ORDER OF THE COURT (Sixth Chamber)
26 October 1995 *

In Joined Cases C-199/94 P and C-200/94 P,

Pesquería Vasco-Montañesa, SA (Pevasa), a company incorporated under Spanish law, established in Bermeo (Spain), represented by Maria Iciar Angulo Fuertes, of the Biscay Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

and

Compañía Internacional de Pesca y Derivados, SA (Inpesca), a company incorporated under Spanish law, established in Bermeo (Spain), represented by Maria Iciar Angulo Fuertes, of the Biscay Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

appellants,

APPEALS against the order of the Court of First Instance of the European Communities (Second Chamber) of 28 April 1994 in Joined Cases T-452/93 and T-453/93 between, on the one hand, *Pevasa and Inpesca* and, on the other hand, the *Commission of the European Communities* seeking: (1) to have that order set aside; (2) annulment of the decisions of the Commission of 18 December 1990 and 8 November 1991 refusing the appellants the financial aid they had sought

* Language of the case: Spanish.

pursuant to 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); (3) an order directing the Commission to take the necessary steps to grant to the appellants the financial aid requested; and (4) an order directing the Commission to pay compensation for the damage caused by its conduct,

the other party to the proceedings being:

Commission of the European Communities, represented by Francisco José Santaolalla Gadea, Principal Legal Adviser, and José Luis Iglesias Buhigues, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of the Legal Service, Wagner Centre, Kirchberg,

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, G. Hirsch, G. F. Mancini (Rapporteur), F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: C. O. Lenz,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By applications lodged at the Court Registry on 8 July 1994, Pesquería Vasco-Montañesa, SA (hereinafter 'Pevasa') and Compañía Internacional de Pesca y Derivados, SA (hereinafter 'Inpesca') brought appeals against the order of the Court of First Instance of 28 April 1994 in Joined Cases T-452/93 and T-453/93 (*Pevasa and Inpesca* v *Commission* [1994] ECR II-229) dismissing their actions as inadmissible and ordering them to pay the costs. Pevasa and Inpesca also claim that the Court should annul the decisions of the Commission of 18 December 1990 and 8 November 1991 refusing the financial aid they had sought pursuant to 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) and order the Commission to take the necessary steps to grant them the financial aid requested and to pay compensation for the damage caused by its conduct.

2 Pursuant to Article 6(1) of Regulation No 4028/86, the Commission may grant Community financial aid towards projects for material investments relating to the purchase or construction of new fishing vessels. Article 35(1)(a) of the regulation provides that the Commission is to take decisions twice yearly on applications for such aid, 'the first decision being taken not later than 30 April and covering applications submitted not later than 31 October of the preceding year and the second decision being taken not later than 31 October and covering applications submitted not later than 31 March of the current year'. Pursuant to Article 37(1), applications for financial aid in response to which no grant has been awarded for lack of funds are to be carried forward, once only, to the following budgetary year.

3 According to the order under appeal, on 29 June 1989 the Commission received an application for financial aid from Inpesca for the construction of a tuna fishing vessel with freezer facilities. On 31 October 1989 it received a similar application from Pevasa.

4 On 18 December 1990 the Commission sent Inpesca and Pevasa identical letters informing them that it had not been possible to grant financial aid for their projects on the ground that the budget item available for financing 1990 projects was insufficient.

5 The Commission acknowledged that its decisions on the appellants' applications should have been taken on 30 April 1990 at the latest. It stated that in April 1990 it had been obliged to suspend the award of new aid on the ground that some Member States had not sent it all the information needed to process the applications submitted. The Commission also explained that the appellants' applications had been automatically carried forward to the 1991 budgetary year in accordance with Article 37(1) of Regulation No 4028/86.

6 In April 1991 the Commission decided to suspend any decision regarding the award of Community aid for the construction of fishing vessels. The Commission made it known, however, by notice published in the Official Journal of 20 June 1991 (OJ 1991 C 160, p. 3), that all construction projects would be reconsidered when it was preparing its decisions in connection with the second round of the 1991 financial year.

7 By identical letters of 8 November 1991, the Commission informed the appellants that it had been impossible to grant financial aid for their projects on the ground that the budget item available for financing 1991 projects was insufficient.

8 By letter of 7 January 1992, Pevasa asked the Commission to inform it whether its application for aid had been carried forward to the 1992 budgetary year and to notify it, in the event of a definitive refusal, of the grounds on which that refusal was based. Inpesca sent the Commission an identical letter on 27 January 1992.

