ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
21 November 1996 *

In Case T-53/96,

Syndicat des Producteurs de Viande Bovine de la Coordination Rurale, a traders' association established under French law, having its headquarters at l'Isle Jourdain (France),

Syndicat des Producteurs de Lait de la Coordination Rurale, a traders' association, having its headquarters at l'Isle Jourdain (France),

Philippe de Villiers, a member of the European Parliament, residing at Aubretières (France),

represented by Alexandre Varaut, of the Paris Bar,

applicants,

v

Commission of the European Communities, represented by Gérard Berscheid, James Macdonald Flett and Ulrich Wölker, 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,

defendant,

* Language of the case: French.

APPLICATION for an award of damages under Article 178 and the second paragraph of Article 215 of the EC Treaty,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: R. García-Valdecasas, President, J. Azizi and M. Jaeger, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 On 27 March 1996 the Commission adopted Decision 96/239/EC on emergency measures to protect against bovine spongiform encephalopathy (OJ 1996 L 78, p. 47, hereinafter 'the Decision'). In Article 1, the Decision prohibits, 'pending an overall examination of the situation', export from the United Kingdom to the other Member States and non-member countries of:

— live bovine animals, their semen and embryos;

— meat of bovine animals slaughtered in the United Kingdom;

— products obtained from bovine animals slaughtered in the United Kingdom which are liable to enter the animal feed or human food chain, and materials destined for use in medicinal products, cosmetics or pharmaceutical products;

— mammalian-derived meat and bone-meal.

2 The Decision is based on Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ 1990 L 224, p. 29), as amended, and in particular on Article 10 thereof, and on Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ 1989 L 395, p. 13), as amended, and in particular on Article 9 thereof. The aforementioned articles in those two directives empower the Commission, in the presence of 'any zoonoses diseases or other cause likely to constitute a serious hazard to animals or to human health', to adopt the necessary measures under the Standing Veterinary Committee procedure. Those same provisions require the Commission to monitor the situation and, by the same procedure, to amend or repeal the decisions taken, depending on how the situation develops.

3 By application lodged at the Registry of the Court of First Instance on 16 April 1996, the applicants, two French producers' associations and Philippe de Villiers, a member of the European Parliament, asked the Court to declare the Commission liable, under the second paragraph of Article 215 of the EC Treaty, for damage allegedly caused by slowness in adopting measures with regard to bovine spongiform encephalopathy (hereinafter 'BSE').

4 By separate document, lodged on 17 July 1996 at the Registry of the Court, the Commission raised an objection of inadmissibility on the basis of Article 114(1) of the Rules of Procedure. The applicants submitted their observations on 6 September 1996.

5 In their application, the applicants claim that the Court should:

— declare the Commission liable, under Article 215 of the Treaty;

— order the Community to pay them the token sum of 1 franc for the non-material damage suffered;

— appoint an expert for the purpose of determining the damage suffered by the members of the two applicant associations.

6 The Commission, in its objection of inadmissibility, contends that the Court should:

— dismiss the application as inadmissible;

— order the applicants to pay the costs.

Admissibility of the action

Arguments of the parties

7 In its objection of inadmissibility, the Commission points out that, under Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, an application must state the

subject-matter of the proceedings and a summary of the pleas in law on which the application is based. It contends that, in an action for damages, the application must contain information for enabling the conduct of the institution of which the applicant complains to be identified, the reasons for which the applicant considers that there is a causal link between that conduct and the damage which it claims to have suffered and the nature and extent of that damage.

8 As regards the damage allegedly suffered, the Commission contends that the application contains no particulars as to the nature (public health aspect and/or market aspect, elements constituting the alleged damage, both that allegedly suffered by each of the applicants specifically and that allegedly suffered by the members of the two associations) and as to the actual existence of the alleged damage. It submits that the mere assertion, which the applicants do not explain, that the damage they have suffered is the same as 'that of any citizen of a member country of the European Union' does not enable the actual extent of the alleged damage, the time of its occurrence or, *a fortiori*, its specific manifestations to be determined.

9 As regards the existence of a sufficiently clear breach of a superior rule of law for the protection of individuals, the Commission contends that a mere assertion, without any further explanation, that it has contravened the principle of proportionality and assessed facts wrongly is not sufficient. Mere reference to a series of inappropriate steps, and of failures to take steps, in the task of monitoring trade between Member States which is conferred upon it does not enable the existence of any such breach to be determined.

10 Finally, as regards the question of a causal link, the Commission contends that the application contains no evidence in this regard.

11 As regards the associations' legitimate interest in bringing proceedings for reparation of the damage allegedly suffered by their members, the Commission states that nowhere in the application is any assignment of rights established or even

referred to and that such an assignment is not in fact provided for in the statutes of the two associations, as annexed to the application (see the judgment of the Court of Justice in Case 238/78 *Ireks-Arkady* v *Council and Commission* [1979] ECR 2955, paragraph 5, and the judgment of the Court of First Instance in Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 77).

