ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
14 July 1994 *

In Case T-584/93,

Olivier Roujansky, of Bordeaux, represented by Pierre Alt, of the Sarreguemines Bar,

applicant,

v

Council of the European Union, represented by Jean-Paul Jacqué, Director in the Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

APPLICATION for a finding that the declaration of the European Council of 29 October 1993 purporting to inform the citizens of the European Economic Community that the Treaty on European Union was to enter into force on 1 Novem-

* Language of the case: French.

ber 1993 is non-existent or at least void and for a finding that the Treaty on European Union in the version of 7 February 1992 and the Treaty on European Union as amended by the declarations of Denmark are void,

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

composed of: J. L. Cruz Vilaça, President, C. P. Briet, A. Kalogeropoulos, D. P. M. Barrington and J. Biancarelli, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 By application lodged at the Registry of the Court of First Instance on 4 January 1994, the applicant brought an action under Article 173 of the EC Treaty for:

— a finding that the declaration of the European Council of 29 October 1993 purporting to inform the citizens of the European Economic Community that the

Treaty on European Union was to enter into force on 1 November 1993 was 'absolutely non-existent' or at least void;

— a finding that the Treaty on European Union in the version of 7 February 1992 and the Treaty on European Union as amended by the declarations of Denmark were void.

2 The abovementioned declaration of 29 October 1993 was adopted by the European Council, meeting in Brussels in connection with the entry into force of the Treaty on European Union. Its first paragraph, as published in particular in a supplement to *Europolitique* No 1899 of 3 November 1993, is worded as follows: 'On 1 November 1993, the date of entry into force of the Treaty on European Union, Europe takes an important step. That step is important because of the content of the Treaty itself, which sets out new ambitions for Europe, and because of the intense debate which its ratification occasioned'.

3 The entry into force of the Treaty on European Union on 1 November 1993 follows the communication addressed by the Italian Republic to the High Contracting Parties recording, in accordance with Article R of the Treaty, the deposit of the last instrument of ratification by the signatory States.

4 The Council of the European Union, by a document lodged at the Registry of the Court of First Instance on 10 February 1994, raised an objection of inadmissibility under Article 114 of the Rules of Procedure.

5 By a document lodged at the Registry of the Court of First Instance on 9 March 1994, the applicant submitted his observations on the objection of inadmissibility.

6 By letter lodged at the Registry of the Court of First Instance on 18 April 1994, the applicant requested that, pursuant to Article 51 of the Rules of Procedure, the case should be heard by the Court sitting in plenary session, in order for it to be examined in the light, in particular, of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

7 Pursuant to Article 114(3) of the Rules of Procedure, the remainder of the proceedings on the objection of inadmissibility is to be oral unless the Court decides otherwise. In the present case, the Court (Second Chamber) considers that sufficient information is available from the documents before it and that there is no need to open the oral procedure or to recommend that the case be referred to the Court sitting in plenary session.

Pleas in law and arguments of the parties

8 In support of its application, the applicant puts forward five pleas in law: (1) lack of authority of the European Council; (2) failure to review the legality of the deposit of the instruments of ratification before putting the Treaty into effect; (3) the legal non-existence of the deposit of the instruments of ratification of the French Republic following the Kingdom of Denmark's refusal, on 18 May 1993, to ratify the Treaty in the version of 7 February 1992; (4) infringement of Article 236 of the EEC Treaty; and (5) the conversion of the Community into a 'non-legal entity'.

9 The Council of the European Union states, in its objection of inadmissibility, that the application meets none of the conditions for admissibility laid down in the second paragraph of Article 173 of the Treaty. First, the contested declaration does not emanate from a Community institution and, moreover, being an act of the European Council, it does not fall, by virtue of Article 31 of the Single European Act, within the purview of the Community judicature. Secondly, the declaration of

the European Council is not a measure that may be challenged since it does not in itself produce any legal effects. Thirdly, the contested declaration cannot be regarded as a decision of which the applicant is an addressee or a decision which, although adopted in the form of a regulation, is of direct and individual concern to him.

10 In his observations on the objection of inadmissibility, the applicant claims in particular that his application is not directed against a measure of the Council of the Union but against the declaration of the European Council of 29 October 1993.

The Court's assessment

11 The Court notes at the outset that this action for annulment is directed against, on the one hand, the declaration of the European Council of 29 October 1993 and, on the other, the Treaty on European Union itself.

12 As regards, first, the claim for a finding that the declaration of the European Council is non-existent or is void, the Court observes that acts of the European Council are not mentioned by the first paragraph of Article 173 of the Treaty as being subject to review by the Community judicature.

13 Moreover, Article 31 of the Single European Act, which was in force when the contested declaration was adopted, expressly excludes the application to the

European Council of the provisions of the EEC Treaty concerning the jurisdiction of the Community judicature. Article L of the Treaty on European Union maintains that exclusion.

14 It follows that this Court has no jurisdiction to review the legality of the European Council's declaration, without its being necessary to give a decision on the other points of the objection of inadmissibility raised by the Council of the European Union.

15 As regards, second, the claim for a finding that the Treaty on European Union is void, it should be observed that that Treaty is not an act of a Community institution within the meaning of Articles 4 and 173 of the Treaty and, consequently, this Court has no jurisdiction to examine the legality of its provisions (see the judgment of the Court of Justice in Joined Cases 31 and 35/86 *LAISA* v *Council* [1988] ECR 2285, paragraph 18).

16 It follows from all the foregoing that this Court has no jurisdiction to take cognizance of this action for annulment and that the action must therefore be dismissed as inadmissible.

Costs

17 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in

the successful party's pleadings. Since the applicant has been unsuccessful and the defendant has applied for costs, the applicant should be ordered to pay the costs in their entirety, including those of the Council of the European Union.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

1. The action is dismissed as inadmissible.

2. The applicant is ordered to pay the costs.

Luxembourg, 14 July 1994.

H. Jung

Registrar

J. L. Cruz Vilaça

President