ORDER OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
20 November 1997 *

In Case T-85/97,

Interprovinciale des Fédérations d'Hoteliers, Restaurateurs, Cafetiers et Entreprises Assimilées de Wallonie ASBL (Féd. Horeca-Wallonie), an association constituted under Belgian law, established at Namur (Belgium), represented by Gilles Bounéou, of the Luxembourg Bar, and by Jean Materne and Alain Bernard, of the Liège Bar, with an address for service in Luxembourg at the Chambers of Gilles Bounéou, 15 Avenue du Bois,

applicant,

v

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

APPLICATION for the annulment of the Commission's decision, addressed to the Kingdom of Belgium by letter SG(96) D/8253 of 24 September 1996, not to raise any objection to the implementation by the Wallonia Region of a draft decree on social tourism,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES,

composed of: A. Kalogeropoulos, President, C. P. Briët, C. W. Bellamy, A. Potocki and J. Pirrung, Judges,

Registrar: H. Jung,

makes the following

Order

Facts

1 The applicant, Interprovinciale des Fédérations d'Hoteliers, Restaurateurs, Cafetiers et Entreprises Assimilées de Wallonie ASBL, is a non-profit-making association constituted under Belgian law whose membership, in the geographical area of the French-speaking and German-speaking cultural communities of Belgium, comprises the trade associations of hotel, restaurant and café proprietors listed in Article 2.01 of its statutes and any other natural or legal persons wishing to associate themselves with the objects set out in its statutes.

2 By letter of 7 April 1995 the applicant sent to the Commission a copy of a letter it had sent on 3 April 1995 to the Minister-President of the Wallonia Region, in which it criticized in particular the system of subsidies available for social tourism establishments under the draft decree of the Regional Executive of the Wallonia Region concerning social tourism (hereinafter 'the draft decree'), which was intended to replace the Royal Decree of 23 January 1951, as amended by the Royal Decree of 2 March 1956, governing the allocation of subsidies to promote workers' holidays and popular tourism.

3 By letter of 21 June 1995 the Commission acknowledged receipt of the applicant's letter of 7 April 1995 and stated that the Directorate-General for Competition would, after contacting the Belgian authorities in order to obtain all the information needed for the Commission to consider whether the decree in question was compatible with the common market, keep the applicant informed of developments.

4 The draft decree was officially notified to the Commission by memorandum of the Permanent Representation of Belgium of 4 October 1995. Additional information was provided by the Belgian authorities at a meeting held on 30 January 1996 and by memoranda received by the Commission on 22 March and 12 June 1996.

5 By a decision contained in letter SG(96) D/8253 of 24 September 1996 addressed to the Minister for Foreign Affairs of the Kingdom of Belgium, the Commission expressed the view, on conclusion of the preliminary phase of examination of State aid provided for in Article 93(3) of the EC Treaty, that 'the aid provided for by the draft decree of the Wallonia Region [could] qualify for the derogation provided for in Article 92(3)(c) of the EC Treaty since it contribute[d] to the development of an activity associated with a clearly defined Community interest and [did] not affect trading conditions to an extent contrary to the common interest'.

6 That decision was notified to the applicant by letter of 30 January 1997.

7 By letter of 12 March 1997 the applicant's lawyers asked the Commission to confirm that 'the sole source of the figures given [in its letter of 24 September 1996], particularly at pages 3 and 4, was the Wallonia Region', so as to enable their clients to 'verify the objectivity of [the Commission's documentation] on which a decision of such importance to them was based'. They asked it to 'take the necessary action within a very brief period', pointing out that the period within which an action might be brought under the fifth paragraph of Article 173 of the Treaty had 'commenced on 31 January 1997'.

8 The Commission replied to the applicant's lawyers by letter of 24 March 1997 confirming that the figures given in the decision of 24 September 1996 had been provided by the Belgian authorities. It stated:

'The information was given to the Commission in the context of the cooperation required of the Member States by Article 5 of the EC Treaty by virtue of which Member States must facilitate the achievement of the Commission's tasks. Where detailed and credible data are forwarded to it by the competent authorities of the Member State concerned and such data do not conflict with the information supplied by the complainants, the Commission has no reason to doubt the accuracy of the data and the propriety of the conduct of the Member State concerned.'

