OPINION OF ADVOCATE GENERAL VAN GERVEN

delivered on 15 July 1993 *

Mr President,
Members of the Court,

1. In this case, Compagnie d'Entreprise CFE ('CFE'), a public limited company governed by Belgian law, seeks an order from the Court for the European Parliament ('the Parliament') to pay a certain amount for contract work carried out. CFE applies to the Court on the basis of an arbitration clause in the contract between it and the Parliament, which confers jurisdiction on the Court in accordance with Article 42 of the ECSC Treaty, Article 181 of the EEC Treaty and Article 153 of the EAEC Treaty.

Facts and legal background

2. The facts may be summarized as follows. The dispute concerns the fitting-out of three conference rooms in the 'Van Maerlant' building, an office block that the Belgian State has had built in Brussels for the European Parliament. On 23 November 1987, in its capacity as the contracting authority, the European Parliament invited tenders for the fitting-out of the abovementioned rooms, and *inter alia* for the performance of carpentry works (lot 5.1). CFE and other building contractors tendered. The Parliament opened tenders on 28 January 1988. In a letter of 21 June 1988, the Parliament informed CFE that it had been chosen to carry out the carpentry work (lot 5.1). In that letter, the Parliament confirmed the value of the work and requested CFE to take all steps necessary to meet the mandatory time-limits which had been agreed upon. On 18 July 1988, the Parliament signed the contract and sent it to CFE to sign. By letter of 8 August 1988, CFE sent the Parliament one set of the signed contractual documents. However, in its letter, it added the following consideration:

'The cover against variation included in our prices was based on the performance schedule provided for in the special conditions, which entailed an order for commencement of work in February-March 1988. On the basis of price trends ... between the date forecast and the actual date under the standard formula for building works, it appears that a price increase of +/-2% took place. We should like to try to find an equitable solution to this problem with you.'

3. Three problems arose out of the performance of that work. First, by letters of 18 August, 28 November and 14 December 1989, CFE drew the Parliament's attention to the fact that, due to what it considered to be a delay in the award of the contract, it had to place orders with its suppliers and subcontractors between August and October

* Original language: Dutch.

1988, instead of the period from March to May of that same year, at prices which had gone up considerably since June 1988. In that letter, CFE repeated its observation that in order to solve that problem equitably, a technical formula for price variation used in Belgium should be applied to the invoicing of the work. That would lead to a price increase of BFR 1 689 055.

A second problem concerns the installation of plaster boards. CFE considers the request of the Parliament's architect to put up such boards on the whole elevation of the partitions to be an order for additional work not included in the general conditions.

The third problem concerns the installation and, following removal, reinstallation of ceiling panelling. Since the materials chosen by CFE did not meet the safety standards, responsibility for painting the panels was given to another undertaking. CFE took down the ceiling panelling and, after painting, reinstalled it. CFE argues that this was also additional work and accordingly claims the sum of BFR 306 344.

As the procedure for the amicable settlement of disputes was not successful, CFE has referred the case to the Court on the basis of the abovementioned arbitration clause. [1] It demands that the Parliament

(i) update the price by BFR 1 689 055, in view of the delay in awarding the contract;

(ii) pay the sum of BFR 393 600 for installing the additional plaster boards;

(iii) pay the sum of BFR 215 437 for installing and reinstalling the wall panels; and

(iv) pay interest for late payment in accordance with Article 15 of the Ministerial Decree of 10 August 1977. [2]

4. The legal relationship between CFE and the Parliament is governed first and foremost by their *contract* of 18 July 1988. That contract provides that Belgian law applies to all matters not specifically provided for therein. [3] In the contract, both parties undertake to comply with the clauses in the 'contractual documents' concerning the price and the undertakings made by CFE in its tender of 28 January 1988. [4] The 'contractual documents', which are an integral part of the contract, are the contract at issue, the undertaking (which contains the tender) signed on 28 January 1988 by the two directors of CFE, the administrative clauses provided for in Annex I, the technical clauses for lot 5.1 and the plans. [5] Both parties expressly accept the exclusion of any other clause or term. [6]

1 — Article 2.4 of the contract provides for both the abovementioned procedure and the arbitration clause.

