JUDGMENT OF THE COURT
2 February 1988 *

In Joined Cases 67, 68 and 70/85

Kwekerij Gebroeders Van der Kooy BV, a limited liability company whose head office is at Zevenhuizen, and

Johannes Wilhelmus van Vliet, a market gardener residing at 27 Vuurlijn, Uithoorn,

both represented by A. J. Braakman, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of Lambert H. Dupong, 14A rue des Bains (Case 67/85),

Landbouwschap, whose head office is in the Hague, represented by A. J. Braakman, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of Lambert H. Dupong, 14A rue des Bains (Case 68/85),

and

Kingdom of the Netherlands, represented by D. J. Keur, Deputy Legal Adviser at the Ministry for Foreign Affairs, with an address for service in Luxembourg at the Netherlands Embassy, 5 rue C. M. Spoo (Case 70/85),

applicants,

v

Commission of the European Communities, represented by its Legal Adviser R. C. Fisher, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, Jean Monnet Building, Kirchberg,

defendant,

* Language of the Case: Dutch.

supported by

Federal Republic of Germany, represented by M. Seidel and M. Loschelder, acting as Agents, with an address for service in Luxembourg at the Embassy of the Federal Republic of Germany, 20-22 avenue Emile Reuter,

Kingdom of Denmark, represented by L. Mikaelsen, Legal Adviser at the Ministry of Foreign Affairs, with an address for service in Luxembourg at the office of Ib Bodenhagen, chargé d'affaires at the Danish Embassy, 11B boulevard Joseph II,

and

United Kingdom of Great Britain and Northern Ireland, represented by R. N. Ricks, of the Treasury Solicitor's Department, acting as Agent, with an address for service in Luxembourg at the British Embassy, 28 boulevard Royal,

interveners,

APPLICATION for the annulment of Commission Decision 85/215/EEC of 13 February 1985 on the preferential tariff charged to glasshouse growers for natural gas in the Netherlands (Official Journal 1985, L 97, p. 49),

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due and J. C. Moitinho de Almeida (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. Kakouris, R. Joliet and F. Schockweiler, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

having regard to the Report for the Hearing and further to the hearing on 18 December 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 2 April 1987,

gives the following

Judgment

1 By three applications lodged at the Court Registry on 15 and 16 March 1985, Kwekerij Gebroeders Van der Kooy BV, a limited liability company whose head office is at Zevenhuizen, and J. W. van Vliet, a market gardener residing at Uithoorn, the Landbouwschap, a body governed by public law whose head office is in The Hague, and the Kingdom of the Netherlands brought an action under the first and second paragraphs of Article 173 of the EEC Treaty for the annulment of Commission Decision 85/215/EEC of 13 February 1985 on the preferential tariff charged to glasshouse growers for natural gas in the Netherlands (Official Journal 1985, L 97, p. 49).

2 In Article 1 of that decision the Commission stated that 'the aid represented by the preferential tariff for natural gas applied in the Netherlands in respect of glasshouse growers from 1 October 1984 is incompatible with the common market within the meaning of Article 92 of the Treaty and must be discontinued'. Article 2 of the decision provides that 'the Netherlands shall inform the Commission before 15 March 1985 of the action it has taken to comply with Article 1'.

3 In its statement of the reasons for the decision, the Commission explained that in the Netherlands the rates charged to glasshouse growers for natural gas are the subject of contracts between NV Nederlandse Gasunie, Groningen, a company incorporated under private law 50% of whose capital is held directly or indirectly by the Netherlands Government and the remainder by two private companies, and the Landbouwschap, a body established under public law to protect the common interests of agricultural undertakings, taking into account the public interest. A further party to these contracts is the Vereniging van Exploitanten van Gasbedrijven in Nederland (Vegin), an association of local gas-distribution companies.

4 Since 1963 the tariffs thereby negotiated, like all the tariffs charged by Gasunie, have by agreement been subject to the approval of the Minister for Economic Affairs.

5 As early as 1981 the Commission took the view that the horticultural tariff prevailing at the time was a preferential tariff inasmuch as it provided exceptionally favourable conditions for growers in the Netherlands. It accordingly found, by Decision 82/73 of 15 December 1981 (Official Journal 1982, L 37, p. 29), that the tariff constituted aid incompatible with Article 92 of the EEC Treaty, and required the Netherlands to discontinue it.