Procedure and forms of order sought

9 By application of 3 April 1997, received at the Registry on the same date, the applicant brought the present action in which it claims that the Court of First Instance should:

— annul the Commission's decision contained in its letter of 24 September 1996 to the Kingdom of Belgium and order the defendant to pay the costs;

— in the alternative, 'hold that the draft decree, wrongly considered by the Commission in its abovementioned decision to be compatible with the common market, could only be so compatible on the condition mentioned in the penultimate paragraph of the grounds of the decision', namely 'in so far as it provides that, in the ancillary commercial activities, the recognized associations engaging in social tourism which make approaches to customers having no connection with social tourism (or not falling within the definition in the applicant's statutes of the persons in relation to whom it must pursue its objects) must (like all non-profit-making associations) charge prices not lower than the average prices charged by hoteliers and restaurateurs in the private sector in an equivalent category for the same kind of services'.

10 Since the application did not designate the party against whom the action was brought, as required by Article 44(1)(b) of the Rules of Procedure of the Court of First Instance, the lawyer for the applicant, by fax sent to the Registry on 3 April 1997, stated that the action was directed against the Commission.

11 On 5 May 1997 the defendant submitted an application to the Court under Article 114 of the Rules of Procedure claiming that the Court should:

— declare the application inadmissible;

— order the applicant to pay the costs.

12 In its observations on that application, lodged at the Registry on 11 June 1997, the applicant contended that the Court should declare the application admissible.

Admissibility

13 Under Article 114 of the Rules of Procedure, a party requesting the Court of First Instance to give a decision on the admissibility of the application without considering the substance of the case, is to make its request by a separate document. The Court may decide that it is unnecessary to open the oral procedure and give its decision on the request by means of a reasoned order. In this case the Court considers that it has sufficient information from the documents before it and that further steps in the procedure are unnecessary.

14 The defendant puts forward three pleas in law in support of its plea of inadmissibility. The first is that the action is time-barred; the second is that the applicant has not satisfied the formal requirements laid down by the first paragraph of Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance; and the third, which relates only to the plea submitted in the alternative, is that the Court of First Instance has no jurisdiction to issue directions to the defendant institutions. It is appropriate to begin by considering the first plea.

Arguments of the parties

15 As regards the time-bar, the defendant contends that the action was not brought within the period of two months laid down in the fifth paragraph of Article 173 of the Treaty. The applicant became aware of the contested decision, which is not addressed to itself, on 31 January 1997, as is evidenced by the letter from its legal advisers of 12 March 1997 to the Commission, with the result that the period of two months expired on 31 March 1997. In view, however, of the extension of time on account of distance prescribed by Article 102(2) of the Rules of Procedure, which is two days for Belgian applicants, the period for initiating proceedings in this case expired on 2 April 1997 at midnight. However, the application, dated 3 April 1997, was lodged and registered at the Registry of the Court of First Instance on 3 April 1997.

16 The Commission adds that the time allowed on account of distance merely constitutes an extension of the period prescribed in the Treaty for the initiation of proceedings, so that the special provision of Article 101(2) of the Rules of Procedure of the Court of First Instance, according to which, where the period ends on a Saturday, Sunday or official holiday, the period is to be extended until the end of the first following working day, applies only at the end of the complete period (the prescribed period, extended by the time allowed on account of distance) and not on a first occasion at the end of the period prescribed by the Treaty and then, if need be, on a second occasion at the expiry of the additional time allowed on account of distance.

17 The applicant, which expressly admits to having become aware of the contested decision on 31 January 1997, maintains that the period of time prescribed for initiating proceedings was not exceeded. It its view the period of two months ended on 31 March 1997 at midnight. Since that day was an official holiday (Easter Monday), the expiry of the period was in any event deferred under Article 101(2) of the Rules of Procedure, to 1 April 1997. With the addition of the two days on account of distance, the period expired on 3 April 1997 at midnight and the application is thus admissible.

18 According to the applicant, both the spirit and the letter of the provisions of the Rules of Procedure at issue in this case require that the prescribed period and the extension on account of distance be regarded as two separate periods, the end of each of which can, if need be cumulatively, be deferred to the following working day if the period expires on a Saturday, Sunday or official holiday.

