JUDGMENT OF THE COURT
5 May 1998 *

In Case C-391/96 P,

Compagnie Continentale (France) SA, a company incorporated under French law, established at Levallois-Perret (France), represented by Patrick Chabrier, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 24 September 1996 in Case T-494/93 *Compagnie Continentale* v *Commission* [1996] ECR II-1157, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by Marie-José Jonczy, Legal Adviser, and Nicholas Khan, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

* Language of the case: French.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. Gulmann, H. Ragnemalm, M. Wathelet (Rapporteur) and R. Schintgen (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, P. J. G. Kapteyn, J. L. Murray, D. A. O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann, L. Sevón and K. M. Ioannou, Judges,

Advocate General: A. La Pergola,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from Compagnie Continentale (France) SA and the Commission at the hearing on 8 October 1997,

after hearing the Opinion of the Advocate General at the sitting on 16 December 1997,

gives the following

Judgment

1 By an application lodged at the Registry of the Court of Justice on 4 December 1996, Compagnie Continentale (France) SA (hereinafter 'Compagnie Continentale' or 'the appellant') brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 24 September 1996 in Case T-494/93 *Compagnie Continentale* v *Commission* [1996] ECR II-1157, (hereinafter 'the contested judgment'), dismissing as inadmissible its action for the annulment of the Commission's decision of 1 April 1993 addressed to the Vnesheconombank.

Legal background

2 On 16 December 1991, the Council adopted Decision 91/658/EEC granting a medium-term loan to the Soviet Union and its constituent Republics (OJ 1991 L 362, p. 89).

3 Article 1(1) thereof provides:

'The Community shall grant to the USSR and its constituent Republics a medium-term loan of not more than ECU 1 250 million in principal, in three successive instalments and for a maximum duration of three years, in order to enable agricultural and food products and medical supplies ... to be imported.'

4 Article 2 of Decision 91/658 provides that for those purposes:

'... the Commission is hereby empowered to borrow, on behalf of the European Economic Community, the necessary resources that will be placed at the disposal of the USSR and its constituent Republics in the form of a loan'.

5 Article 3 provides:

'The loan referred to in Article 2 shall be managed by the Commission.'

6 Article 4 further provides:

'1. The Commission is hereby empowered to finalise, in concert with the authorities of the USSR and its constituent Republics ..., the economic and financial conditions to be attached to the loan, the rules governing the provision of funds and the necessary guarantees to ensure loan repayment.

...

3. Imports of products financed by the loan shall be effected at world market prices. Free competition shall be guaranteed for the purchase and supply of products, which shall meet internationally recognised standards of quality.'

7 On 9 July 1992 the Commission adopted Regulation (EEC) No 1897/92 laying down detailed rules for the implementation of a medium-term loan to the Soviet Union and its constituent Republics [in accordance with] Council Decision 91/658/EEC (OJ 1992 L 191, p. 22).

8 Under Article 2 of that regulation:

'The loans shall be concluded on the basis of agreements entered into between the Republics and the Commission which shall include, as conditions for disbursement of the loan, the requirements set out in Articles 3 to 7.'

9 Article 4 of Regulation No 1897/92 states that:

'1. The loans shall only finance the purchase and supply under contracts that have been recognised by the Commission as complying with the provisions of Decision 91/658/EEC and with the provisions of the agreements referred to in Article 2.

2. Contracts shall be submitted to the Commission for recognition by the Republics or their designated financial agents.'

10 Article 5 sets out the conditions of recognition pursuant to Article 4. These include the two following conditions:

'(1) The contract was awarded following a procedure guaranteeing free competition ...

(2) The contract offers the most favourable terms of purchase in relation to the price normally obtained on the international markets.'

11 On 9 December 1992 the European Economic Community, the Russian Federation, as successor in law of the USSR, and its financial agent, the Vnesheconombank ('VEB'), signed a Memorandum of Understanding under Regulation No 1897/92, on the basis of which the European Community was to grant to Russia the loan provided for in Decision 91/658. It was provided that the EEC as lender would grant to the VEB, as borrower, under the guarantee of the Russian Federation, a medium-term loan of the principal sum of ECU 349 million for a maximum term of three years.

