ORDER OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

10 March 2005 *

In Joined Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-265/00, T-267/00, T-268/00, T-271/00, T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00,

Gruppo ormeggiatori del porto di Venezia Soc. coop. rl, established in Venice (Italy), represented by F. Munari, lawyer, with an address for service in Luxembourg,

applicant in Case T-228/00,

Gruppo ormeggiatori del porto di Chioggia Piccola Soc. coop. rl, established in Venice, represented by S. Carbone, A. Taramasso and F. Munari, lawyers, with an address for service in Luxembourg,

applicant in Case T-229/00,

* Language of the case: Italian.

Compagnia lavoratori portuali Soc. coop. rl,

Società cooperativa lavoratori portuali San Marco Venezia Soc. coop. rl,

established in Venice, represented by A. Bortoluzzi and C. Montagner, lawyers, with an address for service in Luxembourg,

applicants in Case T-242/00,

Portabagagli del porto di Venezia Soc. coop. rl, established in Venice, represented by A. Bortoluzzi and C. Montagner, lawyers, with an address for service in Luxembourg,

applicant in Case T-243/00,

Abibes SpA, established in Venice, represented by G. Orsoni, G. Simeone and A. Schmitt, lawyers, with an address for service in Luxembourg,

applicant in Case T-245/00,

Fluvio Padana Srl, established in Venice, represented by G. Orsoni, G. Simeone and A. Schmitt, lawyers, with an address for service in Luxembourg,

applicant in Case T-246/00,

Serenissima motoscafi Srl, established in Venice, represented by G. Orsoni, A. Pavanini and A. Schmitt, lawyers, with an address for service in Luxembourg,

applicant in Case T-247/00,

Integrated Shipping Co. SpA (ISCO), established in Venice, represented by G. Orsoni, G. Simeone and A. Schmitt, lawyers, with an address for service in Luxembourg,

applicant in Case T-248/00,

Società cooperativa veneziana motoscafi, Soc. coop. rl,

Cooperativa 'San Marco' motoscafi in servizio pubblico Soc. coop. rl,

Cooperativa serenissima taxi Soc. coop. rl,

established in Venice, represented by G. Orsoni, A. Pavanini and A. Schmitt, lawyers, with an address for service in Luxembourg,

applicants in Case T-250/00,

Cooperativa ducale fra gondolieri di Venezia, Soc. coop. rl,

Gondolieri Bauer Soc. coop. rl,

established in Venice, represented by M. Giantin, lawyer, with an address for service in Luxembourg,

applicants in Case T-252/00,

Sacra Srl, established in Venice, represented by M. Marinoni, G.M. Roberti and F. Sciaudone, lawyers, with an address for service in Luxembourg,

applicant in Case T-256/00,

Fondamente nuove servizio taxi e noleggio, Soc. coop. rl,

Bucintoro motoscafi servizio taxi e noleggio Soc. coop. rl,

established in Venice, represented by R. Vianello, A. Bortoluzzi and C. Montagner, lawyers, with an address for service in Luxembourg,

applicants in Case T-257/00,

Multiservice Srl, established in Venice, represented by A. Bortoluzzi and C. Montagner, lawyers, with an address for service in Luxembourg,

applicant in Case T-258/00,

Veneziana di navigazione SpA, established in Venice, represented by A. Bortoluzzi and C. Montagner, lawyers, with an address for service in Luxembourg,

applicant in Case T-259/00,

Cooperativa traghetto S. Lucia Soc. coop. rl, established in Venice, represented by A. Bortoluzzi, C. Montagner and F. Stivanello Gussoni, lawyers, with an address for service in Luxembourg,

applicant in Case T-265/00,

Comitato 'Venezia vuole vivere', established in Venice, represented in Cases T-265/00 and T-267/00 by A. Bortoluzzi, C. Montagner and F. Stivanello Gussoni and in Cases T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00 by A. Bianchini, lawyers, with an address for service in Luxembourg,

applicant in Cases T-265/00, T-267/00, T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00,

