JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

18 March 2010 *

In Case T-189/08,

Forum 187 ASBL, established in Brussels (Belgium), represented by A. Sutton and G. Forwood, Barristers,

applicant,

v

European Commission, represented by N. Khan and C. Urraca Caviedes, acting as Agents,

defendant,

ACTION for the annulment of Commission Decision 2008/283/EC of 13 November 2007 amending Decision 2003/757/EC on the aid scheme implemented by Belgium for coordination centres established in Belgium (OJ 2008 L 90, p. 7), in so far as it does not provide reasonable prospective transitional periods for the coordination

* Language of the case: English.

centres concerned by the judgment of the Court of Justice in Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187* v *Commission* [2006] ECR I-5479,

THE GENERAL COURT (Eighth Chamber),

composed of M.E. Martins Ribeiro, President, S. Papasavvas (Rapporteur) and A. Dittrich, Judges,

Registrar: K. Pocheć, Administrator,

having regard to the written procedure and further to the hearing on 6 July 2009,

gives the following

Judgment

Background to the dispute

1 The Belgian tax scheme for coordination centres, which is an exception to the ordinary law, was established by Royal Decree No 187 of 30 December 1982 concerning the establishment of coordination centres (Arrêté royal no 187 relatif à la création de centres de coordination, *Moniteur belge*, 13 January 1983, p. 502), as supplemented and amended on several occasions.

2 To benefit from that scheme, a coordination centre must first be individually authorised by a royal decree. To obtain authorisation, the centre must form part of a multinational group with capital and reserves of at least BEF 1 000 million and an annual consolidated turnover of at least BEF 10 000 million. Only certain preparatory, ancillary or centralisation measures are authorised, and undertakings in the financial sector are excluded from the scheme. Centres must employ at least the equivalent of 10 full-time employees in Belgium at the end of the first two years of their activity.

3 An authorisation granted to a centre is valid for 10 years and renewable for the same duration.

4 The tax scheme for coordination centres was examined by the Commission of the European Communities when it was introduced. In particular, in decisions communicated in the form of letters on 16 May 1984 and 9 March 1987, the Commission found essentially that such a scheme, based on a system of flat-rate assessment of the income of the coordination centres, did not contain an aid element.

5 After adopting, on 11 November 1998, a notice on the application of the State aid rules to measures relating to direct business taxation (OJ 1998 C 384, p. 3), the Commission undertook a general review of the tax legislation of the Member States from the point of view of the rules on State aid.

6 In that connection the Commission, on 12 February 1999, asked the Belgian authorities for certain information relating inter alia to the scheme for coordination centres. They replied in March 1999.

7 In July 2000 the Commission informed the Belgian authorities that the scheme appeared to constitute State aid. With a view to initiating the cooperation procedure in accordance with Article 17(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC] (OJ 1999 L 83, p. 1), the Commission requested the Belgian authorities to submit their comments within a period of one month.

8 On 11 July 2001 the Commission adopted four proposals for appropriate measures on the basis of Article 88(1) EC, concerning inter alia the scheme for coordination centres. It proposed that the Belgian authorities should accept a number of changes to the scheme, while providing as a transitional measure that centres authorised before the date of acceptance of those measures could continue to benefit from the previous scheme until 31 December 2005.

9 Since the Belgian authorities did not accept the appropriate measures proposed, the Commission initiated the formal investigation procedure by a decision notified by letter of 27 February 2002 (OJ 2002 C 147, p. 2), in accordance with Article 19(2) of Regulation No 659/1999. It invited the Kingdom of Belgium to submit comments and provide any information relevant to the assessment of the measure in question. It also invited that Member State and interested third parties to submit comments and provide any information relevant to determining whether the beneficiaries of the scheme at issue had a legitimate expectation that transitional measures would be laid down.

10 On 13 September 2002 the applicant brought an action for annulment of the decision to initiate the formal investigation procedure (Case T-276/02).

11 Following the formal investigation procedure, the Commission on 17 February 2003 adopted Decision 2003/757/EC on the aid scheme implemented by Belgium for coordination centres established in Belgium (OJ 2003 L 282, p. 25, 'the 2003 decision').

12 According to Articles 1 and 2 of the 2003 decision:

'*Article 1*

The tax scheme which currently operates in Belgium for the benefit of coordination centres approved under Royal Decree No 187 constitutes aid incompatible with the common market.