12 Paragraph 6 of the Memorandum provides:

'The proceeds of the loan, less commissions and costs incurred by the EEC, shall be disbursed to the borrower and applied, according to the terms and conditions of the Loan Agreement, exclusively to cover irrevocable documentary credits issued by the borrower in international standard form pursuant to delivery contracts provided that such contracts and documentary credits have been approved by the Commission of the European Communities as complying with the Council decision of 16 December 1991 and the present Memorandum of Understanding.'

13 Paragraph 7 sets out the conditions to which recognition of the conformity of the contract is subject. It states in particular that the suppliers are to be selected by Russian organisations designated to that end by the Government of the Russian Federation.

14 On 9 December 1992 the Commission and the VEB signed the loan agreement provided for in Regulation No 1897/92 and the Memorandum of Understanding (hereinafter 'the loan agreement'). That agreement sets out in precise terms the machinery for the disbursement of the loan. It establishes a facility to which recourse may be had during the drawing period (15 January 1993 to 15 July 1993), with a view to the advance of sums authorised for payment of goods supplied.

15 On 15 January 1993, in accordance with Article 2 of Decision 91/658, the Commission, as borrower, concluded on behalf of the Community a loan agreement with a consortium of banks led by Crédit Lyonnais.

Facts and procedure before the Court of First Instance

16 In the judgment appealed against the Court of First Instance made the following findings:

'8. The applicant, an international trading company specialising in agricultural raw materials, was contacted, together with other companies, in connection with an [informal] invitation to tender organised by Exportkhleb, a State-owned company charged by the Russian Federation with the negotiation of wheat purchases.

9. On 27 November 1992 the applicant signed two contracts with Exportkhleb for the sale of wheat. Under the first contract, it undertook to supply 500 000 tonnes of milling wheat, 50 000 tonnes of which were subsequently cancelled, at a price of US $140.40 per tonne, CIF free out one safe Baltic Sea discharge port. Under the second contract, it undertook to supply 20 000 tonnes of durum wheat at a price of US $145 per tonne, CIF free out one safe Black Sea port. That second contract was modified on 2 December 1992 to provide for the delivery of an additional 15 000 tonnes of durum wheat at a price of US $148 per tonne, CIF free out one safe Black Sea port. All those consignments were to be shipped by 28 February 1993.

10. Following signature of the loan agreement ... the VEB requested the Commission to approve the contracts concluded between Exportkhleb and the grain exporting companies, including the contracts signed by the applicant.

11. After the Commission had obtained from the applicant various additional items of essential information, concerning in particular the ecu/US$ exchange rate, which had not been fixed in the contract, it finally gave its approval on 27 January 1993, in the form of a notice of confirmation addressed to the VEB.

12. According to the applicant, the letters of credit did not become operational until 16 February 1993 in the case of the durum wheat and 25 February 1993 in the case of the milling wheat, that is to say, a few days before the end of the shipment period provided for by the contracts (28 February 1993).

13. The contracts were only partially performed. Although a substantial part of the goods had been delivered or was in the course of shipment, it was becoming clear, according to the applicant, that it would not be possible to deliver all of them by 28 February 1993.

14. On 19 February 1993 Exportkhleb invited all the exporters to attend a meeting in Brussels, which was held on 22 and 23 February 1993. At that meeting Exportkhleb requested the exporters to submit fresh quotations for delivery of what it termed the "foreseeable balance", that is to say, the quantities which could not reasonably be expected to be delivered by 28 February 1993. According to the applicant, the price of wheat rose considerably between November 1992, when the sale contracts were concluded, and February 1993, when those fresh negotiations took place.

15. Following negotiations in which the exporting companies had to align themselves on the lowest bid, namely US $155 per tonne, agreement was reached between the importer and its contracting partners regarding the allocation of the fresh quantities to be supplied by each company. Compagnie Continentale was awarded a contract for the supply of 300 000 tonnes of milling wheat, of which 120 000 tonnes were to be supplied at the price initially agreed and 180 000 tonnes at a price of US $155, together with 20 000 tonnes of durum wheat or milling wheat at a price of US $155. Under that informal agreement, the shipment period was to end on 30 April 1993.