2 — For the reference to that Ministerial Decree, see below, point 4 and note 6.

3 — Article 2.4 of the contract.

4 — Article 2.1 of the contract.

5 — Article 2.2 of the contract.

6 — Article 2.6 of the contract.

The administrative clauses contained in Annex I to the contract constitute the *special conditions*. The most relevant of those provisions for the purposes of these proceedings are the following.

Article A 14 ('reference documents') provides that, subject to any derogation provided for in the special conditions, the work is governed by, *inter alia*, the Royal Decree of 22 April 1977 concerning public works, supply and service contracts ('the Royal Decree') and the Ministerial Decree of 10 August 1977 laying down the general conditions governing public works, supply and service contracts ('the general conditions'). [7]

Article A 5.1 ('qualified lump sum') provides:

'This contract, whether it includes one or more lots, or all lots, constitutes a "qualified lump sum contract, with a schedule of unit prices".

The term "qualified lump sum" means that the (European Parliament) reserves the right to alter the construction specifications to a specified extent. Notwithstanding that right, the "lump sum" shall remain applicable, that is to say that the (successful tenderer) must carry out all the work referred to in the documents or schedules appended hereto, at the agreed price, readjusted in accordance with statements of work done, and within the time-limits provided for in the contract, in accordance with best building practice and at his own expense and risk.'

Article A 15 ('application and/or derogations') specifies, *inter alia*, those provisions of the Royal Decree which are derogated from. In respect of Article 35 of that Decree, concerning the period for which tenderers remain bound by their tender, [8] that article provides:

'Choice of the successful tenderer: the period within which the decision of the (European Parliament) must be notified to the contractor shall be 180 calendar days from the day after that on which the tenders are opened.'

Article B 13.1 ('validity of tender') provides:

'Contrary to what is stated in the Official Journal of 03.01.79, the tender shall be valid for 600 calendar days from the lodging thereof.

No price variation will be accepted prior to the expiry of that period.'

7 — The Royal Decree was published in the *Moniteur Belge* of 27 July 1977, p. 9552; the general conditions were published in the *Moniteur Belge* of 8 September 1977, p. 10931.

8 — Article 35(1) of the Royal Decree provides: 'Tenderers shall continue to be bound by their tender, as possibly amended by the administrative authority, for a period of 60 calendar days as from the day after the opening of tenders, *unless the special conditions provide for a different period*'. (Emphasis added).

Finally, *Article B 28.1* ('duration of the work') provides:

'The work covered by this contract must be fully complete by 27 February 1989.

Provision must, however, be made for partial occupation of the rooms prior to that date.

(...)

The date for the commencement of work is fixed at 15 May 1988. Workshop preparation must however be scheduled.'

The claim for an updating of the tender price

5. *The parties' views.* CFE asserts that its claim does not concern price variation during the course of performance, but an updating of its tender price of 28 January 1988. In its application, it claims an updating to the time of the order, namely 18 July 1988. However, in its reply, CFE maintains that its claim concerns the updating of the price of its tender to the day on which it was able to place orders with its sub-contractors. It therefore claims an updating equivalent to the amount obtained by applying the technical price variation formula for the period from March 1988 to 31 October 1988, the date on which it negotiated new prices with its sub-contractors.

6. Before considering the substantive arguments, I have to discuss the plea of inadmissibility raised by the Parliament in its rejoinder, based on Article 42(1) of the Rules of Procedure of the Court, against what the Parliament describes as a significant amendment to CFE's claim, namely the extension of the updating sought, from the date of the award of the contract to the date on which it placed orders with its sub-contractors, in other words from 18 July 1988 to 31 October 1988. Article 42(1) of the Rules of Procedure allows the parties to offer further evidence in the reply and rejoinder in support of their arguments, provided they give reasons for the delay in offering it; in the Parliament's view, it follows *a fortiori* that an amendment of the claim made in a reply must be declared inadmissible by the Court.

