# JUDGMENT OF THE COURT (Second Chamber)
7 May 1992 *

In Joined Cases C-258/90 and C-259/90,

**Pesquerias de Bermeo SA and Naviera Laida SA,** companies governed by Spanish law, established in las Arenas-Guecho, Spain, represented by Antonio Ferrer López and Luis María Angulo Errazquin, of the Vizcaya Bar, with an address for service in Luxembourg at the Chambers of Arendt & Harles, 4 Avenue Marie-Thérèse,

applicants,

v

**Commission of the European Communities,** represented by José Luis Iglesias Buhigues, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission decisions EXP/ES/1/90 and EXP/ES/2/90, of 6 June 1990 finding that the projects for exploratory fishing voyages in the waters of the South-West Atlantic Ocean do not fulfil the conditions for the grant of Community financial aid under Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ 1986 L 376, p. 7),

* Language of the case: Spanish.

THE COURT (Second Chamber),

composed of: F. A. Schockweiler, President of the Chamber, G. F. Mancini and J. L. Murray, Judges,

Advocate General: C. Gulmann,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 12 November 1990,

after hearing the Opinion of the Advocate General at the sitting on 21 January 1992,

gives the following

## Judgment

1 By two applications lodged at the Court Registry on 23 August 1990, Naviera Laida SA ('Naviera') and Pesquerias De Bermeo SA ('Pesquerias'), established in Arenas-Guecho, Spain, brought a number of actions. The first, brought under the second paragraph of Article 173 of the EEC Treaty, seeks the annulment of Commission decisions EXP/ES/1/90 and EXP/ES/2/90, of 6 June 1990 finding that the projects for exploratory fishing voyages in the waters of the South-West Atlantic Ocean do not fulfil the conditions for the grant of Community financial aid under Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ 1986 L 376, p. 7). The second seeks a declaration from the Court that by virtue of Article 15 of the same regulation the applicants were entitled to Community financial aid for their projects for the fishing voyages in question. The third, brought under Article 178 and the second paragraph of Article 215 of the EEC Treaty, seeks redress for the loss they claim to have suffered as a result of the contested decisions.

2 On 14 February Naviera and Pesquerias submitted to the Commission of the European Communities, through the Spanish authorities, two applications for incentive premiums for projects for exploratory fishing voyages in the international waters of the South-West Atlantic Ocean, in the vessels 'Geminis' and 'Ceres'.

3 The two vessels commenced their voyages on 15 February 1990 in Montevideo, Uruguay, and 22 February 1990 in Punta Arenas, Chile, respectively.

4 The Commission acknowledged receipt of the abovementioned applications on 7 March 1990.

5 On 24 April 1990, the Commission informed the Standing Committee for the Fishing Industry ('the Committee') provided for in Article 16 of Regulation No 4028/86 that, as far as 1990 was concerned, it no longer considered it appropriate for such voyages to be undertaken in the South-West Atlantic where the previous voyages had been conducted. The Commission based that statement on the fact that between 1987 and 1989 42 incentive premiums had been granted, of which 25 were for voyages in the same zone of the South-West Atlantic and for the same species as those mentioned by Naviera and Pesquerias in their applications. By letters of 25 April 1990, the Commission informed them that incentive premiums would no longer be granted for exploratory fishing voyages to the South-West Atlantic.

6 In May 1990, Naviera and Pesquerias sent letters indicating that their applications had been lodged on 14 February 1990 and that the Commission had acknowledged receipt on 7 March 1990. The Commission's letters of 25 April 1990 had, they said, given the impression that the decisions to be taken under Regulation No 4028/86 had not yet been taken, the time-limit of two months laid down in Article 16(3) of that regulation thus not having been observed.

7 On 6 June 1990, the Commission adopted the two contested decisions, which were addressed both to the Kingdom of Spain and to Pesquerias and Naviera. It stated in Article 1 of each of those decisions that the projects for exploratory fishing voyages in the waters of the South-West Atlantic Ocean did not fulfil the conditions for the grant of Community financial aid under Regulation No 4028/86. The second and third recitals of the preamble to the contested decisions are worded as follows:

'Whereas Community fishermen are aware of the marine potential of this zone; the results of the exploitation of that zone are also known and an exploratory fishing voyage with a view to evaluating the profitability of regular long-term exploitation of the fishery resources in that area is not justified;

Whereas consequently that exploratory fishing voyage does not fulfil the conditions laid down for Community financial aid, in particular the conditions laid down in Article 14(2)(c) of Regulation (EEC) No 4028/86 ...'.

