JUDGMENT OF THE COURT
5 May 1998 *

In Case C-403/96 P,

Glencore Grain Ltd, formerly trading as Richco Commodities Ltd, a company incorporated under Bermudian law, established at Hamilton (Bermuda), represented by M. M. Slotboom, P. V. F. Bos and J. G. A. van Zuuren, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 Rue Goethe,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 24 September 1996 in Case T-491/93 *Richco* v *Commission* [1996] ECR II-1131, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by B. J. Drijber and N. 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: Dutch.

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 the parties 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 application lodged at the Registry of the Court of Justice on 23 December 1996, Glencore Grain Ltd, formerly trading as Richco Commodities Ltd (hereinafter 'Glencore' 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 in Case T-491/93 *Richco* v *Commission* [1996] ECR II-1131 (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 contested judgment the Court of First Instance made the following findings:

'8. The applicant, an international trading company, 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 28 November 1992 the applicant signed a contract with Exportkhleb for the sale of wheat, whereby it undertook to supply 700 000 tonnes of milling wheat at a price of US $140 per tonne, CIF free out one safe Baltic Sea discharge port. That contract stipulated that the goods were to be shipped by 28 February 1993.

10. Following signature of the loan agreement (see above), the VEB requested the Commission to approve the contracts concluded between Exportkhleb and the exporting companies, including the contract signed with 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. However, according to the applicant, that notice of confirmation modified the contract in two respects, namely the shipment period, which the Commission unilaterally extended until 31 March 1993, and the ecu/US$ exchange rate. By Addendum No 2 signed on 28 January 1993, Exportkhleb and the applicant finally agreed to fix the exchange rate on the basis of the official rate as at 15 January 1993, bringing the price up to ECU 115.86 per tonne.

12. According to the applicant, the documentary credit did not become effective until 22 February 1993, that is to say, one week before the end of the shipment period provided for by the contracts (28 February 1993).

13. 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 the goods 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 on the world market rose considerably between November 1992, when the sale contract was concluded, and February 1993, when the 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, reflecting, according to the applicant, the price on the world market at that date, agreement was reached between Exportkhleb and its contracting partners regarding the allocation of the fresh quantities to be supplied by each company. Richco Commodities was awarded a contract for 450 000 tonnes of milling wheat for delivery during the period from March to April 1993. Applying the new rate of exchange fixed by the parties, the price agreed was ECU 132.

16. According to the applicant, by reason of the urgency arising from the seriousness of the food situation in Russia, it was decided, at Exportkhleb's request, that those modifications would be formalised by a simple rider to the initial contract (Addendum No 3), dated 23 February 1993. When that addendum was drawn up, it was agreed that the quantity of wheat to be delivered should be reduced to 430 200 tonnes, 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 that the contract with the applicant had been modified.

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 whole 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 information was interpreted as confirming the Commission's agreement.

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 23 and 26 March 1993. The applicant maintains that on 7 April 1993 it was informed by Exportkhleb of the Commission's refusal to approve the amendments to the contract as initially concluded; that refusal was given concrete form by a letter sent to the VEB on 1 April 1993 by the Agriculture Commissioner.

21. In his letter of 1 April 1993, the Commissioner, Mr R. Steichen, stated in essence 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, he stated that "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 agreed 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. It was in those circumstances that, by application lodged at the Registry of the Court of Justice on 5 July 1993 ..., the applicant brought the present action.

23. By order of 27 September 1993 the Court of Justice referred the case to the Court of First Instance of the European Communities 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).

24. ... By document lodged at the Registry on 30 September 1993 the Commission raised an objection of inadmissibility.'

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

'— annul the decision or at least the act of the Commission of 1 April 1993 addressed to the VEB;

— order the Commission to pay it the sum of ECU 7 374 023.78, this sum being the difference between the price agreed and the price paid (ECU 6 615 990.36), plus ECU 758 033.42 for lost interest, together with interest thereon from the date when the action was brought;

— order the Commission to pay the costs' (paragraph 27).

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

'— declare the application for annulment inadmissible;

— declare the application for damages inadmissible;

— order the applicant to pay the costs' (paragraph 28).

The contested judgment

Admissibility of the action for annulment

19 The Court of First Instance dismissed as inadmissible the action 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 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 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, such as the prices agreed between 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, which was to decide whether or not to recognise the conformity of the initial contract or of the amendment thereto. 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. Similarly, the fact that the applicant was informed by the Commission of developments in the matter, and in particular that it received a copy of the notice of confirmation addressed to the VEB, does not as such establish that that decision is of direct concern to the applicant.