16. According to the applicant, it was decided at the request of Exportkhleb, by reason of the urgency arising from the seriousness of the food situation in Russia and with a view to obviating the ponderous procedure for approval and for setting up the credits, that those modifications would be formalised by simple [addenda] to the initial contracts, which were dated, for the sake of convenience, 23 February 1993, the date of the meeting in Brussels. When the [addenda] were drawn up, it was agreed that the quantity of wheat to be delivered should be reduced, in order, according to the applicant, to prevent the new total price from exceeding the total price initially provided for.

17. On 9 March 1993 Exportkhleb informed the Commission, first, that the contracts concluded with five of its suppliers had been amended and, second, that the deliveries still to be made would henceforth be effected at a price of US $155 per tonne, to be converted into ecus at a rate of 1.17418 (ECU 132 per tonne).

18. On 12 March 1993 Mr Legras, Director General in the Directorate-General for Agriculture (DG VI), replied to Exportkhleb, stating that he wished to draw its attention to the fact that, since the maximum value of those contracts had already been set by the Commission's notice of confirmation and the entire available amount of credits for wheat was already contracted, such a request could only be accepted by the Commission if the total value of the contracts was maintained, which could be done by a corresponding reduction in outstanding quantities to be delivered. He further stated that the request for approval of the amendments could only be considered by the Commission pursuant to an official request from the VEB.

19. According to the applicant, that letter was interpreted as confirming the Commission's agreement in principle, subject to scrutiny for the purposes of formal approval once the documentation was sent by the VEB. It was for that reason that the applicant continued to ship the cargoes of wheat bound for Russia.

20. According to the applicant, the documentation containing the new bids and the amendments to the contracts was officially sent by the VEB to the Commission on 22 March 1993. On 1 April 1993, by letter addressed to the VEB by the Agriculture Commissioner, the Commission refused to approve the amendments to the contracts.

21. The contents of the letter of 1 April 1993 may be summarised as follows. The Commissioner, Mr R. Steichen, stated that, having examined the amendments to the contracts concluded between Exportkhleb and various suppliers, the Commission was prepared to accept those relating to the postponement of the final dates for delivery and payment. On the other hand, "the magnitude of the price increases is of such a nature that we cannot consider them as a necessary adaptation but as a substantial modification of the contracts initially negotiated". He

went on to state: "In fact, the present level of prices on the world market (end of March 1993) is not significantly different from the level which prevailed at the time when the initial prices were agreed (end of November 1992)." The Commissioner pointed out that the need, first, to ensure free competition between potential suppliers and, second, to secure the most favourable purchase terms constituted one of the main factors governing the grant of approval by the Commission. He found that, in the present case, the amendments had been negotiated directly with the companies concerned, without any competition with other suppliers, and concluded: "The Commission cannot approve such major changes as simple amendments to existing contracts." The Commissioner stated that he would be willing to approve the amendments relating to the postponement of delivery and payment, subject to compliance with the usual procedure. On the other hand, he stated that, "should it be considered necessary to modify the prices or quantities, it would then be appropriate to negotiate new contracts to be submitted to the Commission for approval under the full usual procedure (including submission of at least 3 offers)".

22. On 5 April 1993 the applicant received a telex from Exportkhleb informing it of the Commission's refusal and quoting extracts from the letter of 1 April 1993, attributed to Mr Legras. On 20 April it received from Exportkhleb the complete text of the letter in question.

...

23. It was in those circumstances that, by application lodged at the Registry of the Court of Justice on 22 June 1993 ..., the applicant brought the present action.

24. By order of 27 September 1993 the Court of Justice referred the case to the Court of First Instance pursuant to Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities (OJ 1993 L 144, p. 21).

25. ... By document lodged at the Registry on 7 December 1993 the Commission raised an objection of inadmissibility.'

17 The contested judgment indicates that the applicant requested the Court to:

'— annul the Commission's decision of 1 April 1993 refusing to approve the agreements concluded on 23 February 1993 and the amendments to the letters of credit relating thereto;

— restore the company's right to receive from Crédit Lyonnais the balance arising from the difference between the price initially agreed and the prices subsequently agreed in relation to the quantities of wheat delivered from 28 February 1993 onwards, failing which the company expressly reserves all its rights if necessary to bring proceedings for non-contractual liability with a view to obtaining compensation for the loss it has suffered;

— order the Commission to pay the costs' (paragraph 28 of the contested judgment).

