ORDER OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
19 January 2001 *

In Case T-126/00,

Confederazione Generale dell'Industria Italiana (Confindustria),

Confederazione Generale Italiana del Commercio, del Turismo, dei Servizi e delle PMI (Confcommercio),

Confartigianato,

Associazione Bancaria Italiana (ABI),

established in Rome (Italy),

Associazione Nazionale fra le Imprese Assicuratrici (ANIA), established in Milan (Italy),

Banco di Napoli SpA, established in Naples (Italy),

represented by A. Pappalardo and M. Merola, lawyers, with an address for service in Luxembourg,

applicants,

* Language of the case: Italian.

Commission of the European Communities, represented by G. Rozet and V. Di Bucci, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for the annulment of Commission Decision 2000/128/EC of 11 May 1999 concerning aid granted by Italy to promote employment (OJ 2000 L 42, p. 1),

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

composed of: A.W.H. Meij, President, K. Lenaerts, A. Potocki, M. Jaeger and J. Pirrung, Judges,

Registrar: H. Jung,

makes the following

Order

Facts, procedure and forms of order sought

1 On 11 May 1999 the Commission adopted Decision 2000/128/EC concerning aid granted by Italy to promote employment (hereinafter 'the contested Decision'). This Decision was notified to Italy on 4 June 1999 and published in the *Official Journal of the European Communities* of 15 February 2000 (OJ 2000 L 42, p. 1).

2 By application lodged with the Registry of the Court of First Instance on 10 May 2000, the applicants brought an action for the annulment of the contested Decision.

3 By separate document lodged with the Registry on 26 June 2000, the Commission raised a preliminary plea of inadmissibility, in accordance with Article 114(1) of the Rules of Procedure of the Court of First Instance. The Commission contends that the Court should:

— dismiss the action as inadmissible;

— order the applicants to pay the costs.

4 By a statement lodged with the Registry on 4 September 2000, the applicants submitted their observations on the preliminary plea of inadmissibility, in accordance with Article 114(2) of the Rules of Procedure. They claim that the Court should:

— dismiss the preliminary plea of inadmissibility;

— order the Commission to pay the costs.

Admissibility

Arguments of the parties

5 The Commission contends that the present action is out of time. There is no record of any delay in the distribution of the Official Journal of 15 February 2000. Consequently, by lodging the application with the Registry of the Court of First Instance on 10 May 2000, the applicants failed to comply with the time-limit laid down in the fifth paragraph of Article 230 EC, Article 101(1)(a) and (b), and Article 102(1) and (2) of the Rules of Procedure of the Court of First Instance, and the third indent of Article 1 of Annex II to the Rules of Procedure of the Court of Justice. The Commission contends that, under those provisions, the application should have been lodged by 9 May 2000 at the latest.

6 The Commission adds that since the abovementioned provisions are not ambiguous, the applicants cannot rely on excusable error, unforeseen circumstances or *force majeure*. Consequently, their application should be declared inadmissible.

7 The applicants, on the other hand, maintain that the 14-day period prescribed by Article 102(1) of the Rules of Procedure of the Court of First Instance began to run on the day following publication of the contested Decision, that is to say, at 00.00 on 16 February 2000, not at midnight on 15 February 2000 as the Commission alleges. The 14-day period ended on the final second of 29 February 2000. The two-month period prescribed in the fifth paragraph of Article 230 EC began to run at 00.00 on 1 March 2000 and ended on the final second of 30 April 2000. Consequently, the 10-day extension of the time-limits on account of distance, provided for by the third indent of Article 1 of Annex II to the Rules of Procedure of the Court of Justice for parties habitually resident in Italy, began to run at 00.00 on 1 May 2000 and ended on the final second of 10 May 2000. The applicants conclude that their action is not out of time and should be declared admissible.

8 The applicants point out that the intention behind Article 102(1) of the Rules of Procedure of the Court of First Instance was to allow persons not addressed by the measure in question 14 days following its publication in the Official Journal so that they could properly acquaint themselves with the measure. The two-month period prescribed by the EC Treaty begins to run, therefore, immediately on completion of the 14th day, since the day of publication is not included, in accordance with the rule that *dies a quo non computatur in termino* (Article 101(1)(a) of the Rules of Procedure of the Court of First Instance).

9 In support of their argument, the applicants also refer to the second sentence of Article 3(1), and to Article 3(2)(c) of Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time-limits (OJ, English Special Edition, 1971 (II), p. 354), according to which a period expressed in weeks, months or years is to start at the beginning of the first hour of the first day of the period, and is to end with the expiry of the last

hour of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day from which the period runs. They also refer to the first paragraph of Article 10(1) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1) and to Article 7(4) of Commission Regulation (EC) No 447/98 of 1 March 1998 on the notifications, time-limits and hearings provided for in Regulation No 4064/89 (OJ 1998 L 61, p. 1). According to the applicants, these provisions should be applied by analogy in order to obtain a coherent interpretation of the procedural provisions directly relevant in the present case.

10 Alternatively, the applicants claim that, if the Commission's point of view is upheld, their action should none the less be declared admissible, given that the error made in calculating the time-limits should be considered excusable, because there is much evidence to support their method of calculating time-limits and because it is not clear how the relevant provisions ought to be applied in the present case.

Findings of the Court

11 Under Article 111 of the Rules of Procedure of the Court of First Instance, where an action is manifestly inadmissible, the Court may, by reasoned order, without taking any further steps in the proceedings, give a decision on the action. In the present case, the Court has sufficient information in the documents before it to give a decision on the admissibility of the action without taking any further steps in the proceedings.

