JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
6 June 1996 *

In Case T-382/94,

Confederazione Generale dell'Industria Italiana (Confindustria), an association governed by Italian law, whose headquarters are in Rome,

and

Aldo Romoli, residing in Milan,

represented by Fausto Capelli, of the Milan Bar, and Louis Schiltz, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 2 Rue du Fort Rheinsheim,

applicants,

v

Council of the European Union, represented by Giorgio Maganza and Antonio Tanca, of its Legal Service, acting as Agents, with an address for service in Luxem-

* Language of the case: Italian.

bourg at the office of Bruno Eynard, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

APPLICATION for annulment of Council Decision 94/660/EC, Euratom, of 26 September 1994 appointing the members of the Economic and Social Committee for the period from 21 September 1994 to 20 September 1998 (OJ 1994 L 257, p. 20),

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

composed of: K. Lenaerts, President, P. Lindh and J. D. Cooke, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 15 February 1996,

gives the following

Judgment

Legal background

1 Article 193 of the EC Treaty established the Economic and Social Committee of the European Communities (ESC), an advisory body to consist of representatives

of the various categories of economic and social activity, in particular, representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations and representatives of the general public.

2 The first paragraph of Article 194 of the EC Treaty allots seats on the ESC to the various Member States. Under the second paragraph of Article 194, the members of the ESC are appointed by the Council, acting unanimously, for four years. Their appointments are renewable. Pursuant to the third paragraph of Article 194, the members of the ESC may not be bound by any mandatory instructions and must be completely independent in the performance of their duties, in the general interest of the Community.

3 Article 195 of the EC Treaty provides as follows:

'1. For the appointment of the members of the Committee, each Member State shall provide the Council with a list containing twice as many candidates as there are seats allotted to its nationals.

The composition of the Committee shall take account of the need to ensure adequate representation of the various categories of economic and social activity.

2. The Council shall consult the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors to which the activities of the Community are of concern.'

Facts

4 With a view to the renewal of the ESC for the period from 21 September 1994 to 20 September 1998, the General Secretariat of the Council sent an introductory note to the Working Party on General Affairs on 8 April 1994, underlining in particular the importance of being in a position to appoint the members at the beginning of September 1994 at the latest, so as to enable the work of the various ESC sections to proceed without interruption. The note also suggested that it could be agreed that the decision appointing members should be adopted by the Council in July 1994, on the understanding that the new members' term of office would not take effect until 21 September 1994.

5 The introductory note summarizes as follows the procedure to be followed in the Council:

'(a) each Member State sends the Council a list containing twice as many candidates as there are seats allotted to its nationals;

(b) the Working Party on General Affairs examines the list to ensure that the composition of the Committee is balanced;

(c) the Permanent Representatives Committee (Coreper) makes a selection among the candidates;

(d) the Commission is consulted on this selection;

(e) the Council adopts a decision appointing the members of the Committee for a period of four years;

...'.

6 By Decision 94/660/EC, Euratom, of 26 September 1994 appointing the members of the Economic and Social Committee for the period from 21 September 1994 to 20 September 1998 (OJ 1994 L 257, p. 20; hereinafter 'Decision 94/660'), the Council appointed the ESC members for the period in question under the 'A points' procedure. The Italian members are those whom the Italian authorities proposed as principal candidates. Three out of the 24 Italian appointees are members of Confindustria, the first applicant.

7 Confindustria is an association governed by Italian law, one of the objects of which is to represent the interests of Italian undertakings which produce goods or supply services, in their dealings with official bodies and administrative authorities, and with economic, political, trade union and social organizations at the national, Community and international level.

8 Mr Romoli, the second applicant, is a member of Confindustria. He was a member of the ESC from 19 September 1978 until 20 September 1994, having been appointed for four consecutive periods. In 1994, his name was put forward by the Italian Government as an alternative candidate and he has not been appointed by the Council for the period from 21 September 1994 to 20 September 1998.

9 Those are the circumstances in which, by application lodged at the Registry of the Court of First Instance on 2 December 1994, the applicants brought the present proceedings.

