JUDGMENT OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)
15 June 1999 *

In Case T-288/97,

Regione Autonoma Friuli-Venezia Giulia, represented by Renato Fusco, of the Trieste Bar, and Maurizio Maresca, of the Genoa Bar, with an address for service in Luxembourg at 36 Rue Wiltz,

applicant,

v

Commission of the European Communities represented by Paul Nemitz and Paolo Stancanelli, of its Legal Service, acting as Agents, assisted by Massimo Moretto, of the Venice Bar, with an address for service in Luxembourg at the Chambers of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision 98/182/EC of 30 July 1997 concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road haulage companies in the Region (OJ 1998 L 66, p. 18),

* Language of the case: Italian.

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

composed of: B. Vesterdorf, President, C.W. Bellamy, R.M. Moura Ramos, J. Pirrung and P. Mengozzi, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 6 October 1998,

gives the following

Judgment

Facts and procedure

1 Law No 4/1985 of the Friuli-Venezia Giulia Region of 7 January 1985 provides for several aid measures for commercial road haulage, in particular in the form of the financing of interest on loans and of investment costs. Those measures were not notified to the Commission.

2 By letters of 29 September 1995 and 30 May 1996, the Commission requested information from the Italian Republic on that law. Following the replies of the Italian authorities, they were informed by letter of 14 February 1997 of the Commission notice pursuant to Article 93(2) of the Treaty, sent to the other

Member States and other interested parties, concerning State aid granted to road haulage companies in the Region of Friuli-Venezia Giulia (OJ 1997 C 98, p. 16), whereby the Commission decided to initiate the procedure under that article of the Treaty against the system provided for by the abovementioned Law No 4/1985.

3 By letter of 27 March 1997, the Italian authorities submitted their observations.

4 By letter of 18 August 1997, addressed to the Permanent Representation of Italy to the European Union, the Commission informed the Italian authorities of its Decision 98/182/EC of 30 July 1997 concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road haulage companies in the Region (OJ 1998 L 66, p. 18, 'the contested decision'). In that decision it finds that the subsidies granted under the legislation in question constitute State aid within the meaning of Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC). In Articles 4 and 5 it declares that aid incompatible with the common market and orders it to be reimbursed. In Article 7, it names the Italian Republic as the addressee of the contested decision.

5 By letter of 20 August 1997, received on 11 September 1997, the Permanent Representation of Italy to the European Union sent the contested decision to the office of the President of the Friuli-Venezia Giulia Region.

6 By application lodged at the Court Registry on 28 October 1997, the Italian Republic brought an action under the second paragraph of Article 173 of the EC Treaty (now, after amendment, the second paragraph of Article 230 EC) for annulment of the contested decision.

7 By application lodged at the Court Registry on 10 November 1997, the applicant brought the present action under the fourth paragraph of Article 173 of the Treaty.

8 By documents lodged at the Court Registry between 12 December 1997 and 26 January 1998, several undertakings, which had benefited from aid granted by the Friuli-Venezia Giulia Region, also brought actions for the annulment of the contested decision. They were registered at the Court Registry as Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to T-607/97, T-1/98, T-3/98 to T-6/98 and T-23/98.

9 By document lodged on 19 February 1998, the Commission raised, in the present case, an objection of inadmissibility in accordance with Article 114(1) of the Rules of Procedure.

10 On 11 May 1998, the applicant submitted its observations on the objection of inadmissibility.

11 Upon hearing the report of the Judge-Rapporteur, the Court decided, pursuant to Article 114(3) of the Rules of Procedure, to open the oral procedure, restricted to consideration of that objection, without any preparatory inquiry. The parties presented oral argument and answered questions put to them by the Court at the hearing on 6 October 1998.

Forms of order sought by the parties

12 The defendant claims that the Court should:

— dismiss the application as inadmissible;

— order the applicant to pay the costs.

13 The applicant contends that the Court should:

— dismiss the objection of inadmissibility raised by the Commission and examine the merits of the case.