Article 2

Belgium is required to withdraw the aid referred to in Article 1 or to amend it in such a way as to make it compatible with the common market.

As of the date of notification of this Decision, the benefits of this scheme or sections thereof may no longer be granted to new beneficiaries or maintained by renewing existing agreements.

With regard to centres approved before 31 December 2000, the scheme may be maintained until the expiry date of the individual approval applying on the date of notification of this Decision and until 31 December 2010 at the latest. In accordance with the second paragraph, if approval is renewed prior to that date the benefits of the scheme dealt with in this Decision may no longer be granted, even temporarily.'

13 On 6 March 2003 the Kingdom of Belgium approached simultaneously the Commission and the Council, asking them for 'the necessary to be done in order for the coordination centres whose approval expires after 17 February 2003 to be extended until 31 December 2005'. That request was repeated on 20 March and 26 May 2003 on the basis of the third subparagraph of Article 88(2) EC.

14 On 25 and 28 April 2003 the Kingdom of Belgium and the applicant association, Forum 187, a grouping of coordination centres, brought actions for the suspension and annulment of all or part of the 2003 decision (Cases C-183/03 and T-140/03, later C-217/03; Cases C-182/03 R and T-140/03 R, later C-217/03 R).

15 By order of 2 June 2003 in Case T-276/02 *Forum 187* v *Commission* [2003] ECR II-2075, the action for annulment of the decision to initiate the formal investigation procedure was dismissed as inadmissible.

16 By order of 26 June 2003 in Joined Cases C-182/03 R and C-217/03 R *Belgium and Forum 187* v *Commission* [2003] ECR I-6887 ('the *Forum 187* order'), the President of the Court of Justice ordered the operation of the 2003 decision to be suspended in so far as it prohibited the Kingdom of Belgium from renewing the authorisations of coordination centres which were current at the date of notification of that decision.

17 As they were allowed to do by the *Forum 187* order, the Belgian authorities renewed the authorisations of coordination centres which expired between 17 February 2003 and 31 December 2005. With the exception of four centres which were granted renewals for an indefinite period, the authorisations were all renewed for a period expiring on 31 December 2005.

18 By Council Decision 2003/531/EC of 16 July 2003 on the granting of aid by the Belgian Government to certain coordination centres established in Belgium (OJ 2003 L 184, p. 17), adopted on the basis of Article 88(2) EC, the 'aid which Belgium plan[ned] to grant in the period up to 31 December 2005 to undertakings authorised as at 31 December 2000 to act as coordination centres under Royal Decree No 187 … and whose authorisations expire between 17 February 2003 and 31 December 2005' was declared compatible with the common market. On 24 September 2003 the Commission brought an action for the annulment of that decision (Case C-399/03).

19 On 22 June 2006 the Court of Justice annulled the 2003 decision in part, in so far as it did not lay down transitional measures for the coordination centres whose applications for renewal of authorisation were pending on the date of notification of that decision, or whose authorisations expired at the same time as or shortly after that notification (Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187* v *Commission* [2006] ECR I-5479, 'the *Forum 187* judgment'). On the same date the Court of Justice also annulled Decision 2003/531, by its judgment in Case C-399/03 *Commission* v *Council* [2006] ECR I-5629).

20 By letter of 4 July 2006, the Commission requested the Belgian authorities to provide it with certain information within 20 working days, so that it could decide how to react to the *Forum 187* judgment.

21 On 27 December 2006 the Kingdom of Belgium adopted a Law on miscellaneous provisions (Loi portant des dispositions diverses, *Moniteur belge*, 28 December 2006, p. 75266, 'the 2006 law') allowing the extension to 31 December 2010 of the authorisations of all coordination centres which applied for extensions, if necessary with retroactive effect. In addition to the centres whose authorisations had been renewed following the *Forum 187* order between 17 February 2003 and 31 December 2005, the 2006 law provided that the possibility of extension would also be available to centres whose authorisations expired between 1 January 2006 and 31 December 2010, and to an unspecified number of centres whose authorisations would have expired on or before 31 December 2005 but which had not applied for renewal by that date. The law

was not notified to the Commission under Article 88(3) EC, but its entry into force was made conditional on confirmation by the Commission that it had no objections.

