ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber, Extended Composition)
17 November 1995 *

In Case T-330/94,

Salt Union Ltd, a company governed by English law, established in Cheshire (United Kingdom), represented by Jonathan Scott and Craig Pouncey, Solicitors, with an address for service in Luxembourg at the Chambers of Georges Baden, 8 Boulevard Royal,

applicant,

v

Commission of the European Communities, represented by Nicholas Khan and Jean-Paul Keppenne, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION, first, for the annulment of the decision contained in a letter of 5 August 1994 in which the Commission informed the applicant that it had found no ground for proposing any appropriate measures within the meaning of Article 93(1)

* Language of the case: English.

of the EC Treaty with regard to the Netherlands regional aid scheme 'Subsidieregeling regionale investeringsprojecten 1991' and, secondly, for an order that the Community should indemnify the applicant for the damage it considers it has suffered as a result of that decision,

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

composed of: C. P. Briët, President, B. Vesterdorf, K. Lenaerts, P. Lindh and A. Potocki, Judges,

Registrar: H. Jung,

makes the following

Order

1 By application lodged at the Registry of the Court of First Instance on 13 October 1994, Salt Union Ltd ('Salt Union') brought an action first, for the annulment of the decision contained in a letter of 5 August 1994 in which the Commission informed the applicant that it had found no ground for proposing any appropriate measures pursuant to Article 93(1) of the EC Treaty with regard to the Netherlands regional aid scheme 'Subsidieregeling regionale investeringsprojecten 1991' and, secondly, for an order that the Commission should indemnify the applicant for the damage it considers it has suffered as a result of that decision.

2 By a separate document, lodged at the Registry on 19 January 1995, the Commission raised a plea of inadmissibility pursuant to Article 114 of the Rules of Procedure of the Court of First Instance. By order of 13 July 1995, the Court (Third Chamber, Extended Composition) reserved its decision on the plea of inadmissibility for the final judgment, pursuant to Article 114(4) of the Rules of Procedure.

3 Frima BV ('Frima') and Verein Deutsche Salzindustrie eV ('VDS') applied to intervene in the case.

4 The applications to intervene were submitted in pursuance of Article 37 of the Statute of the Court of Justice of the EC, which is applicable to proceedings before the Court of First Instance in accordance with the first paragraph of Article 46 thereof. They satisfy the requirements of Article 115 of the Rules of Procedure and were served on the parties in accordance with Article 116(1) of the Rules of Procedure.

5 The President of the Chamber referred the applications to intervene to the Court (Third Chamber, Extended Composition) as provided in Article 116(1) of the Rules of Procedure.

Frima's application to intervene

6 By application lodged at the Registry on 22 March 1995, Frima, a company governed by Netherlands law, with its registered office in The Hague (Netherlands), represented by Tom Ottervanger, of the Rotterdam Bar, with an address for service

in Luxembourg at the Chambers of Zeyen Beghin Feider, Loeff Claeys Verbeke, 67 Rue Ermesinde, applied to intervene in the case in support of the form of order sought by the defendant.

7 In support of its application to intervene, Frima points out that the object of the procedure implicitly challenges the validity of aid of HFL 12.5 million granted to it by the Netherlands Government under the regional aid scheme concerned for the construction of a new salt production plant at Harlingen in the province of Friesland (Netherlands). Frima submits that the action for annulment brought by Salt Union is capable, therefore, of substantially affecting Frima's position in that it might be deprived of all or part of the aid granted to it by the Netherlands Government.

8 By letter of 10 April 1995, Salt Union has stated that it has no observations to make concerning Frima's application to intervene.

9 By letter of 10 April 1995, the Commission has stated that Frima ought to be given leave to intervene, since it was the beneficiary of aid granted under the scheme in relation to which the Commission had refused to adopt appropriate measures and had thus established an interest in the result of the case. The Commission also observes that Frima has been given leave to intervene in Case T-154/94 *Comité des Salines de France et Compagnie des Salins du Midi et des Salines de l'Est* v *Commission*, concerning the same aid granted to Frima (order of the Court of 10 February 1995, not published in the ECR).