9 Since they received no reply to those letters, Pevasa and Inpesca wrote to the Commission, on 18 March 1992 and 31 March 1992 respectively, calling upon it to act in accordance with Article 175 of the EEC Treaty.

10 By letters of 18 May 1992, received on 25 May 1992, the Commission informed the appellants that its letters of 18 December 1990 and 8 November 1991 constituted reasoned notifications of decisions in accordance with Article 35 of Regulation No 4028/86.

11 By letters of 21 May 1992, the Commission stated that, pursuant to Article 37(1) of the regulation, applications for Community aid in response to which no grant has been awarded for lack of funds may be carried forward to the following budgetary year once only. Secondly, the Commission pointed out that a list of projects receiving Community aid was available on request and that interested parties could therefore examine, and if need be request the Court of Justice to review the legality

of, the Commission's decision to give priority to those projects in awarding Community aid.

12 On 30 July 1992 the appellants brought an action under Articles 173, 174, 176, 178 and the second paragraph of Article 215 of the EEC Treaty for the annulment of the Commission's decisions contained in its letters of 18 December 1990 and 8 November 1991, for an order directing the Commission to take the necessary steps to grant them the Community financial aid requested and for recognition of their entitlement to compensation for the damage caused by the contested decisions.

13 By order of 28 April 1994, the Court of First Instance dismissed those actions as inadmissible. It found, in particular, that in so far as the relevant applications contained claims for annulment, they had been submitted well after the expiry of the two-month time-limit laid down in Article 173 of the Treaty, extended by 10 days on account of distance. The claim that the Court of First Instance should direct the Commission to take the necessary steps for granting the aid sought was found to exceed the jurisdiction conferred on the Community judicature in proceedings for annulment. The Court of First Instance noted that the claims for compensation contained in the applications, which sought by way of damages payment of the interest due on the financial aid requested, did not stand alone but were subordinate to the claims for judicial recognition of the appellants' right to that aid and, since the latter claims were inadmissible, so were the former. Lastly, the claims for compensation contained in the appellants' replies were deemed by the Court of First Instance to constitute new claims which could not be allowed, pursuant to Article 48(2) of the Rules of Procedure.

14 In support of their claims that the order of 28 April 1994 should be set aside, Pevasa and Inpesca have put forward essentially three pleas in law concerning, respectively, the different heads of claim set out in the applications at first instance and dismissed by the Court of First Instance as inadmissible. In its response, the Commission contended that the appeal should be dismissed.

15 Pursuant to Article 119 of its Rules of Procedure, where the appeal is clearly inadmissible or clearly unfounded, the Court may at any time dismiss it by reasoned order.

The first plea in law

16 As regards their claims for the annulment of the Commission's decisions, the appellants submit that the Court of First Instance infringed Article 173 of the Treaty in finding that the letters of 8 November 1991 were precise and unequivocal, that they constituted acts producing definitive legal effects *vis-à-vis* the appellants, that they amounted to proper notification of the decisions contained therein and that, consequently, time started to run for the purposes of bringing proceedings when those letters reached them. According to the appellants, the Commission's conduct had caused confusion, had given rise in itself to reasonable doubts and was contrary to the principle of legal certainty and the duty to act in good faith. In the first place, the letters of 8 November 1991 were drafted in terms similar to those in which the letters of 18 December 1990 were couched, although the Commission claimed that the letters produced different legal effects, the latter carrying the applications for financial aid forward to the next budgetary year and the former definitively refusing to grant those applications. Furthermore, it was a matter of public knowledge that the Commission did not comply with Article 37(1) of Regulation No 4028/86, according to which applications for financial aid may be carried forward once only, as the Court of Auditors pointed out in its annual report concerning the financial year 1990 (OJ 1991 C 324, p. 1, p. 93). Lastly, the ambiguity of the Commission's conduct was confirmed by the fact that it did not

reply to the requests for clarification, dated 7 January 1992 and 27 January 1992, following which the appellants formally called upon it to act, in accordance with Article 175 of the Treaty. Consequently, the Commission only defined its position clearly and unequivocally by the letters of 18 May 1992, notified on 25 May 1992, on which date time started to run for the purposes of calculating the time-limit set by Article 173 for bringing proceedings.

17 It should be observed, first, that the letters of 8 November 1991 state clearly and unequivocally that the applications for financial aid had been refused for lack of budgetary funds. As the Court of First Instance was right to point out, the definitive nature of those refusals, which followed the decisions to the same effect of 18 December 1990, stems from Article 37(1) of Regulation No 4028/86, which permits applications to be carried forward once only, and not from a decision adopted by the Commission. Consequently, the Commission was not under a duty to explain the legal effects of the second refusal and the fact that the wording of the letters of 8 November 1991 was similar to that of the letters of 18 December 1990 is irrelevant.

