ORDER OF THE COURT (Fourth Chamber)

24 April 1996 *

In Case C-87/95 P,

Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e Procuratori (CNPAAP), represented by Pietro Adonnino, Mario Sanino, Maurizio de Stefano and Alberto Colabianchi, of the Rome Bar, with an address for service in Luxembourg at the Chambers of Marianne Goebel, 1 Rue François Faber,

appellant,

APPEAL against the order of the Court of First Instance of the European Communities (Third Chamber) of 11 January 1995 in Case T-116/94 *Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e Procuratori* v *Council of the European Union* [1995] ECR II-1, seeking to have that order set aside,

the other party to the proceedings being:

Council of the European Union, represented by Rüdiger Bandilla, a director in its Legal Service, and Antonio Lucidi, of its Legal Service, acting as Agents, with

* Language of the case: Italian.

an address for service in Luxembourg at the office of Bruno Eynard, Director General of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

THE COURT (Fourth Chamber),

composed of: C. N. Kakouris, President of the Chamber, P. J. G. Kapteyn and J. L. Murray (Rapporteur), Judges,

Advocate General: A. La Pergola,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 20 March 1995, the appellant brought an appeal against the order of the Court of First Instance of the European Communities of 11 January 1995 in Case T-116/94 *Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e Procuratori* v *Council* [1995] ECR II-1 ('the order under appeal') in so far as it dismissed as inadmissible the appellant's action seeking the annulment of Regulation (EC) No 3604/93 specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty (OJ 1993 L 332, p. 4) and, in the alternative, the partial annulment of the last indent of Article 4(2) of Regulation No 3604/93.

2 Article 104a of the EC Treaty provides:

'1. Any measure, not based on prudential considerations, establishing privileged access by Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions shall be prohibited.

2. The Council, acting in accordance with the procedure referred to in Article 189c, shall, before 1 January 1994, specify definitions for the application of the prohibition referred to in paragraph 1.'

3 On 13 December 1993 the Council adopted Regulation No 3604/93, which contains definitions of the following concepts: 'measure establishing privileged access' (Article 1), 'prudential considerations' (Article 2), 'public undertaking' (Article 3) and 'financial institutions' (Article 4).

4 Article 4(2) of Regulation No 3604/93 provides that the following are not to be regarded as 'financial institutions' for the purposes of Article 104a of the Treaty:

' — the European Central Bank and national central banks,

— post office financial services when they form part of the general government sector defined in accordance with the European System of Integrated Economic Accounts or when their main activity is to act as the financial agent of the government, and

— the institutions which are part of the general government sector defined in accordance with the European System of Integrated Economic Accounts or the liabilities of which correspond completely to a public debt.'

5 Paragraph 241 of the Second Edition of the European System of Integrated Economic Accounts ('ESA'), compiled by Eurostat, provides that the 'general government sector' is divided into three sub-sectors, namely central government, local government and social security funds. The latter sub-sector is defined in Paragraphs 244 and 245 of the ESA as including 'all central and local institutional units whose principal activity is to provide social benefits and whose main resources are derived from compulsory social contributions paid by other units. This sub-sector includes, in particular, autonomous pension funds and other insurance institutions when the premiums paid are fixed without reference to the individual exposure to risk of the insured.'

6 The appellant is a public organization to which lawyers who continuously exercise their professional activity on Italian territory are obliged to belong. It appears from the order under appeal that the appellant was classified by Italian Law No 70 of 20 March 1975 (*Gazzetta Ufficiale della Repubblica Italiana* — GURI — No 87 of 2 April 1975) as a public organization administering compulsory welfare and assistance schemes. Under Article 12 of Decree-Law No 155 of 20 May 1993, as amended by Ratifying Law No 243 of 19 July 1993 (GURI *Supplemento Ordinario* No 204 of 31 August 1993), such organizations are required, for the years 1993, 1994 and 1995, to invest an amount equivalent to 25% of all dues received by them during each of those reference years in an interest-bearing current account, blocked for five years, at the Tesoreria Centrale dello Stato (Central State Treasury).

