# ORDER OF THE COURT
(First Chamber)
7 May 1998 *

In Case C-239/97,

**Ireland**, represented by Michael A. Buckley, Chief State Solicitor, acting as Agent, and by Paul Gallagher, SC, and Niamh Hyland, barrister-at-law, with an address for service in Luxembourg at the Irish Embassy, 28 Route d'Arlon,

applicant,

v

**Commission of the European Communities**, represented by Peter Oliver, of its Legal Service, 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,

APPLICATION for the annulment of Commission Decision C(97) 693 of 16 April 1997 concerning the reduction of assistance from the European Regional Development Fund (ERDF) to the operational programme for Tourism in Ireland 1989-1993 within the Community support framework for structural assistance under Objective 1 in Ireland for the period 1989-1993 and amending Decision C(89) 2258/7 of 21 December 1989 as last amended by Decision C(93) 3769 of 17 December 1993,

* Language of the case: English.

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, D. A. O. Edward and L. Sevón (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

## Order

1 By application lodged at the Court Registry on 30 June 1997 Ireland requested, pursuant to Article 173 of the EC Treaty, the annulment of Commission Decision C(97) 693 of 16 April 1997 concerning the reduction of assistance from the European Regional Development Fund (ERDF) to the operational programme for Tourism in Ireland 1989-1993 within the Community support framework for structural assistance under Objective 1 in Ireland for the period 1989-1993 and amending Decision C(89) 2258/7 of 21 December 1989 as last amended by Decision C(93) 3769 of 17 December 1993.

2 By application lodged on 28 July 1997, the Commission raised an objection of inadmissibility under Article 91(1) of the Rules of Procedure on the ground that the action was out of time. Furthermore, it asked that Ireland be ordered to pay the costs.

3 The Commission claims that the action was not brought within the period of two months laid down in the fifth paragraph of Article 173 of the Treaty. Since the applicant State had received notification of the contested decision on 17 April 1997, that period of two months, extended on account of distance in accordance with Article 81(2) of the Rules of Procedure by 10 days for Irish applicants, expired in the present case on 27 June 1997. The proceedings were not initiated, however, until 30 June 1997.

4 The applicant State does not dispute that the proceedings were initiated after the expiry of the prescribed period. It claims, however, that the time-limit was exceeded because of unforeseeable circumstances or *force majeure* within the meaning of Article 42 of the EC Statute of the Court of Justice. In that respect, it states that the application was posted by express mail to the Court on 26 June 1997 and that the express mail service used, a special post distribution service, had guaranteed next-day delivery. However, the aircraft which brought the mail from Dublin to Brussels was late in landing which meant that the aircraft was delayed in unloading its baggage. All baggage from the aircraft therefore missed the transfer connection from Brussels to Luxembourg.

5 The applicant State adds that, in the circumstances of the present case, it could not reasonably have foreseen that the express mail distribution service would fail to comply with its obligations. It claims, furthermore, that these difficulties were completely beyond its control in that it could not have done anything further to ensure that the application reached Luxembourg within the time-limit.

6 It should be noted, first, that in the present case, taking account of the period of 10 days allowed to the applicant State on account of distance, the period allowed for commencing proceedings expired on 27 June 1997. The action brought on 30 June 1997 is therefore out of time.

7 The Court has repeatedly held that no derogation from the application of the Community rules on procedural time-limits may be made save where the circumstances are quite exceptional, in the sense of being unforeseeable or amounting to *force majeure*, in accordance with the second paragraph of Article 42 of the EC Statute of the Court of Justice, since the strict application of those rules serves the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice (see, in particular, the judgments in Case 42/85 *Cockerill-Sambre* v *Commission* [1985] ECR 3749, paragraph 10, Case 152/85 *Misset* v *Council* [1987] ECR 223, paragraph 11, Case 276/85 *Cladakis* v *Commission* [1987] ECR 495, paragraph 11, and the order in Case C-59/91 *France* v *Commission* [1992] ECR I-525, paragraph 8).

8 The circumstances cited by the applicant State cannot however be regarded as exceptional in the sense of amounting to unforeseeable circumstances or *force majeure* within the meaning of the abovementioned provision.

9 The applicant State cannot validly claim that, by sending the application by express mail on 26 June 1997, it did everything necessary to ensure that it would arrive in good time, that is to say in the present case, on the following day, when it had a period of 10 days on account of distance calculated on the basis of the normal period for postal delivery taking into account any problems in the postal service. Nor, in those circumstances, can it plead an exceptional malfunctioning of those services in order to avoid the loss of rights resulting from the expiry of the procedural time-limit (see the order in *France* v *Commission*, cited above, paragraph 10).

10 It follows from the foregoing that the application must be dismissed as inadmissible.

## Costs

11 Under Article 69(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. The Commission has applied for costs against Ireland. Since Ireland has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT
(First Chamber)

hereby orders:

**1. The application is dismissed as inadmissible.**

**2. Ireland shall pay the costs.**

Luxembourg, 7 May 1998.

R. Grass — Registrar

M. Wathelet — President