12 The Commission further contends that the applicants' action is out of time or, at the very least, partly out of time. It points out that, according to Article 43 of the EC Statute of the Court of Justice, an action for damages is time-barred after a period of five years from the occurrence of the event giving rise to it. Since the application gives no particulars as to when the damage occurred or as to when there were specific manifestations of it, the Commission finds itself obliged to submit that reliance on any events which occurred before 6 April 1991, that is to say five years before the application was lodged on 6 April 1996, must be held to be time-barred.

13 In conclusion, the Commission contends that the total lack of factual and legal elements to support the application impairs its rights of defence since it prevents it from making proper arrangements for its defence. Consequently, it asks the Court to declare the action inadmissible.

14 In their application, the applicants submit that, as regards the fault with which the Commission is charged, it must be concluded, taking into account the information on BSE available to the Commission and the actions which the latter has taken since 1986, the date on which the first BSE case was discovered, that the measures adopted by the Commission up to 27 March 1996, the date of adoption of the Decision, which prohibits exports of bovine animals and derived products from the United Kingdom to the other Member States and non-member countries, were insufficient.

15 The applicants consider that, in taking proper measures at such a late stage, the Commission failed in its duty to control and monitor intra-Community trade, particularly where this may affect the health and life of consumers, as is clear from Articles 129 and 129a of the EC Treaty. The applicants maintain that the Commission failed to observe the principle of proportionality in so far as the measures

taken before 27 March 1996 were not proportionate to the risk which BSE entailed for human health. They point out that on 27 March 1996, although there was still no certainty about the transmission of BSE to man, the Commission adopted measures imposing absolute bans. They accordingly conclude that, before those measures were adopted, it committed a clear error of assessment as regards the risks of transmission of BSE, since, as they see the matter, the evidence of the existence of a risk of transmission is still the same.

16 As regards the damage allegedly suffered by the applicants, the application is framed in these terms:

'The Syndicat des Producteurs de Viande Bovine de la Coordination Rurale, the Syndicat des Producteurs de Lait de la Coordination Rurale and Philippe de Villiers have, like any citizen of a member country of the European Union, suffered non-material damage for which they claim compensation.

The Syndicat des Producteurs de Viande Bovine de la Coordination Rurale and the Syndicat des Producteurs de Lait de la Coordination Rurale also request the appointment of an expert for the purposes of determining the damage suffered by each of their members.'

17 As regards the causal link between the damage allegedly suffered and the Commission's conduct, the applicants maintain that the damage suffered was caused by the Commission's failure to fulfil its duty to control and monitor intra-Community trade, particularly where such trade may affect the health and life of consumers.

18 In their observations on the objection of inadmissibility, the applicants submit that, as regards the damage, they have requested the Court to appoint an expert since the damage is not determinable in any other way. They maintain that, according to the judgment of the Court of Justice in Case 90/78 *Granaria* v *Council and Commission* [1979] ECR 1081, paragraphs 5 and 6, an action for damages in which the applicant reserves the right to specify the extent of the damage at a later date cannot be declared inadmissible on this ground.

. *Findings of the Court*

19 Under Article 114 of its Rules of Procedure, the Court may, on application by a party, decide the question of admissibility without going to the substance, on the conditions laid down in paragraphs 3 and 4 of that article. In the present case, the Court considers that, since it has sufficient information from an examination of the documents before it, it is not necessary to open the oral procedure.

20 Under Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, any application must state the subject-matter of the proceedings and contain a summary of the pleas in law on which the application is based.

21 It is settled case-law that those particulars must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, where appropriate, without any other information in support. In order to guarantee legal certainty and the sound administration of justice it is necessary, in order for an action to be admissible, that the basic legal and factual particulars on which the action is based be indicated, if only in summary form but coherently and intelligibly, in the application itself (see the judgments of the Court of Justice in Case C-347/88 *Commission* v *Greece* [1990] ECR I-4747, paragraph 28, and in Case C-52/90 *Commission* v *Denmark* [1992] ECR I-2187, paragraph 17 et seq.; see also the order of the Court of First Instance in Case T-85/92 *De Hoe* v *Commission* [1993] ECR II-523, paragraph 20, upheld by the order of the Court of

Justice in Case C-338/93 P *De Hoe* v *Commission* [1994] ECR I-819; the order of the Court of First Instance in Case T-56/92 *Koelman* v *Commission* [1993] ECR II-1267, paragraph 21; and the judgment of the Court of First Instance in Case T-387/94 *Asia Motor France* v *Commission* [1996] ECR I-961, paragraph 106).

22 It is also settled case-law that, in order to satisfy those requirements, an application seeking compensation for damage caused by a Community institution must state the evidence from which the conduct alleged against the institution by the applicant may be identified, the reasons for which the applicant considers that there is a causal link between the conduct and the damage which the applicant claims to have suffered and the nature and extent of that damage (judgment of the Court of First Instance in Case T-64/89 *Automec* v *Commission* [1990] ECR II-367, paragraph 73; *Exporteurs in Levende Varkens and Others* v *Commission*, cited above, paragraph 75 and *Asia Motor France and Others* v *Commission*, cited above, paragraph 107).

