ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
15 July 1998 *

In Case T-115/94 (92),

Opel Austria GmbH, formerly General Motors Austria GmbH, a company incorporated under Austrian law, established in Vienna, represented by Dirk Vandermeersch, of the Brussels Bar, and Till Müller-Ibold, Rechtsanwalt, Frankfurt-am-Main, with an address for service in Luxembourg at the Chambers of Arendt and Medernach, 8-10 Rue Mathias Hardt,

applicant,

v

Council of the European Union, represented by Bjarne Hoff-Nielsen, Legal Adviser, acting as Agent, and by Hans-Jürgen Rabe and Georg M. Berrisch, Rechtsanwälte, Hamburg, and of the Brussels Bar, with an address for service in Luxembourg at the office of Alessandro Morbilli, Director General of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: English.

APPLICATION for taxation of costs made following the judgment of the Court of First Instance of 22 January 1997 in Case T-115/94 *Opel Austria* v *Council* [1997] ECR II-39,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber)

composed of: P. Lindh, President, K. Lenaerts and J. D. Cooke, Judges,

Registrar: H. Jung,

makes the following

Order

Procedure

1 By application lodged at the Registry of the Court of First Instance on 21 March 1994, registered as Case T-115/94, Opel Austria GmbH ('Opel Austria') applied for annulment of Council Regulation (EC) No 3697/93 of 20 December 1993 withdrawing tariff concessions in accordance with Article 23(2) and Article 27(3)(a) of the Free Trade Agreement between the Community and Austria (General Motors Austria) (OJ 1993 L 343, p. 1).

2 By orders of 7 and 20 October 1994 respectively, the President of the Second Chamber of the Court of First Instance granted the Commission leave to intervene in support of the form of order sought by the Council and granted the Republic of Austria leave to intervene in support of the form of order sought by the applicant.

3 By judgment of 22 January 1997 in Case T-115/94 *Opel Austria* v *Council* [1997] ECR II-39 the Court allowed Opel Austria's application and ordered the Council to bear its own costs and to pay the applicant's costs.

4 By letter of 14 July 1997 Opel Austria requested the Council to pay total costs of BFR 9 939 563.

5 By letter of 31 July 1997 the Council rejected that request.

6 Discussions took place with a view to reaching a settlement, but they were unsuccessful. Opel Austria then applied, by application lodged at the Registry of the Court on 12 January 1998, for taxation of its costs.

Forms of order sought by the parties

7 The applicant claims that the Court should order the Council to pay to it the whole of its expenses and lawyers' fees, amounting to BFR 9 939 563.

8 The defendant contends that the Court should set the amount of recoverable costs, including the costs of the taxation proceedings, at a reasonable amount, which should not exceed BFR 2 500 000 in total.

Substance

Arguments of the parties

9 The applicant submits that the expenses and lawyers' fees whose recovery it is claiming were both indispensable and appropriate costs.

10 It is a principle of Community law that the successful party in a case brought before the Community judicature is normally entitled to recover the whole of the expenses which it has incurred.

11 The subject-matter and nature of the dispute justified the expenses and lawyers' fees incurred by the applicant, because the application was directed at a regulation which for the first time applied State aid rules in Free Trade Agreements (hereinafter 'FTA') concluded by the Community to aid granted in non-member countries of the European Union. Community trade defence mechanisms were applied in circumstances in which they had not previously been applied.

12 The case raised a number of novel issues with particular significance for the development of Community law, in particular whether, in the context of the Agreement on the European Economic Area ('the EEA Agreement'), State aid granted in the past is considered to be existing aid and, therefore, not subject to retroactive

scrutiny in the Community and in the EEA; the impact of Community law on the effects of the succession of international agreements in regard to the matter in question, namely the FTA between the Community and the Republic of Austria, the EEA Agreement, the EC Treaty and, throughout that period, the General Agreement on Tariffs and Trade (GATT); and the legal effects of the EEA Agreement prior to its entry into force but after its ratification.

13 The facts and legal issues were complex, difficult and disputed and called for a considerable volume of work on the part of the applicant's counsel. Its counsel had some knowledge of the relevant facts, since they had dealt with the matter before the contested regulation was adopted. However, that knowledge was undermined by the Commission's refusal fully to disclose, before the adoption of that regulation, its version of the relevant facts.

14 In support of its application, the applicant produces a table summarising the time spent on each stage of the procedure. According to that table, the applicant's counsel spent a total of 272.75 hours in preparing the application, 230.5 hours in preparing the reply, 154.5 hours in preparing observations on the interventions and 135.75 hours in preparing for the oral procedure. Moreover, a further 80.25 hours were spent during the procedure on matters such as communicating with the applicant and the Austrian Government and contacts with the Council and the applicant relating to issues linked to the action.

15 Lastly, the case was of crucial financial importance to the applicant. In 1994 alone the applicant was liable to pay a provisional sum of somewhat more than BFR 120 000 000 in duties imposed by the contested regulation. When it brought its action to contest that regulation, it did not know whether the institutions would take the view that the duty would not apply after the accession of the Republic of Austria to the European Union and whether that accession would actually take place. Consequently, it had to assume that the regulation

would apply for many years. On the basis of that assumption, the applicant could reasonably estimate that the net present value of the customs duties which it would have incurred between 1994 and 2001 would amount to approximately BFR 1 250 000 000.