8 It must be borne in mind that, on 7 November 1989, the Commission had granted incentive premiums for exploratory fishing voyages which had been undertaken by the same vessels, the 'Geminis' and the 'Ceres', in the same zones of the South-West Atlantic and for the same species as those mentioned in the contested decisions.

9 Under Article 1 of Regulation No 4028/86, the Commission may grant Community financial aid for certain measures including, in particular, the re-orientation of fishing activities by means of exploratory fishing voyages. That aid is granted in order to facilitate structural change in the fisheries sector within the guidelines of the common fisheries policy.

10 Pursuant to Article 13 of Regulation No 4028/86,

'For the purposes of this Title, "exploratory fishing voyage" means any fishing operation carried out for commercial purposes in a given area with a view to assessing the profitability of regular, long-term exploitation of the fishery resources in that area.'

11 Pursuant to Article 14(2) and (3) of Regulation No 4028/86:

'2. To qualify for Community aid, the projects referred to in paragraph 1 must also:

(a)...

(b)...

(c) relate to fishing zones where ... stable and profitable exploitation seems possible in the long term;

(d)...

3. A project may comprise several successive voyages to the same fishing zone with a view to establishing the basis for the stable long-term exploitation of that zone.'

12 Under Article 16 of Regulation No 4028/86, projects for exploratory fishing voyages are to be submitted to the Commission through the competent national authorities once their favourable opinion has been obtained. Pursuant to Article 16(3):

'Within two months of the submission of a project, the Commission shall decide whether to grant the premium .... This decision shall be notified to the beneficiaries and to the Member State(s) concerned. The other Member States shall be informed accordingly within the Standing Committee for the Fishing Industry ...'

13 According to Article 3(2) of Commission Regulation (EEC) No 1871/87 of 16 June 1987 laying down detailed rules for implementing Council Regulation (EEC) No 4028/86 as regards schemes to encourage exploratory fishing (OJ 1987 L 180, p. 1), in order to qualify for an incentive premium, voyages may not begin until after the date on which the application for aid is recorded as received by the Commission.

14 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

## The claims for annulment

15 In support of their claims for annulment, Naviera and Pesquerias put forward three pleas in law, alleging essentially that the Commission failed to comply with the two-month time-limit laid down in Article 16(3) of Regulation No 4028/86; that it failed to have regard to the conditions laid down by that regulation for an exploratory fishing voyage to qualify for Community financial aid, and did not discharge its obligation to state reasons; and, finally, that it contravened the principle of the protection of legitimate expectations.

### *Failure to observe the two-month time-limit*

16 Naviera and Pesquerias consider that, by virtue of Article 16(3) of Regulation No 4028/86, the Commission is required to give a decision on the grant of an incentive premium for a project for an exploratory fishing voyage within two months after submission of the project. Commission decisions adopted beyond that time-limit

are, in their view, unlawful and therefore liable to be annulled. Moreover, when adopting such belated decisions, the Commission has no alternative, they contend, but to grant the requested Community financial aid.

17 The Commission is of the opinion that the period of two months laid down in Article 16(3) is not mandatory but merely indicative. Upon the expiry of that period, applicants for premiums are entitled to use the remedies made available to them by the Treaty regarding its failure to act. In any event, failure to observe the time-limit has no bearing on the content of a decision concerning an application for an incentive premium for an exploratory fishing voyage.

18 In that connection, it must be observed in the first place that no specific provision of Regulation No 4028/86 sets out the consequences of a failure by the Commission to observe the two-month time-limit provided for in Article 16(3) of that regulation.

19 Secondly, it is apparent from the purpose attributed by the regulation to Commission decisions concerning the grant of incentive premiums that that time-limit is not mandatory.

20 No provision of Regulation No 4028/86 provides any basis for the view that the improvement of fishing possibilities outside waters covered by Community legislation, to which attention is drawn in the fourth and eleventh recitals in its preamble, is subject to compliance with the time-limit laid down in Article 16(3) of Regulation No 4028/86.