18 The Commission raised an objection of inadmissibility in which it contended that the Court should:

'— declare the action inadmissible on the ground that it was brought out of time;

— declare the application for annulment inadmissible on the ground that the decision is not of direct concern to the applicant;

— declare the ancillary claim inadmissible;

— order the applicant to pay the costs' (paragraph 29 of the contested judgment).

The contested judgment

19 The Court of First Instance dismissed as inadmissible the application for the annulment of the Commission's decision of 1 April 1993 ('the contested decision') on the following grounds:

'47. According to the fourth paragraph of Article 173 of the Treaty, any natural or legal person may institute proceedings against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to the former.

48. It is necessary, therefore, to determine whether the letter sent by the Commission to the VEB on 1 April 1993 is of direct and individual concern to the applicant.

49. First of all, the Commission has not denied that the applicant is individually concerned. Having regard to the circumstances of the case, the Court considers that only the question whether the contested decision is of direct concern to the applicant need be examined.

50. The Community rules and the agreements concluded between the Community and the Russian Federation provide for a division of powers between the Commission and the agent appointed by the Russian Federation to arrange the purchase of the wheat. It is for that agent — in the present case, Exportkhleb — to select the other contracting party by means of an invitation to tender and to negotiate and

conclude the contract. The Commission's role is merely to verify that the conditions for Community financing are fulfilled and, where necessary, to acknowledge, for the purposes of the disbursement of the loan, that such contracts are in conformity with the provisions of Decision 91/658 and with the agreements concluded with the Russian Federation. It is not for the Commission, therefore, to assess the commercial contract with reference to any other criteria.

51. It follows that the undertaking to which a contract is awarded has a legal relationship only with the party with whom it contracts, namely Exportkhleb, which is authorised by the Russian Federation to conclude contracts for the purchase of wheat. The Commission, for its part, has legal relations only with the borrower, namely the Russian Federation's financial agent, the VEB, which notifies it of the commercial contracts so that their conformity can be recognised, and which is the addressee of the Commission's decision in that regard.

52. The action of the Commission does not therefore affect the legal validity of the commercial contract concluded between the applicant and Exportkhleb; nor does it modify the terms of the contract, particularly as regards the prices agreed by the parties. Thus, irrespective of the Commission's decision not to recognise the agreements as being in conformity with the applicable provisions, the amendment which the parties made on 23 February 1993 to their contract of 28 November 1992 remains validly concluded on the terms agreed between them.

53. The fact that the Commission was in contact with the applicant or with Exportkhleb cannot affect that assessment of the legal rights and obligations which each of the parties involved has under the applicable legislation and contractual agreements. Moreover, as regards the admissibility of the application for annulment, the exchanges relied on by the applicant do not show that the Commission went beyond its proper role. Thus, the sole purpose of the alleged contacts between the Commission and the applicant in January 1993 was to have the parties include in their contract a condition which was indispensable for acceptance

of conformity, but it was left to the parties alone to modify their contract if they wanted to secure the financing provided for. Furthermore, the fact that the Commission sent the applicant a copy of the notice of confirmation addressed to the VEB does not affect the legal significance of that notice.

54. Whilst it is true that, on receiving from the Commission a decision finding that the contract is not in conformity with the applicable provisions, the VEB may not issue a documentary credit capable of being covered by the Community guarantee, nevertheless, as stated above, the decision affects neither the validity nor the terms of the contract concluded between the applicant and Exportkhleb. The Commission's decision does not take the place of a decision taken by the Russian national authorities, since the Commission may only examine the conformity of contracts for the purposes of Community financing.

55. Moreover, in order to establish that the contested decision is of direct concern to it, the applicant cannot rely on the presence in the commercial contracts of a suspensory clause making the performance of the contract and payment of the price subject to acknowledgement by the Commission that the criteria for disbursement of the Community loan are fulfilled. Such a clause is a link which the contracting parties decide to make between the contract concluded by them and a contingent future event: their agreement will be binding only if the latter occurs. The admissibility of an application under the fourth paragraph of Article 173 of the Treaty cannot, however, be made to depend on the intention of the parties. The applicant's argument must therefore be rejected.

56. Lastly, the Court considers that the applicant's claim for protection of a legitimate expectation that the amendment to the contracts would be validated by the Commission goes to the substance of the case and does not, therefore, affect its assessment of the admissibility of the action.