Law

Arguments of the parties

14 The Commission puts forward five pleas in law in support of its objection of inadmissibility. The first plea alleges that the applicant does not have *locus standi* for the purpose of bringing an action under the fourth paragraph of Article 173 of the Treaty against a decision in the field of State aid. Relying on the judgments of the Court of Justice in Case 78/76 *Steinike & Weinlig* [1977] ECR 595 and Case 248/84 *Germany* v *Commission* [1987] ECR 4013, it states that it follows

from Articles 92 and 93 of the EC Treaty (now, after amendment, Article 88 EC) that the granting of aid cannot be attributed to any legal entity other than the State. Those articles are aimed at aid granted by the State or through State resources in any form whatsoever. In that context, the regional authorities of a Member State are not considered to have a particular legal status in their own right.

15 It is for the Member State to defend the general interest and to take account of differing interests when granting aid. Measures adopted in the field of State aid by regional or local bodies cannot therefore confer rights or impose obligations on them under the Treaty beyond those which derive from the direct effect of Community rules. It follows that the obligation of abolishing or recovering an aid is always and exclusively incumbent on the State, irrespective of the public body which, in the context of the internal organisation of that State, granted or administered the aid.

16 Since the applicant does not have a particular legal status in its own right within the system of aid established by the Treaty, the defence of its interests falls to the Member State of which it is a part and which has, under the second paragraph of Article 173 of the Treaty, a privileged right of action against the contested decision.

17 In the Commission's submission, recognition of *locus standi* for regional or local authorities to bring proceedings under the fourth paragraph of Article 173 of the Treaty would have unacceptable consequences. First, the Treaty system in the field of State aid would be undermined if recognition of the particular circumstances of regional or local entities conferred on them the right to bring proceedings under the fourth paragraph of Article 173 of the Treaty. That would enable those authorities to grant aid without notification and to bring an action for annulment of decisions of the Commission prohibiting aid, even against the wishes of the Member State concerned. The role of coordination and supervision which the Treaty confers on States in the field of aid granted within their territory would thus be called into question and the Community courts would have to adjudicate on purely internal conflicts of interest and competence, whereas the

Treaty does not confer that function on them (Case C-95/97 *Région Wallonne* v *Commission* [1997] ECR I-1787, paragraph 7, and Case C-180/97 *Regione Toscana* v *Commission* [1997] ECR I-5245, paragraph 7).

18 Second, to hold the present application to be admissible would lead to an increase in the number of actions and to obstacles to the proper implementation of Commission decisions in the field of aid. Not only would regional and local authorities be able to bring actions against decisions with which the Member State has complied, but the same decision could be the subject of parallel actions brought by the State before the Court of Justice and the infra-State entity before the Court of First Instance. The central government could thus, by preparing its case jointly with an infra-State entity, avoid the obligation of having to challenge Community acts within the prescribed time-limit. Moreover, if the applicant were recognised as having *locus standi*, it would have to be accepted that local entities of other Member States can defend the interests of undertakings in competition with those in receipt of State aid. This, in practice, would mean affirming the existence of an *actio popularis*. An independent right of action of infra-State entities would thus discharge the Member States from their responsibility towards the Community under Articles 92 and 93 of the Treaty.

19 That the action is inadmissible is also the necessary consequence of a consistent application of the case-law of the Court of Justice in the field of infringement proceedings under Article 169 of the EC Treaty (now Article 226 EC). In that field, and in order not to compromise the application of Community law, the State concerned cannot plead the conduct of its local or regional authorities as a ground for contesting the infringement with which it is charged.

20 By its second plea in law, the Commission submits that Italian law does not recognise the applicant as having *locus standi*. The obligations incumbent on the Italian State in the field of aid, such as those flowing from the decision adopted by

the Commission, fall within the domain of external affairs of that State and are, accordingly, a matter in respect of which central government has exclusive competence.

21 The third plea in law alleges that the applicant has no interest, as a legal person within the meaning of the fourth paragraph of Article 173 of the Treaty, in bringing an action. According to the defendant, it follows from the judgment of the Court of Justice in Case 282/85 *DEFI* v *Commission* [1986] ECR 2469, paragraph 18, that, in order to have *locus standi* to challenge a decision in that context, an infra-State entity must show that the interests which it considers to be its own are distinct from the general interest the defence of which is assured by the State. However, the objectives of developing, modernising and strengthening the road haulage industry, pursued by the applicant by means of the aid at issue, rank among the interests defended by the Italian State. It is also clear that the contested measure is not a decision addressed to another person, in the sense contemplated in the fourth paragraph of Article 173 of the Treaty.