Cooperativa Daniele Manin fra gondolieri di Venezia Soc. coop. rl, established in Venice, represented by A. Bortoluzzi, C. Montagner and F. Stivanello Gussoni, lawyers, with an address for service in Luxembourg,

applicant in Case T-267/00,

Conepo servizi Soc. coop. rl, established in Venice, represented by A. Biagini, S. Scarpa and P. Pettinelli, lawyers, with an address for service in Luxembourg,

applicant in Case T-268/00,

Ligabue Catering SpA, established in Venice, represented by A. Vianello, M. Merola and A. Sodano, lawyers, with an address for service in Luxembourg,

applicant in Case T-271/00,

Verde sport SpA, established in Venice, represented by A. Bianchini, lawyer, with an address for service in Luxembourg,

applicant in Case T-274/00,

Cooperativa carico scarico e trasporti scalo fluviale Soc. coop. rl, established in Venice, represented by A. Bianchini, lawyer, with an address for service in Luxembourg,

applicant in Case T-275/00,

Cipriani SpA, established in Venice, represented by A. Bianchini, lawyer, with an address for service in Luxembourg,

applicant in Case T-276/00,

Cooperativa trasbagagli Soc. coop. rl, established in Venice, represented by A. Bianchini, lawyer, with an address for service in Luxembourg,

applicant in Case T-281/00,

Cooperativa fra portabagagli della stazione di Venezia Srl, established in Venice, represented by A. Bianchini, lawyer, with an address for service in Luxembourg,

applicant in Case T-287/00,

Cooperativa braccianti mercato ittico 'Tronchetto' Soc. coop. rl, established in Venice, represented by A. Bianchini, lawyer, with an address for service in Luxembourg,

applicant in Case T-296/00,

supported in Cases T-228/00, T-229/00, T-242/00, T-243/00, T-247/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-265/00, T-267/00, T-268/00 and T-271/00 by

Italian Republic, represented by U. Leanza, acting as Agent, with an address for service in Luxembourg,

intervener,

v

Commission of the European Communities, represented by V. Di Bucci, acting as Agent, assisted by A. Dal Ferro, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION for the annulment of Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50),

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

composed of J. Pirrung, President, A.W.H. Meij, N.J. Forwood, I. Pelikánová and S.S. Papasavvas, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 By Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50, 'the contested decision'), the Commission found that the relief from social security contributions provided for by those laws, in so far as they referred to Article 2 of the Ministerial Decree of 5 August 1994, constituted State aid incompatible with the common market where they were granted to firms, established in those places, which were neither small or medium-sized enterprises (SMEs) within the meaning of the Community guidelines on State aid for SMEs, nor

firms eligible for exemption under Article 87(3)(c) EC, nor firms which hired groups of workers experiencing particular difficulties entering or re-entering the labour market as referred to in the Community guidelines on aid to employment (second paragraph of Article 1 of the contested decision). The contested decision found that the reductions in social security contributions provided for by Article 1 of the Ministerial Decree of 5 August 1994, granted to firms located in Venice and Chioggia, with the exception of the municipal companies ASPIV, Consorzio Venezia nuova, ACTV, Panfido SpA and AMAV, also constituted State aid incompatible with the common market (Article 2 of the contested decision).

2 In Article 5 of the contested decision, the Commission required the Italian Republic to recover from the beneficiaries the aid incompatible with the common market, referred to in the second paragraph of Article 1 and in Article 2 of that decision.

3 It was stated in the contested decision that the Commission had notified the Italian Republic by letter of 17 December 1997 of its intention to initiate the formal examination procedure laid down in Article 88(2) EC (recital 3), and the aid schemes under consideration had been suspended with effect from 1 December 1997 (recital 14).

4 The contested decision was published in the *Official Journal of the European Communities* on 23 June 2000. By applications lodged at the Court Registry between 30 August and 18 September 2000, the applicants brought the present actions.

5 By documents lodged at the Court Registry on 19 January 2001, the Commission raised an objection of inadmissibility against those actions.

