JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
8 November 2000 *

In Joined Cases T-485/93, T-491/93, T-494/93 and T-61/98,

Société Anonyme Louis Dreyfus & C^ie^, established in Paris (France), represented by R. Saint-Esteben, of the Paris Bar, with an address for service in Luxembourg at the Chambers of A. May, 398 Route d'Esch,

Glencore Grain Ltd, formerly Richco Commodities Ltd, established in Hamilton (Bermuda), represented by P.V.F. Bos and J.G.A. van Zuuren, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of M. Loesch, 11 Rue Goethe,

Compagnie Continentale (France), established at Labège (France), represented by P. Chabrier, of the Paris Bar, with an address for service in Luxembourg at the Chambers of E. Arendt, 8-10 Rue Mathias Hardt,

applicants,

v

Commission of the European Communities, represented initially by M.-J. Jonczy, Legal Adviser, and B.J. Drijber and N. Khan, of its Legal Service, and,

* Languages of the case: French and Dutch.

subsequently, by Ms Jonczy and H. van Vliet, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION, first, for annulment of the Commission's decision of 1 April 1993 relating to contracts concluded between each of the applicants and Exportkhleb and, second, for compensation for the damage allegedly suffered as a result of that decision,

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

composed of: J. Pirrung, President, A. Potocki and A.W.H. Meij, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 23 February 2000,

gives the following

Judgment

Legal background

1 On 16 December 1991, having established the need to provide food and medical aid to the Soviet Union and its constituent Republics, the Council adopted Decision 91/658/EEC granting a medium-term loan to the Soviet Union and its constituent Republics (OJ 1991 L 362, p. 89), Article 4(3) of which provides as follows:

'Imports of products financed by the loan shall be effected at world market prices. Free competition shall be guaranteed for the purchase and supply of products, which shall meet internationally recognised standards of quality.'

2 By Regulation (EEC) No 1897/92 of 9 July 1992, the Commission adopted detailed rules for the implementation of the medium-term loan granted by Decision 91/658 (OJ 1992 L 191, p. 22). According to Article 4 of that regulation, the loans granted by the Community to the Republics of the former Soviet Union were to finance only the purchases and supplies under contracts that had been recognised by the Commission as complying with the provisions of

Decision 91/658 and with the agreements concluded between those Republics and the Commission with a view to the grant of those loans. Article 5 of Regulation No 1897/92 provided that such recognition was to be given only if the following conditions, *inter alia*, were fulfilled:

'1. The contract was awarded following a procedure guaranteeing free competition. To this end, the purchasing organisations of the Republics shall, when selecting supplier firms within the Community, seek at least three offers from firms independent of each other (...).

2. The contract offers the most favourable terms of purchase in relation to the price normally obtained on the international markets.'

3 On 9 December 1992 the European Economic Community, the Russian Federation and its financial agent, the Vnesheconombank ('VEB') signed, pursuant to Regulation No 1897/92, a Memorandum of Understanding, on the basis of which the European Community was to grant to Russia the loan provided for by Decision 91/658. The seventh and twelfth indents of Article 7 of that Memorandum of Understanding reproduced the abovementioned provisions of Article 5 of Regulation No 1897/92.

4 On the same day the Commission and the VEB signed the loan agreement provided for by Regulation No 1897/92 and by the Memorandum of Understanding. That agreement sets out the machinery for the disbursement of the loan. It stipulates, in Article 5.1(a), that the approval request to be sent by the VEB to the Commission was to be in the standard form appended to that agreement as Annex 2-A. It is apparent from that annex that the VEB was required to attach to that request a copy of the supply contract, the three invitations to tender sent to independent undertakings and issued prior to the conclusion of that contract, and the responses to those invitations.

5 On 15 January 1993, in accordance with Article 2 of Decision 91/658, the Commission as borrower concluded on behalf of the Community a loan agreement with a consortium of banks led by Crédit Lyonnais.

Facts

6 During the last quarter of 1992 the applicants, international trading companies, were contacted in connection with an informal invitation to tender organised by Exportkhleb, a State-owned company charged by the Russian Federation with the negotiation of wheat purchases.

7 By contracts variously concluded on 27 and 28 November 1992, the applicants and Exportkhleb agreed as follows. Société Anonyme Louis Dreyfus & Cie ('Louis Dreyfus') undertook to supply 325 000 tonnes of milling wheat at a price of 140.50 United States dollars (USD) per tonne, CIF free out one safe Baltic Sea discharge port. Glencore Grain concluded a contract for the supply of 700 000 tonnes of milling wheat at a price of USD 140 per tonne on the same terms. Compagnie Continentale (France), for its part, signed two contracts. The first concerned the supply of 500 000 tonnes of milling wheat, 50 000 tonnes of which were subsequently cancelled, at a price of USD 140.40 per tonne, CIF free out one safe Baltic Sea discharge port; the second concerned the supply of 20 000 tonnes of durum wheat, at a price of USD 145 per tonne, CIF free out one safe Black Sea port. That second contract was modified on 2 December 1992 to provide for the delivery of an additional 15 000 tonnes of durum wheat at a price of USD 148 per tonne, CIF free out one safe Black Sea port. Under the terms of each of those contracts, the goods were to be shipped during the months of January and February 1993.