10 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure without any preparatory inquiry. However, the Court asked the Council to produce certain documents.

11 At the hearing on 15 February 1996, the parties presented oral argument and answered questions put by the Court. During the hearing, the Council produced at

the Court's request an extract from the summary record of the meeting of Coreper on 21 September 1994. The Court took formal note of a statement made by the Council's agent to the effect that, although the extract reflects the discussion which took place at Coreper's meeting of 21 September 1994, it cannot be regarded as an official Council document.

Forms of order sought

12 The applicants claim that the Court should:

— declare the application admissible;

— annul Decision 94/660;

— order the Council to pay the costs.

13 The Council contends that the Court should:

— declare the application made by the first applicant to be inadmissible or, at least, unfounded;

— dismiss the application made by the second applicant as unfounded;

— order the applicants to pay the costs.

Admissibility

14 The Council takes the view that Decision 94/660 is not of individual concern to Confindustria, within the meaning of the fourth paragraph of Article 173 of the Treaty, and that the application is therefore inadmissible in so far as it was lodged by that body.

15 The Court notes that, according to established case-law (judgment of the Court of Justice in Case 297/86 *CIDA and Others* v *Council* [1988] ECR 3531, paragraph 13), the second applicant, Mr Romoli, is individually concerned by Decision 94/660, a point which, indeed, the Council does not contest. Consequently, since the application is admissible with respect to the second applicant, there is no need to consider whether the first applicant is entitled to bring proceedings, as the application itself is one and the same (judgment of the Court of Justice in Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraph 31).

Substance

16 The applicants put forward two pleas in law in support of their application. By the first, they allege infringement of Article 195 of the EC Treaty and, by the second, infringement of Article 190 thereof.

The first plea: infringement of Article 195 of the Treaty

Arguments of the parties

17 The applicants argue that Article 195 of the Treaty has been infringed in three respects. First, the Council failed to examine the list submitted by the Italian Government, and the way in which the Commission's opinion was sought entailed a

number of irregularities; secondly, the assessment of the representative character of certain candidates was erroneous; and, thirdly, the resulting representation on the ESC of industrial undertakings is unsatisfactory. The applicants stress that, in so far as those arguments relate to the plea that the contested decision is unlawful, they must be considered as a whole and not individually.

18 The applicants argue, first, that the Council did not even attempt to assess for itself the representative character of the candidates on the lists submitted. Instead of making a selection from among the 48 names put forward by Italy, the Council was content to adopt, without discussion, the list of persons proposed as a first choice and to disregard all those proposed as alternatives.

19 In their reply, the applicants also request that the Commission's opinion be lodged with the Court, so as to verify whether the proper procedure was followed.

20 The second argument in support of the applicants' plea that Article 195 was infringed is that the representative character of Mr Romoli, who was a member of the ESC from 1978 to 1994 and President of the Energy and Nuclear Questions Section from 1982 to 1994, was not properly assessed. According to the applicants, the only reason why Mr Romoli was not reappointed is that his name did not appear on the list of principal candidates; they contrast his situation with that of another former member, whose name was placed on that list, and who was reappointed for the period from 1994 to 1998.

21 The applicants maintain that the Council committed another error of assessment regarding the question of representativity, by appointing to the ESC a member (Mr Amato) of the Associazione Liberi Imprenditori Autonomisti (ALIA), an association which in fact numbers a mere 100 members throughout Italy and which, rather than representing an economic category, does no more than bring together certain entrepreneurs who share a political ideology.

22 Thirdly and lastly, the applicants argue that the category of industrial undertakings is currently under-represented on the ESC. This can be demonstrated by comparing the current ratio of representatives to those represented with that for the preceding period.

23 The Council contends that there is nothing in the evidence put forward by the applicants to show that the membership of the ESC, as established by the contested decision, fails to take account of the criteria laid down by the second subparagraph of Article 195(1) of the Treaty.

24 The Council argues that the members of the ESC are appointed in complete independence, in their capacity as representatives of the various categories of economic and social activity, and not as representatives of associations. Furthermore, according to settled case-law, their representative character is to be appraised at the Community level and not at the national level (*CIDA and Others* v *Council*, cited above). The Council maintains that none of the three arguments put forward by the applicants establishes that the contested decision fails to satisfy the criterion of adequate representation of the various socio-economic categories within the Community.

