As the Commission has pointed out, it is settled case-law that the Court of First Instance is not entitled, when exercising judicial review of legality, to issue directions to the institutions or to assume the role assigned to them (Joined Cases T-374/94, T-375/94 T-384/94 and T-388/94 *ENS and Others v Commission* [1998] ECR II-3141, paragraph 53).

The claim for annulment

Admissibility

Arguments of the parties

- 22 The Commission contends that the fax message of 30 March 1999 is not a measure capable of forming the subject of an action for annulment under Article 173 of the EC Treaty (now, after amendment, Article 230 EC).
- 23 First, it maintains that the applicant has no acknowledged right to obtain the information requested. Although Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents (OJ 1994 L 46, p. 58; 'Decision 94/90') gives citizens the right of access to documents or items on file which exist, it does not give them the right to obtain information or replies following questions put to the institution. In this case, the applicant was clearly seeking information and not access to a document that existed at the time of his request. No other provision of Community law requires the Commission to reply to the applicant's questions.
- 24 Secondly, the Commission observes that the information requested concerned the action of the EIB and not its own. The interest rates applied by the EIB to loans granted by means of risk capital or from its own resources are a matter for the EIB alone, in accordance with Articles 154(3) and 154a of Decision 91/482. The Commission stresses that it does not have the information sought, or, *a fortiori*, any documents containing it.

- 25 Thirdly, the Commission maintains that the applicant's situation does not fall within the EIB's field of operation, any more than it falls within that of the Commission or the European Development Fund ('EDF'). The Commission states that, according to its information, the applicant has not been in receipt of loans granted with the support of the EIB or the EDF. The loans granted by the Socredo bank to the applicant therefore bore no relation to Community financing. Supplying the information requested would therefore not fall within the scope of any form of technical assistance for the realisation of a project financed by the Community, or of any duty of assistance.
- 26 The applicant replies that, in accordance with the principles laid down in the case-law (Joined Cases 1/57 and 14/57 *Société des Usines à Tubes de la Sarre v High Authority* [1957] ECR 105; Joined Cases 316/82 and 40/83 *Kohler v Court of Auditors* [1984] ECR 641; Case 294/83 *Les Verts v Parliament* [1986] ECR 1339; Case T-3/93 *Air France v Commission* [1994] ECR II-121), the Commission's decision of 30 March 1999 is a challengeable measure for the purposes of Article 173 of the Treaty. As such, moreover, it should have been supported by a statement of reasons.
- 27 He then contends that the information requested appears in the decisions concerning the association of the overseas countries and territories with the Community, adopted by the Council and applied by the Commission. From this he concludes that the Commission did not have the right to refuse to supply him with that information because it was contained in public Community documents. He also points to the fact that the Commission is entrusted with the implementation of Decision 91/482, and that, according to Article 236(2) of that decision, it is the administrator of the EDF.
- 28 The applicant also contests the Commission's contention that it is not required to supply the information requested. He claims that, under Article 174(d) of Decision 91/482, the Commission and the EIB must provide assistance by means of their information and coordination services.

- 29 Finally, the applicant maintains that it has not in any way been established that the funds lent by Socredo did not come from the EIB. He states that that question is currently a matter in issue in court proceedings in French Polynesia.

Findings of the Court of First Instance

- 30 Under Article 114(1) of the Rules of Procedure, where a party so applies, the Court of First Instance may rule on inadmissibility without going into the substance of the case. Under Article 114(3), the remainder of the proceedings is to be oral, unless the Court of First Instance otherwise decides. In this case, the Court considers that it is sufficiently well informed by examining the documents on the file to rule on the application without opening the oral procedure.
- 31 According to settled case-law, the mere fact that a letter has been sent by a Community institution to its addressee in response to a request made by the latter is not sufficient for that letter to be characterised as a decision within the meaning of Article 173 of the Treaty, thus entitling its recipient to bring an action for its annulment. Moreover, only measures which produce binding legal effects so as to affect the interests of an applicant by bringing about a distinct change in his legal position are acts or decisions which may be the subject of an action for annulment under Article 173 (order in Case T-22/98 *Scottish Soft Fruit Growers v Commission* [1998] ECR II-4219, paragraph 34).
- 32 In this case, the applicant cannot claim that the Commission's letter of 30 March 1999 produced binding legal effects of a nature such as to affect his interests by bringing about a distinct change in his legal position.
- 33 First, it is clear from what the applicant's own pleadings, and more particularly from his observations on the objection of inadmissibility, that the information

