# JUDGMENT OF THE COURT
30 January 1985 *

In Case 290/83

**Commission of the European Communities,** represented by Marie-José Jonczy, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

**French Republic,** represented by Gilbert Guillaume and Gérard Boivineau, acting as Agents, with an address for service in Luxembourg at the French Embassy, 2 rue Bertholet,

defendant,

APPLICATION for a declaration that the French Republic, by encouraging the Caisse nationale de crédit agricole [National Agricultural Credit Fund] to pay an allowance to the poorest farmers, has failed to fulfil its obligations under Article 5 of the EEC Treaty, having regard to the objectives of the Treaty concerning competition and in particular to Article 92 *et seq.* thereof,

## THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due, and C. Kakouris (Presidents of Chambers), P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann and Y. Galmot, Judges,

Advocate General: G. F. Mancini
Registrar: J. A. Pompe, Deputy-Registrar

**

gives the following

* Language of the Case: French.

** after hearing the Opinion of the Advocate General delivered at the sitting on 5 December 1984,

# JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

## Decision

1 By an application lodged at the Court Registry on 23 December 1983 the Commission of the European Communities brought an action, pursuant to Article 169 of the EEC Treaty, for a declaration that, by encouraging the Caisse nationale de crédit agricole to make grants to the poorest farmers, the French Republic has failed to fulfil its obligations under Article 5 of the EEC Treaty, having regard to the objectives of the Treaty concerning competition and in particular to Article 92 *et seq.* thereof.

2 Following the annual agricultural conference between the French Government and the agricultural trade organizations in December 1981, a number of aid measures in favour of French agriculture were published. The measures were notified by the French Government to the Commission in pursuance of Article 93 (3) of the Treaty. They included a 'solidarity grant' of 1.5 thousand million francs intended to subsidize the poorest farmers. That grant was financed by the operating surplus accumulated over several years by the Caisse nationale de crédit agricole [National Agricultural Credit Fund] (hereinafter referred to as 'the Fund').

3 The solidarity grant took the form of a lump sum payment accorded to all farmers whose turnover was less than FF 250 000, the amount paid being inversely proportional to income. The amounts of aid were calculated by the agricultural authorities of the départments and paid through the Mutualité sociale agricole [Agricultural Insurance Association].

4 Initially, by a letter dated 10 March 1982, the Commission initiated the procedure provided for in Article 93 (2) of the Treaty with regard to certain of the measures notified, including the solidarity grant.

5 In its replies the French Government maintained that the Fund's surplus was generated by the management of private funds and not of State resources. It stated in addition that the decision to allocate the resources in question had been taken immediately prior to the agricultural conference by the Fund's governing board, on which the State representatives were in a minority. Therefore, the measures in question could not constitute State aid within the meaning of Article 92 (1) of the Treaty.

6 On the basis of those arguments, the Commission took the view that the aid in question was not State aid within the strict meaning of the expression, but that the Fund's decision to finance the solidarity grant must have been the result of encouragement and pressure from the public authorities. The Commission therefore broke off the procedure under Article 93 (2) and, by a letter dated 14 September 1982, initiated the procedure provided for in Article 169 of the Treaty, claiming that the French Government had failed to fulfil its obligations under Article 5 of the Treaty, the second paragraph of which provides that the Member States must abstain from any measure which could jeopardize the attainment of the objectives of the Treaty. Since in its replies to that letter the French Government denied that charge, the Commission brought this action.

7 The Commission considers that there is no doubt that the State was the initiator of the decision taken by the Fund's governing board. In its view, the decision presents all the characteristics of a decision taken under pressure from the public authorities, and the fact that those authorities do not have a majority on the governing board is irrelevent in that respect.

8 The Commission refers in addition to the fact that the provisions of the French *code rural* concerning the Fund provide only for credit operations. Since under French law the Fund is a public body, it may not act *ultra vires.* That means, in particular, that it may not use its assets for purposes other than those provided for in its articles. If the Fund exceeds its powers the Minister for Agriculture must intervene as the supervisory authority. The fact that he did not intervene proves, according to the Commission, that the State did not oppose the solidarity grant, despite its incompatibility with the powers conferred on the Fund.