10 Article 37 of the EC Statute provides that in order to be given leave to intervene in a case before the Court, a person must establish an interest in the result of the case. It is settled case-law that, in a dispute concerning State aid, the beneficiary of that aid has such an interest (see, for example, the order of the Court of 1 July 1993 in Case T-17/93 *Matra Hachette* v *Commission*, not published in the ECR, paragraphs 19 and 20, and the abovementioned order in *Comité des Salines de France*, paragraph 9).

11 The Court points out that Frima is the beneficiary of aid granted under the Netherlands regional aid scheme which forms the subject-matter of the decision at issue. Frima must, consequently, be granted leave to intervene in the case in support of the form of order sought by the Commission.

VDS's application to intervene

12 By application lodged at the Registry on 31 March 1995, VDS, an association governed by German law, with its registered office in Bonn (Germany), represented by Thomas Jestaedt, of the Düsseldorf Bar, and by Walter Klosterfelde and Karsten Metzlaff, of the Hamburg Bar, with an address for service in Luxembourg at the Chambers of Philippe Dupont, 8-10 Rue Mathias Hardt, applied to intervene in the case in support of the form of order sought by Salt Union.

13 In support of its application to intervene, VDS states that it is an association of all German salt producers. It claims to have an interest in the result of the case, since the aid granted to Frima under the Netherlands regional aid scheme creates further capacity on a market already experiencing significant over-capacity. Since Frima will not be able to market all its salt in the Netherlands, it will probably export salt to Germany, so affecting the interests of German salt producers.

14 Salt Union has made no observations concerning VDS's application to intervene.

15 By letter of 24 April 1995, the Commission has stated that VDS, if granted leave to intervene in the case, 'will support to their full extent the forms of order for which the applicant argues in its application of 13 October 1994'. The Commission

acknowledges that, as VDS's members appear to be competitors of Frima, VDS should be granted leave to intervene, in so far as it supports Salt Union's claims for the annulment of the decision contained in the letter of 5 August 1994. However, referring to the order of the Court of Justice of 12 April 1978 in Joined Cases 116/77, 124/77 and 143/77 *Amylum and Others* v *Council and Commission* [1978] ECR 893, the Commission considers that the application to intervene must be dismissed in so far as VDS supports Salt Union's claim for an order that the Community should indemnify it for the damage allegedly suffered by it. According to the Commission, VDS can have no interest in Salt Union securing a declaration by the Court of the Commission's liability for the damage suffered by Salt Union.

16 The Court holds first of all that, in any event, VDS cannot be granted leave to intervene in so far as that intervention is intended to support Salt Union's claims under Article 215 of the Treaty for compensation for the damage allegedly suffered by it. As the Commission has correctly observed, VDS cannot claim to have a direct and present interest in the acceptance of those claims (order in *Amylum*, paragraph 9; orders of the Court of First Instance of 14 July 1995 in Case T-521/93 *Atlanta and Others* v *Council and Commission*, not published in the ECR, paragraph 12, and of 17 July 1995 in Case T-516/93 *Pacific Fruit Company* v *Council and Commission*, not published in the ECR, paragraph 12).

17 In so far as VDS's intervention is intended to support Salt Union's claims under Article 173 of the Treaty for annulment of the decision contained in the letter of 5 August 1994, the Court observes that the Court of Justice and the Court of First Instance have consistently held that an undertaking in competition with a beneficiary of State aid has an interest in the result of a case concerning that aid (see, for example, the order of the Court of Justice of 26 November 1991 in Case C-100/91 *Italgrani* v *Commission*, not published in the ECR, paragraph 10, and the abovementioned order in *Comité des Salines de France*, paragraph 15). The Court finds that VDS has adduced sufficient evidence that its members, German salt producers, are in competition with Frima.