Unlike the Parliament, I consider that CFE did not extend its claim in its reply: what it claims in its reply is the same thing as it sought in its application, namely an updating of the price on account of the delay in awarding the contract. Rather, as it stated at the hearing, CFE has clarified its claim in its reply — as may also be seen from the fact that it has not increased the amount of the claim, BFR 1 689 055 — or, more accurately, it has set out its claim in more detail, clearly as a response to the criticism made by the Parliament in its defence concerning the imprecise formulation of the claim.

The details provided by CFE in its reply, as regards the price increase which occurred after its tender and the difficulties which it encountered in negotiations with its suppliers and sub-contractors, do indeed constitute better-substantiated evidence of the facts and, accordingly, *further evidence* in support of its arguments concerning the updating of the sum payable. If the question is looked at in that way, CFE should have given reasons for the delay in offering that new evidence as required by Article 42(1) of the Rules of Procedure. In my opinion, its failure to do so cannot, however, lead the Court to rule that the clarifications in question are inadmissible. In fact, both CFE's precise claim and the factual circumstances on which its claim is based had been the subject of discussions between the parties for some time, as is apparent form the exchange of letters between August and December 1989, referred to above (in point 3). Furthermore, the details given by CFE may be regarded as being closely linked to 'amplifying a submission made previously, directly or by implication in the original application', namely for the payment of a sum for the delay in awarding the contract and, to that effect, as constituting such an amplification.

In view of the flexibility of the Court's case-law on that point, [9] I am therefore in favour of admitting the abovementioned details.

7. As to the substance of the case, I shall first discuss the parties' arguments and the provisions upon which they rely. In support of its view, CFE maintains first that the award of the contract should have taken place around 1 March 1988, that is to say two and a half months prior to 15 May 1988, the date set for the start of the work in Article B 28.1 of the special conditions. The clauses under which the contract must be awarded within a period of 180 calendar days, starting the day following that on which tenders are opened (Article A 15) and remain valid for 600 calendar days (Article B 13.1) are not, it considers, to be applied, since a reasonable interpretation of the terms under which the work is to be carried out means that only the starting and finishing dates fixed for the work (15 May 1988 and 27 February 1989 respectively) may be regarded as decisive.

In the light of that interpretation and the consequent delay in awarding the contract, CFE bases its claim for additional payment *principally* on Article 16(1) of the general conditions. That provision is worded as follows:

'The successful tenderer may rely on omissions, delays or conduct of whatever nature which he attributes to the administration or its servants, and which cause him delay and/or damage, in order to secure an extension of the time-limit for performance, variation or termination of the contract and/or damages, as the case may be. (...)'

According to CFE, that provision gives the successful tenderer the right to obtain variation of the contract in the broad sense and the claim for variation can be based on any conduct of the administration, without it being necessary to prove a specific breach of contract. The conduct ascribable to the Parliament is its delay in placing the order for

9 — See Case 306/81 *Verros* v *Parliament* [1983] ECR 1755. The citation comes from paragraph 9 of that judgment, in which, in turn, the Court refers to the *Amylum* case: see Case 101/81 *Amylum* v *Council* [1982] ECR 3107, in particular at para. 25.

budgetary reasons. As a result, CFE was faced with an unforeseeable price increase and was forced to renegotiate between August and October 1988 with its subcontractors — who were no longer bound by their original offer (which is usually valid for only three months). It is also of no avail to the Parliament to rely upon a breach of Article 16(3) (for the wording of that provision, see below, point 8), since that provision refers to the contract for the work and CFE could not rely on the provisions of that contract until it received the decision awarding it the work, as it in fact did. On 8 August 1988, CFE informed the Parliament of the negative consequences of the delay, having received the order on 1 August.

In the alternative, CFE claims that there are extraordinary and unforeseeable circumstances within the meaning of Article 16(2) of the general conditions. That provision is worded as follows:

'2.1 The successful tenderer shall not in principle be entitled to any amendment of the contractual conditions on account of circumstances of whatever nature outside the control of the administrative authority. However, he may, either for the purpose of requesting an extension of the time-limit for performance or, if he has sustained very significant damage, in order to request the variation or the termination of the contract, rely on circumstances which he was not reasonably able to foresee when the tenders were lodged or the contract concluded, which he was not able to avoid, and the consequences of which he was not able to prevent, despite having taken all necessary steps. (...)'