8 Following signature of the loan agreement, the VEB requested the Commission to approve each of the contracts concluded between Exportkhleb and the applicants.

9 After the Commission had obtained from the applicants various additional items of essential information, concerning in particular the ECU/USD exchange rate, which had not been fixed in the contracts, it gave its approval on 27 January 1993, in the form of notices of confirmation addressed to the VEB.

10 According to the applicants, the letters of credit on the basis of which the financing was to be provided did not become effective until the second half of February 1993, that is to say, only a few days before the end of the shipment period provided for by the contracts.

11 Although a substantial part of the goods had been delivered or was in the course of shipment, it was becoming clear, according to the applicants, that it would not be possible to deliver all the goods by the end of February 1993.

12 By telex of 19 February 1993 Exportkhleb invited the exporters to attend a meeting in Brussels, which was held on 22 and 23 February 1993. At that meeting Exportkhleb requested the exporters to submit fresh quotations for delivery of what it termed the 'foreseeable balance', that is to say, the quantities which could not reasonably be expected to be delivered by 28 February 1993. According to the applicants, the price of wheat on the world market rose considerably between November 1992, when the sale contracts were concluded, and February 1993, when the fresh negotiations took place.

13 Following that meeting in Brussels, the applicants reached agreement with Exportkhleb for the supply of further shipments of wheat, which were to be delivered by the end of April 1993. Louis Dreyfus was awarded a contract for 185 000 tonnes of milling wheat at a price of USD 155. Glencore Grain undertook to supply 450 000 tonnes of milling wheat at the same price. Lastly, Compagnie Continentale (France) was awarded a contract for the supply of

300 000 tonnes of milling wheat, of which 120 000 tonnes were to be supplied at the price initially agreed and 180 000 tonnes at a price of USD 155, together with 20 000 tonnes of durum wheat or milling wheat at the same price.

14 According to the applicants, it was decided at the request of Exportkhleb, by reason of the urgency arising from the seriousness of the food situation in Russia, that those modifications would be formalised by simple riders to the initial contracts.

15 On 9 March 1993 Exportkhleb informed the Commission that the contracts concluded with five of its suppliers had been amended and that the deliveries still to be made would henceforth be effected at a price of USD 155 per tonne (CIF free out one safe Baltic port), to be converted into ecus at a rate of 1.17418 (ECU 132 per tonne).

16 By fax of 12 March 1993 the Director-General of the Directorate-General for Agriculture (DG VI) pointed out to Exportkhleb that, since the maximum value of those contracts had already been set by the Commission's notice of confirmation and the whole available amount of credits for wheat was already contracted, such a request could only be accepted by the Commission if the total value of the contracts was maintained, which could be done by a corresponding reduction in outstanding quantities to be delivered. He further stated that the request for approval of the amendments could only be considered by the Commission pursuant to an official request from the VEB.

17 According to the applicants, that information was interpreted as confirming the Commission's agreement in principle, subject to scrutiny for the purposes of formal approval once the documentation was sent by the VEB.

18 The riders to the contracts were then officially agreed, albeit that they were notionally dated 22 February 1993, the date of the meeting in Brussels. Whilst

the price per tonne was not changed from that which had been announced on 9 March 1993, the volumes were altered in order to prevent the total amount from exceeding the amount initially provided for. The applicants then resumed or continued with their shipments.

19 The documentation containing the new bids and the amendments to the contracts were officially sent by the VEB to the Commission on 22 and 26 March 1993.

20 By letter of 1 April 1993, signed by the Agriculture Commissioner, the Commission informed the VEB of its refusal to approve the amendments to the contracts as initially concluded.

21 In that letter, the Commissioner stated that, having examined the amendments to the contracts concluded between Exportkhleb and various suppliers, the Commission was prepared to accept those relating to the postponement of the final dates for delivery and payment. On the other hand, 'the magnitude of the price increases is of such a nature that we cannot consider them as a necessary adaptation but as a substantial modification of the contracts initially negotiated'. He went on to state: 'In fact, the present level of prices on the world market (end of March 1993) is not significantly different from the level which prevailed at the time when the initial prices were agreed (end of November 1992).' The Commissioner pointed out that the need, first, to ensure free competition between potential suppliers and, second, to secure the most favourable purchase terms constituted one of the main factors governing the approval of contracts by the Commission. He found that, in the present case, the amendments had been negotiated directly with the companies concerned, without any competition with other suppliers, and concluded: 'The Commission cannot approve such major changes as simple amendments to existing contracts.' He further stated that 'should it be considered necessary to modify the prices or quantities, it would then be appropriate to negotiate new contracts to be submitted to the Commission for approval under the full usual procedure (including submission of at least 3 offers)'.

