JUDGMENT OF THE COURT (Sixth Chamber)
19 February 1998 *

In Case C-309/95,

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, and Jean-Paul Keppenne, 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,

applicant,

v

Council of the European Union, represented by Rüdiger Bandilla, Director of its Legal Service, and Diego Canga Fano, of the same Service, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer, Kirchberg,

defendant,

supported by

The French Republic, represented by Catherine de Salins, Head of Sub-Directorate in the Legal Affairs Directorate at the Ministry of Foreign Affairs, and

* Language of the case: French.

Frédéric Pascal, Chargé de Mission in the same Directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8 B Boulevard Joseph II,

intervener,

APPLICATION for the annulment of the Council's decision of 22 June 1995 on the granting of exceptional aid to producers of table wine in France,

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, G. F. Mancini, P. J. G. Kapteyn (Rapporteur), J. L. Murray and G. Hirsch, Judges,

Advocate General: G. Cosmas,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 24 April 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 29 September 1995, the Commission of the European Communities brought an action under Article 173 of the EC

Treaty for the annulment of the Council's decision of 22 June 1995 on the granting of exceptional aid to producers of table wine in France (hereinafter 'the Decision').

2 Under Article 1 of the Decision, the aid concerned may be paid by the French Government to those wine-growers taking part in the preventive distillation of table wine and wine suitable for yielding table wine, produced in France during the 1994/95 marketing year, opened in accordance with Article 38 of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine (OJ 1987 L 84, p. 1).

3 It is clear from the recitals in the preamble to the Decision that the French Government notified the Commission of the aid plan, in accordance with Article 93(3) of the Treaty, and the Commission deemed it not to be compatible with the common market. The Council, however, considered that there were exceptional circumstances justifying the aid and, on the basis of the third subparagraph of Article 93(2), decided to consider the aid compatible with the common market.

4 The third subparagraph of Article 93(2) of the Treaty provides that, on application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant is to be considered to be compatible with the common market, in derogation from the provisions of Article 92 or from the regulations provided for in Article 94, if such a decision is justified by exceptional circumstances.

5 The Commission's primary plea in support of its application alleges misapplication of the third subparagraph of Article 93(2) of the Treaty, inasmuch as, in its contention, that provision is employed in order to derogate from the mechanisms of the common organisation of the market in wine; in the alternative it pleads, first, the absence in the present case of the exceptional circumstances required under the said provision and, second, the inadequacy and incorrectness of the statement of reasons for the Decision.

6 In its reply the Commission, drawing the appropriate conclusions from the judgment in Case C-122/94 *Commission* v *Council* [1996] ECR I-881, states that, as far as its primary plea is concerned, it is confining itself to maintaining that the Council exceeded the limits of its discretion.

7 By order of 7 February 1996 the President of the Court granted leave to the French Republic to intervene in support of the form of order sought by the Council.

8 By separate document dated 6 November 1995 the Council raised a plea of inadmissibility pursuant to Article 91 of the Rules of Procedure. By decision of 18 June 1996 the Court decided to reserve its decision on that plea for the final judgment.

The plea of inadmissibility

9 The Council, supported by the French Government, states that since the Decision was not published in the *Official Journal of the European Communities* and since its addressee, for the purposes of Article 191(3) of the EC Treaty, is the French Republic, not the Commission, the latter should have brought its action within a period of two months from 22 June 1995, the date on which the Decision came to its knowledge, in accordance with the fifth paragraph of Article 173 of the Treaty.

10 The Council observes, first, that, as is clear from the application, the Commission was aware of every aspect of the background to the matter, secondly that it participated in the work of the Council and, lastly, that it had knowledge of the Decision as soon as it was adopted, on 22 June 1995, since it joined to its application the minutes, prepared by its General Secretariat, of the meeting of the Council. The French Government adds that the Council did not make any amendments to the draft decision submitted for its approval.