57. In view of the foregoing, the Court considers that the Commission's decision of 1 April 1993, addressed to the VEB, is not of direct concern to the applicant, within the meaning of the fourth paragraph of Article 173 of the Treaty. Consequently, the application for annulment of that decision must be declared inadmissible.'

20 With regard to the claim seeking restoration of the applicant's rights against a third party, the Court of First Instance pointed out that in an action for annulment based on Article 173 of the Treaty the role of the Community judicature is restricted to reviewing the legality of the contested act, and that that claim had accordingly to be declared inadmissible (paragraph 59 of the contested judgment.)

21 The Court considered that there was no need to examine the plea that the action had been brought out of time (paragraph 60).

22 In the light of those considerations, the Court of First Instance dismissed the action as inadmissible and ordered the applicant to pay the costs.

The appeal

23 In support of its appeal Compagnie Continentale relies on two pleas: infringement of the fourth paragraph of Article 173 of the Treaty and contradictory reasoning vitiating the judgment.

The first plea

24 The first plea is divided into two limbs.

25 First, the appellant criticises the Court of First Instance for taking the view that it was not directly concerned on the ground that 'the undertaking to which a contract is awarded has a legal relationship only with the party with whom it contracts, namely Exportkhleb' and that 'the Commission, for its part, has legal relations only with the borrower, namely the Russian Federation's financial agent, the VEB' (paragraph 51 of the contested judgment).

26 It argues that the existence of an individual and direct link has been deemed by the case-law not to be affected by the involvement of a State (or its agents) (Joined Cases 106/73 and 107/63 *Töpfer and Getreide-Import* [1965] ECR 405 and Joined Cases 41/70 to 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411) or by the absence of legal relations between an applicant and the Community institution whose decision is being contested (Case 169/84 *Cofaz and Others* v *Commission* [1986] ECR 391, Case T-83/92 *Zunis Holding and Others* v *Commission* [1993] ECR II-1169, Case T-3/93 *Air France* v *Commission* [1994] ECR II-121, and Case T-2/93 *Air France* v *Commission* [1994] ECR II-323).

27 In the present case, the appellant claims, the situation is on all fours with that in *International Fruit Company*, cited above, in which the Court held that where 'the national authorities do not enjoy any discretion' and where 'the Commission alone is competent to assess the economic situation in the light of which the grant of import licences must be justified', the decision directly affects the parties concerned; 'in these circumstances as far as the interested parties are concerned, the issue of or refusal to issue the import licences must be bound up with this decision'.

28 Secondly, it claims that the contested judgment is in breach of the fourth paragraph of Article 173 of the Treaty inasmuch as it declares that the applicant is not directly concerned by the contested decision on the ground that the latter 'does not ... affect the legal validity of the commercial contract concluded between the applicant and Exportkhleb; nor does it modify the terms of the contract, particularly as regards the prices agreed by the parties' (paragraph 52).

29 According to Compagnie Continentale, by wrongly limiting the scope of the condition laid down in the fourth paragraph of Article 173 to impairment of the applicant's legal situation, the Court of First Instance omitted to consider, as it had been requested to do, whether the legal effects produced by the contested decision affected the applicant's situation and its financial interests, irrespective of any continuing contractual relationship.

30 In *Zunis*, however, cited above, the Court of First Instance held that, for a decision to be 'of direct and individual concern' to the applicant, its 'legal and factual situation' had to be affected (paragraphs 34 and 35).

31 The Commission challenges the admissibility of the appeal on the ground that nearly all the arguments put forward merely reproduce arguments developed by the appellant before the Court of First Instance. It has consistently been held that an appeal which merely repeats or reproduces verbatim pleas and arguments already raised at first instance does not satisfy the requirements of Article 51 of the EC Statute of the Court of Justice and Article 112(1)(c) of its Rules of Procedure.

32 As to the substance, the Commission observes as a preliminary matter that the contractual clauses on which the appellant relies are far from clear and refutes the argument that, failing approval by the Commission, the contractual obligation to pay came to an end. The contract at issue could only be interpreted by the competent jurisdiction, that is to say that chosen by the contracting parties in the contract itself, namely the Moscow Chamber of Commerce and Industry. Compagnie Continentale has never brought the matter before that body.