22 Louis Dreyfus and Glencore Grain state that Exportkhleb informed them of the Commission's refusal on 5 April 1993. Compagnie Continentale (France) maintains that it received on the same day a telex from Exportkhleb informing it of that refusal but that the full text of the letter of 1 April 1993 was not communicated to it until 20 April 1993.

Procedure

23 By applications lodged at the Registry of the Court of Justice on 9 June, 5 July and 22 June 1993, the applicants brought proceedings registered, respectively, under numbers C-311/93, C-343/93 and C-357/93.

24 By orders of 27 September 1993 the Court of Justice referred those cases to the Court of First Instance of the European Communities pursuant to Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities (OJ 1993 L 144, p. 21).

25 Those case were registered in the Registry of the Court of First Instance under numbers T-485/93, T-491/93 and T-494/93.

26 By judgments of 24 September 1996 in Case T-485/93 *Dreyfus* v *Commission* [1996] ECR II-1101, Case T-491/93 *Richco* v *Commission* [1996] ECR II-1131 and Case T-494/93 *Compagnie Continentale* v *Commission* [1996] ECR II-1157, the Court of First Instance dismissed as inadmissible the applications for annulment made by each of the applicants and rejected the objection of inadmissibility raised by the Commission with regard to the claims of Louis Dreyfus and Glencore Grain for compensation.

27 By applications lodged at the Registry of the Court of Justice between 28 November and 23 December 1996, the applicants brought appeals against those judgments in so far as they declared the claims for annulment inadmissible.

28 By orders of 27 January 1997 the Court of First Instance decided to suspend the written procedure as regards the claims for compensation pending delivery of the judgments of the Court of Justice.

29 By application lodged at the Registry of the Court of First Instance on 8 April 1998, Compagnie Continentale (France) brought a fresh action seeking an order requiring the Commission to make good the damage suffered by the applicant as a result of the decision of 1 April 1993. That case was registered in the Registry of the Court of First Instance under number T-61/98.

30 By judgments of 5 May 1998 in Case C-386/96 P *Dreyfus* v *Commission* [1998] ECR I-2309, Case C-391/96 P *Compagnie Continentale* v *Commission* [1998] ECR I-2377 and Case C-403/96 P *Glencore Grain* v *Commission* [1998] ECR I-2405, the Court of Justice set aside the judgments of the Court of First Instance inasmuch as they declared the applications for annulment inadmissible, referred the cases back to the Court of First Instance for judgment on the substance and reserved the costs.

31 The written procedure before the Court of First Instance was resumed at the stage which it had reached, in accordance with Article 119(2) of the Rules of Procedure of the Court of First Instance.

32 By order of 9 June 1998, the Court of First Instance (Third Chamber), mindful of the fact that it had not, in its judgment of 24 September 1996 in Case T-494/93, ruled on the Commission's contention that the action was time-barred, decided to reserve its decision on the issue of inadmissibility for the final judgment.

33 By order of the President of the Third Chamber of the Court of First Instance of 11 June 1998, Cases T-494/93 and T-61/98 were joined for the purposes of the written and oral procedure and of the judgment, pursuant to Article 50 of the Rules of Procedure.

34 On hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure.

35 By order of the President of the Second Chamber of the Court of First Instance of 19 January 2000, Cases T-485/93, T-491/93, T-494/93 and T-61/98 were joined for the purposes of the oral procedure, in accordance with Article 50 aforesaid.

36 The parties presented oral argument and answered questions from the Court at the hearing on 23 February 2000.

37 The applicants stated at the hearing that they had no objection to the joinder, for the purposes of the judgment, of Cases T-485/93, T-491/93, T-494/93 and T-61/98.

38 In accordance with Article 50 of the Rules of Procedure, the Court hereby decides to join those cases for the purposes of the judgment.

Forms of order sought

39 The applicant in Case T-485/93 claims that the Court should:

— annul the decision of 1 April 1993;

— order the Commission to make good the material and non-material damage suffered by it;

— order the Commission to pay the costs.

40 The applicant in Case T-491/93 claims that the Court should:

— annul the decision of 1 April 1993;

— order the Commission to pay it compensation for the damage suffered by it as a result of that decision, amounting to EUR 7 374 023.78, together with interest from the date of lodgment of the application;

— order the Commission to pay the costs.

41 The applicant in Joined Cases T-494/93 and T-61/98 claims that the Court should:

— annul the Commission's decision of 1 April 1993;

— order the Commission to pay it compensation for the damage suffered by it as a result of that decision, amounting to EUR 1 858 987, together with interest;

— order the Commission to pay the costs.

