ORDER OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
4 February 2004 *

In Case T-14/00,

Coöperatieve Aan- en Verkoopvereniging Ulestraten, Schimmert en Hulsberg BA, established in Ulestraten (the Netherlands), and the 143 other applicants whose names appear in the annex to the present order, represented initially by G. van der Wal, and subsequently by L. Parret, lawyers, with an address for service in Luxembourg,

applicants,

supported by

Kingdom of the Netherlands, represented initially by M. Fierstra, and subsequently, H.G. Sevenster, acting as Agents,

intervener,

* Language of the case: Dutch.

Commission of the European Communities, represented initially by H. Speyart and G. Rozet and, subsequently, by G. Rozet and H. van Vliet, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment in part of Commission Decision 1999/705/EC of 20 July 1999 on the State aid implemented by the Netherlands for 633 Dutch service stations located near the German border (OJ 1999 L 280, p. 87),

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

composed of: J. Pirrung, President, V. Tiili, A.W.H. Meij, M. Vilaras and N.J. Forwood, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 By Decision 1999/705/EC of 20 July 1999 on the State aid implemented by the Netherlands for 633 Dutch service stations located near the German border (OJ 999 L 280, p. 87, 'the Decision'), the Commission found that the aid granted by the Kingdom of the Netherlands to 450 Dutch service stations was not compatible with the common market and the functioning of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3), and ordered recovery of the aid already granted. The list of service stations referred to by name in that decision includes Borrekuil BV, established in Beek (the Netherlands), and the applicants.

2 By application lodged at the Registry of the Court on 22 September 1999, Borrekuil, represented by P.W.A.M. van Roy, lawyer, brought an action against the Decision. That action was registered as Case T-211/99.

3 By separate document lodged at the Registry of the Court on 16 December 1999, the Commission raised a plea of inadmissibility of that action pursuant to Article 114 of the Rules of Procedure of the Court. Borrekuil lodged its observations on that plea on 3 and 9 February 2000.

4 By application lodged at the Registry of the Court on 19 January 2000, the applicants brought the present action under the fourth paragraph of Article 230 EC, claiming that the Court should annul the Decision at least in so far as it concerned them.

5 The written procedure in Cases T-211/99 and T-14/00 was suspended from 9 March 2000 to 13 June 2002 pending the delivery of the judgment of the Court of Justice in the parallel Case C-382/99 *Netherlands* v *Commission* [2002] ECR I-5163.

6 By application lodged at the Registry of the Court on 1 March 2000, the Kingdom of the Netherlands applied to intervene in the present case in support of the form of order sought by the applicants. By order of 3 October 2003, the President of the Second Chamber of the Court, Extended Composition, allowed that intervention.

7 By application lodged at the Registry of the Court on 19 June 2000, Borrekuil also applied to intervene in the present case in support of the form of order sought by the applicants. The application to intervene was served on the parties pursuant to the first subparagraph of Article 116(1) of the Rules of Procedure. The parties did not submit any observations on that application within the time-limit allowed for that purpose.

8 In accordance with the third subparagraph of Article 116(1) of the Rules of Procedure, the President of the Second Chamber, Extended Composition, referred Borrekuil's application to intervene to the Chamber.

Law

9 Borrekuil submits that, in the present case, it has established an interest in the result of the case submitted to the Court within the meaning of the second paragraph of Article 40 of the Statute of the Court of Justice. Borrekuil asserts in this regard that it is affected by the Decision in the same way as some of the applicants. Like them it was identified in the Decision as belonging to the category of service station called 'company-owned/dealer-operated' or 'Co/Do') linked to an oil company by a price management system clause. The Decision states that the 80 service stations coming within that category, including Borrekuil, illegally received a subsidy which the oil companies concerned are required to repay. Borrekuil claims that it therefore has every interest in the annulment of the Decision.

10 It should be noted in this connection that, under the second paragraph of Article 40 of the Statute of the Court of Justice, which, pursuant to the first paragraph of Article 53 of that statute, is applicable to the procedure before the Court of First Instance, any person establishing an interest in the result of a case, with the exception of cases between Member States, between institutions of the Community or between Member States and institutions of the Community, is entitled to intervene in that case. An application to intervene must be limited to supporting the form of order sought by one of the parties.

11 It has consistently been held that the concept of an interest in the result of the case, within the meaning of that provision, must be defined in the light of the precise subject-matter of the dispute and be understood as meaning a direct, existing interest in the ruling on the forms of order sought and not as an interest in relation to the pleas in law and arguments put forward. The expression 'result' is to be understood as meaning the operative part of the final judgment which the parties ask the Court to deliver (orders of the Court of Justice in Case 111/63 *Lemmerz-Werke* v *High Authority* [1965] ECR 677 and Joined Cases 116/77, 124/77 and 143/77 *Amylum and Others* v *Council and Commission* [1978]

ECR 893, paragraphs 7 and 9; order of the President of the Court of Justice in Joined Cases C-151/97 P(I) and C-157/97 P(I) *National Power and PowerGen* [1997] ECR I-3491, paragraphs 51 to 53 and 57; order of the President of the Second Chamber of the Court of First Instance in Case T-191/96 *CAS Succhi di Frutta* v *Commission* [1998] ECR II-573, paragraph 28; order of the President of the First Chamber of the Court of First Instance in Case T-138/98 *ACAV and Others* v *Council* [1999] ECR II-1797, paragraph 14; and order of the Court of First Instance in Case T-15/02 *BASF* v *Commission* [2003] ECR II-213, paragraph 26).

