JUDGMENT OF THE COURT
15 December 1987 *

In Case 346/85

United Kingdom, represented by R. N. Ricks of the Treasury Solicitor's Department, acting as Agent, assisted by Stephen Richards, Barrister of Gray's Inn, with an address for service in Luxembourg at the British Embassy,

applicant,

v

Commission of the European Communities, represented by D. Grant Lawrence, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Decision 85/466 of 28 August 1985 concerning the clearance of the accounts presented by the United Kingdom in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, expenditure for 1981 (Official Journal 1985, L 267, p. 52) is void in relation to fishery products,

THE COURT,

composed of: G. Bosco (President of Chamber), acting as President, J. C. Moitinho de Almeida (President of Chamber), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. Kakouris, R. Joliet and F. Schockweiler, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 5 May 1987,

* Language of the Case: English.

after hearing the Opinion of the Advocate General delivered at the sitting on 16 September 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 15 November 1985 the United Kingdom brought an action before the Court under the first paragraph of Article 173 of the EEC Treaty for a declaration that Commission Decision 85/466 of 28 August 1985 on the clearance of the accounts presented by the United Kingdom in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section (hereinafter referred to as 'the Fund'), expenditure for 1981 (Official Journal 1981, L 267, p. 52), is void in so far as the Commission has failed to charge to the Fund the sums of UKL 12 976.92 and UKL 3 236.25 incurred by the United Kingdom in 1981 by way of financial compensation to producers' organizations in respect of compensation paid by them for the withdrawal of cod and hake respectively from the market.

2 The United Kingdom relies on four submissions in support of its action:

(a) Infringement of Article 43 of the EEC Treaty and Article 102 of the Act of Accession in conjunction with Regulation No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218), Regulation No 1723/72 of the Commission of 26 July 1972 on the clearance of the accounts of the Fund (Official Journal, English Special Edition (Second Series) III, p. 109) and Council Regulation No 100/76 of 19 January 1976 on the common organization of the market in fishery products (Official Journal, L 20, p. 1);

(b) Infringement of Regulations Nos 729/70, 1723/72 and 100/76;

(c) Misuse of powers;

(d) Infringement of essential procedural requirements.

3 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

4 The United Kingdom's first submission is essentially that the fishing quotas on which the Commission relies in order to refuse Community financing of the intervention at issue are not legally binding because the power to adopt the Community measures in the area of conservation of the resources of the sea is vested in the Council and there was no process of cooperation as required by the case-law of the Court to remedy in 1981 the Council's failure to act.

5 The Commission contends that in view of the Court's case-law it was justified in requesting the Member States in the special situation obtaining in 1981 to comply with the proposals it had submitted to the Council for 1981 fixing total allowable catches (TACs) for certain fish stocks and their allocation among the Member States.

6 In order to assess the merits of the first submission it is necessary to consider whether in 1981 there were Community rules in relation to the conservation of the resources of the sea restricting catches.

7 The essential point about the situation in 1981 is that the Council, which pursuant to Article 102 of the 1972 Act of Accession has since 1 January 1979 been solely responsible for the adoption of conservation measures under the common fisheries policy, acting on a proposal from the Commission, adopted no such measures.

8 Council Decision 80/993 of 28 October 1980, based on the Treaties, concerning fishery activities in waters under the sovereignty or jurisdiction of Member States and adopted on a temporary basis pending the adoption of permanent Community measures (Official Journal 1980, L 298, p. 38), laid down interim measures applicable until 20 December 1980. Those measures provided that the Member States should conduct their fishing activities in such a way as to take into account the total allowable catches and the part thereof made available to third countries

under agreements or arrangements made with them, pursuant to Council Regulation No 754/80 of 26 March 1980 concerning, for certain fish stocks occurring in the Community fishing zone, the fixing for 1980 of the total allowable catches, the share available for the Community and the means of making the catches (Official Journal 1980, L 84, p. 36) and the Commission's proposals of 12 September and 24 October 1980.

9 At its meeting on 15 to 17 December 1980 the Council had adopted a declaration in the minutes to the effect that the Member States would conduct their fishing activities in such a way that the catches made by their ships during the interim period would take into account the TACs which had been submitted, for 1981, by the Commission to the Council in its proposals of 18 November and 16 December 1980.

10 In 1981 the Commission repeatedly amended its TAC proposals and ultimately submitted to the Council on 24 July 1981 a proposal for a regulation concerning, for certain fish stocks occurring in the Community fishing zone, the fixing of the total allowable catches for 1981 and the share available to the Community and a proposal for a regulation concerning the allocation among the Member States of the total catch possibilities available to the Community in 1981 for fish stocks or groups of them occurring in the Community fishing zone.

11 In a declaration submitted to the Council on 27 July 1981 (Official Journal, C 224, p. 1) the Commission set out the position resulting from the absence of agreement on its proposals for fixing the TACs and quotas for 1981. The Commission recalled that it had certain rights and duties under Article 155 of the Treaty, as had been confirmed by the Court in particular in its judgment of 5 May 1981 in Case 804/79 *Commission* v *United Kingdom* [1981] ECR 1045. In view of the overriding public interest, and, as a precautionary measure pending a final decision by the Council, the Commission therefore called upon all Member States in pursuance of their rights and duties to conduct their fishing activities in such a way as to ensure compliance with the Commission's proposals. The Commission also declared that it was determined to use all the means in its power to ensure the compliance by the Member States with those proposals, which it considered in the circumstances to be legally binding upon the Member States.