42 The Commission contends that the Court should:

— in Case T-491/93, dismiss the claim for damages as inadmissible, alternatively unfounded;

— in Case T-494/93, dismiss the application for annulment as inadmissible, alternatively unfounded;

— dismiss as unfounded the application for annulment in Case T-491/93 and the actions in Cases T-485/93 and T-61/98;

— order the applicants to pay the costs.

The defence that the application for annulment in Case T-494/93 was out of time

Arguments of the Commission

43 The Commission maintains that the application for annulment, lodged on 22 June 1993, is time-barred.

44 It observes that the applicant acknowledges having been informed of the contested decision as early as 5 April 1993, by means of a telex from Exportkhleb. That telex unequivocally notified the applicant of the contents of, and reasons for, the Commission's decision. Consequently, the action should have been brought within a period of two months from 5 April 1993, that is to say, by no later than 11 June 1993 including an extension of time on account of distance.

45 In the alternative, the Commission observes that the applicant did not obtain a copy of the decision until 20 April 1993 but argues that, having regard to the clear wording of the telex of 5 April 1993, to the urgency of the matter and to the seriousness of the consequences of the information thus conveyed, a prudent undertaking would not have waited until 20 April 1993 to obtain the text of the decision of 1 April 1993 but would have taken immediate steps to that end.

Findings of the Court

46 Under the fifth paragraph of Article 173 of the EC Treaty (now the fifth paragraph of Article 230 EC), proceedings for annulment must be instituted within two months of the publication of the measure, or of its notification to the applicant, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

47 In addition, according to Annex II to the Rules of Procedure of the Court of Justice, to which Article 102(2) of the Rules of Procedure of the Court of First Instance refers, the prescribed time-limit of two months is extended on account of distance by six days in the case of an applicant established in France.

48 In the present case, the decision of 1 April 1993 was neither published nor notified to the applicant.

49 Failing publication or notification, it is for a party who has knowledge of an act concerning him to request the full text thereof within a reasonable period. Subject to that proviso, the period for bringing an action can begin to run only from the moment at which the third party concerned acquires precise knowledge of the content and grounds of the act in question, in such a way as to enable him to exercise his right of action (judgments in Case T-465/93 *Murgia Messapica* v *Commission* [1994] ECR II-361, paragraph 29, Joined Cases T-432/93, T-433/93 and T-434/93 *Socurte and Others* v *Commission* [1995] ECR II-503, paragraph 49, and Case T-109/94 *Windpark Groothusen* v *Commission* [1995] ECR II-3007, paragraph 26). The term 'precise knowledge' does not mean knowledge of every aspect of the decision but of its essential contents (see, to that effect, the order of the Court of First Instance of 10 February 1994 in Case T-468/93 *Frinil* v *Commission* [1994] ECR II-33, paragraph 32).

50 In the present case, it should be noted that the telex of 5 April 1993 sent by Exportkhleb to the applicant contains only two brief extracts from the decision of 1 April 1993. The passages in question, which are in any event truncated, do not set out the essential objections expressed by the Commission in that decision, namely that the riders to the contracts had been agreed without any competition with other potential suppliers.

51 In those circumstances, although the telex of 5 April 1993 enabled the applicant to realise that the Commission had expressed an unfavourable view concerning the riders, it did not provide the applicant with precise knowledge of the grounds on which that view was based.

52 It cannot therefore constitute the starting-point from which the period for bringing the action for annulment commenced to run.

53 As to the alternative argument advanced by the defendant, the Court considers that, in the circumstances of the case, the period of 15 days which elapsed between 5 April 1993, when the telex from Exportkhleb was received, and 20 April 1993, when the text of the decision was received, was not unreasonable in terms of the case-law cited above, notwithstanding the urgency of the situation as revealed by the information provided by Exportkhleb.

54 Consequently, the plea of inadmissibility alleging that the action is time-barred must be rejected.

The application for annulment

The alleged infringement of Decision 91/658 and of Regulation No 1897/92

55 It is common ground between the parties that, in order to qualify for the Community financing, the new terms of the sale contracts, relating to the prices and quantities and even, in one case, the nature of the product to be supplied, had to be approved by the Commission. It is immaterial in that regard whether those new terms fall to be classified as riders to the original contracts or as new contracts.

56 The parties are also agreed that one of the conditions imposed by the relevant provisions for the purposes of obtaining the Commission's approval relates to the price agreed, whilst another concerns adherence, in the conclusion of the contract, to the precepts of free competition. It is apparent from the contested decision that, in the Commission's view, neither of those conditions has been fulfilled.

57 Moreover, it is not disputed by the parties that those two conditions are cumulative, with the result that the non-fulfilment of either of them is enough to justify the decision not to approve the contracts.

58 In the circumstances of the present case, it is appropriate, first of all, to consider the second condition.

Arguments of the applicants

59 The applicants maintain that, contrary to what is stated by the Commission in the contested decision, the condition relating to free competition was complied with when the contracts were entered into in February 1993, as it had been when the contracts were concluded in November 1992.