21 Moreover, the non-mandatory nature of the time-limit in question is confirmed by Article 3(2) of Regulation No 1871/87. Under that provision, an applicant for an incentive premium may begin the exploratory fishing voyage at any time after the date on which the application was recorded, that is to say long before the Commission has adopted its decision and in any event before the expiry of the period in

question. In view of the fact that the Commission may take a decision refusing the aid requested, an applicant who chooses that possibility does so at his own risk.

22 Accordingly, the plea concerning the Commission's failure to observe the two-month time-limit laid down in Article 16(3) of Regulation No 4028/86 is unfounded.

*The pleas alleging infringement of the conditions for the application of Regulation No 4028/86 and breach of the obligation to state reasons*

23 Naviera and Pesquerias claim that their 1990 applications, like those made in 1989, fulfilled all the conditions laid down by Regulation No 4028/86, and more particularly the one laid down in Article 14(2)(c) thereof. Thus, if stable and profitable long-term exploitation is to be envisaged, several successive voyages are required, as indicated in Article 14(3). Moreover, in refusing to grant the incentive premiums, the Commission relied on criteria adopted after the expiry of the time-limit provided for in Article 16(3) of Regulation No 4028/86. Finally, the contested decisions, which give no details of the criteria thus adopted, infringe the obligation to state reasons laid down in Article 190 of the EEC Treaty.

24 The Commission considers that, before adopting a decision on the grant of financial aid for an exploratory fishing voyage, it must evaluate the technical data of the project, viewing it within the general and complex framework of the fishing sector. In undertaking such an evaluation, it enjoys a discretion, which it did not overstep by taking account of the results of previous exploratory fishing voyages in the South-West Atlantic. As is apparent from the statement of the reasons for the contested decisions, the projects in question did not fulfil certain conditions laid down for grant of the premium. Moreover, it does not follow from Article 14(3) of Regulation No 4028/86, which provides that a project may comprise several successive voyages to the same zone, that the Commission is required to approve more than one voyage in order to evaluate the long-term profitability of stable exploitation in a given zone.

25 In that regard, it must be stated, first, that Article 13 of Regulation No 4028/86 defines exploratory fishing as any fishing operation carried out for commercial purposes in a given area with a view to assessing the profitability of regular, long-term exploitation of the fishery resources in that area. Thus, the Commission can award financial aid for such a project only if it covers (a) a clearly defined zone within the waters mentioned in Article 14(1) of Regulation No 4028/86 and (b) fishing zones where, on the basis of an estimate of potential fishery resources, stable and profitable exploitation seems possible in the long term, within the meaning of Article 14(2)(c). Where the Commission is called on to adopt a decision under Article 14 of Regulation No 4028/86, it enjoys a wide discretion as to whether the conditions for the grant of financial aid are fulfilled.

26 It must also be borne in mind that the Court has held (see its judgment in Case C-269/90 *Hauptzollamt München-Mitte* v *Technische Universität München* [1991] ECR I-5469) that where the Community institutions have such a power of appraisal, respect for the rights guaranteed by the Community legal order in administrative procedures is of fundamental importance. Those guarantees include, in particular, the obligation to give an adequate statement of the reasons for the decision. That statement of reasons must show, clearly and unequivocally, the reasoning of the author of the measure, so that the person concerned can, in order to defend his rights, ascertain the grounds on which it was adopted, and the Court can undertake its review.

27 In that regard, it must be pointed out, first, that in the preambles to the contested decisions of 6 June 1980, the Commission states that the Community fishermen are aware of the potential of the fishing zone in question, that the results of the exploitation of that zone are also known to those concerned and that an exploratory fishing voyage with a view to evaluating the profitability of regular long-term exploitation of the fishery resources in that zone is not justified; the Commission adds that such exploratory fishing voyages do not fulfil the conditions laid down for Community financial aid, in particular the conditions laid down in Article 14(2)(c) of Regulation (EEC) No 4028/86.

28 Furthermore, the Commission, relying on the results of 25 exploratory fishing voyages between 1987 and 1989 in the South-West Atlantic zone, some of which were in fact undertaken by Naviera and Pesquerias themselves, had made its position known to the Committee and to Naviera and Pesquerias in April 1990.

29 It follows that the Commission gave a sufficient statement of the reasons for its adverse decisions and therefore that the pleas as to infringement of the conditions for the application of Regulation No 4028/86 must be rejected.

