JUDGMENT OF THE COURT (Fifth Chamber)
7 December 1993 *

In Case C-6/92,

Federazione Sindacale Italiana dell'Industria Estrattiva (Federmineraria), an association formed under Italian law, whose registered office is in Rome,

Società Italiana Sali Alcalini SpA (Italkali), a company incorporated under Italian law, whose registered office is in Palermo (Italy),

Thalassia SpA, a company incorporated under Italian law, whose registered office is in Palermo,

Laviosa Chimica Mineraria SpA, a company incorporated under Italian law, whose registered office is in Livorno (Italy),

Società Sarda di Bentonite SpA, a company incorporated under Italian law, whose registered office is in Villaspeciosa (Italy),

all five represented by Aurelio Pappalardo, of the Trapani Bar, with an address for service in Luxembourg at the chambers of Alain Lorang, 51 Rue Albert 1er,

applicants,

supported by

Regione Sardegna, represented by Sergio Panunzio and Andrea Guarino, of the Rome Bar, with an address for service in Luxembourg at the Chambers of Alain Lorang, 51 Rue Albert 1er,

and

* Language of the case: Italian.

Regione Sicilia, represented by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5-7 Rue Marie-Adelaïde,

interveners,

v

Commission of the European Communities, represented by Lucio Gussetti, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Nicola Annecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Decision 91/523/EEC of 18 September 1991 abolishing the support tariffs applied by the Italian railways for the carriage of bulk ores and products produced and processed in Sicily and Sardinia (OJ 1991 L 283, p. 20) is void,

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: M. Darmon,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 11 February 1993,

after hearing the Opinion of the Advocate General at the sitting on 14 July 1993,

gives the following

Judgment

1 By application lodged at the Court Registry on 6 January 1992, the Federazione Sindacale Italiana dell'Industria Estrattiva ('the Federation') together with Società Italiana Sali Alcalini SpA, Thalassia SpA, Laviosa Chemica Mineraria SpA and Società Sarda di Bentonite SpA ('the four companies') applied, pursuant to the second paragraph of Article 173 of the EEC Treaty, for a declaration that Commission Decision 91/523/EEC of 18 September 1991 abolishing the support tariffs applied by Italian railways for the carriage of bulk ores and products produced and processed in Sicily and Sardinia (OJ 1991 L 283, p. 20, 'the Decision') was void. The decision was addressed to the Italian Republic alone.

2 Article 1 of the Decision requires the Italian Republic to 'abolish the system of support tariffs for the carriage of certain types of goods from Sicily and Sardinia introduced by the last paragraph of Article 19 of Law No 887 of 22 December 1984'. That law was published in the Supplement to *Gazzetta Ufficiale* No 356 of 29 December 1984.

3 The last paragraph of Article 19 of the law provides that 'a 30% reduction on national railway tariffs shall apply to the carriage of bulk ores produced in and exported from the islands. This reduction is extended to 60% for products produced and processed in the islands. The amount of the reductions shall be borne by the Treasury, which shall reimburse the national railways the amounts due pursuant to Community law.'

4 In the Decision, the Commission stated that for the Italian State to accept liability for such reductions was incompatible with Article 80(1) of the EEC Treaty, which provides that the Member States cannot apply to transport operations within the Community 'rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries', unless authorized by the Commission. Furthermore, it ruled out the possibility that the measure in question might benefit from a derogation to that prohibition under Article 80(2).

5 In their application for annulment, the four companies and the Federation, which is their professional association, submit that they form part of a limited group of undertakings which has previously benefited from the preferential tariffs in question. They maintain that, since they belong to the limited category of undertakings which extract or process ores in Sicily or Sardinia, the Decision affects them individually and, moreover, that since the Decision leaves Italy no element of discretion, it is of direct concern to them.

6 The Commission raised an objection of inadmissibility pursuant to the first paragraph of Article 91(1) of the Rules of Procedure and asked the Court to rule on the objection without entering into the substance of the action.

7 Reference is made to the Report for the Hearing for a fuller account of the relevant legislation and the facts of the case, the course of the proceedings and the submissions and arguments of the parties, which are mentioned hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility

Admissibility of the action brought by the four companies

8 It is appropriate, first of all, to consider the admissibility of the action brought by the four companies.

9 In support of its objection of inadmissibility, the Commission claims that its Decision is not of direct and individual concern to the four applicants, within the meaning of the second paragraph of Article 173 of the EEC Treaty.

10 The second paragraph of Article 173 provides that 'Any natural or legal person may (...) institute proceedings against a decision (...) which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former'.

11 As a result of the judgment in *Plaumann* v *Commission* (Case 25/62 [1963] ECR 95) persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed.

12 In this respect, the companies claim that they form part of a known and limited category of persons to whom the contested Decision is of concern, namely the undertakings which extract bulk ores in the two islands, and that this category was or could be identified by the Commission at the time the Decision was adopted.

13 That argument cannot be accepted.

14 The Decision does not affect the interests of the applicant companies alone. It also affects the interests of the railways, whose competitive position compared to other modes of transport is favoured by the reduced tariff. It is also of interest to the carriers to whom the applicants may entrust the consignment of their goods and which can, themselves, make use of the railway services. Finally, it concerns their customers, who, depending on the terms of the sales contracts, may be induced to bear some or all of the transport costs.

15 In these circumstances, the Decision cannot be considered to affect operators whose number or identity was fixed and ascertainable at the time of its adoption.

16 It is therefore appropriate to state, without even having to ascertain whether the Decision is of direct concern to the applicants, that, since it is not of individual concern to them, their action for annulment must be dismissed as inadmissible.

Admissibility of the action brought by the Federation

17 As far as the action brought by the Federation is concerned, it should be pointed out that neither in its application nor at the hearing has the Federation put forward its own grounds, distinct from those of its members, to prove that it has an interest in bringing an action.

18 Since the action brought by the four companies is inadmissible, that brought by the Federation is likewise inadmissible.

Costs

19 Under Article 69(2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants and the interveners have been unsuccessful, but the Commission has only asked for the applicants to be ordered to pay the costs, the latter must be ordered to bear their own costs and those of the Commission relating to the action, whilst the interveners and the Commission must be ordered to bear their own costs in connection with the applications to intervene.

On those grounds,

THE COURT (Fifth Chamber)

hereby declares:

1. The action is dismissed as inadmissible.

2. The applicants shall bear their own costs and those incurred by the Commission as a result of their action.

3. The interveners and the Commission shall bear their own costs in connection with the intervention.

Moitinho de Almeida Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 7 December 1993.

J.-G. Giraud — Registrar

J. C. Moitinho de Almeida — President of the Fifth Chamber