22 Relying on the Opinion of Advocate General Van Gerven in Case C-70/88 *Parliament* v *Council* [1990] ECR I-2041, at I-2052, the defendant argues that infra-State entities, even when defending their own interests, do so on behalf of a certain common interest, so that they must not be included in the category of natural or legal persons envisaged by the fourth paragraph of Article 173 of the Treaty.

23 By its fourth plea in law, the defendant claims that the applicant is not directly affected by the contested decision. In that respect, it claims, in essence, that the fact that, during the infringement procedure, the applicant provided information to the Permanent Representation of Italy to the European Union, which then sent it to the Commission, is not sufficient for the contested decision to affect the applicant directly.

24 Nor, similarly, does the fact that the decision requires the cancellation and recovery of the State aid which has been declared incompatible indicate that the

applicant is directly affected by it, since the decision is addressed to the Italian State and the Region of Friuli-Venezia Giulia acts only within the framework of the applicable provisions of domestic law.

25 In its fifth plea, the Commission claims that the contested decision does not affect the applicant individually. It contends that, contrary to the requirements of settled case-law, the Friuli-Venezia Giulia Region is unable to show that it is in a factual situation which differentiates it from all other persons. The fact that the applicant participated in the infringement procedure is not such as to distinguish it individually. Similarly, the applicant is no more concerned by the contested decision than any other public body which, under domestic law, may be involved in its implementation.

26 The applicant challenges the pleas in law put forward by the Commission. It states, in essence, that the Commission is confusing the sphere of application of the procedure for supervising State aid, laid down in Article 92 of the Treaty, with that of judicial protection, which is governed by Article 173 of the Treaty. The Commission's reasoning leads to the conclusion that only the Member State may bring an action for annulment in the field of aid, since, like the regions, neither the beneficiaries of the aid nor their competitors are, in the context of such an action, in a position which is different to that of the State.

27 The applicant contends, moreover, that it is directly and individually concerned by the contested decision.

Findings of the Court

28 It should be noted at the outset that, since it has legal personality under Italian domestic law, the applicant may bring an action for annulment under the fourth paragraph of Article 173 of the Treaty, according to which any natural or legal

person may initiate proceedings against a decision addressed to that person or 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 (see the judgment in Case T-214/95 *Vlaamse Gewest* v *Commission* [1998] ECR II-717, paragraph 28 and the case-law there cited, and the order in Case T-238/97 *Comunidad Autónoma de Cantabria* v *Council* [1998] ECR II-2271, paragraph 43).

29 Since the contested decision was addressed to the Italian Republic, the right of the applicant to bring an action depends on whether that decision is of direct and individual concern to it.

30 Persons other than those to whom a decision is addressed may claim to be individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty only if the decision affects them by reason of certain attributes peculiar to them or of factual circumstances in which they are differentiated from all other persons and thus distinguishes them individually in the same way as the person addressed (judgments of the Court of Justice in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107, and Case 169/84 *Cofaz* v *Commission* [1986] ECR 391, paragraph 21). The purpose of that provision is to ensure that legal protection is also available to a person who, whilst not being the person to whom the contested measure is addressed, is in fact affected by it in the same way as is the addressee (judgment of the Court of Justice in Case 222/83 *Commune de Differdange* v *Commission* [1984] ECR 2889, paragraph 9).

31 In that connection it should be noted that the contested decision concerns aid granted by the applicant. Not only does it affect measures adopted by the applicant but, in addition, it prevents the applicant from exercising its own powers as it sees fit (see, to that effect, the judgment in *Vlaamse Gewest* v *Commission*, cited above, paragraph 29). Contrary to what the Commission maintains, the applicant's circumstances cannot be equated with those of the Comunidad Autónoma de Cantabria in *Comunidad Autónoma de Cantabria* v *Council*, cited above, since the distinguishing factor pleaded by that autonomous

community was limited to the socio-economic repercussions of the contested act on its territory.