sought appears in measures adopted by the Council and published in the *Official Journal of the European Communities*. It must be observed that there is no provision of Community law requiring the Commission to reply to a request, emanating from a person established in the territory of a Member State or of the overseas countries and territories, for identification of the relevant passages of Community legislation.

34 Secondly, the applicant cannot rely on the provisions of Decision 94/90 as the basis of a right to obtain the information requested.

35 It should be noted, as a preliminary observation, that he did not ask the Commission to give him access to any particular document, but made inquiries of it concerning information on the activity of the EIB. In that respect, it is necessary, for the purposes of applying Decision 94/90, to maintain a distinction between the concept of a document and that of information. None of the provisions in Decision 94/90 or the code of conduct annexed to it deal with the right of access to information; the right concerned relates exclusively to documents. In the preamble to Decision 94/90 there is a lone recital which refers to the Declaration on the Right of Access to Information annexed to the Final Act of the Treaty on European Union. That reference, which is not the subject of any further explanation, cannot confer a new meaning on the term 'document', which is used several times in the decision.

36 It cannot therefore be inferred from Decision 94/90 that the public's right of access to a Commission document implies a duty on the Commission's part to reply to any request for information from an individual, as is the situation in this case.

37 In his letter of formal notice of 8 March 1999, the applicant refers to the contents of his fax message to the EIB of 28 December 1998, in which he gave no indication as to the documents containing the information which he was seeking, although, in accordance with the code of conduct annexed to Decision 94/90, 'an

application for access to a document [must] contain information that will enable the document or documents concerned to be identified'. The way in which his application was formulated shows, at the very least, that he was seeking to obtain information and not access to one or more specific Commission documents. In his fax message of 28 December 1998, the applicant states *inter alia*: 'Decision 93/731 published on 31 December 1993 gives me the right to obtain the information requested from the competent authority within the European Union. I therefore repeat my request and would greatly appreciate it if, this time, I were to receive the information which I urgently need; I must know what interest rates were applied to risk capital sent to French Polynesia for the following years...'

38 Moreover, and in any event, even if the information sought by the applicant had to be regarded as necessarily appearing in one or more documents, the information which the Commission had at its disposal at the time when it drafted the fax message of 30 March 1999 shows that such documents could only be in the possession of the EIB. The Commission was therefore not in a position to give the applicant access to such documents, and its reply of 30 March 1999 could not therefore alter his legal position.

39 Nor, furthermore, even if the applicant's request had to be construed as indicating with sufficient clarity to the Commission that the information sought was to be found in the Council's decisions concerning the association of the overseas countries and territories with the Community, can Decision 94/90 be understood as meaning that the documents it covers extend to all acts of the institutions, in the sense contemplated in Article 189 of the EC Treaty (now Article 249 EC), published in the Official Journal. It is not the purpose of Decision 94/90 to make accessible to the public, by establishing a right of access with which the Commission must comply, documents which are already accessible by reason of their publication in the Official Journal.

40 Thirdly, the applicant was not entitled to documents of the Commission, by virtue of some duty on its part, whether by virtue of the tasks assigned to the Commission by Article 155 of the EC Treaty (now Article 211 EC) or in

connection with the administration or of the EDF or that it assist him in seeking the information necessary for conducting his action before the court in French Polynesia.