16 The Council observes that according to the documents submitted by the applicant, the amount claimed is made up of counsel's fees (BFR 9 557 563), disbursements of the applicant's counsel (BFR 309 000), travel expenses of a representative of the parent company (BFR 28 000) and costs of the address for service in Luxembourg (BFR 45 000).

17 It stresses that only expenses necessarily incurred are recoverable costs.

18 As regards the subject-matter and nature of the proceedings, it considers that the applicant overstates the importance of the case. The Court's judgment does not address the issues concerning the application of the State aid rules in the FTA.

19 Although the proceedings concerned some important and novel questions of Community law, their importance is not such as to justify the amount of the lawyers' fees claimed.

20 As to the difficulties raised and the amount of work generated, the Council asserts that the case did not justify the time spent by the applicant's counsel. The amount of the fees invoiced is therefore manifestly excessive.

21 In that regard, it is clear from the documents produced by the applicant that its counsel spent 873.75 hours on the case; that 14 lawyers from the law firm representing the applicant worked on the case; and that the person primarily responsible for handling the matter spent some 648.25 hours on it. By way of comparison, counsel to the Council, who was primarily responsible for the Council's defence and handled the case almost alone, spent a total of 165 hours on the case.

22 Furthermore, as the applicant acknowledges, its counsel dealt with the matter prior to the adoption of the contested regulation, so that they were familiar with the facts. Furthermore, as a result of the close contacts between the applicant and the Austrian Government, they were very well informed of the Commission's position.

23 Lastly, as to the applicant's financial interest in the case, the Council considers that the exact amount of that interest is not particularly relevant, because, even if the figures presented by the applicant were correct, the time spent on the case by the applicant's counsel would still be excessive.

24 The Council also considers that the amount of BFR 309 000 claimed as disbursements is excessive.

25 Basing its assessment on the number of hours spent on the case by its own counsel and an average hourly fee of BFR 10 000, it assesses the recoverable costs at a total amount of BFR 2 500 000. However, since that sum is calculated on a generous basis, it should cover all the expenses incurred by the applicant.

Findings of the Court

26 Under Article 91 of the Rules of Procedure 'the following shall be regarded as recoverable costs: ... expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers'. It follows from that article that recoverable costs are limited, first, to those incurred for the purpose of the proceedings before the Court of First Instance and, second, to those which are necessary for that purpose (see the order of the Court of Justice of 9 November 1995 in Case 89/85 DEP *Ahlström Osakeyhtiö and Others* v *Commission*, not published in the ECR, paragraph 14).

27 It is settled law that the Community judicature is not empowered to tax the fees payable by the parties to their own lawyers but it may determine the amount of those fees which may be recovered from the party ordered to pay the costs. When ruling on an application for taxation of costs, the Court is not obliged to take account of any national scales of lawyers' fees or any agreement in that regard between the party concerned and his agents or advisers (see the order of 8 November 1996 in Case T-120/89 (92) *Stahlwerke Peine-Salzgitter* v *Commission* [1996] ECR II-1547, paragraph 27).

28 Since there are no Community provisions laying down fee-scales, the Court must make an unfettered assessment of the facts of the case, taking into account the purpose and nature of the proceedings, their significance from the point of view of Community law, as well as the difficulties presented by the case, the amount of work generated by the dispute for the agents and advisers involved and the financial interests which the parties had in the proceedings (see the order of 24 March 1998 in Case T-175/94 (92) *International Procurement Services* v *Commission*, not yet published in the ECR, paragraph 10).

29 As regards the difficulties presented by the case and its significance from the point of view of Community law, it is clear that this case concerned a number of questions which had not been specifically examined in previous cases, in particular the application of the provisions on State aid in the FTAs concluded between the

Community and the various member countries of the European Free Trade Association; the legal effect which an international agreement concluded by the Community had before it entered into force but after the Community, as last contracting party, had deposited its instrument of approval; the application and interpretation of the EEA Agreement and of several of its articles, in particular Article 6; and the legal consequences of the fact that the edition of the *Official Journal of the European Communities* in which a Community measure was published had been backdated. The nature of the proceedings therefore justified high fees and the applicant's being represented by a number of lawyers (see the order in Case T-120/89 (92) *Stahlwerke Peine-Salzgitter* v *Commission*, cited above, paragraph 30).

30 However, although it is true that the proceedings raised a large number of important legal issues, the amount of work which the proceedings could have generated for the applicant's advisers, including research and consideration of legal literature, the relevant regulations and the case-law, was not so great as to justify recoverable expenses as high as those claimed. A total of almost 900 hours worked is clearly in itself quite excessive. Furthermore, the applicant's counsel were also familiar with the case to a certain extent, because they had been involved in the procedure preceding the Council's adoption of the regulation at issue.

31 The Council does not dispute that the financial interest which the proceedings represented for the applicant was substantial.

32 Having regard to the foregoing, the amount of recoverable costs should be fixed at BFR 4 000 000.

33 Since that sum takes account of all the circumstances of the case up to the date of this order, there is no need to give a ruling on the costs incurred by the parties in relation to these ancillary proceedings.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

The total amount of the costs to be paid by the Council to the applicant is fixed at BFR 4 000 000.

Luxembourg, 15 July 1998.

H. Jung — Registrar

P. Lindh — President