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 cannot 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 of the Russian national authorities, since the Commission may only examine the conformity of contracts for the purposes of Community financing.

55. Furthermore, as regards the direct applicability of Regulation No 1897/92, on which the applicant relies, the Court observes that Article 5 of that regulation lists on a non-exhaustive basis — as is apparent from the use of the adverbial phrase "in particular" — the conditions which contracts must fulfil in order to qualify for Community financing; in addition, Article 4(1) of the regulation expressly refers to the provisions of the agreements concluded between the Russian Federation and the Commission. As regards the loan agreement, which sets out in precise terms the detailed rules pursuant to which Community financing is granted, Article 5.1 thereof refers to the absolute discretion of the Commission. In those circumstances, the applicant's argument does not appear to be well founded.

56. Lastly, 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 contract 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 dependent on the intention of the parties. The applicant's argument must therefore be rejected.

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.'

Admissibility of the claim for compensation

20 The Court of First Instance declared the claim for compensation for loss allegedly suffered by the applicant admissible on the following grounds:

'63. The Court observes, first, that the arguments maintaining that the decision was legal and denying liability for breach of contract by one of the Russian parties go to the substance of the case and cannot constitute a ground of inadmissibility.

64. Second, it is settled case-law that the action for damages provided for by Article 178 and the second paragraph of Article 215 of the Treaty was meant to be an autonomous form of action with a particular purpose to fulfil within the system of remedies provided for (judgment in *Krohn* [Case 175/84 [1986] ECR 753], paragraph 26). It follows that, in principle, the inadmissibility of a claim for annulment cannot entail the inadmissibility of a claim for damages for alleged loss.

65. It has, however, been held, by way of exception to the principle stated above, that the inadmissibility of a claim for annulment renders a claim for damages inadmissible where the claim for damages is actually aimed at securing withdrawal of

an individual decision which has become definitive (judgment in *Krohn*, paragraph 33, and judgment of the Court of First Instance in Case T-514/93 *Cobrecaf and Others* v *Commission* [1995] ECR II-621, paragraph 59), and thus constitutes an abuse of process. The burden of proving such an abuse of process lies on the party pleading it.

66. In the present case, the Court considers that the Commission has not discharged that burden. First, the defendant has simply asserted that the applicant is merely seeking to obtain the same price as it would have obtained if the Commission had approved the amendment to the contract. Second, as the Court of Justice held in its judgment in *CMC* v *Commission* [Case 118/83 [1985] ECR 2325], which concerned an invitation to tender under the Lomé Convention, it would be wrong, in circumstances such as those of the present case, to dismiss the possibility that acts or conduct of the Commission or its officials or agents might cause damage to third parties. Any person who claims to have been injured by such acts or conduct must therefore have the possibility of bringing an action, if he is able to establish liability, that is, the existence of damage caused by an illegal act or illegal conduct on the part of the Community (judgment in *CMC* v *Commission*, paragraph 31).'

21 In the light of those considerations, the Court of First Instance:

(1) dismissed the application for annulment as inadmissible;

(2) dismissed the objection of inadmissibility inasmuch as it concerned the claim for compensation for the damage allegedly suffered by the applicant;

(3) ordered the procedure relating to that claim for compensation to be continued in relation to the substance;

(4) reserved the costs.

The appeal

22 In support of its appeal, Glencore raises two pleas: infringement of the fourth paragraph of Article 173 of the Treaty and contradictory reasoning vitiating the judgment.

The first plea

23 The first plea is divided into two limbs.

24 In the first limb the appellant criticises the Court of First Instance for departing from the settled case-law of the Court of Justice, and of the Court of First Instance itself, in holding that the applicant was not directly concerned by the contested decision.

25 In the first place, it submits that the Court of First Instance erred in its view that the contested decision did not take the place of a decision of the Russian authorities (paragraph 54 of the contested judgment). It refers in that regard to Articles 4 and 5 of Regulation No 1897/92 concerning the recognition of supply contracts, and to Articles 1 and 4 of the supply contract entered into by it with Exportkhleb. Those provisions were justified, it submits, by the deplorable financial situation in which the Russian authorities found themselves which would not have enabled them to honour their payment obligations in the absence of Community financing.

26 Article 1 of the contract provides:

'This contract is concluded subject to approval of EEC authorities and the bank agreement between the authorised bank of the Russian Federation and the bank authorised by the EEC authorities.'