33 As regards the first limb of the first plea and, in particular, the reference to the judgment in *International Fruit Company*, cited above, the Commission observes that in that case its refusal to issue import licences for dessert apples originating in non-member countries had been notified to the applicant through the intermediary of the Produktschap voor Groenten en Fruit in The Hague. Thus, the legal effect of the Commission's decision on the applicants stemmed directly from that decision, even if it was formally addressed to the Netherlands body.

34 In the present case, by contrast, the request for advance payments under the loan granted to the Russian Federation was apparently addressed to the Commission by the VEB on behalf of Russia (and not Compagnie Continentale) and the alleged effect was merely a result of a combination of the contested decision and the terms of the contract, to which the Commission is not a party.

35 As regards the second limb of the first plea, the Commission considers that, for an action for the annulment of a Commission decision to be admissible, the decision must produce effects in Community law with regard to the applicant, failing which it is not directly concerned by the decision. The effect relied on by the appellant stems solely from the contractual clauses which it invokes.

36 As regards the objection of inadmissibility raised by the Commission, the appeal clearly states which aspects of the contested judgment are criticised and the legal arguments which specifically support the appeal (see, in particular, the order of 26 April 1993 in Case C-244/92 P *Kupka-Floridi* v *Economic and Social Committee* [1993] ECR I-2041, paragraph 9). Accordingly, the fact that those arguments were also raised at first instance cannot entail their inadmissibility.

37 The objection of inadmissibility must therefore be dismissed.

38 Under the fourth paragraph of 173 of the Treaty, any natural or legal person may institute proceedings for the annulment of a decision addressed to that person or of a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to the former.

39 In the present case the contested decision was formally addressed to the VEB.

40 The Court of First Instance dealt only with the question whether the applicant was directly concerned by the contested decision, since the Commission had not denied that the applicant was individually concerned.

41 The Court's case-law shows that, for a person to be directly concerned by a Community measure, the latter must directly affect the legal situation of the individual and leave no discretion to the addressees of that measure who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules (see to that effect, in particular, *International Fruit Company*, cited above, paragraphs 23 to 29, Case 92/78 *Simmenthal* v *Commission* [1979] ECR 777, paragraphs 25 and 26, Case 113/77 *NTN Toyo Bearing Company and Others* v *Council* [1979] ECR 1185, paragraphs 11 and 12, Case 118/77 *ISO* v *Council* [1979] ECR 1277, paragraph 26, Case 119/77 *Nippon Seiko and Others* v *Council and Commission* [1979] ECR 1303, paragraph 14, Case 120/77 *Koyo Seiko and Others* v *Council and Commission* [1979] ECR 1337, paragraph 25, Case 121/77 *Nachi Fujikoshi and Others* v *Council* [1979] ECR 1363, paragraph 11, Joined Cases 87/77, 130/77, 22/83, 9/84 and 10/84 *Salerno and Others* v *Commission and Council* [1985] ECR 2523, paragraph 31, Case 333/85 *Mannesmann-Röhrenwerke and Benteler* v *Council* [1987] ECR 1381, paragraph 14, Case 55/86 *Arposol* v *Council* [1988] ECR 13, paragraphs 11 to 13, Case 207/86 *Apesco* v *Commission* [1988] ECR 2151, paragraph 12, and Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 9).

42 The same applies where the possibility for addressees not to give effect to the Community measure is purely theoretical and their intention to act in conformity with it is not in doubt (see to that effect Case 62/70 *Bock* v *Commission* [1971]

ECR 897, paragraphs 6 to 8, Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraphs 8 to 10, and Joined Cases C-68/94 and C-30/95 *France and Others* v *Commission* [1998] ECR I-1375, paragraph 51).

43 The Court of First Instance should therefore have determined whether the contested decision alone affected the appellant's legal situation, since the competent Russian authorities had no discretion to forgo Community financing and have the contract performed in accordance with the conditions agreed between the parties in the addendum but repudiated by the Commission.

