JUDGMENT OF THE COURT
4 February 1997 *

In Joined Cases C-71/95, C-155/95 and C-271/95,

Kingdom of Belgium, represented by J. Devadder, Director of Administration in the Ministry of Foreign Affairs, Foreign Trade and Development Cooperation, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins,

applicant,

v

Commission of the European Communities, represented by T. van Rijn, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of C. Goméz de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

supported, in Cases C-71/95 and C-155/95, by

French Republic, represented by C. de Salins, Deputy Director of the Legal Affairs Directorate at the Ministry of Foreign Affairs, and F. Pascal, seconded to that directorate from the Central Administration, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9 Boulevard du Prince Henri,

intervener,

* Language of the case: Dutch.

APPLICATION for the annulment of:

— in Case C-71/95, Commission Regulation (EC) No 3303/94 of 21 December 1994 introducing transitional measures for imports of bananas into Austria, Finland and Sweden in the first quarter of 1995 (OJ 1994 L 341, p 46);

— in Case C-155/95, Commission Regulation (EC) No 479/95 of 1 March 1995 introducing transitional measures for the application of the tariff quota arrangements for the import of bananas as a result of the accession of Austria, Finland and Sweden for the second quarter of 1995 (OJ 1995 L 49, p 18);

— in Case C-271/95, Commission Regulation (EC) No 1219/95 of 30 May 1995 adopting transitional measures for the application of the tariff quota arrangements for imports of bananas for the third quarter of 1995 as a result of the Accession of Austria, Finland and Sweden (OJ 1995 L 120, p. 20),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, G. F. Mancini, J. C. Moitinho de Almeida (Rapporteur) and J. L. Murray (Presidents of Chambers), P. J. G. Kapteyn, C. Gulmann, D. A. O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann and H. Ragnemalm, Judges,

Advocate General: M. B. Elmer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 9 July 1996, at which the Belgian Government was represented by A. de Ridder, Deputy Adviser at the Legal Department of the Ministry of Foreign Affairs, Foreign Trade and Development Cooperation, acting as Agent, the French Government by F. Pascal and the Commission by T. van Rijn,

after hearing the Opinion of the Advocate General at the sitting on 15 October 1996,

gives the following

Judgment

1 By applications lodged at the Court Registry on 14 March 1995 in Case C-71/95, on 17 May 1995 in Case C-155/95 and on 10 August 1995 in Case C-271/95, the Kingdom of Belgium brought an action under the first paragraph of Article 173 of the EC Treaty for annulment of Commission Regulation (EC) No 3303/94 of 21 December 1994 introducing transitional measures for imports of bananas into Austria, Finland and Sweden in the first quarter of 1995 (OJ 1994 L 341, p 46), Commission Regulation (EC) No 479/95 of 1 March 1995 introducing transitional measures for the application of the tariff quota arrangements for the import of bananas as a result of the accession of Austria, Finland and Sweden for the second quarter of 1995 (OJ 1995 L 49, p 18), and Commission Regulation (EC) No 1219/95 of 30 May 1995 adopting transitional measures for the application of the tariff quota arrangements for imports of bananas for the third quarter of 1995 as a result of the Accession of Austria, Finland and Sweden (OJ 1995 L 120, p. 20) (hereinafter 'the contested Regulations').

2 By two orders of the President of the Court of 6 September 1995 (Case C-155/95) and 4 October 1995 (Case C-71/95), the French Republic was given leave to intervene in support of the Commission.

3 By order of the President of the Court of 14 June 1996 the three cases were joined for the purposes of the oral proceedings and the judgment.

4 Title IV of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas (OJ 1993 L 47, p. 1, hereinafter 'the Council Regulation') replaced the various national arrangements previously in force with common arrangements for trade with third countries.

5 Article 18(1) of that regulation, as amended by Council Regulation (EC) No 3290/94 of 22 December 1994 on the adjustments and transitional arrangements required in the agriculture sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations (OJ 1994 L 349, p. 105), provides for a tariff quota of 2.1 million tonnes (net weight) to be opened for 1994 and of 2.2 million tonnes (net weight) for subsequent years for imports of third-country bananas and non-traditional ACP bananas.

