In Case 59/79

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

v

COMMISSION OF THE EUROPEAN COMMUNITIES

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

The Commission, by a decision dated 8 December 1978 notified to the Italian Republic, initiated the procedure provided for in Article 93 (2) of the EEC Treaty against a draft law of the Sicilian Region on "Special measures for the purpose of supporting and developing the economy of the island and also strengthening its civil structures".

Under this procedure the Commission gave notice to the parties concerned, other than the Member States, to present their comments within eight weeks (Official Journal C 305 of 21 December 1978, p. 3).

On 25 January 1979 the applicant, the Fédération Nationale des Producteurs de Vins de Table et Vins de Pays, lodged a complaint with the President of the

Commission in which it pointed out that the proposed subsidy of Lit 300 per 100 kilograms of grapes processed by the co-operative wineries of Sicily was incompatible with Article 92 of the Treaty and requested him to find in accordance with the procedure laid down in Article 93 (3) that this aid was not incompatible with the Common Market.

The Commission did not reply and the applicant, by an application dated 10 April 1979, received at the Court on 13 April 1979, has brought an action against the Commission under Article 175 of the EEC Treaty for failure to act. It claims that the Commission has not dealt with its "complaint" of 25 January 1979 within the prescribed period, and, in its conclusions, claims that the Court should declare that the aid in question is not compatible with the Common Market according to Article 92 of the Treaty and cause it to be abolished in accordance with the emergency procedure laid down in Article 93 (3) of the Treaty.

The Commission, by an application dated 18 May 1979, received at the Court on 22 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) Article 175 of the Treaty does not apply:

— The Commission has not first been given formal notice to act.

— The Commission has a reasonable period within which to conclude an inquiry held pursuant to Article 93 (2) of the Treaty, and the period specified in Article 175 of the Treaty has absolutely no connexion with the procedural requirements of Article 93.

(b) The procedure for holding an administrative inquiry has not yet been concluded, since no decision has yet been reached on the draft aid measures in question and consequently the aid cannot be put into effect.

The applicant has not suffered any injury.

(c) The applicant's conclusions cannot be accepted. The Commission is the only body which is competent to decide as to the incompatibility of any aid with Article 92 and the Court cannot substitute itself for the Commission.

In answer to these arguments the applicant points out that:

(a) It has an "interest" in obtaining a reply from the Commission, since it is authorized to represent the collective interest of French wine-growers, and in challenging the Commission's failure to reply.

(b) The Commission has been called upon to act by the letter which the applicant has addressed to it.

(c) The Commission may reply to the applicant without however taking a decision; that is the object of the action for failure to act.

(d) To request the Court to declare that a proposal is incompatible with Article 92 is not the same as requesting it to substitute itself for the executive when the executive has failed to reply to comments for which it has asked on the proposal complained of.

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 application is inadmissible. If the Commission decides to initiate a procedure pursuant to the provisions of Article 93 of the EEC Treaty it has a reasonable period within which to complete this procedure. The fact that the applicant availed itself of the opportunity afforded it by the Commission during this procedure to submit its comments cannot be assimilated to the institution's "being called upon to act" within the meaning of Article 175 of the Treaty which causes the period of two months referred to in the second paragraph of that article to start to run. Furthermore it should be pointed out that a natural or legal person may complain to the Court of Justice, pursuant to the provisions of the third paragraph of the same article, only that an institution has failed to address to that person any act other than a recommendation or an opinion. The applicant has not addressed to the Commission an application which fulfils those conditions.

On those grounds,

THE COURT

hereby orders as follows:

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

2. **The applicant is ordered to pay the costs.**

Luxembourg, 11 July 1979.

A. Van Houtte
Registrar

H. Kutscher
President