*The plea alleging breach of the principle of the protection of legitimate expectations*

30 Naviera and Pesquerias consider that the Commission infringed the principle of the protectionoof legitimate expectations: they expected to obtain the incentive premiums for the 1990 projects concerned since the latter were identical in all material respects to those submitted in 1989, for which such premiums had been granted.

31 The Commission objects, first, that that plea is inadmissible, on the ground that it was raised for the first time in the reply.

32 However, it is sufficient to point out that Naviera and Pesquerias included that allegation as to breach of the principle of the protection of legitimate expectations in their applications. Accordingly, the plea is not a new one introduced in the course of the procedure and, therefore, the Commission's objection must be rejected.

33 The Commission goes on to say, in the alternative, that the approval of the 1989 projects does not automatically imply that later projects would be approved, even if they related to the same vessels, species and fishing zones. Moreover, the

Commission considers that the applicants had, before the end of the two-month period laid down in Article 16(3), received information which made it foreseeable that their applications would be rejected.

34 With respect to the alleged breach of the principle of the protection of legitimate expectations, it must be borne in mind that the Court has consistently held that whilst the principle of the protection of legitimate expectations is one of the fundamental principles of the Community, traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained (see, to that effect, the judgment in Case C-350/88 *Delacre* v *Commission* [1990] ECR I-395). That applies to a field like that of exploratory fishing, where the objective being pursued is constantly changing by reference, in particular, to the results of previous fishing voyages.

35 Accordingly, economic agents cannot claim to have legitimate expectations that incentive premiums will be granted for projects on the ground that such premiums were granted for previous voyages.

36 Nor may economic agents base such expectations on the expiry of the period of two months laid down in Article 16(3) of Regulation No 4028/86. Firstly, that time-limit is not mandatory and, secondly, its expiry does not confer on the applicants any entitlement to the financial aid at issue. Furthermore, the Commission had informed Naviera and Pesquerias, as early as April, that it could not envisage the grant of premiums for projects relating to the South-West Atlantic zone.

37 Consequently, Naviera and Pesquerias have no grounds for alleging that the Commission infringed the principle of the protection of legitimate expectations.

38 Since this plea is likewise unfounded, their claims for the annulment of the contested decisions must be rejected in their entirety.

**The claim that the Court should declare that Naviera and Pesquerias were entitled to the incentive premiums for the projects for fishing voyages at issue**

39 Naviera and Pesquerias consider that the Court should, after annulling the contested decisions, declare that the applicants were entitled to the incentive premiums for the projects for exploratory fishing voyages in the South-West Atlantic.

40 It need only be observed here that claims for a declaration by the Court that the applicants were entitled to certain benefits are inadmissible in an action for annulment. Therefore, the claims made in that regard in their applications must be rejected.

**The claims for compensation**

41 Naviera and Pesquerias consider that the conditions for the non-contractual liability of the Community to be incurred are fulfilled in the present case since, by unlawfully refusing to grant them Community financial aid, the Commission caused them damage.

42 It must be stated in that regard that, as has been consistently held, the Community's non-contractual liability under the second paragraph of Article 215 of the Treaty depends on the coincidence of a set of conditions as regards the unlawfulness of the acts alleged against the Community institution, the fact of damage and a causal link between the conduct of the institution and the wrongful act complained of (see to that effect the judgment in Case C-308/87 *Grifoni* v *Commission* [1990] ECR I-1203, paragraph 6).

43 It follows from the foregoing considerations that the Commission cannot be held to have engaged in any unlawful conduct, in relation to the adoption of the contested decisions, of such a kind as to cause the Community to incur non-contractual liability.

44 Consequently, without its being necessary to examine whether the alleged damage was in fact incurred or whether a causal link existed between the conduct of the institution and such damage, the claims for compensation must be rejected.

45 Since the latter claims have also been rejected, the applications of Naviera and Pesquerias must be dismissed in their entirety.

## Costs

46 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they are asked for in the other party's pleadings. Since Naviera and Pesquerias have failed in their submissions, they must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

**1. Dismisses the applications;**

**2. Orders the applicants to pay the costs.**

Schockweiler Mancini Murray

Delivered in open court in Luxembourg on 7 May 1992.

J.-G. Giraud
Registrar

F. A. Schockweiler
President of the Second Chamber