6 Article 19(1) of the Council Regulation allocates 66.5% of the tariff quota to the category of operators who marketed third-country and/or non-traditional ACP bananas, 30% to the category of operators who marketed Community and/or traditional ACP bananas, and 3.5% to the category of operators established in the Community who started marketing bananas other than Community and/or traditional ACP bananas from 1992.

Article 19(4) provides:

'If the tariff quota is increased, the additional available quantity shall be allocated to importers in the categories referred to in paragraph 1 ....'

7 In order to implement the Council Regulation, the Commission adopted *inter alia* Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community (OJ 1993 L 142, p. 6), which replicates the distinction between the three categories of operator mentioned in paragraph 6 above and describes them as Categories A, B and C.

8 The Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, hereinafter 'the Act of Accession') provides, in Article 137(2), second indent, that 'the rights and obligations resulting from the common agricultural policy shall be applicable in full in the new Member States'.

9 Article 148 of the Act of Accession provides:

'1. Unless otherwise stipulated in specific cases, the Council, acting by a qualified majority on a proposal from the Commission, shall adopt the necessary provisions to implement this Title.

2. The Council ... may make the adaptations to the provisions appearing in this Title which may prove necessary as a result of a modification in Community rules.'

10 Article 149(1) of the Act of Accession provides:

'If transitional measures are necessary to facilitate the transition from the existing regime in the new Member States to that resulting from application of the common organization of the markets under the conditions set out in this Title, such measures shall be adopted in accordance with the [Management Committee] procedure .... These measures may be taken during a period expiring on 31 December 1997 and their application shall be limited to that date.'

11 According to Article 150 of the Act of Accession:

'1. The transitional measures relating to implementation of the instruments concerning the common agricultural policy not specified in this Act, including in the field of structures, which are required as a result of accession shall be adopted prior to accession in accordance with the procedure laid down in paragraph 3 and shall enter into force on the date of accession at the earliest.

...

3. The Council, acting by a qualified majority on a proposal from the Commission, shall adopt the transitional measures referred to in paragraphs 1 and 2. Nevertheless, the measures affecting instruments initially adopted by the Commission will be adopted by this institution following the procedure referred to in Article 149(1).'

12 Article 4(1) of Regulation No 3303/94 and Article 1(1) of Regulations Nos 479/95 and 1219/95 provide that for the first, second and third quarters of 1995 respectively the competent authorities of Austria, Finland and Sweden are to authorize the operators established on their territory who have imported bananas in 1991 and/or 1992 and/or 1993 to import bananas originating in third countries up to a limit of certain fixed quotas.

13 The third and fourth paragraphs of Article 4(1) of Regulation No 3303/94 and the third and fourth paragraphs of Article 1(1) of Regulations Nos 479/95 and 1219/95 provide in substance that each operator's authorization to import may not cover a quantity greater than a certain percentage of the average of the annual quantities imported by him in the years 1991, 1992 and 1993 and that this authorization is not to predetermine the reference quantity to be allocated to the operator in question for 1995 pursuant to Regulation (EEC) No 1442/93.

14 Those regulations, which are based on the Act of Accession, specifically Article 149(1) thereof, are justified, as stated in the second recital in the preamble to Regulation No 3303/94 and the third recital in the preamble to Regulations Nos 479/95 and 1219/95, by the fact that, to facilitate the transition from the arrangements existing in the new Member States before their accession to those resulting from the application of the common organization of the market in bananas, operators established in those countries should be authorized to import in the relevant quarter of 1995, as a transitional measure, a specific quantity of bananas originating in third countries.

15 Article 3(2) and (3) of Regulation No 479/95 provides that:

'The competent authorities shall establish the lists of the operators concerned and the quantities marketed by each of them in accordance with the rules laid down in ... Regulation (EEC) No 1442/93 by 31 March 1995'

and are to notify them to the Commission by 7 April 1995.

16 On 6 April 1995 the Commission presented to the Council a proposal for a regulation adapting the Council Regulation as regards the volume of the annual quota for the import of bananas into the Community following the accession of Austria, Finland and Sweden (OJ 1995 C 136, p. 22).