6 By documents lodged at the Court Registry on 7 March 2001, the Italian Republic applied for leave to intervene in support of the forms of order sought by the applicants in Cases T-256/00, T-268/00 and T-271/00. By documents lodged on 10 April 2001, it applied for leave to intervene in support of the forms of order sought by the applicants in Cases T-228/00, T-229/00, T-242/00, T-243/00, T-247/00, T-250/00, T-252/00, T-257/00 to T-259/00, T-265/00 and T-267/00. By orders of 19 June 2001, the President of the Second Chamber (Extended Composition), after hearing the parties, granted leave to intervene from the stage of the written procedure in Cases T-256/00, T-268/00 and T-271/00 and during the oral procedure in the other cases, in accordance with Article 116(6) of the Rules of Procedure of the Court of First Instance.

7 As measures of organisation of procedure provided for in Article 64 of the Rules of Procedure, the Court, having regard to the complexity of the criteria for compatibility set out in the contested decision and described, in essence, in paragraph 1 above, invited the Italian Republic to state inter alia, in respect of each of the applicant undertakings in these cases, as well as in 35 other cases also seeking annulment of the contested decision, whether it considered that it was required, in implementation of Article 5 of the Decision, to recover the aid which had been granted and was now at issue. By letter lodged at the Court Registry on 25 September 2003, supplemented at the request of the Court by a letter lodged on 24 March 2004, the Italian Republic stated that it had excluded from the procedure to recover the aid in question all the undertakings which had brought the present actions. It also produced two letters, dated 29 June and 29 October 2001, in which the Commission provided it, at its request, with guidelines for classifying as State aid the reductions in social security contributions at issue granted to undertakings operating in certain sectors of activity, for the purposes of implementing the contested decision.

8 The Court asked the Commission to give its views on the implications of the Italian Government's replies for the legal interest in bringing proceedings of the applicants excluded from the aid recovery procedure set in motion in implementation of the contested decision, from the point of view of an examination of the admissibility of their applications. The Commission complied with that request by letter lodged at the Court Registry on 14 May 2004.

9 After a reply had been received from the Commission, the same request was made to the applicants. Furthermore, the applicants and the Commission were also asked to submit their observations on a possible joinder of these cases. The applicants in Cases T-228/00, T-229/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00, T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00 replied by letters lodged at the Court Registry between 25 June and 5 July 2004. By letter received at the Court Registry on 5 July 2004, the Commission expressed its opinion with regard to a possible joinder.

Forms of order sought by the parties

10 The applicants claim that the Court should:

— annul Articles 1, 2 and 5 of the contested decision in so far as they declare the reductions in social security contributions provided for by Articles 1 and 2 of the Ministerial Decree of 5 August 1994 incompatible with the common market and order their recovery;

— order the defendant to pay the costs.

11 The Commission contends that the Court should:

— dismiss the actions as inadmissible;

— order the applicants to pay the costs.

Law

12 Having regard to the connection between the present cases and after hearing the parties, this Court considers it appropriate to join the cases for the purpose of the further course of the proceedings, pursuant to Article 50 of the Rules of Procedure.

13 Under Article 113 of the Rules of Procedure, the Court may at any time, of its own motion, consider whether there exists any absolute bar to proceeding with an action; it shall give its decision in accordance with Article 114(3) and (4).

14 In this case, the Court considers that it has sufficient information from the documents in the file and therefore decides — in the interests of procedural economy having regard to the particulars of these cases and notwithstanding the objections of inadmissibility raised by the Commission — to rule, of its own motion, in accordance with the case-law cited in paragraphs 22 and 38 below, on whether there exists any absolute bar to proceedings owing to the lack of a legal interest in bringing proceedings and to lis pendens, without initiating the oral procedure.

The applicants' legal interest in bringing proceedings

Arguments of the parties

15 In the present case, the Commission — in reply to the Court's question regarding the implications of the information provided by the Italian Government with regard to the exclusion of the applicant undertakings from the procedure to recover the aid in

question and regarding the applicants' interest in bringing proceedings — made the preliminary point that it was unable, in the time it was allowed, to give its opinion as to whether the assessments made by the Italian authorities in that regard were correct. It would be for the competent services of the Commission to ask those authorities for additional information if necessary and ultimately for the college of Commissioners to take the decision as to whether or not to bring an action before the Court of Justice pursuant to Article 88(2) EC for a declaration, where appropriate, that the Italian Republic had not fulfilled its obligations under the contested decision.