Findings of the Court

25 The applicants argue, first of all, that the Council did nothing more than adopt the list of principal candidates submitted by Italy without assessing for itself their representative character.

26 On that point, it should be noted that, in order to verify whether the composition of the ESC ensures at the Community level adequate representation of the various categories of economic and social activity, it is for the Council to assess for itself

the representative character of all the candidates appearing on the national lists and it must not consider itself bound by any distinction made by the Member States between candidates proposed as principal candidates and those proposed as alternative candidates (see the judgment in *CIDA and Others* v *Council*, cited above, paragraph 24).

27 In the present case, the Court does not accept that, simply because the Council appointed all the principal candidates proposed by Italy, it can be concluded that the Council did not assess for itself the representative character of those candidates.

28 Furthermore, it is clear from the documents produced by the Council at the Court's request that the list of persons proposed by Italy as principal candidates was not adopted without first being discussed by the various Council bodies. Those documents show that, as soon as the Working Party on General Affairs received each national list, it made an initial selection of candidates and, in the case of each Member State, sent Coreper both the list of all the candidates proposed by the State concerned and a list of the candidates whom Coreper might consider appointing, subject to the opinion of the Commission. The Italian and French lists were sent to Coreper on 19 September 1994.

29 Similarly, it is clear from the document produced by the Council at the hearing (see paragraph 11, above) that the question of the appointment of the members of the ESC was subsequently discussed at the meeting of Coreper on 21 September 1994 and that Coreper was able to adopt a position on that occasion on a draft decision to be submitted to the Council for adoption under the 'A points' procedure, subject to the Commission adopting a position in the meantime on the final lists.

30 It is important to note that, at that meeting, the members of Coreper had an opportunity to raise any doubts which they may have had regarding the ability of the ESC membership proposed by the Working Party on General Affairs to ensure adequate representation of the various categories of economic and social activity.

No argument has been put forward in this case which would justify a finding that they failed to examine the representative character of the candidates proposed.

31 Furthermore, the documents produced by the Council at the Court's request confirm that the Commission concurred with the opinion that Decision 94/660 would ensure adequate representation of the various categories of economic and social activity.

32 In that connection, it is clear from the judgment in *CIDA and Others* v *Council* that the purpose of consulting the Commission in accordance with Article 195(2) of the Treaty is to enable it 'to aid the Council in its task of ensuring adequate representation in the ESC of the various categories of economic and social activity' and that 'the Council must therefore consult the Commission on the choices which it intends to make on the basis of the national proposals and not on those proposals themselves' (paragraph 28).

33 In this case, the documents produced by the Council at the Court's request show that, between 22 July 1994 and 20 September 1994, the General Secretariat of the Council transmitted to the Commission for its approval, in relation to each Member State, either a list of the candidates whom Coreper recommended for appointment or a provisional list of those whom Coreper could envisage nominating.

34 The document produced at the hearing (see paragraph 11, above) discloses that the Commission was present at the meeting of Coreper on 21 September 1994, during which the question of the appointment of the members of the ESC was raised, and that it had an opportunity on that occasion to acquaint itself with the definitive list of candidates whom Coreper recommended for appointment.

35 By letters addressed to the Secretary-General of the Council between 27 July 1994 and 23 September 1994, the Commission approved the various national lists. At the time when the last letter, in which the Commission approved the French and Italian lists, was sent — 23 September 1994 — the Commission was accordingly aware of the composition of the ESC in its entirety, as envisaged by Coreper, and thus was in a position to make whatever comments it desired. Significantly, it simply communicated its approval.

36 The applicants argue next that Article 195 was also infringed by the error of assessment concerning the representative characters of Mr Amato and Mr Romoli.