27 Under Article 4 thereof:

'Payment is to be effected for each shipment of the goods in accordance with the terms of the EEC loan to the Russian Federation authorised by the EEC and the bank authorised by the Russian Federation ... This contract is subject to receipt by the relevant advising bank of an appropriate undertaking from the cover account holder (bank authorised by the EEC).'

28 In order to honour their undertakings to Glencore, the Russian authorities were therefore entirely dependent, in fact and in law, on recognition by the Commission for the purposes of Community financing. Consequently, when the Commission in its letter of 1 April 1993 refused to recognise the amendments agreed on 23 February 1993, its decision took the place of the decision by the Russian authorities to pay the higher price, with the result that they were able to pay for the wheat supplied by Glencore only at the old price and not at the new price which had been agreed in the amendment to the contract.

29 Secondly, the Court of First Instance failed to take account of the fact that in the absence of Community financing the Russian authorities had no margin of discretion available to them as regards their obligation to pay Glencore (see Joined Cases 41/70 to 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411, Case 62/70 *Bock* v *Commission* [1971] ECR 897, and Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207).

30 Thirdly, the Court of First Instance departed from the case-law of the Court of Justice and the Court of First Instance on the admissibility of actions brought by a 'potential recipient of the aid' against Commission decisions on State aid.

31 It observes in that connection that, in the same way as a Member State which is contemplating the grant of aid may agree with a potential recipient that it should be granted only if the Commission approves the aid notified, the Russian authorities were contractually bound to pay to Glencore the new higher price if the Commission approved that price for the purposes of Community financing. Similarly, the position of Glencore, which during the recognition procedure by the Commission was in continuous contact with the latter, is analogous to the situation of a potential recipient of aid. The Court of First Instance erred in attaching no importance to this fact at paragraph 53 of the contested judgment.

32 In the second limb of its plea the appellant submits that the Court of First Instance erred in deciding that the existence of the suspensory clause affecting performance of the contract and payment of the price did not mean that Glencore was directly affected by the contested decision (paragraph 56 of the contested judgment). On the contrary, the fact that the contract between Glencore and Exportkhleb had to be approved by the Commission in order to be eligible for Community financing and that its performance was therefore dependent, in fact and in law, on that approval was the very reason for including the suspensory clause.

33 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 of Article 112(1)(c) of its Rules of Procedure.

34 As regards the substance, the Commission notes that the appellant relies on the fact that the supply contract entered into with Exportkhleb contains a suspensory clause. Irrespective of the differing interpretations to which that clause could give rise, however, a refusal on the part of the Commission to approve Community financing could not mean that the financial obligations under the supply contract should not be complied with. Any dispute between the appellant and Exportkhleb, which would be purely a matter of private law, should be brought before the Moscow Chamber of Commerce, under the terms of the contract itself.

35 Furthermore, the Commission considers that an individual's right of action against an act of a Community instutution cannot be made to depend on private-law arrangements entered into by that individual with a third party or by action taken by one of the parties or by both parties in connection with the performance of the contract.

36 The Commission goes on to observe that the Russian authorities were not exercising prerogatives of public law under the aegis of a Community policy. Far from implementing a Community act, their decision to enter into the supply contract, and then to refuse to pay the price difference subsequently agreed, only has effects in private law in the legal relationship between Exportkhleb and the appellant. That, it is contended, is a major difference in relation to the situation in *International Fruit Company*, cited above. In the latter case, the national implementing body, to which the Commission's contested decision had been addressed, was merely an intermediary between the Commission and the claimant, and had no room for manoeuvre.

37 As to the case-law on State aid relied on by the appellant, the Commission observes that, where it declares aid granted to an undertaking to be incompatible with the common market, that undertaking is always directly concerned by such a decision, irrespective of any provision which may have been inserted into the contract entered into with it at the behest of the Member State.

8 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.

39 The objection of inadmissibility must therefore be dismissed.

40 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.

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

42 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.

43 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).

44 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).

45 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.

46 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, such as 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 56).

47 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.

48 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.

49 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.

50 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.

51 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.

52 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.

53 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 Glencore deprived the latter of any real possibility of performing the contract awarded to it, or of obtaining payment for supplies made thereunder.

54 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.

55 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.

56 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

57 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

58 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.'

59 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-491/93 *Richco* v *Commission* inasmuch as it dismisses as inadmissible the action for annulment brought by Glencore Grain Ltd, formerly trading as Richco Commodities Ltd.**

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

Registrar

G. C. Rodríguez Iglesias

President