60 They draw attention in that connection to the context in which the negotiations took place at the meeting on 22 and 23 February 1993, and especially the urgency of the situation at that time (see, in particular, the judgment in *Dreyfus* v *Commission*, cited above, paragraph 50).

61 Next, they observe that the provisions of Decision 91/658 and of Regulation No 1897/92 lay down no special formal requirements concerning competition between Community suppliers. In any event, Article 5(1) of Regulation No 1897/92 merely provides for Exportkhleb, as a purchasing organisation, to 'seek' at least three offers from firms independent of each other.

62 The applicants further point out that, when the contracts were entered into in November 1992, the call for competing bids from at least three independent undertakings took the form of a simple request made by telephone. By contrast, when the riders were entered into, the procedure for seeking competing bids was conducted on a more formal basis, with offers being solicited from the undertakings concerned by telex. The applicants observe, moreover, that the meeting in Brussels on 22 and 23 February 1993 was mentioned in the trade press. Since the Commission raised no objection to the procedure relating to the conclusion of the initial contracts, its criticisms of the procedure culminating in the adoption of the riders are unfounded.

63 The negotiations conducted at that meeting in Brussels on 22 and 23 February 1993, whilst separate, prompted each supplier to match the lowest offer made to the Russian authorities.

64 The applicants maintain, finally, that it was logical for Exportkhleb to have wished, in the context of the second call for bids, to procure the quantities still needed; consequently, the fact that the quantities required in the context of the second call for bids were the same as those which had not been delivered does not show that the procedure followed was uncompetitive.

Findings of the Court

65 The Court observes, as a preliminary point, that the criterion requiring adherence to the principle of free competition in the conclusion of contracts is crucial to the proper functioning of the lending mechanism established by the Community. In addition to being aimed at the prevention of fraud and collusion, it is designed, more generally, to guarantee the optimum use of the funds made available by the Community for aid to the Republics of the former Soviet Union. In actual fact, it is intended to protect both the Community as lender and the Republics in question as recipients of food and medical aid.

66 Consequently, fulfilment of that criterion is clearly not merely a formal obligation but in fact an essential element of the implementation of the lending mechanism.

67 In those circumstances, it is necessary to verify whether the Commission, when adopting the contested decision, was correct in finding that the condition of free

competition had not been fulfilled upon the conclusion of the riders to the contracts. The legality of the decision must be assessed in the light of all the rules needing to be complied with by the Commission in the matter, including those relating to the agreements concluded with the Russian authorities.

68 The riders concluded with the various Community undertakings constitute, in relation to one another, specific contracts, each of them requiring the Commission's authorisation. It is necessary, therefore, to examine whether each applicant, upon agreeing new contractual terms with Exportkhleb, was required to compete with at least two independent undertakings.

69 It should be noted in that regard, first, that the telex sent by Exportkhleb to the applicants, inviting them to attend a meeting in Brussels on 22 and 23 February 1993, cannot be regarded as proof that each undertaking, prior to concluding the riders, was required to compete with at least two undertakings independent of each other.

70 It is true that the applicable Community legislation does not require the call for bids to be in any particular form. However, the question which arises in the present case is not whether a telex may constitute a valid call for bids but whether the telex in question shows that each undertaking was required to compete with others before the new terms were concluded. Clearly, the telex from Exportkhleb, which was worded in a general way and which did not state, in particular, the quantities to be supplied or the delivery terms, does not constitute the necessary evidence in that regard.

71 Similarly, the extracts from the trade press produced by the applicants, which report the arrival in Europe of representatives of Exportkhleb for discussions on,

inter alia, supplies of wheat in the context of the Community loan, do not in any way show that the riders were concluded with undertakings which had previously been required to compete with at least two other independent undertakings.

72 As Glencore Grain has pointed out, it is true that the applicable legislation requires Exportkhleb merely to 'seek' at least three competing offers. Consequently, the possibility cannot be ruled out that certain undertakings, despite having been invited to submit a bid, may have declined to do so.

73 In the present case, however, the documentation does not even show that, for every rider finally concluded, at least two competing undertakings declined to respond to Exportkhleb's invitation.

74 Thus, in the telefax which it sent to the Commission on 9 March 1993 in order to point out the changes made to the contracts, Exportkhleb merely referred to the contracts concluded with each undertaking. In respect of each contract, mention was made only of the bid submitted by the undertaking to which the contract was awarded and the terms agreed following the negotiations between Exportkhleb and the undertaking in question. In relation to each of those contracts, no indication is given of at least two other responses, even negative ones, having been given to the invitations to submit offers. That telefax merely states that each undertaking had concluded with Exportkhleb a contract corresponding to the tonnage still to be delivered by it as at the date of the meeting in Brussels. In actual fact, although offers were indeed annexed to the telefax of 9 March 1993, these were separate offers for separate contracts, and not for one and the same contract. Consequently, that telefax likewise provides no proof that each rider was concluded after competing offers had been solicited from at least three undertakings independent of each other.