18 Secondly, even on the assumption that the Commission were found to have infringed Article 37(1) when considering other applications, the appellants would not be able to rely on such instances of unlawfulness as grounds for claiming that the legal effects of the refusal contained in the letters of 8 November 1991 were uncertain.

19 Thirdly, the fact that the Commission did not reply with all due speed to the requests for clarification submitted by the appellants — regrettable though that may be — cannot in any way alter the definitive nature of the contested decisions.

20 Consequently, the Court of First Instance was correct in finding that the letters of 8 November 1991 constituted acts producing definitive legal effects with regard to the appellants, that they amounted to proper notification of the decisions contained therein and that time for the purposes of bringing proceedings under Article 173 therefore started to run on the day on which they reached the appellants. Similarly, it was correct in holding that those findings applied to the letters of 18 December 1990 for the same reasons.

21 The first plea in law must therefore be rejected.

The second plea in law

22 As regards the claims that the Court of First Instance should declare the contested decisions void and that it should direct the Commission to take the necessary steps for granting the aid requested, the appellants submit that the Court of First Instance infringed Articles 174 and 176 of the Treaty in that it improperly joined the separate claims put forward, which were based on those two articles. Under Article 174, a decision of the Court of First Instance to uphold the application for annulment would mean that the contested acts must be declared void, as sought by the appellants in their first claim. Under Article 176, an institution whose act has been declared void is required to take the necessary measures to comply with the judgment, with the result that the second claim would not then exceed the jurisdiction conferred on the Community judicature by the Treaty.

23 First, in so far as they seek a declaration from the Court of First Instance that the contested decisions are void, the claims submitted at first instance by the appellants overlap with the claims for annulment which the Court of First Instance dismissed as inadmissible.

24 Secondly, in so far as the appellants claim that the Court of First Instance should direct the Commission to take certain measures, the Court of Justice has consistently held (see, most recently, its judgment in Case C-21/94 *Parliament* v *Council* [1995] ECR I-1827, paragraph 33) that, when exercising judicial review of legality under Article 173 of the Treaty, the Community judicature has no jurisdiction to issue directions, even where they concern the manner in which its judgments are to be complied with.

25 Consequently, the second plea in law must also be rejected.

The third plea in law

26 As regards the claims for compensation in respect of the damage suffered, the appellants submit that the Court of First Instance infringed Articles 176, 178 and 215 by interpreting the claim set out in the application in an incomplete, partial and excessively formalistic manner. That claim concerned payment of the financial aid by way of compensation, as well as the right to default interest. In that context, the claim for compensation was based on Articles 176, 178 and 215 read in conjunction with one another and constituted an independent matter, distinct from the claim for annulment.

27 Even on the assumption that the forms of order sought by the appellants in the applications lodged at first instance concerned a claim for compensation as well as for recognition of the right to payment of default interest, the Court has repeatedly held (see *inter alia* the judgments in Case 543/79 *Birke* v *Commission and Council* [1981] ECR 2669, paragraph 28, and in Case 799/79 *Bruckner* v *Commission and Council* [1981] ECR 2697, paragraph 19) that, although a party may take

action by means of a claim for compensation without being obliged by any provision of law to seek the annulment of the illegal measure which causes him damage, he may not by those means circumvent the inadmissibility of an application which concerns the same instance of illegality and which has the same financial end in view.

28 In the present case, the claims purportedly seeking compensation sought payment of precisely the same amounts as would have been granted by way of Community aid if the Commission had granted the applications submitted to that end by the appellants, increased by default interest, and were based on the same pleas in law alleging illegality as were put forward in support of the claims for annulment. In those circumstances, it is clear that the purpose of those claims for compensation was to circumvent the time-limit laid down by Article 173 for bringing proceedings and that they therefore constituted a misuse of the procedure under Article 178 of the Treaty.

29 Consequently, the pleas in law put forward by the appellants in support of their application to have the order of the Court of First Instance set aside are wholly and manifestly unfounded. Since the other forms of order sought by the appellants were contingent upon that order being set aside, there is no need to consider them. The appeals must therefore be dismissed pursuant to Article 119 of the Rules of Procedure.

Costs

30 Under Article 69(2) of the Rules of Procedure, 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 appellants have failed in their submissions, they must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby orders:

1. The appeals are dismissed.

2. The appellants are ordered to pay the costs.

Luxembourg, 26 October 1995.

R. Grass

Registrar

C. N. Kakouris

President of the Sixth Chamber