Case 93/84

Commission of the European Communities
v
French Republic

'Aid to fishing undertakings'

Summary

Action for failure by a Member State to fulfil its obligations — Non-compliance with a Commission decision concerning State aid — Decision not contested by means of an action for a declaration of nullity — Defences — Legality of the decision called in question — Not admissible

(EEC Treaty, Art. 93 (2), second subparagraph)

A Member State may not, in proceedings for a declaration that by failing to comply with a Commission decision concerning State aid it has failed to fulfil an obligation under the Treaty, challenge the factual and legal findings on which the Commission based its decision if it did not contest that decision in due time by means of an action for a declaration of nullity.

OPINION OF ADVOCATE GENERAL
SIR GORDON SLYNN
delivered on 30 January 1985

My Lords,

This is an application dated 30 March 1984 by the Commission against the Republic of France under Article 93 (2) of the EEC Treaty. The Commission claims a declaration that in failing to carry out a decision of the Commission of 8 February 1983, the Republic of France has broken its obligations under the Treaty. That decision, which is concerned with aid to maintain maritime employment granted to fishing

undertakings by the Government, shows that since 1974 an aid has been paid to fishing undertakings in France, which is calculated on the basis of the number of litres of gas oil which is used. It appears that the Commission accepted that this aid should be given, at any rate until 1980. At that time, the Commission came to the view that this was no longer a temporary aid, but was one which had a substantial direct impact on competition and trade between the Member States, and that it was accordingly incompatible with the common market within the meaning of Article 92 of the EEC Treaty.

The Commission, accordingly, called upon the French Government to comment upon the view which it had formed, thereby initiating the procedure under Article 93 (2) of the Treaty. In fact, in 1981 and 1982, the amount of the aid was increased and the Commission initiated new proceedings under Article 93 (2) in respect of the new aid introduced for the year 1982.

The French Government, in reply to the Commission's request for comments in respect of this aid, contended that the aid did not distort competition and was really called for because of the difficulties which were being faced by the fishery industry, leading to a loss of jobs and, it was said, an increase of importations into France.

The Commission, however, remained of the view that it had initially formed and, accordingly, the decision was notified on 5 April 1983. The French Republic did not immediately comply with the decision within the time laid down, but on 28 June 1983 set out a number of reasons why the decision should not be complied with. It relied upon the changes which had taken place in the fishery industry and sought to show that the aid was not affecting competition, partly because of the increase in imports into France. It stressed the difficulties being faced by the French fishery industry, and called for a review of the situation in the Community as a whole.

As a result of that letter, the Commission gave to France a further month to comply with the decision, but that was not done. Accordingly, these proceedings were issued.

The written pleadings are refreshingly concise and also clear. It is plain that the Commission relies on the simple fact that this decision was issued and has not been complied with. The defence makes a reference to the letter of 28 June 1983 in support of its argument that what has been done is not incompatible with the common market so as to justify the decision.

There is, however, no challenge to the form or legality of the decision itself and, in my opinion, it is clear that the Republic of France is not entitled to rely upon the arguments which it has advanced in order to avoid complying with the decision. It failed to challenge that decision within the time prescribed by Article 173 of the Treaty, and it must now comply with it in accordance with the judgment of the Court in Case 156/77 *Commission* v *Belgium* [1978] ECR 1881 and Case 130/83 *Commission* v *Italy* of 11 July 1984 [1984] ECR 2849.

In my opinion, the Commission is entitled to the declaration which it claims and the Republic of France should pay the Commission's costs.