12 It is apparent from the minutes of the Council meeting on 27 July 1981 that the Commission's declaration was challenged by the Council's Legal Department and by the representatives of the various Member States, and that finally the Council agreed to discuss the TACs and quotas proposed for 1981 at its next meeting.

13 In a letter to the Member States dated 28 July 1981 the Commission reminded the Member States of its declaration and added that it believed it was obliged not merely to approve or disapprove, in the light of its proposals, national measures as and when they might be submitted to it, but also to require all Member States to take steps to comply with those proposals; pending the next meeting of the Council the Commission intended to give its approval to catches which amounted to not more than three-quarters of the amount of the quotas proposed by it. The Commission called upon all Member States to indicate not later than 24 August 1981 the measures which they proposed to take in order to ensure that this general rule was observed in the interim period.

14 On 5 January 1981 the United Kingdom informed the Commission of measures restricting herring fishing from the Mourne stock for 1981. On 17 March 1981 the Commission confirmed that the United Kingdom measure complied with the proposed TAC regulation for 1981.

15 On 17 September 1981 the United Kingdom adopted certain measures restricting mackerel catches in certain areas and the Commission approved that conservation measure. No other conservation measures were adopted.

16 The Court has had occasion to state the applicable Community law on the subject in its previous judgments, most recently in the judgment of 5 May 1981 referred to above. The present case, however, differs from the situation described in that judgment inasmuch as the Council took no interim decision for 1981 and all that issued from it was the declaration in the minutes of the Council meeting on 15 to 17 December 1980 that the Member States would conduct their fishing activities in such a way that the catches would take into account the TACs submitted for 1981 by the Commission to the Council in its proposals of 18 November and 16 December 1980.

17 The Court held in its judgment of 5 May 1981, referred to above, that, where the Council had failed to act, Article 5 of the Treaty required Member States to facilitate the Community's accomplishment of its task and to refrain from any measures likely to jeopardize the achievement of the aims of the Treaty; Article 5 imposed on Member States special duties of action and abstention where the Commission, in order to meet urgent conservation needs, had submitted to the Council proposals which, although they were not adopted by the Council, represented a basis for concerted Community action. The Court also declared that this was a field reserved to the powers of the Community, within which Member States might henceforth act only as trustees of the common interest; Member States could not, therefore, in the absence of appropriate action on the part of the Council, bring into force any interim conservation measures which might be required by the situation except as part of a process of collaboration with the Commission. Member States had a duty not to lay down national conservation measures incompatible with the objections, reservations or conditions which might be formulated by the Commission.

18 The Court thus accepted that where the Council had failed to adopt the conservation measures necessary to protect fish stocks, such measures, designed to answer urgent needs, might be agreed upon by means of a process of cooperation between the Member States and the Commission, in order to enable the Community to meet its responsibilities.

19 It is common ground that no such process of cooperation was initiated in 1981 between the United Kingdom and the Commission since the United Kingdom did not respond to the Commission's invitation to adopt the measures needed to ensure compliance with its proposals. In those circumstances, and without its being necessary to rule on the legal consequences of that lack of cooperation on the part of a Member State, it must be found that the proposals unilaterally made by the Commission in relation to the fish quotas to be allocated to the United Kingdom cannot be regarded as Community rules.

20 Moreover, as the Court has repeatedly held, Community legislation must be certain and its application foreseeable by those subject to it. That requirement of legal certainty must be observed all the more strictly in the case of rules liable to

entail financial consequences, in order that those concerned may know precisely the extent of the obligations which they impose on them.

21 It follows from the foregoing that in the present case there were in 1981 no rules of Community law within the meaning of Article 3 of Regulation No 729/70, disregard of which could justify the Commission's refusal to charge to the Fund the intervention payments which are the subject of the action.

22 Moreover, it has not been denied that the expenditure was actually incurred by the United Kingdom. Commission Decision 85/466 of 28 August 1985 must therefore be declared void as claimed in the application and there is no need to consider the applicant's other submissions and arguments.

Costs

23 Under Article 69 (2) of the Rules of Procedure the unsuccessful party must be ordered to pay the costs. As the Commission has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that Commission Decision 85/466/EEC of 28 August 1985 on the clearance of the accounts presented by the United Kingdom in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, expenditure for 1981, is void in so far as the Commission has failed to charge to the Fund the sums of UKL 12 976.92 and UKL 3 236.25 in respect of intervention payments made for the withdrawal from the market of cod and hake;

(2) Orders the Commission to pay the costs.

Bosco Moitinho de Almeida Koopmans Everling

Bahlmann Galmot Kakouris Joliet Schockweiler

Delivered in open court in Luxembourg on 15 December 1987.

P. Heim
President

A. J. Mackenzie Stuart
Registrar