17 On 3 August 1995 the Commission adopted Regulation (EC) No 1924/95 laying down transitional measures for the application of the tariff quota arrangements for imports of bananas as a result of the accession of Austria, Finland and Sweden (OJ 1995 L 185, p. 24). That regulation is based on Article 149(1) of the Act of Accession and the fourth recital in its preamble gives as a reason for its adoption the fact that the Council has not taken any decision to increase the tariff quota, on the basis of the proposal presented by the Commission.

18 Under Article 1 of that regulation, a quantity of 353 000 tonnes (net weight), additional to the tariff quota provided for in Article 18 of the Council Regulation, is to be opened for 1995 for imports into Austria, Finland and Sweden of bananas from third countries and of non-traditional ACP bananas.

The quantities already imported into the three new Member States pursuant to the contested Regulations are to be set against the overall quantity thus fixed.

For the fourth quarter of 1995, Article 2 of Regulation No 1924/95 provides for the issue of import licences in Austria, Finland and Sweden, distinguishing between operators in Categories A and C registered by the competent authorities of the three new Member States in accordance with Regulation No 479/95.

19 The Commission justified the adoption of this new arrangement by the fact that import authorizations in the new Member States for the first three quarters of 1995 had had to be set against the overall Community quota; that supplies to the new Member States had consisted of third-country bananas only; that authorizations to import had therefore been granted to operators in Category A; that the remaining balance of the tariff quota, including the additional quantity, did not permit, in the fourth quarter, the allocation among the various categories of operators, pursuant to Article 19 of the Council Regulation, in view of the authorizations to import granted already in the three new Member States since the beginning of 1995; and that, furthermore, such an allocation would not make it possible for the supply requirements of the Community to be met.

20 By Regulation (EC) No 2008/95 of 18 August 1995 the Commission fixed the single reduction coefficient for the determination of the quantity of third-country or non-traditional ACP bananas to be allocated to each operator for import into Austria, Finland and Sweden for the fourth quarter of 1995 (OJ 1995 L 196, p. 3).

First plea in law

21 The Kingdom of Belgium maintains, in the originating applications in Cases C-71/95 and C-155/95, that it was for the Council, on the basis of Article 149 of the Act of Accession, rather than for the Commission, to adopt the contested Regulations which contain transitional measures derogating from the Council Regulation.

22 In its replies in Cases C-71/95 and C-155/95, and in the application in Case C-271/95, the Kingdom of Belgium argues that the contested Regulations should not have been adopted on the basis of Article 149 but on the basis of Article 148, or possibly Article 150, of the Act of Accession. It acknowledges that in the applications relating to the first two cases it mistakenly referred to Article 149 of the Act of Accession, basing itself on a version of the Act superseded by the definitive version.

23 It does not dispute the need for a quota increase as a result of the new accessions but submits that to that end the Commission could have acted on the basis of Article 16(3) of the Council's Rules of Procedure and followed the procedure provided for therein.

Admissibility

24 In its defences in Cases C-71/95 and C-155/95, the Commission points out that the Kingdom of Belgium had committed an error in referring to the applicable provisions. That error is fundamental, inasmuch as Article 149 of the Act of Accession on which the regulations are based authorizes the Commission, contrary to the applicant's argument, to adopt transitional measures.

25 In its rejoinders in Cases C-71/95 and C-155/95, the Commission points out, moreover, that the arguments put forward by the Kingdom of Belgium in its replies in those two cases differ from the summaries in the applications, in so far as the applicant states therein that the contested Regulations should have been adopted by the Council, whereas in its replies it dwells on the respective functions of Articles 148, 149 and 150 of the Act of Accession.

26 The Commission considers that it is for the Court to determine whether, as far as this plea in law is concerned, the Kingdom of Belgium has satisfied the requirements of Article 38 and 42 of the Rules of Procedure.

27 The French Republic points out that in the applications in Cases C-71/95 and C-155/95 the Kingdom of Belgium challenges the Commission's competence to adopt the contested Regulations and that it raises the question of legal basis only at the reply stage.