16 However, the Commission takes the view that the aforementioned applicants do not have a legal interest in bringing proceedings either in respect of the past, since, according to the information provided by the Italian authorities, they are not the subject of a recovery procedure, or in respect of the future, because at the date of the contested decision the aid schemes under consideration were no longer being applied.

17 For their part, the applicants consider that the Italian Government's decision to exclude them from the procedure to recover the aid in implementation of the contested decision has no bearing on their interest in bringing proceedings, since the Commission can review that national implementing measure and, if appropriate, bring proceedings against the Italian Republic under Article 88(2) EC.

18 In particular, in Cases T-228/00 and T-229/00, the applicants point out that, if such an action were brought and were successful, they would be required to repay the aid and would have no judicial remedy.

19 In Cases T-228/00, T-229/00, T-245/00 to T-248/00 and T-250/00, the applicants consider that they would be without an interest in bringing proceedings only if recovery from them of the aid in question were ruled out once and for all. That

would be the case if the Commission declared that it no longer intended to review the findings of the Italian Government. In Case T-256/00, the applicant claims that only if the Court of First Instance considered that it had been definitively established that the measures from which it had benefited did not constitute State aid within the meaning of Article 87(1) EC would it no longer have a legal interest in bringing proceedings.

20 In Case T-252/00, the applicants submitted observations jointly with the applicant in Case T-253/00. They consider that they were excluded from the procedure to recover the aid in question because they are undertakings which employ groups of workers experiencing particular difficulties entering or re-entering the labour market, in accordance with the guidance given by the Commission to the Italian Republic in its letter of 29 June 2001. They disagree that the Italian Government's assessment is subject to review by the Commission. Furthermore, the applicants have an interest in the aid granted to SMEs established in Venice being recognised as compatible with the common market.

21 In Cases T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00, the applicants claim that the Italian Government's answers to the questions put by the Court, to the effect that they were excluded from the procedure for recovery of the aid at issue, are neither definitive nor inviolable. They did not prevent the national authorities from recovering the alleged aid from the Società per l'industria alberghiera SpA, the applicant in Case T-286/00.

Findings of the Court

22 Since the conditions of admissibility of an action, in particular whether there is a legal interest in bringing proceedings, concern an absolute bar to proceedings (order of the Court of Justice in Case 108/86 *D.M.* v *Council and ESC* [1987] ECR 3933,

paragraph 10, and order in Case T-398/02 R *Linea GIG* v *Commission* [2003] ECR II-1139, paragraph 45), it is for the Court to consider of its own motion whether the applicants have an interest in obtaining annulment of the contested decision.

23 According to settled case-law, for an action for annulment brought by a natural or legal person to be admissible, that person must have a vested and present interest in the annulment of the contested act. That interest must be determined at the time when the application is lodged (Case T-16/96 *Cityflyer Express* v *Commission* [1998] ECR II-757, paragraph 30). It cannot be assessed in the light of a future and uncertain occurrence. In particular, if the interest which an applicant claims concerns a future legal situation, he must demonstrate that the prejudice to that situation is already certain (Case T-138/89 *NBV and NVB* v *Commission* [1992] II-2181, paragraph 33).

24 In this case, it is apparent from the replies given by the Italian Republic to the questions put by the Court that it does not consider that it is required, in implementation of the contested decision, to recover the contested aid from the applicant undertakings. In that regard, the Italian Republic also states that it took as its basis for the purposes of implementing the decision the guidance provided, at its request, by the Commission in its letters of 29 June and 29 October 2001, included in the file, with regard to classifying as State aid the reductions in social security contributions in question granted to undertakings operating in certain sectors of activity.

25 The Court must therefore take note of the fact that the Member State concerned — which is responsible for implementing the contested decision subject to review by the national court and, if necessary, by the Court of Justice pursuant to Article 88(2) EC — has decided, on the basis of the operative part of the contested decision and of the guidelines for its implementation provided by the Commission (see the last sentence of paragraph 7 above), not to recover the alleged aid from the applicant undertakings.