12 Since the present action is directed against a measure published in the Official Journal of 15 February 2000, it should be recalled that under Article 102(1) of the Rules of Procedure of the Court of First Instance 'where the period of time allowed for commencing proceedings against a measure adopted by an institution

runs from the publication of that measure, that period shall be calculated, for the purposes of Article 101(1)(a), from the end of the 14th day after publication thereof in the *Official Journal of the European Communities*'.

13 Secondly, under Article 101(1) of the Rules of Procedure, when reckoning periods of time prescribed by the EC Treaty or the abovementioned Rules, the day during which the event from which they are calculated took place is not to be taken into account; and such periods are to end with the expiry of whichever day in the last month (if the period concerned is expressed in months), falls on the same date as the day during which the event from which they are to be calculated took place.

14 As the Court held in Case 152/85 *Misset* v *Council* [1987] ECR 223, paragraph 7, those rules, which exclude, in the calculation of procedural time-limits, the day of the event from which the period is to run, are designed to ensure that parties are able to make full use of the periods allowed. The Court concluded that, regardless of the hour of day at which the measure in question is notified, 'time does not begin to run until the end of the day of notification'.

15 This reasoning is also valid for the purposes of interpreting Article 102(1) of the Rules of Procedure of the Court of First Instance, regarding time-limits which begin to run from the publication of the measure in question. In this provision it is stated that these periods are to be calculated, for the purposes of Article 101(1)(a) 'from the end of the 14th day after publication'. Article 102(1) of the Rules therefore allows the applicant 14 full days as well as the normal period of two months, and the day from which the time-limit is calculated is, therefore, postponed until the 14th day following publication of the measure in question.

16 Since the present action concerns the two-month period prescribed in the fifth paragraph of Article 230 EC, the day from which this is calculated was accordingly postponed from 15 February 2000 to 29 February 2000, which allowed the applicants a further period of 14 full days, including the day of 29 February until midnight.

17 In accordance with Article 101(1)(b) of the Rules of Procedure of the Court of First Instance, under which a time-limit expressed in months ends with the expiry of whichever day in the last month falls on the same date as the day on which it began, this period expired at the end of 29 April 2000.

18 The fact that this date fell on a Saturday did not mean that the time-limit was extended, in accordance with the first paragraph of Article 101(2) of the Rules of Procedure of the Court of First Instance, until the end of the next working day. Under Article 102(2) of the Rules of Procedure of the Court of First Instance, in conjunction with the third indent of Article 1 of Annex II to the Rules of Procedure of the Court of Justice, the time-limit had been increased by 10 days on account of distance, the applicants all being established in Italy. As the Court of Justice pointed out in *Emsland-Stärke* v *Commission* (Case C-122/90, paragraph 9; not published in the European Court Reports), the first paragraph of Article 101(2) of the Rules of Procedure of the Court of First Instance only applies in cases where the time-limit, including the extension on account of distance, ends on a Saturday, Sunday or official holiday (see also Case T-85/97 *Horeca-Wallonie* v *Commission* [1997] ECR I 2113, paragraphs 25 and 26). In the present case, taking into account a 10-day extension, the full time-limit set for the action to be brought expired on Tuesday 9 May 2000 at midnight, since this day is not on the list of official holidays laid down in Article 1 of Annex I to the Rules of Procedure of the Court of Justice, applicable to the Court of First Instance in accordance with the second paragraph of Article 101(2) of the Rules of Procedure of the Court of First Instance.

19 Consequently, the present action, brought on 10 May 2000, is out of time.

20 In so far as the applicants dispute this by relying on the application by analogy of Regulations Nos 1182/71, 4064/89 and 447/98, suffice it to say that the provisions on the time-limit for bringing an action amount to a full set of rules which allows not only the beginning of the time-limit, but also its length, to be determined, so that the application by analogy of the abovementioned Regulations does not come into question (see, to that effect, *Misset* v *Council,* cited above, paragraph 10).

21 In so far as the applicants also rely on excusable error, is settled law that the strict application of Community rules concerning procedural time-limits meets the requirements of legal certainty and the need to avoid all discrimination or arbitrary treatment in the administration of justice (*Misset* v *Council,* cited above, paragraph 11). The rules governing the time-limits applicable in the present case do not pose any particular difficulty of interpretation; accordingly, it cannot be accepted that this is a case of excusable error on the part of the applicants, justifying derogation from the strict application of the abovementioned rules.

22 Finally, the applicants have not established or even put forward an argument of unforeseeable circumstances or of *force majeure* which would allow the Court of First Instance to waive the time-limit in question on the basis of the second paragraph of Article 42 of the EC Statute of the Court of Justice, applicable to proceedings before the Court of First Instance under Article 46 of the same Statute.

23 The action must therefore be dismissed as manifestly inadmissible.

24 In these circumstances, it is no longer necessary to rule on the application to intervene submitted on 9 October 2000 by the Federazione Associazioni Imprese Distribuzione.

Costs

25 Under Article 87(2) of the Rules of Procedure, any unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings. Having regard to the forms of order sought by the defendant in this case, the applicants, having been unsuccessful, must be ordered to pay the costs.

On those grounds,

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

hereby orders:

1. The action is dismissed as manifestly inadmissible.

2. The applicants shall bear the costs.

Luxembourg, 19 January 2001.

H. Jung
Registrar

A.W.H. Meij
President