According to CFE, since the dates for the commencement and completion of the work were mandatory, the delay in placing the order constitutes a circumstance which it was not reasonably able to foresee when it lodged the tender. Paragraph 2 should therefore apply notwithstanding the presence of any clause which — as in this case Article A 5.1 of the special conditions does (see point 4 above) — precludes price variation.

8. To CFE's argument the Parliament replies, *principally*, that Article B 13.1 of the special conditions prohibits any price variation (see point 4 above). CFE cannot circumvent that prohibition by demanding that its tender price be updated. The Parliament then analyses CFE's demand that the price be updated and distinguishes two stages, a precontractual stage up to 19 July 1988 and a contractual stage after that date.

As regards the *precontractual* period, the Parliament points out that if, when the order was placed, the time-limit for the award of the contract had gone by and prices had increased, then CFE should at that time have requested that Article 38 of the Royal Decree (set out below, in point 10) be applied to enable it to obtain a higher price.

As regards the *contractual* period, the Parliament states that its relationship with CFE is governed by Article 16 of the general conditions. However, CFE cannot invoke paragraph 1 of that article on the basis of conduct of the administration, in this case the

alleged delay in placing the order, which is prior to the conclusion of the contract. According to the Parliament, Article 16(2) does not apply either, since the conditions laid down for its application are not met: that is to say a price increase of more or less 2% which occurred between August and October 1988 does not constitute a significant damage within the meaning of that provision and, furthermore, CFE did not take all necessary steps to avoid the results of that price increase.

In the alternative, the Parliament maintains that, if Article 16(1) or (2) were to apply, CFE could be successful only if it were able to prove that it had a legitimate expectation regarding the period for performing the works and that its tender price had been set on the basis of that period. It should, furthermore, have drawn the conduct alleged to the attention of the Parliament within 30 days of the date on which it ought normally to have become aware of it, and should have substantiated and provided supporting figures for its claim. For ease of understanding, I shall cite paragraph 3 and summarize paragraph 4:

'3. A contractor or supplier who finds that conduct or circumstances of whatever nature, whether or not referred to in paragraphs 1 and 2, disrupt the ordinary performance of the contract, and who is thus entitled to request an extension of the time-limits for performance, variation or termination of the contract and/or damages, must bring the matter to the attention of the administration forthwith, explaining briefly what influence such conduct or circumstances have or could have on the contract and the cost of the work to be carried out.

Complaints and applications based on conduct or circumstances which the successful tenderer has not brought to the attention of the administration in sufficient time, with the result that the administration has not been able to assess the reality or the effect on the market thereof in order to take such measures as the situation might require, are not admissible.

In any event, such complaints or applications shall not be admissible where the alleged conduct or circumstances were not brought to the attention of the administration within 30 calendar days of their occurrence or of the date on which the successful tenderer ought normally to have been aware of them. (...)'

Article 16(4) provides that the abovementioned complaints and applications must be lodged by the successful tenderer within certain mandatory time-limits, with proper substantiation and supporting figures.

9. *My assessment.* First, I must make it clear that I cannot share CFE's view that, in the light of Article B 28.1, a reasonable interpretation of the general conditions rules out the application of Articles A 15 and B 13.1 of the special conditions (for the wording of all those articles see point 4 above). To that end, CFE relies upon — in my opinion wrongly — *inter alia* Article 1161 of the Belgian Civil Code concerning the interpretation of contracts. That article provides that all the

clauses in a contract 'shall be interpreted by reference to one another, so that each is interpreted in the manner called for by the document as a whole.' Only if Articles A 15, B 13.1 and B 28.1 of the special conditions were inconsistent with each other could they be derogated from. However, as I intend to demonstrate, that is not the case.