19 Since the extension of time on account of distance is intended, in principle, to allow the applicant to dispatch his application to the Registry by post, which is not possible on a non-working day, the applicant claims that the extension of the period prescribed for initiating proceedings must not be curtailed by a day which cannot be used for dispatch by that method.

20 The applicant also observes that, if the Rules of Procedure had not provided for any extension of time on account of distance, the last working day for initiating proceedings would in this case have been Tuesday 1 April 1997. The introduction of an additional period of two days on account of distance should not negate that deferral but should work to the further advantage of the applicant.

21 The applicant also submits that Article 101(2) of the Rules of Procedure, concerning extension until the end of the working day immediately following the end of a period which expires on a Saturday, Sunday or official holiday, applies to every period mentioned in paragraph 1 of that article and therefore to every procedural time-limit 'prescribed by ... these Rules of Procedure'. The extended procedural time-limits on account of distance are provided for in Article 102(2) of the Rules of Procedure. It necessarily follows that those time-limits also fall within the scope of the rule laid down in Article 101(2) of the Rules of Procedure.

Findings of the Court

22 Pursuant to the fifth paragraph of Article 173 of the Treaty, proceedings are to be initiated within two months of the publication of the measure or of its notification to the applicant or, in the absence of notification, of the day on which it came to the knowledge of the latter, as the case may be.

23 It is clear from Article 101(1) of the Rules of Procedure of the Court of First Instance that that period of two months must be calculated without counting the day of occurrence of the event marking its starting-point and expires at the end of the day which, in the last month, bears the same number as the day of occurrence of the event marking the starting-point of the period. Pursuant to Article 101(2) of the Rules of Procedure, '[i]f the period would otherwise end on a Saturday, Sunday or official holiday, it shall be extended until the end of the first following working day'.

24 That provision is supplemented by Article 102(2) of the Rules of Procedure, under which extensions, on account of distance, of procedural time-limits provided for in a decision of the Court of Justice and published in the *Official Journal of the European Communities* are to apply to the Court of First Instance. The decision of the Court of Justice on extension of time-limits on account of distance, appended as Annex II to its Rules of Procedure, provides that the prescribed time-limits are to be extended on account of distance by two days for the Kingdom of Belgium.

25 As the Court of Justice held in its order of 15 May 1991 in Case C-122/90 *Emsland-Stärke* v *Commission* (not published in the European Court Reports), paragraph 9, Article 80(2) of the Rules of Procedure of the Court of Justice, to which Article 101(2) of the Rules of Procedure of the Court of First Instance corresponds and which refers solely to the case where the period ends on a Saturday, Sunday or official holiday, is applicable only where the entire period, including the extension on account of distance, ends on a Saturday, Sunday or official holiday (see also the judgment of the Court of First Instance in Joined Cases T-80/89, T-81/89, T-83/89, T-87/89, T-88/89, T-90/89, T-93/89, T-95/89, T-97/89, T-99/89, T-100/89, T-101/89, T-103/89, T-105/89, T-107/89 and T-112/89 *BASF and Others* v *Commission* [1995] ECR II-729, paragraph 62).

26 The extension on account of distance is not to be regarded as separate from the procedural time-limit but merely as a prolongation of it, as is expressly indicated by the decision of the Court of Justice on extension of time-limits on account of distance, mentioned above, according to which '[i]n order to take account of distance, procedural time-limits ... shall be extended as follows ...'.

27 It follows that, in this case, having regard to the two days' extension of time on account of distance which was available to the applicant, the period prescribed for the initiation of the proceedings expired on 2 April 1997 at midnight.

28 Furthermore, the applicant has not established, or indeed claimed, the existence of unforeseeable circumstances or *force majeure* which might have allowed the Court of First Instance to derogate from the time-limit concerned on the basis of the second paragraph of Article 42 of the Statute of the Court of Justice, which applies to proceedings before the Court of First Instance pursuant to Article 46 of that Statute.

29 It follows from the foregoing that the application must be dismissed as inadmissible and that it is unnecessary to give a decision on the other pleas of inadmissibility raised by the defendant.

Costs

30 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful and the defendant has applied for costs, the applicant must be ordered to pay the costs.

On those grounds,

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

hereby orders:

1. The application is dismissed as inadmissible.

2. The applicant shall pay the costs.

Luxembourg, 20 November 1997.

H. Jung — Registrar

A. Kalogeropoulos — President