23 The Court finds, however, that in their application the applicants have not provided the slightest evidence of either the nature of the alleged damage or of the way in which the damage which they may have suffered was caused by the conduct of the Commission of which they complain.

24 As regards, first, the non-material damage allegedly suffered by the two applicant associations and by Philippe de Villiers, the application contains no specific particulars as to what constitutes the damage or whether the damage has actually been incurred. The statement that they have been harmed 'like any citizen of a member country' is not sufficient to enable the damage claimed to have been suffered to be identified.

25 Secondly, as regards the material damage allegedly suffered by the members of the two associations, the Court likewise finds that the application makes no reference to the damage allegedly suffered. In particular, the applicants do not indicate the nature or extent of the damage.

26 This total lack of particulars cannot be made good by the request, made by the two associations, for an expert to be appointed for the purpose of 'determining' the material damage allegedly suffered by their members. If this request is to be interpreted as a request for the commissioning of an expert's report, which is a measure of inquiry provided for by Article 65(d) of the Rules of Procedure, it cannot be upheld since the purpose of measures of inquiry — namely to prove alleged facts — cannot be achieved in the present case since no facts have been adduced to prove the existence of the damage allegedly suffered. Furthermore, if the applicants' request is to be interpreted as a request for a measure of organization of procedure to be adopted under Article 64(2)(b) and (c) of the Rules of Procedure, it cannot be upheld either, since the purpose of such measures is to determine the points on which the parties must present further argument or which call for measures of inquiry, to clarify the forms of order sought by the parties, their pleas in law and arguments and the points at issue between them. The task in the present case is not one of identifying points requiring an inquiry or clarifying the forms of order sought but of ascertaining all of these. Similarly, no point at issue between the parties can be clarified as the Commission is not in a position to contest the damage alleged by the applicants because of the lack of any indication of the basic particulars as to its nature and extent and as to its causal link with the Commission's alleged failures to fulfil its duty to control and monitor intra-Community trade.

27 Nor can the applicants rely on the judgment in *Granaria* v *Council and Commission*, cited above. In that case, the Court of Justice held that an application in which the applicant merely asserts that it has suffered pecuniary damage as a result of the legislation in question whilst reserving the right to specify the extent of the damage at a later stage cannot in general satisfy the requirements of the Rules of Procedure concerning the statement of the subject-matter of the dispute and the pleas relied on. However, the factual circumstances of that case, in which the Court of Justice held, exceptionally, that the fact that the application was incomplete did not necessarily render it inadmissible, were very different from those of the present case. That case concerned, in fact, an action for damages brought as a result of the judgment of the Court of Justice of 19 October 1977 in Joined Cases 117/76 and 16/77 *Ruckdeschel and Others* v *Hauptzollamt Hamburg-St Annen* [1977] ECR 1753 in which the Court of Justice found that in Article 5 of Council Regulation No 1125/74 of 29 April 1974 amending Regulation No 120/67/EEC on

the common organization of the market in cereals (OJ 1974 L 128, p. 12) and ending the grant of production refunds for quellmehl was unlawful on the ground of breach of the principle of equal treatment of the producers concerned. In those circumstances, it took the view that the issue of the legal basis of liability was particularly well suited for separate determination and for reasons of procedural economy examined the question whether the Commission had incurred liability, going on to conclude that it had not done so towards *Granaria*. Moreover, in that case, the nature of the damage allegedly suffered and the causal link between the damage and the regulation declared unlawful could be deduced from the circumstances of the case.

28 As regards the applicant associations' interest in bringing proceedings in the name of their members, the applicant associations have not identified in the action the parties alleged to have suffered damage nor proven, or even mentioned in the application, an assignment of rights or conferment of authority from which they could derive their interest in bringing proceedings in the name of their members (see the judgment in Case 238/78 *Ireks-Arkady* v *Council and Commission*, cited above, paragraph 5, and the judgment in Joined Cases T-481/93 and T-484/94 *Exporteurs in Levende Varkens and Others* v *Commission*, cited above, at paragraph 77). This Court considers that in those circumstances the two associations have not demonstrated the existence of an interest in bringing proceedings in the name of their members.

29 From all the foregoing considerations it follows, first, that the application does not satisfy the minimum requirements laid down by the first paragraph of Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance in order for an application to be admissible and, secondly, that the applicant associations have not established an interest in bringing proceedings. The objection of inadmissibility must accordingly be upheld and the application dismissed as inadmissible, without its being necessary to examine whether the other elements required in support of an action for damages exist or to consider the merits of the other arguments put forward by the applicants and the Commission.

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. Since the applicants have been unsuccessful, and the Commission has applied for costs to be awarded against them, the applicants must be ordered jointly and severally to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Dismisses the application as inadmissible;

2. Orders the applicants jointly and severally to pay the costs.

Luxembourg, 21 November 1996.

H. Jung
Registrar

R. García-Valdecasas
President