32 Moreover, the contested decision prevents the applicant from continuing to apply the legislation in question, nullifies the effects of that legislation and requires it to initiate the administrative procedure for the recovery of the aid from the beneficiaries. Even though that decision was addressed to the Italian Republic, the national authorities, when communicating it to the applicant, did not act in the exercise of a discretion. The applicant is thus directly concerned by the contested measure (see, to that effect, the judgments of the Court of Justice in Joined Cases 41/70, 42/70, 43/70 and 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411, paragraphs 26 to 28, Case 113/77 *NTN Toyo Bearing* v *Council* [1979] ECR 1185, paragraph 11, and Case 207/86 *Apesco* v *Commission* [1988] ECR 2151, paragraph 12).

33 It follows from the foregoing that the contested decision is of individual and direct concern to the applicant.

34 None the less, the Court must also verify whether the applicant's interest in challenging the contested decision does not merge with the interest of the Italian State. In this connection, it should be noted at the outset that the applicant is an autonomous regional body of that State which has rights and interests of its own. The aid with which the contested decision is concerned constitutes a set of measures taken in the exercise of the legislative and financial autonomy which is vested in it directly under the Italian constitution (Articles 115 and 116). That being so, the applicant's position, in the present case, cannot be compared to that of the applicant in *DEFI* v *Commission*, cited above. In that case, the French Government had the power to determine the management and policy of the DEFI committee and thus also to define the interests which that committee was required to defend.

35 It follows that the applicant may bring an action against the contested decision pursuant to the fourth paragraph of Article 173 of the Treaty.

36 That conclusion is not invalidated by the other pleas put forward by the Commission in support of its objection of inadmissibility.

37 As the applicant rightly maintains, the argument based on the system of the Treaty in the field of State aid confuses the sphere of application of the supervision procedure laid down in Articles 92 and 93 of the Treaty with that of judicial protection, which is governed by Article 173 of the Treaty.

38 The prohibition contained in Article 92(1) of the Treaty is directed to all aid granted by a Member State or through State resources, without distinguishing between aid granted directly by the State or by public or private organisations (see, to that effect, *Steinike & Weinlig*, cited above, paragraph 21, and *Germany* v *Commission*, cited above, paragraph 17). Given that the purpose of that provision is to prevent Member States from circumventing that basic prohibition by granting public funding through other bodies, all measures adopted in that way are attributed to the State, irrespective of their actual author. That is why decisions taken under Article 93 of the Treaty, which are intended to ensure compliance with that prohibition, are addressed solely to the Member State. It may thus be seen that the assimilation of regional or local entities to the State, in that context, is justified by reasons relating to the effectiveness of the system of supervision laid down in Articles 92 and 93 of the Treaty.

39 The consequence of the approach advocated by the defendant would be that, in the field of State aid, only Member States, recipients of aid (judgment of the Court of Justice in Case 323/82 *Intermills* v *Commission* [1984] ECR 3809, paragraph 5), competitors (*Cofaz* v *Commission*, cited above, paragraphs 21 to 31), and, in certain circumstances, the trade associations which represent the interests of the industry affected by the grant of aid (judgment of the Court of Justice in Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraphs 21 to 24, and of the Court of First Instance in Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971, paragraphs 53 and 62) could benefit from the

judicial protection provided for in Article 173 of the Treaty. Infra-State public entities, such as the applicant, would thus be excluded from that protection.

40 In that regard, it should be observed at the outset that the provisions of the Treaty concerning the right of interested persons to bring an action must not be construed restrictively (see, in particular, *Plaumann* v *Commission*, cited above, at 107).

41 The purpose of the fourth paragraph of Article 173 of the Treaty is to provide appropriate judicial protection for all persons, natural or legal, who are directly and individually concerned by acts of the Community institutions. Standing to bring an action must accordingly be recognised in the light of that purpose alone and the action for annulment must therefore be available to all those who fulfil the objective conditions prescribed, that is to say, those who possess the requisite legal personality and are directly and individually concerned by the contested act. That must also be the approach where the applicant is a public entity which satisfies those criteria.