12 It is also settled case-law that it is necessary to distinguish between prospective interveners establishing a direct interest in the ruling on the specific act whose annulment is sought and those who can establish only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties (orders of the Court of Justice in Case C-76/93 P *Scaramuzza* v *Commission* [1993] ECR I-5715, paragraph 11, and I-5721, paragraph 11; orders of the Court of First Instance in Joined Cases T-97/92 and T-111/92 *Rijnoudt and Hocken* v *Commission* [1993] ECR II-587, paragraph 22, and T-87/92 *Kruidvat* v *Commission* [1993] ECR II-1375, paragraph 12; *CAS Succhi di Frutta* v *Commission*, cited above, paragraph 28; and *BASF* v *Commission*, cited above, paragraph 27).

13 It should be noted in the present case, first, that by their principal pleas the applicants claim that the Court should 'annul the [Decision] or at least Articles 2 and 3 thereof in part in so far as they provide, with reference to (one of) the applicants that the sums which it/they received pursuant to the [national measures in question] constitute unlawful State aid within the meaning of Article 87(1) EC and/or must be repaid by the applicant(s) and/or in so far as it follows from [the Decision] that the sums which may be paid to the applicant(s) or which are due to be paid under the [national measures in question] are classified as constituting unlawful aid within the meaning of Article 87(1) EC'.

14 Second, it should be noted that, as is clear from its wording, recitals and operative part, although the Decision is drafted and published in the form of a single decision and is addressed to a single person, it must be treated as a bundle of

633 individual decisions which, following a case-by-case assessment, find that 183 separate subsidies individually granted by the Kingdom of the Netherlands to the same number of individually named service stations are compatible with the common market and that the subsidies individually granted by that Member State to 450 individually named service stations are not compatible with the common market and order that the latter subsidies be recovered from the beneficiaries. The Decision can be annulled only with respect to those operators of service stations which have successfully brought an action before the Community judicature and remains binding on those operators of service stations which have not applied for its annulment (see, to that effect, Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others* v *Commission* [2002] ECR I-8375, paragraph 100; Case T-227/95 *AssiDomän Kraft Products and Others* v *Commission* [1997] ECR II-1185, paragraphs 56 and 57, set aside in other respects by the judgment of the Court of Justice in Case C-310/97 P *Commission* v *AssiDomän Kraft Products and Others* [1999] ECR I-5363; order in *BASF* v *Commission*, paragraph 31).

15 It should be noted, third, that if a person individually concerned by a decision consisting of a bundle of individual decisions decides to bring an action for annulment, the matter to be considered by the Community judicature relates only to those aspects of the decision which concern that person. Unchallenged aspects concerning other persons individually concerned by that decision, on the other hand, do not form part of the matter to be tried by the Community judicature (*Commission* v *AssiDomän Kraft Products and Others*, cited above, paragraph 53).

16 In those circumstances, Borrekuil has an interest in the submissions of the applicants in the main action being upheld only in so far as the partial annulment of the Decision which that would entail, which would call in question the merits of the findings and evaluations made in that decision in its regard, would require the Commission, under Article 233 EC, to reconsider Borrekuil's inclusion in the category of company-owned/dealer-operated service stations referred to in Articles 2 and 3 of the Decision (see, by analogy, the order in *BASF* v *Commission*, paragraph 34).

17 The judgment in *Commission* v *AssiDomän Kraft Products and Others* (paragraphs 56 and 71) makes it clear that, where a decision consisting of a bundle of individual decisions is partially annulled, Article 233 EC does not imply that the Commission must, at the request of those concerned, re-examine the legality of that decision in so far as it individually concerns other persons besides the applicant.

18 An interest such as that referred to in paragraph 16 above does not therefore constitute a direct, existing interest within the meaning of the case-law cited at paragraphs 11 and 12 above, but is, at most, an indirect and potential interest (see, by analogy, the order in *BASF* v *Commission*, cited above, paragraph 37).

19 The foregoing considerations are not undermined by the fact that Borrekuil itself has an independent right of action against the Decision in so far as that decision concerns it, as that fact is irrelevant for the purposes of determining whether Borrekuil has established an interest in intervening in the present case. It is equally irrelevant for present purposes that Borrekuil has in fact brought such an action or that the Commission has raised a plea of inadmissibility against that action.

20 In an action for annulment of a decision consisting of a bundle of individual decisions, the only purpose of considering the grounds of a judgment for annulment which set out the precise reasons for the illegality found by the Community Courts is to determine the exact meaning of the ruling in the operative part of the judgment. The authority of a ground of judgment annulling a measure cannot apply to the situation of persons who were not parties to the proceedings and with regard to whom the judgment cannot therefore have decided anything whatever (*Commission* v *AssiDomän Kraft Products and Others*, cited above, paragraph 55).

21 Therefore, any annulment of the Decision in so far as it concerns the applicants would not support Borrekuil's action. Similarly, the dismissal of the applicants' action could not undermine that of Borrekuil.

22 In the light of the foregoing considerations, it must be held that the interest in intervening on which Borrekuil relies cannot be classified as a direct, existing interest in the result of the case within the meaning of the second paragraph of Article 40 of the Statute of the Court of Justice. Its application to intervene must therefore be dismissed.

Costs

23 Under Article 87(1) of the Rules of Procedure, an order as to costs is to be made in the judgment or order bringing the proceedings to an end. Since this order brings the proceedings to an end as regards Borrekuil, it is proper to make an order as to costs in connection with its application for leave to intervene.

24 Under Article 87(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. Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States which have intervened in the proceedings are to bear their own costs. Although Borrekuil has been unsuccessful, since the parties to the main action have not applied for costs in their pleadings, each party must be ordered to bear its own costs.

On those grounds,

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

hereby orders:

1. **The application to intervene is dismissed.**

2. **The parties shall bear their own costs relating to the intervention proceedings.**

Luxembourg, 4 February 2004.

H. Jung
Registrar

J. Pirrung
President