6 Following that decision, which had in the mean time been challenged in three actions for annulment under Article 173 of the EEC Treaty, a new tariff was negotiated. That tariff, which received the approval of the Commission, entailed the alignment of the horticultural tariff on the industrial tariff (specifically, on the 'D' industrial tariff) plus a premium of 0.5 cents/m3. It also contained a quarterly revision clause similar to the clause in force for industry, and was applied from 1 April 1983 to 30 September 1984.

7 On the adoption of the new tariff Decision 82/73 was repealed and the actions brought against it were discontinued.

8 On 28 September 1984 a new tariff contract was concluded between Gasunie, Vegin and the Landbouwschap for the period from 1 October 1984 to 1 October 1985. Under the new tariff the gas price for horticulture is equivalent to the average 1983 level, plus a fixed percentage of 10%. The ceiling price for gas is thus 42.5 cents/m3.

9 The Commission opened the procedure under Article 93 (2) of the EEC Treaty in respect of the new tariff, which the Netherlands Government had notified to it by letter of 4 October 1984, and ultimately adopted Decision 85/215, which is challenged in these proceedings.

10 By applications lodged at the Court Registry on 24 April, 25 April and 21 June 1985 respectively, the Kingdom of Denmark, the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland applied to intervene in these proceedings in support of the Commission's conclusions. By orders of 8 May, 26 June and 18 September 1985 the Court granted them leave to intervene.

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

Admissibility

I — *Case 67/85*

12 The Commission contends that the application brought by Van der Kooy BV and Mr Van Vliet is not admissible under the second paragraph of Article 173. It argues that the aid disallowed by Decision 85/215 favours all Netherlands growers who use natural gas to heat their glasshouses. Since the aid in question benefits a very broad category of businesses, the Commission decision requiring that aid to be discontinued cannot be regarded as being of direct and individual concern to the applicant growers.

13 By virtue of the second paragraph of Article 173 of the Treaty, the admissibility of an action brought by an individual against a decision not addressed to him is subject to the condition that it must be of direct and individual concern to the applicant. Since Van der Kooy BV and Mr Van Vliet are not amongst the persons to whom the contested decision is addressed it is necessary to consider whether the decision is none the less of direct and individual concern to them.

14 As the Court has previously held (see in particular the judgments of 15 July 1963 in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95 and 14 July 1983 in Case 231/82 *Spijker* v *Commission* [1983] ECR 2559), persons other than those to whom a decision is addressed may claim to be individually concerned by that decision only if it 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 if by virtue of those factors it distinguishes them individually just as in the case of the person addressed.

15 That is not so in this case. The contested decision is of concern to the applicants solely by virtue of their objective capacity as growers established in the

Netherlands and qualifying for the preferential gas tariff on the same footing as any other grower in the same circumstances. With regard to them, therefore, the decision is a measure of general application covering situations which are determined objectively, and entails legal effects for categories of persons envisaged in a general and abstract manner. Thus the contested decision cannot be regarded as being of individual concern to the applicants.

16 For those reasons, the application in Case 67/85 must be declared inadmissible.

II — *Case 68/85*

17 The Commission also raises an objection of inadmissibility with regard to the application submitted by the Landbouwschap.

18 The Commission maintains that, even on the assumption that the Landbouwschap acted as the growers' representative in the tariff negotiations with Gasunie, a body set up to promote the collective interests of a category of persons cannot be considered to be directly and individually concerned for the purposes of the second paragraph of Article 173 by a measure affecting the general interests of that category (see the judgments of the Court of 18 March 1975 in Case 72/74 *Union syndicale* v *Council* [1975] ECR 401 and 28 October 1982 in Case 135/81 *Groupement des agences de voyages* v *Commission* [1982] ECR 3799).

19 The objection cannot be upheld.

20 First of all, contrary to the Commission's assertion, the Landbouwschap acts as the representative of growers' organizations in regard to gas tariffs.

21 Although the Landbouwschap cannot be considered to be directly and individually concerned by Decision 85/215 as a recipient of the contested aid, it is none the

less true that, as the Landbouwschap rightly argues, its position as negotiator of gas tariffs in the interests of the growers is affected by Decision 85/215.