26 Against that legal and factual background, the applicants, by referring only to the Commission's power to check that the Member State concerned has implemented the contested decision and, if necessary, to refer the matter to the Court of Justice pursuant to Article 88(2) EC, rely merely on future and uncertain circumstances to show that they have an interest in bringing proceedings, namely that the Commission might reach a different conclusion from that of the Italian Republic and require it to recover the alleged aid from the applicants.

27 As regards the assertion made by the applicants in Cases T-274/00 to T-276/00, T-281/00, T-287/00, T-288/00 and T-296/00 that, although the Italian Government replied that the applicant in Case T-286/00 was excluded from the procedure for recovery of the alleged aid, the national authorities nevertheless did recover the aid from that undertaking, there is no evidence to support that claim. Furthermore, with regard to the applicants in Cases T-274/00 to T-276/00, T-281/00, T-287/00, T-288/00 and T-296/00, recovery has indeed not taken place and there is no indication that it is planned.

28 Finally, the arguments of the applicants in Case T-252/00 — which, unlike the applicant in Case T-253/00, were excluded from the procedure for recovery of the alleged aid, according to the replies given by the Italian Government — are completely irrelevant for assessing whether there is a vested and present interest in the annulment of the contested decision, in which the Commission declares that the reductions in social security contributions at issue granted to SMEs are compatible with the common market (see paragraph 1 above).

29 In those circumstances, the conclusion must be, in the first place, that, since in the present case only a future and uncertain decision by the Commission calling in question the implementing decision taken by the Italian Republic could affect their legal position, the applicant undertakings do not have a vested and present interest in the annulment of the contested decision.

30 Furthermore, even if the hypothesis referred to in the previous paragraph were to materialise, the applicants, contrary to their claims, would not thereby be deprived of any effective judicial protection. Since those undertakings cannot seek annulment of the contested decision, because they have no legal interest in bringing proceedings, that decision cannot, in principle, bind the national court in their regard, in contrast to the situation considered in Case C-188/92 *TWD* [1994] ECR I-833, paragraphs 24 to 26, which concerned a Commission decision regarding individual aid which was therefore clearly open to challenge by the applicant under the fourth paragraph of Article 230 EC. In the present case, the applicants would therefore be able to bring proceedings, if appropriate, before the national court against any decisions taken by the competent authority requiring them to repay the aid and to raise before that court, as a defence, the unlawfulness of the contested decision.

31 It is apparent from the case-law of the Court of Justice (see, to that effect, Case C-241/95 *Accrington Beef and Others* [1996] ECR I-6699, paragraphs 15 and 16, and Case C-408/95 *Eurotunnel and Others* [1997] ECR I-6315, paragraph 28) that the fact that a Commission decision which finds that a State aid scheme is incompatible with the common market and orders recovery of the aid paid out is no longer open to challenge should only be raised, under the principle of legal certainty, by the national court against beneficiaries of that aid who plead, as a defence, the unlawfulness of that decision if those beneficiaries were unquestionably entitled and had been informed that they were entitled to challenge the Commission decision under the fourth paragraph of Article 230 EC and had failed to exercise that right within the time-limit provided for in that article. In that regard, it should also be pointed out that, in line with the case-law mentioned above and in accordance with the principle of the sound administration of justice, beneficiaries of an aid scheme who have not directly challenged the Commission decision within the time-limit laid down cannot, for that reason, be declared out of time for pleading, as a defence, the unlawfulness of that decision before the national court, if, having regard to the particular circumstances of the case or to the complexity of the criteria which the Commission decision applied to the obligation of recovery, the question of whether those beneficiaries would be required to repay the aid in question, in implementation of the Commission decision, could reasonably have given rise to doubt initially, so that their interest in bringing proceedings against that decision was not obvious.