44 The Court of First Instance merely found that the decision of the Commission, 'which may only examine the conformity of contracts for the purposes of Community financing', had not affected 'the legal validity of the commercial contract concluded between the applicant and Exportkhleb' and did not modify 'the terms of the contract, particularly as regards the prices agreed by the parties', and that the 'amendment which the parties made on 23 February 1993 to their contract of 28 November 1992 [remained therefore] validly concluded on the terms agreed between them' (paragraphs 52 and 54). It added that the presence in the contract of a 'suspensory clause making performance of the contract and payment of the contract price subject to acknowledgment by the Commission that the criteria for disbursement of the Community loan are fulfilled' resulted from the intention of the parties themselves, on which the admissibility of an action under the fourth paragraph of Article 173 could not be made to depend (paragraph 55).

45 However, the findings of the Court of First Instance contain objective, relevant and consistent grounds for concluding that the appellant was directly concerned by the contested decision.

46 The contested judgment indicates that the VEB, acting as financial agent for the Russian Federation, participated, in accordance with the Memorandum of Understanding and the loan agreement which binds it to the Commission, in the implementation of the Community financing of imports into the Russian Federation of agricultural and food products and medical supplies, as provided for in Decision 91/658.

47 Moreover, it appears that the validity of the supply contract at issue was subject to the suspensory condition of recognition by the Commission of conformity of the contract with the conditions for disbursement of the Community loan and no payment could be made if the bank designated in the contract did not receive a due undertaking for reimbursement issued by the Commission.

48 That detail is corroborated by the socio-economic context in which the supply contract was concluded: as stated in the third and fourth recitals in the preamble to Council Decision 91/658, the economic and financial situation of the recipient republic was critical, and the food and medical situation was deteriorating. In those circumstances it was legitimate to take the view that the supply contract was entered into only subject to the obligations assumed by the Community, in its capacity as lender, in regard to the VEB, once the commercial contracts had been recognised as being in conformity with Community rules.

49 In those circumstances the insertion into the contract of that suspensory clause, which was certainly the intention of the parties, merely reflected, as was emphasised by the Advocate General in point 69 of his Opinion, the fact that the supply contract was subject for financial reasons to the conclusion of the loan agreement between the Community and the republic in question, since payment for supplies

of cereals could be made only from financial resources made available to the purchasers by the Community by means of the opening of irrevocable documentary credits.

50 Exportkhleb's option to perform the supply contracts in accordance with the price conditions repudiated by the Commission and thus to forgo Community financing was purely theoretical and, in the light of the facts found by the Court of First Instance, was therefore not sufficient to prevent the appellant from being directly concerned by the contested decision.

51 It is thus clear that the contested decision whereby the Commission, in the exercise of its powers, refused to approve the addendum to the supply contract between Exportkhleb and Compagnie Continentale deprived the latter of any real possibility of performing the contract awarded to it, or of obtaining payment for supplies made thereunder.

52 Consequently, although the contested decision was addressed to the VEB, as financial agent of the Russian Federation, it directly affected the appellant's legal situation.

53 The Court of First Instance therefore erred in law in taking the view, in the light of the facts as found by it, that the appellant was not directly concerned, within the meaning of the fourth paragraph of Article 173 of the Treaty, by the contested decision.

54 The appeal is therefore well founded in so far as it relates to the dismissal as inadmissible of the action for annulment by the contested judgment.

The second plea

55 In view of the foregoing there is no need to examine the second plea.

Referral back of the case to the Court of First Instance

56 Under the first paragraph of Article 54 of the EC Statute of the Court of Justice, 'if the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.'

57 In the present case, the Court is of the view that it is not in a position to give judgment in the present state of the proceedings and that the case must therefore be referred back to the Court of First Instance for judgment on the substance.

On those grounds,

THE COURT

hereby:

1. **Annuls the judgment of the Court of First Instance of 24 September 1996 in Case T-494/93 *Compagnie Continentale* v *Commission* in so far as it dismisses as inadmissible the action for annulment brought by Compagnie Continentale (France) SA;**

2. **Refers the case back to the Court of First Instance for judgment on the substance;**

3. **Reserves costs.**

Rodríguez Iglesias Gulmann Ragnemalm

Wathelet Schintgen Mancini

Moitinho de Almeida Kapteyn Murray

Edward Puissochet Hirsch

Jann Sevón Ioannou

Delivered in open court in Luxembourg on 5 May 1998.

R. Grass G. C. Rodríguez Iglesias

Registrar President