11 Both the Council and the French Government consider that the Commission may not rely on the Court's case-law according to which, failing publication or notification, it is for the party which has knowledge of a decision concerning it to request the whole text thereof within a reasonable period and the period for bringing an action can begin to run only from the moment at which the third party concerned acquires precise knowledge of the content of the decision in question and of the reasons on which it is based (Case C-180/88 *Wirtschaftsvereiningung Eisen- und Stahlindustrie* v *Commission* [1990] ECR I-4413). The Commission's position in this case cannot, in fact, be compared with that of a third party in a procedure falling within the spheres of competition or State aid.

12 The Commission, however, which was present at the meeting of the Council from 19 to 22 June 1995, maintains that its application is admissible, because the Decision is one of the acts which, in accordance with Article 191(3) of the Treaty, take effect only from the date of their notification. In the alternative, the Commission claims that it had precise knowledge of the grounds for the Decision only on 1 August 1995, the date on which it received the Council's letter of 27 July 1995 informing it that the Decision had been notified.

13 Under the fifth paragraph of Article 173 of the EC Treaty, the proceedings provided for in that article are to be instituted within two months of the publication of the measure, or of its notification to the applicant, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

14 It is common ground that the Decision was not published in the *Official Journal of the European Communities*.

15 Under Article 191(3) of the Treaty decisions other than those which, pursuant to Article 191(1), are to be published in the *Official Journal of the European Communities* are to be notified to those to whom they are addressed and are to take effect upon such notification.

16 According to Article 2 of the Decision, its addressee was the French Republic. It was notified to the French Government by letter from the Secretary-General of the Council dated 27 July 1995.

17 Since the Decision was neither published in the *Official Journal of the European Communities* nor notified to the Commission as addressee, the period of two months could begin to run with regard to that institution only as from the day on which the Decision came to its knowledge.

18 According to the case-law of the Court, in the absence of publication or notification, it is for the party which has knowledge of a decision concerning it to request the whole text thereof within a reasonable period and the period for bringing an action can begin to run only from the moment at which the third party concerned acquires precise knowledge of the content of the decision in question and of the reasons on which it is based in such a way as to enable it to exercise its right of action (Case C-180/88 *Wirtschaftsvereiningung Eisen- und Stahlindustrie* v *Commission*, cited above, paragraph 22).

19 It must therefore be ascertained what was the date on which the Commission had precise knowledge of the content of the decision and of the reasons on which it was based.

20 The documents in the case show that by 16 June 1995 a draft Council decision on the granting of exceptional aid to table wine producers in France (Document 8100/95 Agri 62) was available to the Members of the Council and of the Commission.

21 Lastly, it is clear from Point 9 of the Extract from Minutes of the 1858th Meeting of the 'Agriculture' Council held in Brussels from 19 to 22 June 1995, drawn up by the Secretariat General of the Commission and appearing in Annex VI to the application, that the Council approved the draft decision unanimously. That document, moreover, describes the discussion preceding the decision, mentions the arguments put forward by the French Government and records the doubts expressed by certain Member States and by the competent Commissioner as to whether it was justifiable to agree to the French Republic's request.

22 Accordingly, the Commission had precise and detailed knowledge of the Decision at the latest by the date on which those minutes were drawn up, that is to say, on 23 June 1995. The time allowed for bringing its action therefore began to run on 24 June 1995 and expired on 26 August 1995, including extension of time on account of distance.

23 Since the application was lodged on 29 September 1995, the application must be dismissed as inadmissible

Costs

24 Under Article 69(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. Since the Commission has been unsuccessful, it must be ordered to pay the costs. Pursuant to Article 69(4), the French Republic, which intervened in support of the Council, must bear its own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Dismisses the application as inadmissible;

2. Orders the Commission to pay the costs;

3. Orders the French Republic to bear its own costs.

Ragnemalm Mancini Kapteyn

Murray Hirsch

Delivered in open court in Luxembourg on 19 February 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber