ORDER OF THE COURT
21 March 1997 *

In Case C-95/97,

Région Wallonne, represented by Jean-Marie de Backer, Olivier Ralet and Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the offices of the Fiduciaire Myson SARL, 30 Rue de Cessange,

applicant,

v

Commission of the European Communities,

defendant,

APPLICATION for the annulment of the Commission Decision of 18 December 1996, entitled 'Steel ECSC — Forges de Clabecq',

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, G. F. Mancini, J. C. Moitinho de Almeida, J. L. Murray and L. Sevón (Presidents of Chambers), C. N. Kakouris, P. J. G. Kapteyn, C. Gulmann, D. A. O. Edward, J.-P. Puissochet (Rapporteur), G. Hirsch, P. Jann, H. Ragnemalm, M. Wathelet and R. Schintgen, Judges,

* Language of the case: French.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 25 February 1997, the Région Wallonne (the Walloon Region of Belgium, hereinafter 'the Walloon Region') brought an action under the first paragraph of Article 33 of the ECSC Treaty and with reference also to the fourth paragraph of Article 173 of the EC Treaty for the annulment of the Commission Decision of 18 December 1996 entitled 'Steel ECSC — Forges de Clabecq', notified to the Kingdom of Belgium by letter dated 23 January 1997.

2 Article 92(1) of the Rules of Procedure provides that 'where it is clear that the Court has no jurisdiction to take cognizance of an action or where the action is manifestly inadmissible, the Court may, by reasoned order, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action'.

3 Both Article 33 of the ECSC Treaty and Article 173 of the EC Treaty provide that the Court of Justice is to have jurisdiction to review the legality of the acts of the Community institutions referred to in those articles. However, it is apparent from Article 3 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing the Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21), as amended by Council Decision

94/149/ECSC, EC of 7 March 1994 (OJ 1994 L 66, p. 29) that since the entry into force of Decision 94/149, the jurisdiction of the Court is limited to actions brought by a Member State or a Community institution.

4 The Walloon Region claims that for the purposes of those Treaty provisions the term 'Member State' should include federal public authorities which have taken over the responsibilities of the federal State in respect of the exercise of the powers with which the decision in question is concerned. In this respect it refers, *inter alia*, to the judgment in Joined Cases 62/87 and 72/87 *Exécutif Régional Wallon and Glaverbel* v *Commission* [1988] ECR 1573 in which the Court did not question the admissibility of an action brought by the Walloon regional government seeking the annulment of a Commission decision relating to planned State aid.

5 The reference to those cases is not relevant. In those cases the Court was not required to rule on its own jurisdiction as, at that time, it had jurisdiction both in respect of actions brought by a Member State or a Community institution and actions brought by natural or legal persons. The fact that the Court did not consider it necessary to consider the admissibility of that action and ruled directly on the substance does not in any way suggest that the Court implicitly acknowledged that the action had been brought by a Member State.

6 On the contrary, it is apparent from the general scheme of the treaties that the term 'Member State', for the purposes of the institutional provisions and, in particular, those relating to proceedings before the courts, refers only to government authorities of the Member States of the European Communities and cannot include the governments of regions or autonomous communities, irrespective of the powers they may have. If the contrary were true, it would undermine the institutional balance provided for by the Treaties, which govern the conditions under which the Member States, that is to say, the States party to the Treaties establishing the Communities and the Accession Treaties, participate in the functioning of the Community institutions. It is not possible for the European Communities to comprise a greater number of Member States than the number of States between which they were established.

7 According to settled case-law, although it is for all the authorities of the Member States, whether it be the central authorities of the State or the authorities of a federated State, or other territorial authorities, to ensure observance of the rules of Community law within the sphere of their competence, it is not the task of the Community institutions to rule on the division of powers by the institutional rules proper to each Member State, or on the obligations which may be imposed on federal State authorities and the federal State (see, *inter alia*, Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraph 13). Thus an action whereby the Commission, under Article 169 of the EC Treaty, or a Member State, under Article 170, can seek a ruling from the Court of Justice that another Member State has failed to fulfil one of its obligations can only be brought against the government of the Member State in question, even if the failure to act is the result of the action or omission of the authorities of a federal State, a region or an autonomous community (see, in particular, precisely in relation to Belgium, Cases 227/85, 228/85, 229/85 and 230/85 *Commission* v *Belgium* [1988] ECR 1 and Case C-211/91 *Commission* v *Belgium* [1992] ECR I-6757).

8 As the action by the Walloon Region cannot be treated as an action by a Member State, or indeed by a Community institution, the Court clearly has no jurisdiction to take cognizance of the action.

9 The second paragraph of Article 47 of the EC and ECSC Statutes provides that 'where the Court of Justice finds that an action falls within the jurisdiction of the Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction'.

10 It is apparent from the Council decision establishing the Court of First Instance of the European Communities that that Court has jurisdiction, *inter alia*, to take cognizance of actions brought by natural or legal persons under the second paragraph of Article 33 of the ECSC Treaty and the fourth paragraph of Article 173 of the EC Treaty.

11 As this action was brought by a legal person under Article 33 of the ECSC Treaty and the applicant also seeks to rely on Article 173 of the EC Treaty, this case falls within the jurisdiction of the Court of First Instance and must, therefore, be referred to that Court.

For those reasons,

THE COURT

makes the following order:

1. Case C-95/97 *Région Wallonne* v *Commission* is referred to the Court of First Instance of the European Communities.

2. Costs are reserved.

Luxembourg, 21 March 1997.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President