28 In examining the admissibility of the applications in Cases C-71/95 and C-155/95 in relation to the first plea supporting the claim for annulment, it must be recalled that Article 38 of the Rules of Procedure requires an application to state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based and that Article 42 of those Rules prohibits the introduction of new pleas in law in the course of proceedings unless they are based on matters of law or of fact which come to light in the course of the procedure.

29 A plea in law can only be considered new if it has not been mentioned directly or indirectly in the application (see Joined Cases 19/60, 21/60, 2/61 and 3/61 *Fives Lille Cail and Others* v High Authority [1961] ECR 281 and Case 108/81 *Amylum* v *Council* [1982] ECR 3107, paragraph 25).

30 In this case, despite the fact that the plea in law is presented in a different form in the applications and the replies, the arguments relied on are substantially identical, the applicant disputing that the contested Regulations could be adopted by the Commission on the basis of a provision in an Act of Accession establishing its competence when it should have been adopted by the Council on the basis of a provision concerning the powers of that institution.

31 Moreover, it appears from the Commission's statements of defence and rejoinders that the Commission did not misapprehend the thrust of this plea in law, so that it was able to put its case properly.

32 It must therefore be held that the applications in Cases C-71/95 and C-155/95 are admissible as far as the first plea for annulment is concerned.

Substance

33 In examining the merits of this plea for annulment, it must be borne in mind that Article 149(1) of the Act of Accession confers on the Commission the power to adopt, under the Management Committee procedure, any transitional measures necessary during a period expiring on 31 December 1997.

34 The common organization of the market in bananas could not be applied to the new Member States of the Community without the Council first increasing the tariff quota. Inclusion of operators from the three new Member States in the tariff quota fixed for the Community of Twelve would have led to a reduction of import entitlement for the operators of the twelve Member States, the grant of insufficient

entitlement to operators in the new Member States and a shortage of bananas in the Community as well as higher prices, all of which are consequences incompatible with the objectives of the Council Regulation.

35 Contrary to the Kingdom of Belgium's contention, an increase in the quota, made necessary by the new accessions, could not have been decided pursuant to Article 16(3) of the Council Regulation. It was not a question of adapting the tariff quota following a revised estimate of consumption in the Community but of setting up arrangements made necessary by the accession of the three new Member States, for which no provision had been made in the Act of Accession.

36 Furthermore, as the Commission has rightly observed, immediate application of the common organization of the market in bananas to the new Member States would have led to serious supply difficulties, given that in those States operators imported third-country bananas, putting them in Category A alone.

37 Contrary to the Kingdom of Belgium's argument, neither Article 148 nor Article 150 of the Act of Accession could provide the legal basis for the transitional measures required.

38 Article 148(1) of the Act of Accession confers on the Council powers to adopt the provisions necessary to implement Title VI on agriculture. It does not therefore allow any derogation from Article 137(2) of the Act of Accession, which provides for the common organization of the markets to apply in full. Article 150 concerns only the period between the date of signature and the date of entry into force of the Act of Accession.

39 The Kingdom of Belgium claims that Article 149 of the Act of Accession cannot form the legal basis for transitional measures which, like those in this case, suspend application of a common market organization. The measures laid down therein, which the Commission is empowered to take, should be adopted 'under the conditions set out in this Title', which implies that the common organization should be respected and that only measures intended to accelerate and facilitate transition to a common market organization can be adopted on the basis of that provision.

40 The Court notes that the measures provided for in Article 149 are intended to facilitate the transition to the regime resulting from 'application of the common organization of the markets under the conditions set out in this Title.' That application is governed by Article 137 of the Act of Accession which indicates that the market organization in the banana sector is to apply from 1 January 1995 in the new Member States and no provision is made for any adaptation or transitional measure.

41 Article 149 subjects the measures for which it provides to a single condition — need to facilitate the transition from the existing regime in the new Member States to that resulting from application of the common organization of the markets in those countries.

42 As the French Government has rightly observed, only that interpretation can render Article 149 effective. The Commission already has powers of implementation which are not limited in time. The special measures that the Commission may adopt pursuant to Article 149 are to expire on 31 December 1997.