32 Furthermore, in that situation, the fact that the Commission decision declaring an aid scheme incompatible and ordering, under certain conditions, recovery of the aid granted has been the subject of an action for annulment or several related actions for annulment before the Court of First Instance does not limit effective judicial protection for the beneficiaries of that aid who, like the applicants in the present case, do not have a legal interest in bringing proceedings owing to the national authorities' decision to exclude them from the recovery procedure. If those beneficiaries were nevertheless the subject of a decision of the national authorities requiring them to repay the aid received, particularly following a review by the Commission, they could, depending on the circumstances, bring an action for annulment before the national court against that national decision and raise, as a defence, the unlawfulness of the aforementioned Commission decision.

33 In that event the national court could stay the proceedings in order to refer a question to the Court of Justice under Article 234 EC for a preliminary ruling on the validity of the Commission's decision or, in the interest of the proper administration of justice, until disposal of the case on the merits before the Community Court (see, to that effect, the order in Case T-34/02 R *B* v *Commission* [2002] ECR II-2803, paragraph 92). If the national court were to find that certain serious pleas put forward by the applicants in support of their objection of inadmissibility had not been raised before the Court of First Instance in support of the aforementioned action or actions for annulment, it would be open to it at any time to refer a question to the Court of Justice for a preliminary ruling determining validity, in relation to those pleas, so that the applicants would, in any event, have full and complete judicial protection.

34 In the second place, as regards the future effects of the contested decision, in that it declares the aid schemes in question incompatible with the common market and thus precludes their application in the future, it need only be observed that, according to settled case-law, the potential beneficiaries of an aid scheme cannot, solely by virtue of that capacity, be regarded as individually concerned by the Commission decision declaring that scheme incompatible with the common market

(see, to that effect, Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraph 15, and Case T-9/98 *Mitteldeutsche Erdöl-Raffinerie* v *Commission* [2001] ECR II-3367, paragraph 77).

35 Against that background, it would be immaterial in any event, for the purpose of determining whether the present actions are admissible, to plead a possible interest in bringing proceedings on that basis alone, on the ground that the contested decision precludes the re-application of the aid schemes in question which had been suspended with effect from 1 December 1997; moreover, the applicants do not dispute this.

36 It follows from all the foregoing that the actions in Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-268/00 and T-271/00 are inadmissible since the applicants have no legal interest in bringing proceedings.

37 Similarly, the actions in Cases T-265/00, T-267/00, T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00, brought jointly by undertakings and by the Comitato 'Venezia vuole vivere', are inadmissible in part, in so far as they were brought by the applicant undertakings which have no legal interest in bringing proceedings.

Lis pendens

38 Since the conditions of admissibility of an action are an issue of public policy, and since the actions in Cases T-265/00, T-267/00, T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00 brought by the Comitato 'Venezia vuole vivere' involve the

same parties and seek the annulment of the same decision, it is for the Court to determine of its own motion whether some of those actions are rendered inadmissible by reason of lis pendens (Joined Cases 45/70 and 49/70 *Bode* v *Commission* [1971] ECR 465, paragraph 11, and Joined Cases 58/72 and 75/72 *Perinciolo* v *Council* [1973] ECR 511, paragraph 5).

39 In that regard it should be pointed out that, in Cases T-265/00 and T-267/00, the Comitato 'Venezia vuole vivere' raises the same pleas. Moreover, it also raises identical pleas in Cases T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00.

40 In those circumstances, in accordance with settled case-law (Joined Cases 172/83 and 226/83 *Hoogovens Groep* v *Commission* [1985] ECR 2831, paragraph 9, and Joined Cases 358/85 and 51/86 *France* v *Parliament* [1988] ECR 4821, paragraph 12), the conclusion must be that the action in Case T-267/00, which was lodged on the same day as the action in Case T-265/00, must be dismissed as inadmissible, since the two applications involve the same parties and seek the annulment of the same decision on the same grounds.

41 For the same reasons, the actions in Cases T-275/00, T-276/00, T-281/00, T-287/00 and T-296/00, which were lodged on the same day as the application in Case T-274/00, involve the same parties and seek annulment of the same decision on the same grounds, must also be declared inadmissible.

