ORDER OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)
11 September 2001 *

In Case T-270/99,

Polyxeni Tessa and **Andreas Tessas**, residing in Larissa (Greece), represented by A. Tessas, with an address for service in Luxembourg,

applicants,

v

Council of the European Union, represented by J. Carbery and D. Zachariou, acting as Agents,

defendant,

* Language of the case: Greek.

supported by

Hellenic Republic, represented by I. Chalkias and P. Mylonopoulos, acting as Agents, with an address for service in Luxembourg,

intervener,

APPLICATION for the annulment of the Council decision of 15 December 1998 relating to the taking over by the Hellenic Republic of the debts of certain agricultural cooperatives and other agricultural businesses owed to the Agricultural Bank of Greece,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Fourth Chamber, Extended Composition),

composed of: P. Mengozzi, President, R. García-Valdecasas, V. Tiili, R.M. Moura Ramos and J.D. Cooke, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 Mr Tessas and his wife, Mrs Tessa, are, respectively, a lawyer and the holder of a licence to run a private vocational training institute located in the commune of Nikaia (Greece).

2 In 1994 they took out a medium-term loan with the Agricultural Bank of Greece ('the ABG') in order to finance the equipping of the institute.

3 Since the vocational training institute could not operate because certain administrative permits were not issued, the applicants were unable to meet their obligations to the ABG.

4 On 27 November 1997 the Greek Parliament adopted Law No 2538/97. That law, which relates primarily to plant-health and veterinary products, also includes a number of provisions relating to support for agriculture and fisheries in Greece. Those provisions concern in particular the settlement and rescheduling by the Greek State of debts owed to the ABG by a significant number of cooperatives

and other agricultural businesses, and economic operators involved in agricultural infrastructure work named in 26 lists annexed to Law No 2538/97.

5 By letter published in the *Official Journal of the European Communities* of 4 December 1998 (OJ 1998 C 376, p. 2), the Commission informed the Greek Government that it had decided to initiate a formal investigation procedure under the first subparagraph of Article 93(2) of the EC Treaty (now the first subparagraph of Article 88(2) EC) with regard to the aid provided for in Law No 2538/97.

6 By letter of 5 October 1998, the Hellenic Republic submitted an application to the Council under the third subparagraph of Article 93(2) of the Treaty, requesting it to decide, by way of derogation from the rules of Article 92 of the EC Treaty (now, after amendment, Article 87 EC), to consider the aid provided for in Law No 2538/97 to be compatible with the common market.

7 By decision of 15 December 1998 addressed to the Hellenic Republic, the Council agreed to that request. Article 1 of the operative part of the decision reads:

'The aid provided for in Articles 14 to 19 and 21 of Greek Law No 2538/97 are considered to be compatible with the common market, up to a total maximum of GRD 158 762 million, of which GRD 10 435 million are reserved for settling the debts of cooperatives incurred as a result of disasters or unforeseeable events which have affected the agricultural sector, GRD 115 448 million are reserved for settling the debts of agricultural cooperatives and GRD 32 879 million are reserved for settling the debts of certain cooperatives and of other economic operators involved in agricultural infrastructure work in order to bring about the

economic recovery of production units and to compensate for damage, the persistence of which might constitute an increasing hindrance to the application of the programme for the development and adjustment of agriculture to meet the new European and world situations'.

8 By letters of 24 June and 13 October 1999, the applicants requested the Greek Minister for Agriculture and the ABG for certain information and documents concerning the aid provided for in Law No 2538/97.

9 By letter registered at the Council Secretariat on 15 June 1999, the applicants requested access to certain documents, in particular the text of the Council decision of 15 December 1998 and the correspondence between the Council and the Greek authorities.

10 By letter of 12 July 1999, the Council Secretariat agreed to that request.

11 By application lodged at the Registry of the Court of First Instance on 3 November 1999, the applicants brought this action.

12 Pursant to Article 114(1) of the Rules of Procedure of the Court of First Instance, the Council raised an objection of inadmissibility by separate document lodged at the Registry of the Court of First Instance on 27 January 2000. The applicants submitted their observations on that objection on 10 March 2000.

13 By application lodged at the Registry of the Court of First Instance on 20 March 2000, the Hellenic Republic applied for leave to intervene in the case in support of the defendant. By order of 12 May 2000, the President of the Extended Fourth Chamber of the Court of First Instance allowed that application.

Forms of order sought

14 In their application the applicants claim that the Court should:

— declare the application admissible and well founded;

— order the Council to pay the costs.

15 In its objection of inadmissibility the defendant contends that the Court should:

— declare the application inadmissible;

— order the applicants to pay the costs.

16 In their observations on the objection of inadmissibility, the applicants claim that the Court should:

— declare the application admissible;

— order the defendant to pay the costs.