22 Furthermore, in that capacity the Landbouwschap has taken an active part in the procedure under Article 93 (2) by submitting written comments to the Commission and by keeping in close contact with the responsible officials throughout the procedure.

23 Lastly, the Landbouwschap is one of the parties to the contract which established the tariff disallowed by the Commission, and in that capacity is mentioned several times in Decision 85/215. In that capacity it was also obliged, in order to give effect to the decision, to commence fresh tariff negotiations with Gasunie and to reach a new agreement.

24 It must therefore be concluded that in the circumstances of this case the Landbouwschap was entitled to bring proceedings under the second paragraph of Article 173 for the annulment of Commission Decision 85/215.

25 It follows that the objection of inadmissibility raised by the Commission in Case 68/85 must be rejected.

Substance

26 In challenging Decision 85/215, the Landbouwschap and the Kingdom of the Netherlands set out in their applications a number of arguments which may be resumed as follows:

— infringement of Article 92 of the Treaty;

— infringement of essential procedural requirements;

— inadequacy of the statement of reasons.

I — *Infringement of Article 92*

27 Article 92 (1) provides: 'Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'.

28 It should be observed at the outset that this case raises the question whether the fixing of the tariff charged for a source of energy at a level lower than that which would normally have been chosen may be regarded as 'aid' when it is attributable to action by the Member State concerned and the other conditions laid down by Article 92 are satisfied. In such circumstances the State, or the entity on which it exerts influence, does not apply the tariff as an ordinary economic agent but uses it to confer a pecuniary advantage on energy consumers, in the same way as it grants aid to certain undertakings, forgoing the profit which it could normally realize. In this case, the applicants concede that a preferential tariff applicable to a given category of undertakings may constitute aid, but deny that that is true of the tariff at issue.

29 It should be pointed out that the preferential tariff was applicable only to undertakings engaged in hothouse horticulture. In that sector, heating costs account for a large part of production costs. If, in such circumstances, the tariff applied to those undertakings displays a downward trend which is not reflected by the tariffs applicable to undertakings in other sectors, that is prima facie evidence for the conclusion that the preferential tariff constitutes aid.

30 That would not be the case, however, if it were demonstrated that the preferential tariff was, in the context of the market in question, objectively justified by economic reasons such as the need to resist competition on the same market from other sources of energy the price of which was competitive. In determining whether such competition is a real prospect account should be taken not only of the different price levels but also of the costs involved in conversion to a new

source of energy, such as replacement and depreciation costs for heating equipment.

31 It is in the light of those factors that the applicants' arguments should be examined. The applicants have, in particular, challenged the submissions of the Commission on the following issues:

(i) whether the fixing of the contested tariff was the result of action by the Netherlands State;

(ii) whether the tariff is lower than would be necessary to offset the risk of conversion to coal;

(iii) whether the tariff affects trade between Member States and distorts competition.

1. *Whether the fixing of the contested tariff was the result of action by the Netherlands State*

32 In the first place, the applicants maintain that, contrary to the explanations given by the Commission in its decision, the contested tariff was not imposed by the Netherlands State and cannot be described as 'aid granted by a Member State or through State resources'.

33 They argue that Gasunie is a company incorporated under private law in which the Netherlands State holds only 50% of the share capital and that the tariff is the outcome of an agreement concluded under private law between Gasunie, Vegin and the Landbouwschap, to which the Netherlands State is not a party.

34 Turning to the point noted by the Commission that the Minister for Economic Affairs has a right of approval over the tariffs charged by Gasunie, the Netherlands Government claims that that is no more than a retrospective supervisory power which is solely concerned with whether the tariffs accord with the aims of Netherlands energy policy.

35 As the Court has held (see in particular the judgments of 22 March 1977 in Case 78/76 *Steinike* v *Germany* [1977] ECR 595 and 30 January 1985 in Case 290/83 *Commission* v *France* [1985] ECR 439), there is no necessity to draw any distinction between cases where aid is granted directly by the State and cases where it is granted by public or private bodies established or appointed by the State to administer the aid. In this instance, the documents before the Court provide considerable evidence to show that the fixing of the disputed tariff was the result of action by the Netherlands State.