7 On 4 December 1993 the appellant requested the Council to state that the prohibition laid down in Article 104a(1) of the Treaty also applied to organizations administering compulsory welfare and assistance schemes.

8 On 13 December 1993, the Council adopted Regulation No 3604/93, which entered into force on 1 January 1994. The appellant, as a public organization administering a compulsory welfare and social assistance scheme, considers that it comes within the definition of 'the general government sector' in the last indent of Article 4(2) of Regulation No 3604/93 and is therefore not covered by the prohibition of privileged access to financial institutions laid down in Article 104a(1) of the Treaty.

9 On 22 March 1994, the appellant brought an action for annulment before the Court of First Instance on the ground that the last indent of Article 4(2) of Regulation No 3604/93 classified it as an institution forming part of the 'general government sector' defined in accordance with the ESA and, consequently, excluded it from the category of 'financial institutions' within the meaning of Article 104a(1) of the Treaty.

10 On 30 May 1994, the Council raised a plea of inadmissibility against that action under Article 114(1) of the Rules of Procedure of the Court of First Instance.

11 On 8 August 1994, in accordance with Article 115 of those rules, Cassa Nazionale di Previdenza ed Assistenza a favore dei Geometri, Cassa Nazionale del Notariato and Cassa Nazionale di Previdenza ed Assistenza per gli Ingegneri e gli Architetti Liberi Professionisti applied to intervene in support of the appellant's claims. On 9 August 1994, the Commission applied to intervene in support of the Council.

The order under appeal

12 On 11 January 1995, under Article 111 of its Rules of Procedure, the Court of First Instance made the order under appeal.

13 The Court of First Instance first pointed out that the fourth paragraph of Article 173 of the Treaty makes the admissibility of an action for annulment by a natural or legal person subject to the condition that the contested act must in reality constitute a decision within the meaning of Article 189 of the Treaty, of direct and individual concern to the applicant. However, since the definitions given in Regulation No 3604/93 are drafted in general and abstract terms, and thus produce legal effects for categories of undertakings and institutions which are determined in a general and abstract manner, it must be regarded as having a general and legislative sphere of application. Even if it had been established that the persons to whom the last indent of Article 4(2) of Regulation No 3604/93 applies were identifiable at the time it was adopted, the legislative nature of that provision would not thereby be called into question, since it envisages objective legal or factual situations (paragraphs 21 to 25).

14 Secondly, the Court of First Instance noted that although a measure which is legislative by nature and by virtue of its sphere of application may concern a natural or legal person individually, for such a person to be regarded as individually concerned, its legal position must be affected by reason of circumstances in which it is differentiated from all other persons and which distinguish it individually in the same way as a person to whom a decision is addressed. However, the prohibition of privileged access to financial institutions laid down in Article 104a(1) of the Treaty refers to financial institutions only and Article 104a(2), on which Regulation No 3604/93 is based, confers upon the Council only the power to specify the definitions of the concepts used in Article 104a(1) and not the power to extend that prohibition to cover non-financial institutions. The facts that the applicant is subject to a compulsory levy under Italian law and that it informed the Council in writing of its situation before Regulation No 3604/93 was adopted do not differentiate it from all other undertakings or institutions, since it is in a situation comparable to that of any other non-financial undertaking or institution, privileged access to which is or may be provided for by current or future legislation of a Member State (paragraphs 26, 27 and 28).

15 Regarding the appellant's alternative argument that it is individually concerned by the last indent of Article 4(2) of Regulation No 3604/93, the Court of First Instance found that it was affected by that provision only objectively as part of the

general government sector. That provision is directed in abstract and general terms to any institution or undertaking belonging to the 'general government sector', as that sector is defined, also in abstract and general terms, by the ESA. The appellant could not, therefore, claim to be individually concerned either by Regulation No 3604/93 as a whole or by the last indent of Article 4(2) thereof (paragraphs 29, 30 and 31).