42 That conclusion finds further support in a comparison of the wording of the second paragraph of Article 33 of the ECSC Treaty with that of the fourth paragraph of Article 173 of the EC Treaty, whose scope is wider. Whereas the ECSC Treaty confers the right to bring an action for annulment only on undertakings and associations of undertakings (see, in that connection, Case T-70/97 *Région Wallonne* v *Commission* [1997] ECR II-1513), the EC Treaty confers that right expressly on 'natural and legal persons', without excluding legal persons governed by public law. Accordingly, it follows from the difference in the wording of those two provisions that the principle of judicial protection under the EC Treaty is wider in scope and is not restricted to undertakings.

43 In those circumstances, the right of infra-State public entities to bring an action for annulment, as provided for in the fourth paragraph of Article 173 of the

Treaty, in the field of State aid cannot depend on whether their particular legal position is expressly recognised by Articles 92 and 93 of the Treaty.

44 Furthermore, that right cannot call into question the obligations of the Member States under Articles 92 and 93 of the Treaty. They remain the entities answerable to the Community for breach of the obligations imposed under those articles.

45 Similarly, the argument derived from Article 169 of the Treaty to the effect that, where actions for failure to fulfil obligations are concerned, infringements committed by regional or local authorities are to be attributed to the Member State must also be rejected.

46 Articles 169 and 173 of the Treaty constitute separate remedies which answer to different objectives. Article 169 of the Treaty is intended to secure the condemnation of breaches by the Member States of the obligations which are theirs under the Treaty and for the observance of which they alone remain answerable to the Community. Accordingly, States may not, in the context of proceedings under that article, plead in justification breaches of obligations on the part of infra-State entities (judgments of the Court of Justice in Joined Cases 227/85, 228/85, 229/85 and 230/85 *Commission* v *Belgium* [1988] ECR 1, paragraphs 9 and 10, and in Case C-33/90 *Commission* v *Italy* [1991] ECR I-5987, paragraph 24).

47 On the other hand, the question whether an action for annulment under the fourth paragraph of Article 173 of the Treaty is admissible can be determined only on the basis of the objectives specific to that provision and of the principle of judicial protection according to which it must be open to any natural or legal person to apply to the courts on his own initiative, that is to say in the exercise of his own judgment, in order to obtain review of an act which adversely affects that person.

48 As regards the danger of involving the Community judicature in the allocation of powers within Member States, it need merely be observed that the problem does

not arise because the Community judicature is not entitled to rule on the allocation of powers by the institutional rules of national law between the various national entities and on the obligations which may fall to each of them. In any event, any difference of views between an applicant and a Member State as to whether it is appropriate to bring an action against a Commission decision is irrelevant when analysing the admissibility of such an action from the perspective of the fourth paragraph of Article 173 of the Treaty.

49 Nor, moreover, can recognition that an applicant has an interest in his own right in challenging the contested decision transform the action for annulment brought by natural and legal persons into a sort of *actio popularis*, as the Commission claims. The objective conditions for admissibility set out in paragraph 41 of this judgment continue to constitute the requirements which any applicant must satisfy in order for him to be able to challenge an act which is not addressed to him.

50 Finally, so far as concerns the applicant's lack of *locus standi* in the field of external relations under Italian law, it is sufficient to observe that this is not relevant for the purpose of determining the possibility of bringing an action for annulment before the Community judicature. As held above (see, in particular, paragraph 41), the only relevant conditions for admissibility are those laid down in Article 173 of the Treaty.

51 For all the foregoing reasons, the objection of inadmissibility raised by the Commission must be dismissed and an order made for the action to proceed.

Costs

52 The costs are reserved.

On those grounds,

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

hereby:

1. **Dismisses the objection of inadmissibility raised by the Commission;**

2. **Orders that the action shall proceed on the substance of the case;**

3. **Orders that the costs be reserved.**

Vesterdorf Bellamy Moura Ramos

Pirrung Mengozzi

Delivered in open court in Luxembourg on 15 June 1999.

H. Jung B. Vesterdorf

Registrar President