- 41 First, he has been unable to show that he benefited from Community funds through the intermediary of Socredo between 1986 and 1989, contrary to the observations made by the Commission on that point in its objection of inadmissibility. He has merely made assertions concerning remarks which he says were made to him by a Socredo employee. Moreover, the applicant himself states in his observations on the objection of inadmissibility that that question is the matter in issue in court proceedings in French Polynesia. In those circumstances, the banking situation of the applicant, which he has sought to clarify with the Commission and the EIB, cannot be held to have any relationship with Community financing.
- 42 Next, the Commission's obligations under Article 155 of the Treaty, taken on its own, cannot be interpreted as requiring it to reply to any request whatever for information made by an individual, no matter what the basis of that request might be.
- 43 Finally, Article 174 of Decision 91/482 does not impose any obligation on the Commission in relation to the applicant. It provides:

'In order to attain effectively the various objectives of this Decision in respect of private investment promotion and to achieve a multiplier effect, the Bank and/or the Commission shall contribute:

...

(d) information and coordination services.’

- 44 Those information and coordination services are supplied in the context of relations between the EIB, the Commission and the authorities of the overseas countries and territories. Contrary to the applicant’s assertions, that provision does not have a direct effect which would result in conferring upon individuals established in the territory of the overseas countries and territories the right to obtain information from the EIB and the Commission.
- 45 It follows from the above that the Commission’s letter of 30 March 1999 does not constitute a challengeable measure for the purposes of Article 173 of the Treaty. The action for its annulment must therefore be dismissed as inadmissible.

The claim for compensation for damage

- 46 The Commission has not raised a plea of inadmissibility against the claim for compensation formulated in the application. However, under Article 113 of the Rules of Procedure, the Court of First Instance may at any time, of its own motion, consider whether there exists any absolute bar to proceeding with an action.
- 47 Under Article 19 of the EC Statute of the Court of Justice, which applies to proceedings before the Court of First Instance by virtue of the first paragraph of Article 46 of that Statute and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, the application must, *inter alia*, specify the subject-matter of the dispute and contain a brief statement of the grounds on which the application is based. In order to fulfil those requirements, an application seeking compensation for damage allegedly caused by a Community institution must set out the particulars which make it possible to identify the conduct with which the applicant charges the institution, the reasons for which he considers there to be a

causal link between that conduct and the damage which he claims to have suffered and the nature and extent of that damage (Case T-13/96 *TEAM v Commission* [1998] ECR II-4073, paragraph 27).

- 48 In this case, whilst it is possible to identify the conduct on the part of the Commission of which the applicant complains, the application contains no indication of the nature and extent of the damage which the applicant claims to have suffered. The applicant merely requests the Court to declare that the Commission has incurred liability with respect to him. Nor is there any other passage in the application, which deals with this claim for compensation.
- 49 In those circumstances, the Commission has been unable effectively to present its case on the merits of the claim — and indeed has refrained from stating its case — and the Court of First Instance cannot exercise its power of review. It follows that the requirements of Article 19 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance have not been complied with in relation to the claim for compensation (see, on that point, the order in Case T-128/96 *Lebedef v Commission* [1996] ECR-SC II-1679, paragraphs 24 and 25, and the judgment in Case T-106/95 *FFSA and Others v Commission* [1997] ECR II-233, paragraphs 123 and 124).

Costs

- 50 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 applicant has been unsuccessful, he must be ordered to pay the costs, as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

- 1. There is no need to adjudicate on the third head of claim in the application, for an order directing the Commission to supply to the applicant the information which he seeks.**
- 2. The application for annulment is dismissed as inadmissible.**
- 3. The application for compensation for damage is dismissed as inadmissible.**
- 4. The applicant is ordered to bear his own costs and to pay those incurred by the Commission.**

Luxembourg, 27 October 1999.

H. Jung
Registrar

K. Lenaerts
President