Of those provisions, Article A 15 undeniably expresses the main rule: as I have stated, that article derogates from Article 35 of the Royal Decree. Whereas Article 35 considers that successful tenderers remain committed by their tender for a period of 60 calendar days from the day after the opening of tenders, Article A 15 provides that the Parliament must notify the tenderer of its choice within 180 calendar days from the day after the opening of tenders. It clearly follows that, in any event, tenderers remain committed by their tender for a period of *at least* 180 days. As a Belgian contractor, CFE knew or in any event ought to have known what that derogation from Article 35 of the Royal Decree meant for it (and for its obligations with regard to suppliers and subcontractors). However, I do not see any inconsistency between Article A 15 and the strict time-limits in Article B 28.1: even though the time-limit of 180 days, if used to the maximum by the Parliament, which is not the case, [10] would effectively delay the *start* of the work, it would not make it impossible, but merely more difficult, to complete the work before the final date laid down by the contract, namely 27 February 1989.

Nor do I see any inconsistency between, on the one hand, the period of validity of 600 days laid down for the tender under Article B 13.1, on the other hand, Article B 28.1. It is apparent from the second paragraph of Article B 13.1 that the basic objective of that article is to prevent contractors from varying their tender price within 600 calendar days of the lodging of the tender. Although the date for completion of the work had actually been set for 27 February 1989 — long before the expiry of the 600 days in mid-July 1989 — the stipulation of such a long period of validity may be logically explained by the fact that the contracting authority wished to allow for delays in carrying out the work and cover itself against any price variation. Furthermore, it may be noted that in its tender of 28 January 1988 CFE unconditionally undertook to carry out the work under the terms in the special conditions and that it expressly added that the tender only bound it where notification of acceptance was given to it *within a period of 600 days* from that date.

10. Quite apart from the foregoing, the objection raised by CFE concerning the delay in placing the order also falls foul of Article 38 of the Royal Decree. Paragraph 1 of that article provides:

10 The time limit of 180 days from the day of the opening of tenders gave the Parliament until 27 July 1988 to notify the tenderers of its choice

'If notification of approval of the tender has not been made within the period prescribed under Article 35, the contract cannot be concluded without the unconditional written agreement of the tenderer concerned.'

Thus, if CFE considered that the award of the contract was late, it ought to have raised the issue of lateness when the order was notified. On the basis of the second paragraph of Article 38 of the Royal Decree, it could have refused to sign the contract or maintain its tender, unless it was given a higher price. [11] However, it did not do so but instead signed the contract on 8 August 1988. I cannot see the consideration it added in the letter of the same date concerning the price increase which had occurred in the meantime (for the wording, see point 2 above) as constituting either a reservation for the purposes of the first paragraph of Article 38, or a requirement for a higher price for the purposes of the second paragraph of Article 38.

11. Nor, in my opinion, does CFE succeed in establishing that the Parliament committed any wrongful act or omission covered by Article 16(1) of the general conditions (see the wording in point 7 above). It follows from the foregoing analysis of the relevant contractual provisions that there is no question of 'omissions, delays or conduct of whatever nature', since under the contract the Parliament had 180 calendar days to choose a contractor.

Even if the Parliament could be criticized for having been too slow, CFE ought to have informed the institution of its complaint or application within 30 calendar days of either the occurrence of the delay alleged or the date on which it ought normally to have become aware thereof, in order to comply with Article 16(3) (cited in point 8 above). It is clear that as from the Parliament's letter of 21 June 1988 (see point 2 above), CFE was aware that it was the successful tenderer and that — as the Parliament stated in its letter — the time-limits had to be complied with. Thus, if it was not to lose its right of complaint under Article 16(1), CFE should, at the latest, have notified the Parliament of the circumstance giving rise to its loss no later than one month thereafter (by 21 July 1988). It did not do so; by contrast, in its reply of 4 July 1988 to the Parliament's letter, it confirms that it will carry out the work awarded to it under its tender of 28 January 1988 and makes no mention of the alleged delay in placing the order.