17 In its statement in intervention the Hellenic Republic contends that the Court should dismiss the application as inadmissible.

Admissibility

18 Under Article 114(3) of the Rules of Procedure, unless the Court of First Instance decides otherwise, the remainder of the proceedings relating to the objection of inadmissibility is to be oral. The Court considers that in this case it has sufficient information from the documents in the case and that there is no need to open the oral procedure.

19 The defendant relies on three pleas of inadmissibility. First, the application does not meet the requirements of the third paragraph of Article 17 of the EC Statute of the Court of Justice, applicable by virtue of Article 46 of that Statute to proceedings before the Court of First Instance. Second, the application is out of time, since it was not lodged within the two-month time-limit laid down in

Article 173(5) of the EC Treaty (now, after amendment, Article 230(5) EC). Third, the contested decision is not of direct or individual concern to the applicants.

20 It is appropriate to consider the third of those pleas of inadmissibility first.

Arguments of the parties

21 In the submission of the defendant, supported by the Greek Government, the contested decision is not of direct and individual concern to the applicants. There is nothing in the application to indicate that Mr Tessas, a lawyer, and his wife, who holds a licence to run a vocational training institute, are engaged in agriculture or are members of agricultural cooperatives. The Council decision to consider the aid granted by the Hellenic Republic to certain agricultural cooperatives and other agricultural businesses to be compatible with the common market is of concern to the applicants only in so far as they are Greek nationals, in the same way as any other Greek citizens.

22 Moreover, even if the applicants were pursuing their economic activity in competition with certain other operators allegedly favoured by the contested aid, they could not by any means be considered to be individually and directly concerned by the contested decision. In the submission of the Greek Government, it is clear from settled case-law that the mere fact that a measure may exercise an influence on the competitive relationships existing on the market in question cannot suffice to allow any trader in any competitive relationship whatever with the addressee of the measure to be regarded as directly and individually concerned by that measure (Joined Cases 10/68 and 18/68 *Eridania and Others* v *Commission* [1969] ECR 459, paragraph 7).

23 The applicants argue that the contested decision is an individual and not a general measure. In that regard, they state that the recipients of the aid which the contested decision declares to be compatible with the common market are not defined in a general and abstract manner and are not all farmers or all agricultural cooperatives. On the contrary, the 180 claimants of the aid, named in the 26 lists annexed to Law No 2538/97, were selected by the Greek Government on the basis of purely political criteria, and are engaged in a wide range of occupations.

24 By means of its subjective nature the contested decision affects the applicants directly and individually. Like Law No 2538/97, it determines in a selective manner a limited number of recipients of the aid in question, excluding all other businesses and traders in the agricultural sector who, like the applicants, having taken out a loan from the ABG and being unable to meet their obligations for reasons of *force majeure*, are in a similar situation.

Findings of the Court

25 It should be noted that the contested decision is addressed to the Hellenic Republic and that, under the fourth paragraph of Article 173 of the Treaty, a natural or legal person may institute proceedings against a decision addressed to another person only if that decision is of direct and individual concern to the former.

26 As regards the requirement of individual concern, it is clear from settled case-law that persons other than those to whom a decision is addressed may only claim to be individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty only if that decision affects them by reason of certain attributes which are peculiar to them, or by reason of circumstances in which they

are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed (judgments of the Court of Justice in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107 and Case 169/84 *Cofaz and Others* v *Commission* [1986] ECR 391, paragraph 22, and judgment of the Court of First Instance in Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Others* v *Commission* [1999] ECR II-3663, paragraph 83).

27 In this particular case it is clear that those conditions are not met. In support of the admissibility of their application the applicants merely claim that they are engaged in vocational training in an agricultural region, thus contributing to its economic and cultural development, and that as a result of that activity they took out a loan from the ABG which they have been unable to repay. Clearly, those circumstances alone are inadequate to differentiate the applicants from any other insolvent debtor of the ABG engaged in an economic activity in an agricultural area of Greece whose name does not appear on the list of recipients of the contested aid.

28 The applicants cannot therefore claim to be individually concerned by the Council decision declaring that aid compatible with the common market.

29 The application must therefore be dismissed as inadmissible without there being any need to adjudicate on the other pleas of inadmissibility raised by the defendant.

Costs

30 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

31 Since the applicants have been unsuccessful they must be ordered to bear their own costs and pay the costs of the defendant, as applied for by the latter.

32 Pursuant to Article 87(4) of the Rules of Procedure, the Hellenic Republic, which intervened in support of the defendant, must bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)

hereby orders:

1. **The application is dismissed as inadmissible.**

2. **The applicants shall bear their own costs and pay those of the defendant.**

3. **The Hellenic Republic shall bear its own costs.**

Luxembourg, 11 September 2001.

H. Jung
Registrar

P. Mengozzi
President