43 It follows from the foregoing that the Commission could properly adopt the contested Regulations on the basis of Article 149 of the Act of Accession and that the first plea in law must therefore be dismissed.

Second plea in law

44 The Kingdom of Belgium maintains that the contested Regulations subject operators in the new Member States to arrangements different from those applying to operators in the Member States of the Community of Twelve, in that they do not provide for application of the allocation formula. It alleges that this difference in treatment is not objectively justified and is therefore contrary to the principle of non-discrimination laid down in Article 40(3) of the EC Treaty.

45 In paragraphs 34 to 36 of this judgment above, the Court held that, failing adaptation by the Council of the overall quota for the enlarged Community, the Commission had to set, on a transitional basis, a specific quota for the new Member States.

46 For the reasons set out in paragraph 36 of this judgment, the Commission was obliged to adopt a transitional arrangement which did not employ the formula allocating quotas between operators, established in Article 19 of the Council Regulation.

47 However, to facilitate full application of the common organization in the new Member States, it made imports of bananas into those States conditional on the issue of licences and provided for a single reduction coefficient.

48 Lastly, the Commission limited application of the transitional arrangement to a period of one year. It has not been shown that it committed an obvious error of assessment in considering that such a period was necessary to facilitate full application of the common organization in the new Member States.

49 Moreover, the contested Regulations establish that import licences granted to operators in the new Member States are not to predetermine the reference quantities to be allocated to those operators for 1995 pursuant to Article 6 of Regulation No 1442/93. As the Commission rightly points out, for 1995 as a whole, operators in the new Member States will have to be treated in the same way as those in the Member States of the Community of Twelve.

50 In the circumstances, it must be held that the factual and legal situation in the new Member States was different from that prevailing in the Member States of the Community of Twelve and that that difference justified the adoption by the Commission of the contested Regulations.

51 In the circumstances, the second plea in law must be dismissed.

Third plea in law

52 The Kingdom of Belgium maintains that the recitals in the preambles to the contested Regulations do not contain an adequate statement of reasons and that the Commission has therefore infringed Article 190 of the EC Treaty.

53 According to settled case-law, the statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. It 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. It is also apparent from the case-law that the statement of the reasons for a measure is not required to specify the matters of fact or of law dealt with, provided that it falls within the general scheme of the body of measures of which it forms part (see Joined Cases C-63/90 and C-67/90 *Portugal and Spain* v *Commission* [1992] ECR I-5073, paragraph 16, and Case C-353/92 *Greece* v *Council* [1994] ECR I-3411, paragraph 19).

54 The aim of Regulations Nos 3303/94 and 479/95 is, according to, respectively, the second and third recitals in their preambles, to facilitate the transition from the arrangements existing in the new Member States before their accession to the Community to those resulting from the application of the common organization of the markets.

55 In the third recital in the preamble to Regulation No 1219/95, the Commission repeats this aim, although in different terms.

56 Failing adaptation by the Council of the tariff quota for the enlarged Community, the interested parties, in particular the Member States of the Community of Twelve, clearly had to accept the necessity for the Commission to fix, on a transitional basis, specific quotas for the new Member States as well as the impossibility for the Commission to apply the allocation formula to those quotas.

57 In the circumstances the third plea in law must be dismissed.

58 It follows from the foregoing that the applications lodged by the Kingdom of Belgium in the three cases must be dismissed.

Costs

59 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 Kingdom of Belgium has been unsuccessful, it must be ordered to pay the costs. Under Article 69(4) of those Rules, Member States and institutions which intervene in proceedings are to be ordered to bear their own costs.

On those grounds,

THE COURT

hereby:

1) Dismisses the applications;

2) Orders the Kingdom of Belgium to pay the costs;

3) Orders the French Republic, which intervened, to bear its own costs.

Rodríguez Iglesias	Mancini	Moitinho de Almeida	
Murray	Edward	Puissochet	Hirsch
Kapteyn	Gulmann	Jann	Ragnemalm

Delivered in open court in Luxembourg on 4 February 1997.

R. Grass — G. C. Rodríguez Iglesias

Registrar — President