12. Nor does it seem to me that the requirements of Article 16(2) of the general conditions (see the wording in point 7 above) are met. For that purpose, the successful tenderer must first have suffered *very significant damage*. It cannot be inferred from Belgian case-law that a price increase of 4% constitutes such very significant damage. [12] Furthermore, it is very doubtful whether, as is required under Article 16(2), the price increases in question were unforeseeable for CFE and whether CFE took all the steps necessary to guard against the consequences

11 — The situation in which the tenderer agrees to maintain his tender only if he is given a higher price is regulated by the second paragraph of Article 38 of the Royal Decree: in that case, the competent authority may, instead of recommencing the procedure, agree to the price increase, refer to the other tenderers in the order in which their tenders are ranked, or ask all the other tenderers to review their prices.

12 — See *inter alia* Civ. Brussels, 8 June 1984, *L'entreprise et le Droit*, 1985, p. 108, in particular, p. 110 (damage can only be categorized as very significant where it represents at least 10 to 15% of the amount of the tender); Civ. Brussels, 18 September 1986, *L'entreprise et le Droit*, 1991, p. 388, more particularly at page 392 (damage following an increase in prices of around 3.5%, is not very significant damage).

of those price increases. First, I have difficulty imagining that by the time of the conclusion of the contract CFE was not reasonably able to *foresee* the price increases in question. It is apparent from its letter of 8 August 1988 (see point 2 above) that at that time it knew of the price increase of around 2% which had occurred between February-March 1988 and July 1988 — an increase which it in no way categorized as exceptional in that letter, but rather as calculable under 'a standard formula'. Nor can I imagine that CFE did not know or could not have known that prices were going to increase again between July and October 1988, an increase which — after the deduction of the 2% noted up to July — amounted to no more than 2% and, accordingly, is in no way as 'spectacular' as CFE would have it.

That issue accordingly leads me to doubt that the requirement of Article 16(2) has actually been met, namely that CFE *was unable to avoid* the circumstances it relies upon and that it *took all the steps necessary* to guard against the consequences of the price increases. Since it knew that prices were increasing, CFE could, once it had received the Parliament's letter of 21 June 1988, have done what was necessary to avoid the effects of future price increases by renegotiating as quickly as possible with its subcontractors. It certainly did not have to wait until August 1988 for this purpose.

13. Having regard to the foregoing considerations, I therefore conclude that CFE's first claim seeking an updating of its tender price to BFR 1 689 055 must be dismissed.

The claim for payment for installation of plaster boards

14. CFE asserts that by installing the plaster boards to beneath the floor and above the false ceiling it carried out the work in accordance with the detailed plans. In a letter of 22 December 1988, the architect required the boards to be installed on the whole elevation of the partitions, which, according to CFE, constituted additional work over and above the work described in the original order. Consequently, in accordance with Article 42 of the general conditions, an extra charge of BFR 393 600 is due.

The Parliament, however, argues that, under Articles 5.1.5 and 5.1.5.1 of the technical clauses, the plaster boards were to be erected on the whole elevation of the partitions. The architect's letter merely drew attention to those clauses and did not therefore constitute an additional order. In any event, if it had considered that that letter obliged it to perform a service which it was not bound to carry out under the contract, CFE ought to

have reacted in accordance with Article B 16.3 of the special conditions. That article ('orders contrary to requirements') provides:

'This article shall also apply where the successful tenderer considers that the orders he has received are contrary to the contractual requirements. The circumstances shall be brought to the attention of the contracting authority by registered letter.'

Consequently, CFE should have informed the contracting authority as soon as possible by registered letter that the order it had received was contrary to the provisions of the contract. However, it did not do so and accordingly its claim is inadmissible.

15. In that regard, I also consider that the Court cannot allow CFE's claim. The technical clauses seem to me to be sufficiently clear with regard to how the plaster boards are to be installed. Article 5.1.5 ('partitions') lays down:

'The work to be carried out comprises all the partitioning included in the three rooms (...).

With the exception of the telephone booths, all partitions shall be erected from the floor base tiling to the under side of the roof (...)

As the thickness of the various partitions varies from 75 mm to 300 mm, the contractor shall comply with the descriptions in the detailed plans as regards the composition and the alternation of the various materials used. The composition of a standard 150 mm partition is set out in Article 5.1.5.1.'