75 Furthermore, the Commission has stated, without being challenged in that regard, that, upon being officially notified by the VEB of the new contractual terms on 22 and 26 March 1993, it did not receive the responses, favourable or unfavourable, given by at least three independent undertakings.

76 The applicants claim, however, that the principle of free competition was adhered to, since each of them was obliged to match the lowest price offered.

77 It is true that the telefax sent by Exportkhleb to the Commission on 9 March 1993 shows that, whilst the prices offered ranged from USD 155 to USD 158.50, the price ultimately agreed with Exportkhleb was USD 155 in respect of all the undertakings.

78 Nevertheless, that shows, at most, that negotiations took place between Exportkhleb and each applicant before each of the contracts was concluded. On the other hand, also taking into account the foregoing, it does not show that the price in question was the result of at least three undertakings independent of each other having competed for each of the contracts to be awarded.

79 Thus, it is apparent that the applicants have not shown that the Commission committed any error in concluding that the principle of free competition had not been respected when the riders to the contracts were concluded.

80 Since one of the cumulative conditions prescribed in the applicable rules was not fulfilled, the first plea must be rejected, without there being any need to consider whether the price agreed in the riders corresponded to the world market price.

Infringement of the principle of the protection of legitimate expectations

Arguments of the applicants

81 The applicant in Case T-485/93 claims that it was given precise oral assurances by the Commission to the effect that the riders would be approved. Moreover, it was on that basis that the applicant resumed, from 4 March 1993 onwards, its shipments of wheat bound for Russia.

82 In addition, each of the applicants relies on the letter sent on 12 March 1993 by the Director-General of DG VI to Exportkhleb, which led the head of the Russian authorities, and subsequently the applicants themselves, to believe that the price increase provided for in the riders to the contracts would be accepted. That letter allegedly shows that:

— the Commission did not have any reservations concerning the actual procedure followed in the negotiations conducted in Brussels in February 1993, of which it had been made aware;

— agreement was given in principle to the rider and to the new price, inasmuch as — to put it in simple terms — the total amount of the Community loan already made available was to remain unchanged, which would involve a reduction in the quantities;

— a reminder was given as to the obligation formally to notify the rider to the Commission, which was done shortly afterwards.

83 The applicants in Cases T-491/93 and T-494/93 also rely on a letter sent on 26 March 1993 to the Deputy Minister of the Russian Federation by the Agriculture Commissioner. The Commissioner did not express the slightest doubt concerning the conformity of the price agreed on 23 February 1993 with market prices.

84 In adopting, on 1 April 1993, a position contrary to that which it had previously expressed on identical points, the Commission disregarded the principle of the protection of legitimate expectations (see, in particular, Case T-571/93 *Lefebvre and Others* v *Commission* [1995] ECR II-2379, paragraph 74).

Findings of the Court

85 It is settled case-law that the right to rely on the principle of the protection of legitimate expectations extends to any individual who is in a situation in which it is apparent that the Community administration has led him to entertain reasonable expectations, in particular by giving him precise assurances (judgment of the Court of First Instance of 8 July 1999 in Case T-266/97 *Vlaamse Televisie Maatschappij* v *Commission* [1999] ECR II-2329, paragraph 71).

86 In the present case, the applicants rely on verbal assurances emanating from members of the Commission's staff, on a letter dated 12 March 1993 from the Director-General of DG VI and on a letter dated 27 March 1993 from the Agriculture Commissioner.

87 First of all, there is nothing in the documents before the Court to show that the alleged verbal assurances, which the Commission denies having given, were actually made or, what is more, that they were such as to engender any legitimate expectation.

88 That part of the plea must therefore be rejected.

89 Next, the applicants attach significance to the letter of 12 March 1993 from the Director-General of DG VI to Exportkhleb, which shows that the Commission indicated its willingness to approve the amendments to the contracts, and in particular the price increases, on condition that the total value of the contract remained unchanged, which necessitated a corresponding reduction in the quantities to be delivered.

90 It should be noted, however, that that letter contained a final paragraph, in the following terms:

'In order to be able to examine and to approve the amended contracts, the Commission needs an official request from the [VEB] to do so by transmitting the amended or new contracts as soon as possible.'

91 The applicants state that that sentence was understood as meaning that the official request was a mere formality.

92 However, its wording precludes such an interpretation. The Director-General of DG VI expressly states that notification is necessary in order for the Commission to be able to 'examine' and 'approve' the amended contracts.

93 In addition, it must be observed that, in the letter in question, the Director-General does not indicate either that the newly agreed price accorded with the market price or that the procedure followed in concluding the riders had been conducted in conformity with the rules on free competition, within the meaning of the applicable legislation. The parties are agreed, however, that those two conditions form the essential basis of the decision of 1 April 1993: it did not provide that, even if the quantities were to be reduced, the Commission would be unable to approve price increases, which would have run counter to what the Director-General of DG VI states in his letter.