37 As regards the applicants' argument that Mr Amato's representative character was erroneously assessed because, when the ESC working groups were being set up, he chose to represent the professional occupations category and not producers, the Court considers that the applicants have failed to establish that Mr Amato was proposed and appointed in order to represent the interests of producers. It is clear from the documents produced in the course of the proceedings that the Council was well aware of the identity of the association to which Mr Amato belonged and was therefore in a position to assess his suitability to represent the various categories of economic and social activity.

38 Furthermore, the applicants have not explained why Mr Amato — who practised law, one of the liberal professions — is unqualified to represent, in adequate measure, the socio-economic interests upheld by the ALIA.

39 As regards the second applicant, suffice it to note that the mere fact that the Council decided not to appoint him as a member of the ESC does not mean that the Council committed an error of assessment as to the degree to which he could be considered representative.

40 Lastly, it is appropriate to consider whether, as the applicants allege, Decision 94/660 fails to ensure adequate representation of producers.

41 The adequate representation required by Article 195(1) of the EC Treaty must be ensured at Community level and, having regard to the limited number of seats, it is not possible for all the components of each category of economic and social activity to be represented by nationals of each of the Member States (judgment in *CIDA and Others* v *Council*, paragraphs 17 and 19).

42 Furthermore, the Council has a wide discretion to ensure, at Community level, adequate representation of the various categories of economic and social activity and consequently in exercising its power of review, the Court may only verify whether the Council has used its power in a manifestly erroneous manner (see the judgment in *CIDA and Others* v *Council*, paragraph 18).

43 In the present case, the Court considers that the applicants have failed to show that Decision 94/660 does not ensure, at the Community level, adequate representation of producers on the ESC. The applicants have not extended their arguments beyond matters relevant to Italy and have failed to provide the Court with any information enabling it to assess the capacity of the ESC, as a whole, to represent adequately the interests of producers. Consequently, even assuming the applicants to be correct in alleging that there are fewer Italian representatives of producers, that would not mean that the ESC does not ensure adequate representation of producers at the Community level.

44 In the light of the foregoing, the first plea in law, alleging infringement of Article 195 of the Treaty, must be rejected.

The second plea: infringement of Article 190 of the Treaty

Arguments of the parties

45 The applicants argue that the contested decision contained no statement of reasons whatsoever, thereby making it impossible for the Court to exercise its power of review.

46 The applicants do not regard the mere reproduction of Article 195 of the Treaty in the preamble to the contested decision as an adequate statement of reasons (see the judgments of the Court of Justice in Case 24/62 *Germany* v *Commission* [1963] ECR 63, Case 203/85 *Nicolet Instrument* v *Hauptzollamt Frankfurt am Main-Flughafen* [1986] ECR 2049 and Case C-269/90 *Hauptzollamt München-Mitte* v *Technische Universität München* [1991] ECR I-5469).

47 The Council contends that the contested decision fulfils the obligation to state reasons in that it indicates the essential matters of fact and law on which it is based.

48 Since the decision in question concerns the appointment of 189 members of the ESC, the Council does not see how it could have set out in detail the reasons which led it to appoint the candidates selected and reject the others.

Findings of the Court

49 According to established case-law (see, for example, the judgment of the Court of Justice in Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, paragraph 14), the statement of reasons required by Article 190 of the Treaty must disclose in a clear

and unequivocal fashion the reasoning followed by the Community authority which adopted the measure in question in such a way as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights and the Court to exercise its power of review.

50 The Court finds that, in addition to the considerations set out in its preamble, Decision 94/660 lists the names of the persons appointed to the ESC by Member State and in each case indicates below each person's name the office or membership held, thus making it possible to determine the economic or social interests each is able to represent on the ESC. In the Court's view, Decision 94/660 thus justifies the choice of the members of the ESC by reference to the representativity requirements laid down in Articles 194 and 195 of the Treaty, and therefore contains an adequate statement of reasons.

51 This plea in law must therefore be rejected.

52 Since none of the pleas in law put forward by the applicants has been upheld, the application must be rejected.

Costs

53 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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 applicants have been unsuccessful in their pleadings, they must be ordered, jointly and severally, to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Rejects the application;

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

Lenaerts Lindh Cooke

Delivered in open court in Luxembourg on 6 June 1996.

H. Jung K. Lenaerts

Registrar President