ORDER OF THE COURT
21 MAY 1977 [1]

# Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland and United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities

**Cases 31/77 R and 53/77 R**

In the Cases 31/77 R and 53/77 R

COMMISSION OF THE EUROPEAN COMMUNITIES, represented and assisted by its Legal Advisers D. R. Gilmour and M. van Ackere, acting as Agents, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, represented by William Henry Godwin, Assistant Treasury Solicitor, acting as Agent, assisted by T. H. Bingham Q. C. of Gray's Inn and P. G. Langdon Davies, Barrister, of the Inner Temple, with an address for service in Luxembourg at the office of John Stephen Chick, British Embassy, 28 Boulevard Royal,

defendant,

Application for the adoption of interim measures requiring the defendant to cease infringing a decision of the Commission pending the trial of the action in the aforementioned cases,

THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

makes the following

1 — Language of the Case: English.

# ORDER

1 Having regard to the report for the hearing,

Having regard to the opinion of the Advocate-General,

2 On 20 January 1977 the United Kingdom of Great Britain and Northern Ireland notified the Commission of its intention to provide, as from 31 January, temporary aid to pig producers in the United Kingdom in the form of a subsidy of 5 1/2 pence per kilogramme deadweight.

3 The Commission, considering that this aid was not compatible with the Common Market within the meaning of Article 92 of the EEC Treaty, initiated the procedure laid down by the first subparagraph of Article 93 (2) and notified the Government of the United Kingdom on the following 25 January.

4 The said Government applied to the Council under Article 93 (2) for a decision that the aid in question was compatible with the Common Market in derogation from the provisions of Article 92. It was not possible for this procedure to be concluded before 15 February 1977, on which date the Council rejected the application.

5 By a decision of 17 February 1977 (OJ L 54, p. 39) the Commission decided that: 'The United Kingdom of Great Britain and Northern Ireland shall forthwith terminate the provision of the aid in the form of a subsidy to pig producers the plan for which was notified to the Commission by letter dated 19 January 1977'.

6 The Member State to which the decision was addressed, which had already brought the aid measure into operation as from 31 January as previously announced, kept it in force despite the decision.

7 By Application 31/77 the Commission referred the matter to the Court in pursuance of the second subparagraph of Article 93 (2) of the EEC Treaty, which provides that: 'If the State concerned does not comply with this

decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 169 and 170, refer the matter to the Court of Justice ...'.

8 Article 92 (1) of the Treaty declares that any aid granted by a Member State which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the Common Market.

9 In accordance with Article 93 (3) the Commission is to be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid.

10 Under the same provision, if the Commission considers that any such plan is not compatible with the Common Market having regard to Article 92, it shall without delay initiate the procedure provided for in Article 93 (2).

11 The last sentence of that article provides that the Member State concerned is not to put its proposed measures into effect until that procedure has resulted in a final decision.

12 It is established that on 25 January 1977, that is to say before the date of coming into operation of the proposed measure in dispute, which was fixed at 31 January, the Commission informed the United Kingdom that it took the view that the measure was not compatible with the Common Market and that it would therefore initiate proceedings under Article 93.

13 It is also established that the defendant nevertheless brought the disputed measure into operation and continued to apply it notwithstanding the Commission decision of 17 February 1977 and the reference to the Court in Application 31/77.

14 The United Kingdom has lodged simultaneously a defence in Case 31/77 and an application for annulment (Case 53/77) on the ground that in adopting its decision the Commission was acting 'without jurisdiction and/or infringing the Treaty and/or misusing its powers.'

15 In this interlocutory application the Commission is asking for the adoption of an interim measure, within the meaning of Article 186 of the Treaty, requiring the United Kingdom to cease infringing the said decision pending the decisions of the Court which will, in both cases, determine the questions of law at issue between the Commission and the United Kingdom.

16 Articles 92 and 93 lay down machinery for the review of the compatibility of State aids with the Common Market in such a way that any national measure instituting or altering any such aid shall be investigated by the Commission and that no such measure may be put into effect until the Commission has announced its decision.

17 It is therefore necessary to find, without pre-judging the question whether the decision of 17 February is or is not well founded, that by bringing the disputed aid measure into force from 31 January 1977 the United Kingdom has acted in contravention of this system, which is essential to protect the proper functioning of the Common Market.

18 Even if the Member State in question took the view that the aid measure was compatible with the Common Market and that the contrary decision of the Commission was vitiated by infringement of the rules of the Treaty, that fact could not entitle it to defy the clear provisions of Article 93 and to act as if that decision were non-existent in law.

19 Indeed, it is in order to prevent Member States from acting as judges in their own cause that the Treaty provides them, namely in Article 173 and the following articles, with the opportunity to refer to the Court any infringement of the law on the part of the institutions, so that a decision of the Commission remains 'binding in its entirety' upon the State to which it is addressed — as laid down by the fourth paragraph of Article 189 — unless the Court decides to the contrary.

20 Disregard of the provisions of the final sentence of Article 93, which is the means of safeguarding the machinery for review laid down by that article, interferes with the proper operation of that machinery to such an extent as to be capable by itself of giving rise to the application of Article 186.

21 The fact that the Commission originally tried to remedy the situation described above without recourse to the Court cannot affect the gravity of that interference and thus exclude the application of Article 186.

22 Nor can the fact that it may very shortly be possible to hear and adjudicate upon the substance of Cases 31/77 and 53/77 militate against the need to ensure that the dispute between the United Kingdom and the Commission with regard to the validity of the decision of 17 February shall be conducted with proper regard to the conditions and procedural requirements laid down by the Treaty.

23 Moreover the provisional measure sought will not necessarily have irreversible consequences as, if the decision of the Commission were to be annulled, the United Kingdom would still be in a position to provide the aid in dispute retroactively.

24 Having regard to the circumstances of the case, in particular of the failure to observe the provisions of the last sentence of Article 93, it is therefore necessary to order the United Kingdom of Great Britain and Northern Ireland to cease forthwith to apply the aid measure which it has been operating since 31 January 1977.

Costs

25 Costs must be reserved.

On those grounds,

THE COURT,

as an interlocutory decision, hereby orders as follows:

**(a) The United Kingdom of Great Britain and Northern Ireland shall forthwith cease to apply the aid measure which it has been operating since 31 January 1977;**

**(b) The costs are reserved.**

Luxembourg, 21 May 1977

A. Van Houtte
Registrar

H. Kutscher
President