94 The fact that the Director-General indicated his willingness to accept a price increase if the quantities were correspondingly adjusted does not mean that the new prices would reflect the market price or that the riders had been concluded in conformity with the rules on free competition.

95 It is true, as the applicants point out, that the letter from the Director-General of DG VI must be construed in the context of the urgency of the situation at the time, as accepted by the Court of Justice in its aforesaid judgments of 5 May 1998 (see, for example, paragraph 50 of the judgment in *Dreyfus* v *Commission*).

96 However, as the applicants stated at the stage of consideration of the admissibility of the present actions, the Commission's approval went to the root of the contracts for the supply of wheat to Russia.

97 That close link was confirmed by the Court of Justice in its judgments of 5 May 1998. Thus, the Court of Justice held in those judgments that it was 'legitimate to take the view that the supply contract was entered into only subject to the obligations assumed by the Community' (judgment in *Dreyfus* v *Commission*, paragraph 50) and that 'payment for supplies... could be made only from financial resources made available to the purchasers by the Community' (ibid., paragraph 51). It also held that, in the absence of the financing set up by the Community, 'Exportkhleb's option to perform the supply contracts... was purely theoretical' (ibid., paragraph 52).

98 Having regard to the essential nature of the Community financing, the Court is unable to accept that the applicants were entitled to rely on a letter from the Director-General of DG VI — which was sent, moreover, to Exportkhleb but not to the VEB — without awaiting the Commission's final decision.

99 In view of all those factors, it is not open to the applicants to claim that the letter of 12 March 1993 from the Director-General of DG VI gave rise to any legitimate expectations on their part within the meaning of the relevant case-law.

100 Lastly, as regards the letter of 26 March 1993 from the Agriculture Commissioner, it should be noted that that letter contains the following conclusion:

'As you are aware, these amendments must be presented by the VEB for approval to the Commission. The official demand concerning such amendments to the contracts has only just reached my services by fax (22/3) and is currently being studied.'

101 Moreover, there is nothing in that letter to indicate that the Commission regarded the rules on free competition as having been complied with or that the prices reflected the market price.

102 Consequently, the letter of 26 March 1993 was not such as to give rise to any legitimate expectations on the part of the applicants.

103 In those circumstances, the plea alleging breach of the principle of the protection of legitimate expectations must be rejected.

Failure to comply with the obligation to provide a statement of reasons

Arguments of the parties

104 According to the applicants, the Commission disregarded the obligation to provide a statement of reasons, as laid down in Article 190 of the EC Treaty (now Article 253 EC) (see Joined Cases T-371/94 and T-394/94 *British Airways and Others and British Midland Airways* v *Commission* [1998] ECR II-2405, paragraphs 89 and 95).

105 At a meeting held in Brussels on 13 May 1993 between the representatives of the Commission and those of the Grain and Feed Trade Committee of the EEC (Coceral), of which the applicants are members, it became apparent that other grounds, apart from those set out in the decision, had been taken into account. As the minutes of that meeting indicate, the prices agreed in the riders resulted, according to the Commission, from prior collusion between the exporters.

106 However, that ground, the validity of which has never been established, was not referred to in the decision. Thus, the decision of 1 April 1993 did not mention all the reasons, let alone the true reasons, for the refusal.

107 The applicant in Case T-491/93 has offered to produce additional evidence, in the form of the testimony of persons who were present at the meeting on 13 May 1993, to confirm what was actually discussed at that meeting.

108 Moreover, the Commission confirmed in its defence that there were other reasons apart from those mentioned in the decision, since it referred — without giving any specific details — to 'wider considerations of a political and economic nature' which were allegedly taken into account with a view to refusing the riders.

109 In Cases T-485/93 and T-494/93, the defendant argues, as a preliminary point, that the plea is inadmissible since it does not fulfil the conditions laid down by Article 44(1)(c) of the Rules of Procedure of the Court of First Instance. Since the decision is accompanied by a statement of reasons, it is irrelevant, in the context of Article 190 of the Treaty, whether it could also have been justified by other reasons. It is therefore impossible to see in what respect Article 190 of the Treaty may be said to have been infringed in the present case.

110 The Commission observes that the minutes of the meeting on which the applicants rely were drawn up by one of the representatives of Coceral and that they were not acknowledged by the Commission as being accurate.

111 Moreover, contrary to what is claimed by the applicants, the Commission did not in any way state in its defence that other factors were taken into account in the context of the adoption of the decision.