16 The Court of First Instance therefore concluded that the action was manifestly inadmissible and that there was no need to make any decision on the applications to intervene (paragraph 32).

Pleas in law

17 The appellant specifies, *in limine*, that it seeks to have the order under appeal set aside in so far as it dismissed as inadmissible its action for the annulment of the last indent of Article 4(2) of Regulation No 3604/93 to the extent that it provides that institutions 'which are part of the general government sector defined in accordance with the [ESA]' are not to be regarded as financial institutions.

18 In support of its claim for the annulment of the order under appeal, the appellant puts forward, in substance, four pleas in law.

19 First, it refers to the arguments it presented before the Court of First Instance in its application and observations on the Council's plea of inadmissibility.

20 Secondly, it submits that, when adopting the definitions necessary for the application of the prohibition laid down in Article 104a(1) of the Treaty, the Council should have analysed the various existing concepts of the general government sector and of financial institutions and should have defined them in accordance with the purpose of Article 104a of the Treaty. It defined non-financial institutions, however, by reference to the ESA, a document which introduces statistical criteria common to the Member States and is applied voluntarily inasmuch as it is not binding and thus has no legal force. That definition is thus not in accordance with the purpose of Article 104a(1) of the Treaty. First, social security organizations behave in the same way as financial institutions. Secondly, account should be taken of the legal nature of welfare organizations, since autonomous organizations should have a different position in relation to the general government sector. Finally, that legal distinguishing criterion is reflected in an economic distinction between social security organizations whose liabilities correspond to a public debt and those whose liabilities are completely separate from any public debt. The appellant concludes that the definition of the general government sector used by the Council when defining non-financial institutions for the purpose of Regulation No 3604/93 is not compatible with the powers conferred by Article 104a(2) of the EC Treaty.

21 Thirdly, the appellant considers that the last indent of Article 4(2) of Regulation No 3604/93 contains in reality a decision to use the definition of the general government sector contained in the ESA as a criterion for excluding it from the category of financial institutions and for not distinguishing its situation in the context of the definition of non-financial institutions. In the appellant's submission, that decision, adopted without taking into account its specific legal status or the existence of compulsory levies under Italian law even though those points were brought to the Council's attention in good time, has an adverse effect on its activity and is thus of direct and individual concern to it within the meaning of the fourth paragraph of Article 173 of the EC Treaty.

22 Fourthly, the appellant submits that a dismissal of its appeal would infringe its right to a fair hearing, since it has no effective remedy before the national courts. By reason of the widespread delay inherent in the hearing of cases by the

competent courts, the Italian judicial system does not provide adequate judicial protection for individuals. That lack of an effective judicial remedy seriously affects the efficiency of the procedure for the judicial review of acts of the Community institutions as imposed by the Treaty and by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

23 In its response, the Council claims that the appeal should be dismissed.

24 First, the Council states that the appellant has not put forward any legal argument capable of showing that the Court of First Instance misapplied Community law when it found the application inadmissible or calling in question the case-law of the Court of Justice on which the Court of First Instance based its order.

25 Secondly, the allegations which the appellant makes against the Council with regard to the adoption of Regulation No 3604/93 are not relevant to the admissibility of the application.

26 Thirdly, the appellant's arguments to the effect that it is directly and individually concerned by the contested provision were already raised before the Court of First Instance, which dismissed them. Nor do those arguments contain any new element which could call the Court of First Instance's assessment into question.

27 Fourthly, the arguments based on the alleged lack of any effective judicial remedy before the national courts cannot render an action for annulment under the fourth

paragraph of Article 173 of the Treaty admissible when the criteria for admissibility are not met. Moreover, the fact that such an action is inadmissible does not mean that the appellant has no other remedy available under, in particular, Article 177 of the Treaty.

Findings of the Court

28 Under Article 119 of the Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may at any time dismiss it by reasoned order.