Article 5.1.5.1 of the special conditions provides:

'a. Partitions shall be made on a frame of hard wood (oak or beech, ...) or vegetable fibreboard. (...)

b. An 18 mm SPAN board or similar shall be applied to both sides of the frame ... followed by a 15 mm coated plaster panel, the exposed side of which is suitable for finishing (textile covering or paint work).'

Read together, those provisions show sufficiently clearly that the plaster boards had to be erected on the whole elevation of the partitions. It is expressly stipulated that the partitions must be erected *from the floor base tiling to the under side of the roof* and that, in the standard case, a 150 mm partition must be made on a hard wood or vegetable fibreboard frame which must be covered on both sides, *inter alia*, by a 15 mm *plaster panel.*

Furthermore, as the Parliament argues, it cannot be denied that, in accordance with Article B 16.3 of the special conditions, CFE should have sent a registered letter to the Parliament if it considered that the architect's letter of 18 December 1988 constituted

an order which ran counter to the provisions of the contract. The fact that it did not do so only serves to reinforce my conviction that the technical clauses are clear and unequivocal in that regard.

The claim for payment for installation and reinstallation of the wall panelling

16. Referring to the contract, CFE asserts that, in addition to lot 5.1. 'carpentry', the order that it received initially also included the job 'painting booth facing panelling.' Those initial provisions implied that the removal of the panelling for painting was CFE's responsibility. Since, however, its panelling did not meet the fire resistance standards laid down by the fire brigade, that work was withdrawn from CFE and the painting work given to another undertaking, ACP. However, CFE had to remove and replace the panelling, which in its view, constituted an additional service, not included in the remainder of the work for which it was responsible. Accordingly, it claims an additional payment under Article 42 of the general conditions.

The Parliament, however, contends that the requirements laid down by Article 42 regarding additional payment are not satisfied. Furthermore, it follows from Article 5.4 of the special conditions that CFE was not entitled to perform any work giving rise to additional expenditure without the Parliament's prior written authorization.

17. The dispute here is basically one of fact, concerning which the documents before the Court do not show the precise allocation of tasks between CFE and ACP when, following the difficulties summarized by CFE, the painting work was given to the latter. I none the less consider that the Court cannot allow CFE's claim in this regard either. In my opinion, the installation and replacement of panelling has to be considered as carpentry work within the broad meaning of the word and not as painting work, that is to say the work with which ACP had henceforth been entrusted. The obligation concerning the removal and replacement of the panelling therefore seems to me to be logically included in the work in lot 5.1 for which CFE was responsible, that is to say the carpentry work. Furthermore, Article A.2.2 of the special conditions stipulates, concerning the contents of the invitation to tender, that:

'it also includes all work and ancillary supplies needed for full completion and satisfy the usual purpose of each item of work in the tender lot(s).'

That rule which, basically, explicitly states the duty of *bona fide* performance of contractual obligations set out in the third paragraph of Article 1134 of the Belgian Civil Code, clearly shows that in any event CFE was bound to perform additional works such as those in issue here in order to carry out fully the work assigned to it. Furthermore,

I should point out that the additional effort, namely the removal and replacement of the panelling, as CFE itself implicitly concedes, was due to its own failure, namely the fact that its panelling did not meet the fire resistance standards set by the fire brigade.

Even if it were possible to consider, as CFE does — and I do not — that the removal and replacement of the panelling constituted additional work within the meaning of Article 42 of the general conditions, which led to additional expenditure for CFE, it is apparent in any event from Article 5.4 of the special conditions that CFE could only have performed those works if, beforehand, it had drawn up an estimate and had obtained the Parliament's written authorization. The aforementioned article provides:

'The (successful tenderer) shall not carry out any work which gives rise to additional expenditure without a prior estimate and the written authorization of the (European Parliament) and its authorized agents.'

However, no such estimate was ever drawn up and CFE never obtained the Parliament's written authorization.

18. Since CFE fails in its three claims and the Parliament has applied under Article 69(2) of the Rules of Procedure of the Court for costs in its pleadings, CFE should be ordered to pay the costs.

Conclusion

19. In the light of the foregoing I propose that the Court:

(1) dismiss CFE's claims;

(2) order CFE to pay the costs.