ORDER OF THE COURT
30 September 1992 *

In Case C-295/92,

Landbouwschap, a body governed by public law, established in The Hague (Netherlands), represented by J. J. Feenstra, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of M. Loesch, 8 Rue Zithe,

applicant,

v

Commission of the European Communities, represented by Michel Nolin and Pieter van Nuffel, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision of 29 April 1992, addressed to the Kingdom of the Netherlands, in which that Institution decided not to raise any objections to the elements of State aid contained in the draft law amending the Wet Algemene Bepalingen Milieuhygiëne (law laying down general provisions for the protection of the environment),

THE COURT,

composed of: O. Due, President, R. Joliet, F. A. Schockweiler, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris,

* Language of the case: Dutch.

J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray, Judges,

Advocate General: C. O. Lenz,
Registrar: J.-G. Giraud,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 3 July 1992, pursuant to the second paragraph of Article 173 of the EEC Treaty, the Landbouwschap applied for the annulment of the Commission's decision of 29 April 1992 addressed to the Kingdom of the Netherlands, in which that Institution decided not to raise any objections to the elements of State aid contained in the draft law amending the Wet Algemene Bepalingen Milieuhygiëne (hereinafter referred to as 'WABM').

2 On 16 January 1992, in accordance with Article 93(3) of the EEC Treaty, the Netherlands Government notified the Commission of the draft law amending the WABM. In the projected amendments, that Government intended to adapt taxes on fossil fuels so as to levy them on the energy content and on the carbon dioxide content equally, and so as to encourage first more efficient energy use and secondly the use of energy sources with a lower carbon dioxide content.

3 The bill provides however for a number of derogations from the taxation system laid down. In the first place, in order to calculate the tax on residual gases released during certain production processes, only the carbon dioxide content is to be taken into consideration, which involves a reduction in the tax imposed on the consumption of those gases. Secondly, electricity power stations using coal for fuel enjoy a

system of refunds, provided that they make certain investments in desulphurizing emissions. Thirdly, major users of natural gas pay reduced tax on consumption over 10 000 000 m^3 a year.

4 In a letter of 4 February 1992, the Commission asked the Netherlands authorities for further information which it considered it needed in order to study the draft law in question. The Netherlands authorities dealt with this request in a letter of 27 February 1992.

5 After completing the study it had undertaken of the draft law, the Commission concluded that the preferential rate applicable to residual gases and to a consumption of natural gas greater than 10 000 000 m^3 a year and also the system of refunds for coal-fired electricity power stations did constitute State aids within the meaning of Article 92(1) of the Treaty. It nevertheless considered that these aids could be regarded as being compatible with the common market pursuant to Article 92(3)(c) of the Treaty and decided, on 29 April 1992, not to oppose them.

6 The Commission informed the Netherlands Government of its decision of 29 April 1992 in a letter dated 5 May 1992.

7 The Landbouwschap brought this action for annulment against that decision contained in the Commission's letter of 5 May 1992, addressed to the Netherlands Government.

8 The Landbouwschap is a body governed by public law with the object of furthering the interests of Dutch agriculture. In that context, the Landbouwschap has special responsibility in this area. In addition to the decisions that it is called on to take regarding horticulture under glass, it acts as the representative of the horticultural organizations with respect to natural gas tariffs and has, since September 1991, conducted negotiations with the Netherlands authorities with a view to entering into a multiannual agreement on energy-saving in the area of horticulture under glass.

9 In support of its action for annulment, the Landbouwschap asserts that, in making its decision, the Commission failed to take full account of certain essential facts and circumstances, and therefore could not reasonably consider that there were no grounds for challenging the draft Netherlands legislation and that it was wrong not to initiate the procedure referred to in Article 93(2) of the Treaty. In particular it challenges the 10 000 000 m^3 a year criterion which is the basis of the arrangements to assist major users of natural gas. It considers moreover that, by requesting the Netherlands Government, in the letter of 4 February 1992, to provide it with further information about the draft measures, the Commission infringed the procedural safeguards provided for in Article 93(2) of the Treaty.

10 Pursuant to Article 92(1) of the Rules of Procedure, where the application is clearly inadmissible the Court may, after hearing the Opinion of the Advocate General, give its decision in the form of a reasoned order, without following the procedure.

11 In order to determine whether this action for annulment is admissible, it must be borne in mind that, pursuant to the second paragraph of Article 173 of the Treaty, any natural or legal person may, under the conditions laid down in the first paragraph of that article, institute proceedings against a decision addressed to another person only where the said decision is of direct and individual concern to the first person. Consequently, the Landbouwschap's right to bring an action is dependent on the question whether it is directly and individually concerned by the decision addressed to the Netherlands Government, in which the Commission decided not to raise any objections to the elements of State aid contained in the draft law amending the WABM.

12 On this point it is sufficient to note that it is apparent from the file that the aids at issue benefit only a group of large industrial undertakings with which neither the applicant nor the horticulturalists whom it represents are in competition. Confirmation or the annulment of the contested decision, in which the Commission authorized the granting of those aids to the industrial undertakings in question, is therefore in no way capable of affecting their interests. Consequently, the Landbouwschap cannot be regarded as being concerned by the contested decision.

13 Furthermore it must be noted that, in its application, the Landbouwschap supplied no information indicating that it was directly and individually concerned by the contested decision.

14 In these circumstances, the action brought under the second paragraph of Article 173 of the Treaty must, pursuant to Article 92(1) of the Rules of Procedure, be dismissed as manifestly inadmissible.

Costs

15 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders:

1. The application is dismissed as inadmissible;

2. The applicant is ordered to pay the costs.

Luxembourg, 30 September 1992.

J.-G. Giraud — Registrar

O. Due — President