36 First of all, the shares in Gasunie are so distributed that the Netherlands State directly or indirectly holds 50% of the shares and appoints half the members of the supervisory board — a body whose powers include that of determining the tariffs to be applied. Secondly, the Minister for Economic Affairs is empowered to approve the tariffs applied by Gasunie, with the result that, regardless of how that power may be exercised, the Netherlands Government can block any tariff which does not suit it. Lastly, Gasunie and the Landbouwschap have on two occasions given effect to the Commission's representations to the Netherlands Government seeking an amendment of the horticultural tariff, first following Commission Decision 82/73, which was later repealed, and then again following Decision 85/215, which is challenged in these proceedings.

37 Considered as a whole, these factors demonstrate that Gasunie in no way enjoys full autonomy in the fixing of gas tariffs but acts under the control and on the instructions of the public authorities. It is thus clear that Gasunie could not fix the tariff without taking account of the requirements of the public authorities.

38 It may therefore be concluded that the fixing of the contested tariff is the result of action by the Netherlands State and thus falls within the meaning of the phrase 'aid granted by a Member State' under Article 92 of the Treaty.

2. *Whether the tariff is lower than was necessary to take account of the risk of conversion to coal*

39 The applicants maintain that the tariff arising out of the agreement between Gasunie, the Landbouwschap and Vegin was fully justified in commercial terms and that it therefore contains no element of aid within the meaning of Article 92.

40 In asssessing the merits of that assertion, it should be recalled that by placing a ceiling of 42.5 cents/m³ on the gas price for growers the tariff had the effect of bringing the gas price several cents below the price which would have resulted from the application of the tariff in force until 1 October 1984. As the agent of the Commission explained at the hearing, the gas price would, under the previous tariff, have reached an average of 48.5 cents/m³ during the first three quarters of 1985.

41 The applicants claim that the decision to limit the rise in the gas price caused by the rise in the price of petroleum products was justified largely by the need to guard against the risk that growers might convert their heating plants to coal, the price of which had recently fallen considerably. That risk had, according to the applicants, forced Gasunie to fix the ceiling price for gas at a level which would take account of competition from coal.

42 Without challenging the argument regarding the risk of conversion to coal as such, the Commission notes in its decision that the same risk arises for other sectors, such as industry, which are heavily dependent on gas. Yet no measures were taken to moderate the price of gas for industry in a manner comparable to the ceiling price established for horticulture. That difference in treatment between industry and horticulture demonstrates, according to the Commission, that the contested tariff is not justified by the desire to resist competition from coal.

43 That argument is irrelevant.

44 It should be borne in mind that, according to the Commission itself (paragraph 6 of Section III of Decision 85/215), at a price for gas of between 46.5 and 47.5 cents/m³ 'it is estimated that 30% of the natural gas consumed by the horticultural sector would be replaced by coal in less than three years'. It follows from that finding by the Commission that, leaving aside the question whether and to what extent there was a risk of conversion to coal in the industrial sector as well, Gasunie could not, on account of that risk, have applied generally a gas price for horticulture above the threshold figure indicated by the Commission, 46.5 to 47.5 cents/m³.

45 In its decision the Commission also contends that the ceiling price for gas under the disputed tariff, namely 42.5 cents/m³, is below the level needed in order to guard against the risk of conversion to coal in the horticultural sector.

46 In that connection it should be noted that the figures given in both the report of the Landbouw-Economisch Instituut (Institute for Agricultural Economy, hereinafter referred to as the 'LEI'), prepared in January 1985 and annexed to the applications, and the report of GFE (a Belgian energy-management company), annexed to the Commission's statement of defence, show that the ceiling price of 42.5 cents/m³ under the tariff was not justified by the risk of conversion to coal.

47 The LEI report clearly suggests in its conclusions that conversion to coal would not represent a practicable or profitable option unless the price of gas exceeded 45 cents/m³. For some categories of undertakings the price is as high as 50 cents/m³, but its average is 46 to 47 cents/m³. It is only in the case of undertakings with no condenser or those with neither a condenser nor carbon dioxide regulating equipment that the 'equilibrium price', that is to say, the price at which growers would decide against conversion to coal, is calculated to be between 40.4 and 41.2 cents/m³.

48 As regards the GFE report, submitted by the Commission and used extensively in the disputed decision, the calculations on which it is based show that at the current price of 42.5 cents/m³ conversion to coal remains negligible, while at 45 cents/m³ conversion would affect 1.5% of total gas consumption in the horticultural sector. It is only at a price of between 46.4 and 47.4 cents/m³ that conversion would become widespread, affecting 27% of total gas consumption in horticulture. Those prices are calculated by GFE on the basis of a holding equipped with a gas boiler with a condenser.

49 It is apparent from those calculations that, at least in the case of holdings having a condenser, a significant trend towards conversion to coal would develop only at a gas price of about 46 or 47 cents/m³, and in any event above 45 cents/m³.

50 The case of holdings without a condenser, for which the LEI gives an equilibrium price of between 40.4 and 41.2 cents/m³, remains to be considered. If the situation of such holdings were to be regarded as important and representative, the decision of Gasunie to align its tariff on the equilibrium prices for these holdings and establish a ceiling price of 42.5 cents/m³ could be considered to be commercially justified.

51 In that regard the applicants have submitted figures to demonstrate that holdings without a condenser are in the majority in the Netherlands. Although the figures supplied by the Landbouwschap show that of the 8 174 horticultural holdings in the Netherlands 4 502 have no condenser, the Netherlands Government states that that is true of only 39% of holdings.

52 Those figures do not, however, explain why Gasunie should decide to align its general horticultural tariff on the equilibrium price for the least efficient type of holding, when 61% of holdings would continue to use gas even at higher prices.

53 In any case, if — as appears from the documents before the Court — 60% of hothouses will be obliged to replace their heating plant in the near future, it is foreseeable that the percentage of hothouses without a condenser will decline, because many growers will move to a more modern and relatively more expensive heating system than at present.

54 It follows that, at least in the medium term, the position of holdings not equipped with a condenser will inevitably become marginal, so that it was not commercially justifiable for Gasunie to fix its horticultural tariff by reference to such undertakings.

55 The conclusion must therefore be that Decision 85/215 correctly found that the contested tariff was lower than was necessary in order to take account of the risk of conversion to coal.

3. *Whether the contested tariff affects trade between Member States and distorts competition*

56 Lastly, the applicants deny that the element of aid in the disputed tariff affects trade between Member States and distorts, or threatens to distort, competition by favouring certain undertakings or the production of certain goods. They argue that the increase in the share of Dutch growers in the Community vegetable market is due to other factors such as specialization of production, compliance with stringent quality standards, standardized packaging, a very high level of knowledge, a high degree of cooperation and the availability of supplies throughout the year.

57 Although those factors may certainly have played an important part in the growth in Dutch exports to the other Member States of the Community in recent years, it is sufficient to observe that owing to the element of aid in the contested tariff many Dutch growers have benefited from a reduction of around 2.5 cents per cubic metre of gas consumed, which is equivalent to a reduction in the price of gas of about 5.5%.

58 A benefit of that order of magnitude is likely to distort competition within the common market, both by reason of the total volume of gas used by the Dutch growers (2 500 million m^3 per annum) and because, according to the information contained in the documents before the Court, energy costs account for 25 to 30% of the total operating costs of hothouse horticulture. It follows that a reduction in the price of gas of around 5.5% granted by the public authorities has appreciable repercussions on total operating costs and artificially lowers the prices of the products in question.

59 As regards the question whether the contested aid affects trade between Member States, as is affirmed by both the Commission and the interveners, it should be pointed out that the figures set out by the Commission in Decision 85/215 (which the applicants have not disputed) demonstrate that this condition is fulfilled. It appears from those figures that the Netherlands at present accounts for 65% of hothouse production of tomatoes in the Community, of which 91% are exported (55% of that figure going to the Federal Republic of Germany alone). Similarly, the Netherlands produces 75% of the Community's hothouse gherkins and cucumbers, of which 68% are exported (73% of that figure to the Federal Republic of Germany alone).

60 In those circumstances, the Commission was right to conclude in Decision 85/215 that the aid in issue affects intra-Community trade and distorts competition in favour of Netherlands growers.

61 It follows from the foregoing considerations that the submission based on infringement of Article 92 of the Treaty is unfounded.

II — *Infringement of essential procedural requirements*

62 The Netherlands Government argues that Decision 85/215 does not specify which part of the disputed tariff constitutes aid and, in particular, does not state the gas price which would in the Commission's opinion be commercially justified and hence free of any element of aid. The Netherlands Government claims that by failing to supply those particulars the Commission infringed an essential procedural requirement.

63 That argument cannot be accepted.

64 The Commission clearly indicated in its decision that the aid at issue consisted in the excessively low level at which the horticultural gas tariff applicable from 1 October 1984 was fixed.

65 That being so, the Netherlands Government can have had no difficulty in understanding that in order to give effect to the decision it was obliged to raise that tariff.

66 As for the fact that the Commission did not state precisely by how much it was necessary to increase the tariff in order to eliminate any element of aid, it is sufficient to observe that, contrary to the assertions of the Netherlands Government, the absence of any such precise statement does not make it impossible to give effect to Decision 85/215 but simply leaves open the question whether the measures actually adopted by the Netherlands Government in this instance are an adequate implementation of that decision.

67 That question, however, lies outside the scope of these proceedings, which concern only the question whether Decision 85/215 is consistent with the Treaty, not the measures adopted to implement it.

68 Accordingly, the submission based on infringement of essential procedural requirements must be rejected.

III — *Inadequacy of the statement of reasons*

69 In this submission the Netherlands Government argues that the Commission failed to set out the grounds on which, in its decision, it did not follow the figures and calculations supplied by the Netherlands Government in order to justify the tariff.

70 The Netherlands Government, supported by the Landbouwschap, further maintains that the reasons given in Decision 85/215 are inadequate to show that intra-Community trade was affected or that competition was distorted.

71 As a preliminary observation it should be pointed out that, as the Court has consistently held (see most recently the judgment of 22 January 1986 in Case 250/84 *Eridania* v *Cassa Conguaglio* [1986] ECR 117), the statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question and must show clearly and unequivocally the reasoning of the institution which adopted the measure, so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review.

72 With reference to the first criticism made by the Netherlands Government it must indeed be recognized that the Commission does not explain the grounds on which it chose not to follow the figures and calculations supplied by the Netherlands Government during the procedure under Article 93 (2). However, that omission does not amount to a failure to state sufficient reasons since, in its decision, the Commission gave an adequately detailed explanation, supported by the figures which it accepted, of why it considered that the disputed tariff contained an element of aid. That being so, it may be concluded that those concerned were duly informed of the justification for Decision 85/215 and were able to put forward their views on the matter in proceedings before the Court.

73 The second criticism expressed by the Netherlands Government and the Landbouwschap is also unfounded.

74 As has been observed above, in its decision the Commission stressed, and illustrated with suitable examples, the volume of hothouse production in the Netherlands and of Dutch exports of horticultural products to other Member States of the Community. With regard to distortion of competition, the decision shows clearly how large a proportion of total operating costs in horticulture is accounted for by energy costs, which indicates that a reduction in those costs is likely to affect the selling price of the products in question.

75 Those explanations provide those concerned with sufficient information as to the reasons which led the Commission to adopt the decision.

76 In those circumstances the submission based on the alleged inadequacy of the statement of reasons must be rejected.

77 Since none of the submissions put forward by the applicants has been upheld, the applications in Cases 68 and 70/85 must be dismissed.

Costs

78 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. As the applicants have been unsuccessful in their submissions, they must be ordered to pay the costs, including those incurred by the Federal Republic of Germany, the only party intervening in support of the Commission's conclusions which has so requested.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application in Case 67/85 as inadmissible;

(2) Dismisses the applications in Cases 68 and 70/85;

(3) Orders the applicants jointly and severally to pay the costs, including those incurred by the Federal Republic of Germany as intervener.

Mackenzie Stuart Bosco Due Moitinho de Almeida Koopmans

Everling Bahlmann Galmot Kakouris Joliet Schockweiler

Delivered in open court in Luxembourg on 2 February 1988.

P. Heim
Registrar

A. J. Mackenzie Stuart
President