112 In the alternative, the Commission points out that the statement of reasons required by Article 190 of the Treaty depends on the nature of the measure in question (Case C-48/96 P *Windpark Groothusen* v *Commission* [1998] ECR I-2873, paragraphs 34 and 35) and the circumstances in which it was adopted. In the present case, the decision concerned a relationship governed by private law in respect of which the Commission had an unfettered discretion. Consequently, no particular statement of reasons was required, especially *vis-à-vis* the applicant, which was merely a third party as regards the contract of 9 December 1992.

Findings of the Court

113 Article 44(1)(c) of the Rules of Procedure provides that an application must contain, *inter alia*, a summary of the pleas in law on which it is based. In the present case, contrary to the arguments of the defendant, the Court finds that that requirement has been fulfilled. The fact of the matter is that the objections raised by the Commission relate not to the procedural admissibility of the plea but to its merits.

114 Consequently, the allegation of inadmissibility must be rejected.

115 It is settled case-law that the statement of reasons required by Article 190 of the Treaty, which is an essential procedural requirement within the meaning of Article 173 of the Treaty, must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review.

116 In the present case, it is quite clear from the decision that the Commission took the view that the amended contracts submitted to it could not be approved since they did not fulfil the conditions laid down by the provisions in force, inasmuch as they had not been concluded in conformity with the principle of free competition and the new prices were not in accordance with the market price.

117 Indeed, the applicants do not deny that they understood that line of reasoning, as is attested by the arguments put forward by them in support of their first plea.

118 It must be concluded, therefore, that the decision is in conformity with the requirements laid down by Article 190 of the Treaty.

119 On the other hand, it is not for the Court to determine, in the context of a plea alleging infringement of Article 190 of the Treaty, whether a decision could have been justified on grounds other than those stated in the decision in question. That would exceed the bounds of its power to review the statement of reasons provided, as recapitulated above.

120 This plea must therefore be rejected.

The claim for compensation for material damage

Admissibility

121 In Case T-491/93, the Commission argues that the claim for compensation for material damage is inadmissible. The application does not explain the claim or, in particular, the nature of the damage pleaded. It does not therefore fulfil the requirements of Article 44(1)(c) of the Rules of Procedure of the Court of First Instance.

122 Article 44(1)(c) provides that an application must state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based. In the present case, the Court finds that that requirement has been fulfilled. The Commission's objection relates not to the procedural admissibility of the plea but to the substance of the claim for compensation.

123 Consequently, the Commission's plea of inadmissibility must be rejected.

Substance

124 Suffice it to recall that, in order for the Community to incur liability, a set of conditions must be fulfilled regarding the unlawfulness of the conduct alleged against the institution concerned, the fact of damage and the existence of a causal link between the conduct in question and the damage complained of (see, in particular, Case T-336/94 *Efisol* v *Commission* [1996] ECR II-1343, paragraph 30).

125 In the present case, the Court finds that the wrongful acts or omissions alleged by the applicants fall variously within the scope of some or all of the pleas put forward by them in support of their application for annulment.

126 Since those pleas have already been rejected, it follows that the applicants have not succeeded in proving any wrongful conduct on the part of the Commission.

127 In those circumstances, the application for compensation for the material damage alleged must be rejected.

The claim for compensation for non-material damage

128 In Case T-485/93, the applicant claims that it has suffered non-material damage as a result of the statements made by the Director-General of DG VI in the presence of representatives of the Community grain export trade at the meeting on 13 May 1993 (see paragraph 105 above), by which he insinuated that the applicant had engaged in unlawful practices at the time of negotiation of the rider to the contract.

129 The applicant claims that the Commission should be ordered to pay one euro by way of compensation for that damage.

130 The document on which the applicant relies in order to establish wrongful conduct on the part of the Commission consists of the minutes of the meeting in question, which were drawn up by Coceral. These are not official minutes or even a document approved in some way by the Commission.

131 Consequently, it cannot be said that the actual content of the discussions, as reported in that document and contested by the Commission, has been established.

132 In those circumstances, the application in Case T-485/93 for compensation for non-material damage must be rejected.

133 It follows that the applications must be dismissed in their entirety.

Costs

134 Under Article 87(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads, the Court may order that the costs be shared or that each party bear its own costs. In the circumstances of the present case, the Commission must be ordered to pay all the costs incurred up to delivery of the judgments of the Court of Justice of 5 May 1998. Each of the applicants must bear its own costs incurred following delivery of those judgments and the applicants must be ordered jointly and severally to pay the costs incurred by the Commission after that delivery.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Joins Cases T-485/93, T-491/93, T-494/93 and T-61/98 for the purposes of the judgment;**

2. **Dismisses the actions;**

3. **Orders the Commission to bear its own costs and to pay the costs incurred by each of the applicants up until delivery of the judgments of the Court of Justice of 5 May 1998. Each applicant is to bear its own costs incurred following delivery of those judgments and the applicants are jointly and severally to pay the costs incurred by the Commission after that delivery.**

Pirrung Potocki Meij

Delivered in open court in Luxembourg on 8 November 2000.

H. Jung A.W.H. Meij

Registrar President