ORDER OF THE COURT
OF 11 JULY 1979 [1]

Fédération Nationale des Producteurs de Vins de Table et Vins de Pays v Commission of the European Communities

Case 60/79

1. *Action for annulment — Natural or legal persons — Trade associations — Measure challenged affecting the general interests of their category — Inadmissibility*
   (EEC Treaty, second paragraph of Art. 173)

2. *Action for failure to act — Natural or legal persons — Measure applied for — Regulation — Inadmissibility*
   (EEC Treaty, third paragraph of Art. 175)

1. It is not possible to accept the principle that an association, in its capacity as the representative of a category of businessmen, is individually concerned by a measure affecting the general interests of that category.

2. A regulation amending another regulation cannot be classified as a measure which may be addressed to a natural or legal person within the meaning of the third paragraph of Article 175 of the EEC Treaty.

In Case 60/79

FÉDÉRATION NATIONALE DES PRODUCTEURS DE VINS DE TABLE ET VINS DE PAYS

v

COMMISSION OF THE EUROPEAN COMMUNITIES

1 — Language of the Case: French.

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco, A. Touffait and T. Koopmans, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

Upon hearing the Advocate General,

makes the following

ORDER

Facts and Issues

Article 6e of Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (I), p. 234) provides for the possibility, subject to certain conditions, of granting aid for concentrated grape must produced within the Community and used to increase the alcoholic strength of wines. The Commission availed itself of this opportunity and, in accordance with the Management Committee procedure, adopted, on 25 January, Regulation (EEC) No 130/79 relating to the 1978/79 wine year (Official Journal L 19, p. 17) which provides that:

— Aid shall be granted on the terms laid down to producers of wine grapes intended for the production of table wines who are able to furnish proof of a yield lower than 70 hectolitres per hectare from the 1978 harvest and whose holdings are situated with certain exceptions in wine-growing Zone C;

— The amount of aid for concentrated must calculated in units of account per degree of potential alcoholic strength is graduated according to the origin of the musts (1.16 units of account for those originating in the Italian part of Zone C III and in Corsica, and 1.04 units of account for those originating in other Community regions).

The Fédération Nationale des Producteurs de Vins de Table et Vins de Pays, the applicant in this case, by a letter dated 8 February 1979 made a protest to a senior official of the French Ministry of Agriculture. The following is an extract from the letter:

"It seems to us to be essential to achieve complete equality of aid, whatever the origin of the concentrated musts, on the basis of 1.16 units of account per degree of potential strength per hectolitre. We hope the French Government may be able to bring the matter before the Commission in Brussels with a view to achieving this equality."

According to the applicant the said official brought the letter to the notice of the Commission.

Since the applicant did not receive any answer from the Commission it commenced proceedings under Articles 173 and 175. It challenges the validity of Regulation No 130/79 and in its conclusions asks for it to be annulled in that it "secures for the Italian part of Zone C III and Corsica a dominant position in the production of concentrated musts within the meaning of Article 86 of the Treaty" and "is calculated to cause dissimilar conditions to be applied to equivalent transactions between trading partners, placing them at a competitive disadvantage and thereby infringing Article 85 of the Treaty".

The Commission, by an application dated 23 May 1979, received at the Court on 25 May 1979, has raised an objection of inadmissibility pursuant to Article 91 (1) of the Rules of Procedure of the Court. It puts forward the following arguments:

(a) Application for annulment:

— The Court has always refused to acknowledge that associations are entitled to bring an action for the annulment of measures which may adversely affect the interests of their members; furthermore Regulation No 130/79 cannot in fact be regarded as an individual decision; the aid was introduced for the benefit of all wine producers fulfilling certain objective conditions and not in favour of specified traders.

— The regulation complained of entrusts Member States with important tasks relating to its implementation, which precludes it from being regarded as of direct concern to the applicant.

(b) Action for failure to act:

— The matter has not been brought before the Commission directly.

— The reference of the matter to the Commission is in any case irregular as the letter of 8 February 1979 does not contain any formal notice to act.

— An application for the annulment of a regulation cannot be regarded as forming the subject-matter of the application which precedes the action for failure to act.

The applicant points out that, although it failed to mention Article 173, it nevertheless referred to Article 85 in connexion with the discriminatory aid and drew attention to the dominant position resulting from this aid. If it is assumed that the applicant has not referred to Article 173 there is a principle derived from the general law that a court before which redress is sought proceeds of its own motion, especially as, in cases concerning a dominant position, the prohibited agreements or decisions are automatically void. It is the wine-growing members of the Federation who, having been asked to state the origin of the

concentrated must purchased by them, drew the attention of their association to the existence of discrimination in regional aids and instructed it to expose this discriminatory feature more effectively than they could. The French Conseil d'État has acknowledged that a trade association has the right to intervene in legal proceedings. As far as the question of allowing legal persons other than a State to institute proceedings is concerned the Court should therefore acknowledge that the spirit of the Treaty extends further than its case-law and that it is perfectly legitimate to allow associations to make full use of the right conferred by Articles 173 and 175.

Decision

According to Article 91 (3) of the Rules of Procedure, unless the Court of Justice decides otherwise the remainder of the proceedings concerning a preliminary objection is to be oral. The Court is of the opinion that there are no grounds for opening the oral procedure and it has decided, as provided for in Article 91 (3), to adjudicate forthwith upon the application in the light of the written statements.

The applicant's application is inadmissible.

As far as the application for the annulment pursuant to the second paragraph of Article 173 of the EEC Treaty is concerned the regulation in question cannot be considered to be a decision addressed to the applicant within the meaning of that article or to be a decision of direct and individual concern to it, although in the form of a regulation. The regulation in question is in fact purely legislative and applies to every wine-producer in the Community. Moreover it should be stressed that, as the Court has already declared, in particular in its judgment of 14 December 1962 in Joined Cases 16 and 17/62 (*Confédération Nationale des Producteurs de Fruits et de Légumes and Others and Fédération Nationale des Producteurs de Raisins de Table* v *Council of the European Economic Community* [1962] ECR 479), it is not possible to accept the principle that an association, in its capacity as the representative of a category of businessmen, is individually concerned by a measure affecting the general interests of that category. The action under this head is therefore inadmissible.

As far as the application under Article 175 of the Treaty is concerned the only legal instrument which might possibly meet the applicant's request would have been a regulation amending Regulation No 130/79; an amending regulation of this kind cannot be classified as a measure which may be addressed to the applicant within the meaning of the third paragraph of Article 175. The action under this head is therefore also inadmissible.

On those grounds,

THE COURT

hereby orders as follows:

1. **The application is dismissed as inadmissible.**

2. **The applicant shall pay the costs.**

Luxembourg, 11 July 1979.

A. Van Houtte
Registrar

H. Kutscher
President