ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
1 June 1999 *

In Case T-74/99,

Karl L. Meyer, farmer, residing at Uturoa, Isle of Raiatea, French Polynesia, represented by Jean-Dominique des Arcis, of the Papeete Bar, with an address for service in Luxembourg care of Horst Pakowski, Ambassador of the Federal Republic of Germany, 20-22 Avenue Émile Reuter,

applicant,

v

Council of the European Union,

defendant,

APPLICATION for annulment of Council Decision 98/317/EC of 3 May 1998 in accordance with Article 109j(4) of the Treaty (OJ 1998 L 139, p. 30),

* Language of the case: French.

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

composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges,
Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 On 3 May 1998 the Council adopted Decision 98/317/EC in accordance with Article 109j(4) of the Treaty (OJ 1998 L 139, p. 30, hereinafter 'Decision 98/317'), designating the Member States of the European Union fulfilling the necessary conditions for the adoption of the single currency on 1 January 1999.

2 The applicant, who operates a tropical fruit plantation on the Isle of Raiatea in French Polynesia, subsequently learned, through an article in the local press, of the existence of the Protocol on France (OJ 1992 C 191, p. 90) which was annexed to the Treaty establishing the European Community pursuant to the Final Act of the Treaty on European Union signed at Maastricht on 7 February 1992 (OJ 1992 C 191, p. 1).

3 It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 11 March 1999, the applicant brought the present

action, expressing, in essence, his view that French Polynesia, which is referred to in Annex IV to the EC Treaty (now, after amendment, Annex II EC) concerning the overseas countries and territories to which the provisions of Part IV of the Treaty apply, should not be excluded from economic and monetary union.

Form of order sought by the applicant

4 The applicant claims that the Court should:

— admit all his claims and declare them well founded;

— rule that the exclusion of French Polynesia from European monetary union is an arbitrary act which discriminates against its population, contrary to Article 6 of the EC Treaty (now, after amendment, Article 12 EC) and Article 8 of the EC Treaty (now, after amendment, Article 17 EC);

— order the annulment and amendment of that part of Decision 98/317 which concerns the exclusion of French Polynesia from the 'euro zone';

— order the Council to pay him the sum of FRF 20 000 in respect of the irrecoverable costs which he has had to incur in the defence of his interests.

Law

5 Article 111 of the Rules of Procedure of the Court of First Instance, as amended with effect from 1 June 1997 (OJ 1997 L 103, p. 6), provides that, where an action is manifestly inadmissible or manifestly lacking any foundation in law, the Court of First Instance may, by reasoned order and without taking further steps in the proceedings, give a decision on the action.

6 In the present case, the Court considers that sufficient information is available to it from the documents in the case-file and has decided, pursuant to that article, to give its ruling without taking further steps in the proceedings.

7 Although he does not expressly refer to it in his application, the applicant's case is based on Article 173 of the EC Treaty (now, after amendment, Article 230 EC), the fourth paragraph of which, in particular, permits any natural person to institute proceedings against a decision which, although in the form of a regulation or decision addressed to another person, is of direct and individual concern to the former.

8 However, according to the fifth paragraph of Article 173 of the EC Treaty (now, after amendment, the fifth paragraph of Article 230 EC), the proceedings provided for in that article are to be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

9 Article 102(1) of the Rules of Procedure of the Court of First Instance provides that, where a measure adopted by an institution is published, the period of time allowed for commencing proceedings against that measure is to run from the 15th day after publication thereof in the *Official Journal of the European Communities*.

10 In addition, under Annex II to the Rules of Procedure of the Court of Justice, to which reference is made in Article 102(2) of the Rules of Procedure of the Court of First Instance, the time-limit of two months provided for in the fifth paragraph of Article 173 of the EC Treaty is extended, on account of distance, by one month in the case of a party established in the territory of French Polynesia.

11 Decision 98/317, which the applicant claims is unlawful in the present case, was published in the *Official Journal* on 11 May 1998. The applicant therefore had three months and fifteen days from that date in which to commence proceedings challenging its legality under Article 173 of the EC Treaty, that is to say, until 26 August 1998. Clearly, the present action was brought after that date. It follows that, for that reason alone, and without there being any need for further examination of the admissibility of that action, it must be declared inadmissible.

12 The reason relied on by the applicant to justify the delay in bringing his action, namely that the contents and implications of Decision 98/317 as regards French Polynesia did not come to his knowledge until 4 January 1999, is irrelevant. The short answer to that point is that, following the publication of Decision 98/317 in the *Official Journal*, the applicant had available to him all the information needed in order to determine the effects of the adoption of that decision in relation to French Polynesia.

13 The time-limit for bringing proceedings provided for in the fifth paragraph of Article 173 of the EC Treaty is designed to ensure not only that the applicant has a reasonable amount of time in which to assess whether there exist grounds for contesting a measure and, if so, to prepare his application, but also that a measure cannot be the subject of an application for annulment after a certain time has elapsed. Only by means of the strict application of the time-limit thus prescribed is it possible to fulfil the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice (order of the Court of Justice in Case C-51/91 *France* v *Commission* [1992] ECR I-525, paragraph 8).

14 For the sake of completeness, it should be noted that Article 2 of Decision 98/317 provides that that decision is addressed to the Member States; consequently, the applicant would have to show in any event that it was of direct and individual concern to him. As it is, the arguments put forward by the applicant in his application do not fulfil that requirement.

15 In the light of the foregoing, the action must be dismissed as manifestly inadmissible.

Costs

16 Pursuant to Article 87(1) of the Rules of Procedure, the applicant must be ordered to bear his own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

1. **The action is dismissed as manifestly inadmissible.**

2. **The applicant is ordered to bear his own costs.**

Luxembourg, 1 June 1999.

H. Jung — Registrar

M. Jaeger — President