42 It follows that the actions in Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-267/00, T-268/00, T-271/00, T-275/00, T-276/00, T-281/00, T-287/00 and T-296/00 are inadmissible.

43 Also, the actions in Cases T-265/00 and T-274/00 are inadmissible in part, in so far as they were brought by Cooperativa traghetto S. Lucia, Soc. Coop. rl (Case T-265/00) and Verde sport SpA (Case T-274/00).

44 Finally, it must be stated that the Court of First Instance considers it inappropriate to investigate, at this stage, the capacity of the Comitato 'Venezia vuole vivere' to bring proceedings in Joined Cases T-265/00 and T-274/00.

Costs

45 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 and, under Article 87(3), where the circumstances are exceptional, the Court of First Instance may order that the costs be shared or that each party bear its own costs. Furthermore, under Article 87(4) of the Rules of Procedure, Member States which intervene in the proceedings are to bear their own costs.

46 In the present case, it must be borne in mind that the lack of a legal interest in bringing proceedings of the applicant undertakings whose pleas of admissibility have been unsuccessful came to light only after the Italian Republic had replied to the questions put by the Court. In view of the initial uncertainty experienced by those undertakings with regard to the effect of the contested decision on their legal position and the risk that the definitive nature of that decision might subsequently be set up against them, it cannot be held against them that they brought these actions. In relation to those applicants, therefore, the parties must be ordered to bear

their own costs. On the other hand, there are no special circumstances to explain why the Comitato 'Venezia vuole vivere' brought the actions in Cases T-267/00, T-275/00, T-276/00, T-281/00, T-287/00 and T-296/00 with the same aim and on the same grounds as previous cases (Cases T-265/00 and T-274/00) between that committee and the Commission.

On those grounds,

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

hereby orders:

1. **Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-265/00, T-267/00, T-268/00, T-271/00, T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00 are joined for the purposes of the remainder of the proceedings.**

2. **The actions in Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-267/00, T-268/00, T-271/00, T-275/00, T-276/00, T-281/00, T-287/00 and T-296/00 are dismissed as inadmissible.**

3. **The actions in Cases T-265/00 and T-274/00 are dismissed in part as inadmissible in so far as they were brought by Cooperativa traghetto S. Lucia Soc. coop. rl (Case T-265/00) and Verde sport SpA (Case T-274/00).**

4. **In Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-268/00 and T-271/00, the applicants, on the one hand, and the Commission, on the other, are to bear their own costs.**

5. **In Cases T-267/00, T-275/00, T-276/00, T-281/00, T-287/00 and T-296/00, Cooperativa Daniele Manin fra gondolieri di Venezia Soc. coop. rl, Cooperativa carico scarico e trasporti scalo fluviale Soc. coop. rl, Cipriani SpA, Cooperativa trasbagagli Soc. coop. rl, Cooperativa fra portabagagli della stazione di Venezia Srl and Cooperativa braccianti mercato ittico 'Tronchetto' Soc. coop. rl are to bear their own costs. In those cases the Commission is to bear the costs which it has incurred in connection with the actions in so far as they were brought by those companies. The Comitato 'Venezia vuole vivere' is to bear its own costs and pay those incurred to date by the Commission in connection with the actions in Cases T-267/00, T-275/00, T-276/00, T-281/00, T-287/00 and T-296/00, in so far as they were brought by the Comitato 'Venezia vuole vivere'.**

6. **The applicants in Case T-265/00, Cooperativa traghetto S. Lucia, and in Case T-274/00, Verde sport, are to bear their own costs. In those two cases the Commission is to bear the costs it has incurred to date in connection with the actions brought by those two companies.**

7. **The Italian Republic is to bear its own costs in Cases T-228/00, T-229/00, T-242/00, T-243/00, T-247/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-267/00, T-268/00 and T-271/00, and the costs which it has incurred in Case T-265/00 in connection with the action brought by Cooperativa traghetto S. Lucia.**

8. **The remainder of the costs are reserved in Cases T-265/00 and T-274/00.**

Luxembourg, 10 March 2005.

H. Jung

Registrar

J. Pirrung

President