9 In those circumstances the Commission considers that the grant in question is a measure having an effect equivalent to State aid, which is incompatible with the common market and which comes within the scope of Article 5 of the Treaty. By its action the French Government created a situation equivalent to that resulting from the grant of State aid and, in so doing, has not abstained from causing measures to be taken which are liable to jeopardize the attainment of the objectives of the Treaty. A Member State cannot avoid its obligations by entrusting to an economic agent the implementation of a measure which, if it were taken by the State directly, would be incompatible with the Treaty.

10 For its part, the French Government maintains that the notion of a measure having an effect equivalent to State aid is not one which is known to Community law. This construction, put forward by the Commission, cannot serve as a basis either for a procedure under Article 93 or for an action under Article 169 for a declaration that a State has failed to fulfil its obligations.

11 Nor, according to the French Government, does the measure in question constitute State aid within the meaning of Article 92 of the Treaty. There was no encouragement on the part of the authorities, in relation to which, moreover, the Fund enjoys complete autonomy. Neither the general rules governing public bodies in French administrative law nor the specific provisions governing the Fund give the Government the power to intervene as a supervisory authority in such circumstances.

12 It appears from the texts provided by the French Government and explanations given by its Agent in the course of the oral procedure that, according to the provisions in force of Article 1 of Decree No 53-707 of 9 August 1953 concerning State control of national public undertakings and certain bodies with economic or social aims, as amended by Decree No 78-173 of 16 February 1978, decisions concerning, *inter alia*, the allocation of the Fund's profits do not become definitive until they have been approved by the public authorities.

13 According to Article 92 (1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. By virtue of the generality of the terms employed in that provision any State measure, in so far as it has the effect of according aid in any

form whatsoever, may be assessed on the basis of Article 92 for its compatibility with the common market.

14 As is clear from the actual wording of Article 92 (1), aid need not necessarily be financed from State resources to be classified as State aid. In addition, as the Court ruled in its judgment of 22 March 1977 (Case 78/76, Steinike & Weinlig [1977] ECR 595) the prohibition contained in Article 92 covers all aid granted by a Member State or through State resources and there is no necessity to draw any distinction according to whether the aid is granted directly by the State or by public or private bodies established or appointed by it to administer the aid.

15 It follows that Article 92 of the Treaty covers aid which, like the solidarity grant in question, was decided and financed by a public body and the implementation of which is subject to the approval of the public authorities, the detailed rules for the grant of which correspond to those for ordinary State aid and which, moreover, was put forward by the Government as forming part of a body of measures in favour of farmers which were all notified to the Commission in pursuance of Article 93 (3).

16 For the purpose of assessing whether or not an aid coming within the scope of Article 92 is compatible with the common market, Article 93 (2) of the Treaty set up a special procedure which lays down specific conditions and rules. Under that provision the Commission may bring an action against the Member State concerned only if that State does not comply with a decision whereby the Commission requests it to abolish or alter the aid in question. Prior to that decision the provision requires that the parties concerned be given notice to submit their observations, thereby guaranteeing the other Member States and the sectors concerned an opportunity to make their views known and allowing the Commission to be fully informed of all the facts of the case before making its decision. Finally Article 93 (2) provides that the Member States concerned may apply to the Council which may, acting unanimously, decide that the aid in question is to be considered compatible with the common market.

17 It follows that the procedure laid down in Article 93 (2) provides all the parties concerned with guarantees which are specifically adapted to the special problems

created by State aid with regard to competition in the common market and which go much further than those provided in the preliminary procedure laid down in Article 169 of the Treaty in which only the Commission and the Member State concerned participate. Accordingly, although the existence of that specific procedure in no way prevents the compatibility of an aid scheme in relation to Community rules other than those contained in Article 92 from being assessed under the procedure provided for in Article 169, the Commission must, however, use the procedure laid down in Article 93 (2) if it wishes to establish that that scheme, as aid, is incompatible with the common market.

18 It follows from the foregoing that Articles 92 and 93 leave no scope for a parallel concept of 'measures equivalent to aid' which are subject to different rules from those which apply to aid properly so-called.

19 In those circumstances the application must be dismissed as inadmissible inasmuch as it is founded directly on Article 169 of the Treaty and the Commission has failed to comply with the preliminary phase of the procedure laid down in Article 93.

**Costs**

20 According to Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the Commission has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

**1. Dismisses the application as inadmissible.**

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

Mackenzie Stuart Bosco Due Kakouris

Pescatore Koopmans Everling Bahlmann Galmot

Delivered in open court in Luxembourg on 30 January 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President