The first plea

29 Under Article 51 of the EC Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure of the Court of Justice, an appeal must give a precise indication of the aspects of the judgment which are complained of, together with the legal arguments put forward in support of the claim that it should be set aside.

30 According to settled case-law, that requirement is not satisfied by an appeal which confines itself to repeating or reproducing word for word the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court; in reality, such an appeal amounts to no more than a request for a re-examination of the application submitted to the Court of First Instance, a matter which falls outside the jurisdiction of the Court

of Justice by virtue of Article 49 of the EC Statute (see, *inter alia*, the order of 17 October 1995 in Case C-62/94 P *Turner* v *Commission* [1995] ECR I-3177, paragraph 17).

31 Regarding the first plea in law, it need merely be pointed out that the appellant, by referring to arguments already presented before the Court of First Instance, has not put forward any argument to the effect that that Court committed an error of law in its assessment. This plea must therefore be dismissed as clearly inadmissible.

The second plea

32 The second plea, alleging incompatibility between the power conferred on the Council by Article 104a(2) of the EC Treaty and the contents of Regulation No 3604/93, relates solely to the substance of the case. It is consequently clearly irrelevant to the admissibility of the action and must therefore be dismissed.

The third plea

33 As regards the plea alleging that the last indent of Article 4(2) of Regulation No 3604/93 is in reality a decision of direct and individual concern to the appellant, it must first be borne in mind that in Joined Cases 16/62 and 17/62 *Confédération Nationale des Producteurs de Fruits et Légumes and Others* v *Council* [1962] ECR 471 the Court held that the term 'decision' in the second paragraph of Article 173 of the EEC Treaty, now the fourth paragraph of Article 173 of the EC

Treaty, must be understood in the technical sense in which it is used in Article 189 of the Treaty and that the criterion for distinguishing between a legislative act and a decision within the meaning of Article 189 must be sought in the general application or otherwise of the act in question.

34 Moreover, it is settled law that the fact that the number and even the identity of the persons to whom a measure applies can be determined more or less precisely is not such as to call in question the legislative nature of the measure (see the order of 23 November 1995 in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 30, and the case-law cited there).

35 In the present case, the definitions given in Regulation No 3604/93, which are drafted in general and abstract terms and thus produce legal effects for categories of undertakings and institutions determined in a general and abstract manner, and therefore for each of those undertakings and institutions, must be regarded as having a general and legislative sphere of application. Even if it had been established that the persons to whom the last indent of Article 4(2) applies were identifiable at the time it was adopted, its legislative nature would not thereby be called into question, since it envisages only objective legal or factual situations.

36 Although, as the Court of First Instance rightly pointed out, the Court of Justice has held that a measure which is legislative by nature may nevertheless in certain circumstances concern some economic operators individually (see Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19), that case-law cannot be relied on in the present case since, unlike the measures contested in those cases, the contested provision has not adversely affected any specific right of the appellant within the meaning of that case-law.

37 The third plea must therefore also be dismissed.

The fourth plea

38 As regards the appellant's fourth plea, based on the widespread delays inherent in the hearing of cases before the competent national courts, such a circumstance, even if proved, cannot warrant a change in the system of remedies and procedures established by Articles 173, 177 and 178 of the Treaty which is designed to give the Court of Justice the power to review the legality of acts of the institutions. It cannot by any means allow an action for annulment brought by a natural or legal person which does not satisfy the conditions laid down by the fourth paragraph of Article 173 to be declared admissible. The Court of First Instance could not therefore take account of such a circumstance in the order under appeal (see *Asocarne*, paragraph 26).

39 It follows that the fourth plea must be dismissed.

40 The appeal must therefore be dismissed as clearly unfounded under Article 119 of the Rules of Procedure.

Costs

41 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Since the appellant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby orders:

1. The appeal is dismissed.

2. The appellant shall bear the costs.

Luxembourg, 24 April 1996.

R. Grass

Registrar

C. N. Kakouris

President of the Fourth Chamber