18 Also, according to the settled case-law of the Court of Justice and the Court of First Instance, the interest of an association in intervening in a case before the Community judicature must be assessed in relation particularly to the objects defined in its statutes (see, for example, the order of the Court of Justice of 11 December 1973 in Joined Cases 41/73, 43/73 to 48/73, 50/73, 111/73, 113/73 and 114/73 *Générale Sucrière and Others* v *Commission* [1973] ECR 1465, paragraph 5; the orders of the Court of First Instance in Case T-87/92 *Kruidvat* v *Commission* [1993] ECR II-1369, paragraph 12 and *Comité des Salines de France*, paragraph 22).

19 The Court finds that, according to the second subparagraph of Paragraph 1 of VDS's statutes, the object of that association is, inter alia, 'the promotion of the general matters of concern of the German salt industry and of the common trade interests of its members'. The same paragraph provides that, within the context of that object, the activities of VDS are to include '(d) the fight against all acts of unfair competition' and '(e) the representation of the interests of the salt industry vis-à-vis authorities and organizations'.

20 The Court holds that, having regard to the fact that its members are competitors of Frima and to its association object, VDS has a sufficient interest in the result of this case. It must therefore be granted leave to intervene in support of the form of order sought by Salt Union, in so far as it is based on Article 173 of the Treaty.

The requests for derogation from the rules governing languages

21 Frima and VDS have asked to be authorized to use in the oral procedure Dutch and German, respectively.

In its letter of 10 April 1995, Salt Union indicated that it had no comments to make about Frima's request regarding use of Dutch in the oral procedure. Nor did it make any observation concerning VDS's corresponding request regarding use of German.

23 With regard to Frima's request, the Commission notes in its letter of 10 April 1995 that it is clear from the order of the Court of 13 May 1993 in Case T-74/92 *Ladbroke Racing* v *Commission* [1993] ECR II-535, paragraph 14, that a request to use a language other than the language of the case must be accompanied by a detailed and specific statement of reasons. As Frima's request contains no special reasons to explain why it should be authorized to use Dutch in the oral procedure, the Commission considers that the request as formulated is incomplete and must accordingly be dismissed.

24 In its letter of 24 April 1995, the Commission observes that the request by VDS does not give reasons as required either. However, since the request relates only to the oral procedure, the Commission has refrained from making any specific submission, leaving the matter entirely to the discretion of the Court.

25 The Court recalls that the fourth subparagraph of Article 35(3) of the Rules of Procedure dispenses only intervening Member States from compliance with the rule requiring the parties to use the language of the case, chosen by the applicant in accordance with the first sentence of Article 35(2) of the Rules of Procedure. However, at the request of one of the parties, and after the opposite party has been heard, the Court of First Instance may, under Article 35(2)(b) of the Rules of Procedure, authorize another of the languages mentioned in Article 35(1) other than the language of the case to be used for all or part of the proceedings.

26 The Court considers that, by virtue of those provisions, an intervener may be permitted to use the language of its choice, other than the language of procedure, provided that, first, that language should be one of those mentioned in Article 35(1) of the Rules of Procedure and, secondly, the procedure should not be delayed and the procedural rights of the main parties to the proceedings should not be prejudiced. Where the request for derogation from the rules on languages relates to the oral procedure alone and there is no justified objection raised by the main parties, those rules should be applied flexibly.

27 The Court finds that, in this instance, no evidence has been adduced to show that the derogation requested by those applying to intervene might delay the procedure or prejudice the procedural rights of the main parties to the proceedings.

28 The requests made by Firma and VDS to use Dutch and German, respectively, in the oral procedure should therefore be allowed.

On those grounds,

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

hereby orders:

1. **Frima BV is granted leave to intervene in support of the form of order sought by the Commission.**

2. **Verein Deutsche Salzindustrie eV is granted leave to intervene in support of the form of order sought by Salt Union, in so far as it is based on Article 173 of the Treaty.**

3. **A period shall be prescribed within which the interveners must state in writing the pleas relied on in support of the forms of order which they seek.**

4. **The requests submitted by Frima BV and Verein Deutsche Salzindustrie eV to be authorized to use Dutch and German, respectively, in the oral procedure are granted.**

5. **The costs are reserved.**

Luxembourg, 17 November 1995.

H. Jung — C. P. Briët

Registrar — President