22 Following a number of reminders and exchanges of correspondence with the Commission, the Belgian authorities on 16 January 2007 supplied the information which the Commission had asked for on 4 July 2006. They provided supplementary information by letters of 8 and 16 February 2007. Three meetings also took place, on 5 and 15 February and 5 March 2007, between the Commission and those authorities.

23 By letter of 21 March 2007, the Commission informed the Belgian authorities of its decision to extend the formal investigation procedure initiated on 27 February 2002 concerning the scheme for coordination centres. That decision and the invitation to interested parties to submit their comments on the reasonable transitional measures for which the Commission, in accordance with the *Forum 187* judgment, should have made provision were published in the *Official Journal of the European Union* of 16 May 2007 (OJ 2007 C 110, p. 20).

24 On 13 November 2007 the Commission, following that formal investigation procedure, adopted Decision 2008/283/EC amending Decision 2003/757/EC on the aid scheme implemented by Belgium for coordination centres established in Belgium (OJ 2008 L 90, p. 7, 'the contested decision').

25 The contested decision, first, amends Article 2 of the 2003 decision, so that coordination centres whose applications for renewal of authorisation were pending on the date of notification of the 2003 decision, or whose authorisations expired at the same time as or soon after the notification of that decision, in other words between 18 February 2003 and 31 December 2005, are entitled to benefit from the scheme at issue until 31 December 2005, and renewal of their authorisations is permitted until that date. Next, as regards the four centres whose authorisations were renewed for an indefinite period following the *Forum 187* order, the contested decision states that the Commission's press release of 16 July 2003 could have given rise to a legitimate expectation on

their part that they would be able to benefit from the scheme at issue until the date of the judgment of the Court of Justice as to the substance. Since that judgment was delivered on 22 June 2006, and in view of the fiscal nature of the measure, the contested decision extends enjoyment of the legitimate expectation to allow those coordination centres to benefit from the scheme at issue until the end of the normal taxable period running on the date of the judgment. Finally, the contested decision declares the 2006 law incompatible with the common market in so far as it is designed to extend the scheme for coordination centres beyond 31 December 2005.

26 Article 1 of the contested decision reads:

'The following text is hereby added to Article 2 of [the 2003 decision]:

"The coordination centres with an application for renewal pending on the date on which the present Decision is notified or with an authorisation which expires at the same time as or shortly after such notification, i.e. between the date of notification and 31 December 2005, may continue to benefit from the scheme for coordination centres until 31 December 2005. Renewal of the authorisation for the said coordination centres is hereby authorised until 31 December 2005 at the latest."'

27 According to Article 2 of the contested decision:

'The four coordination centres in Belgium with an authorisation that has been renewed for an indefinite period on the basis of the [*Forum 187* order] may benefit from the scheme for coordination centres until the end of the normal taxable period running on 22 June 2006.'

28 Article 3 of the contested decision provides:

'The [2006 law] is incompatible with the common market in so far as its provisions are designed to extend by way of new decisions to renew authorisations the scheme for coordination centres beyond 31 December 2005.

Accordingly, the Commission calls on Belgium to desist from implementing the relevant provisions of the [2006 law].'

29 Article 4 of the contested decision reads as follows:

'Article 1 shall apply with effect from 18 February 2003.'

Procedure and forms of order sought

30 By application lodged at the Registry of the Court on 22 May 2008, the applicant brought the present action.

31 Upon hearing the report of the Judge-Rapporteur, the Court (Eighth Chamber) decided to open the oral procedure and, in the context of the measures of organisation of procedure provided for in Article 64 of the Court's Rules of Procedure, put a

question in writing to the applicant, inviting it to reply at the hearing, and asked it to produce a document, which it did within the period prescribed.

32 By letter of 1 July 2009, the Commission submitted observations on the report for the hearing, a letter sent to it on 27 January 2009 by a coordination centre, and its comments in that regard. On 3 July 2009 the President of the Eighth Chamber of the Court decided to add those documents to the case-file and invited the applicant to comment on them at the hearing.

33 The parties presented oral argument and replied to the questions put by the Court at the hearing on 6 July 2009.

34 The applicant claims that the Court should:

— annul the contested decision in so far as it does not provide reasonable prospective transitional periods for the coordination centres concerned by the *Forum 187* judgment;

— take such other or further steps as justice may require;

— order the Commission to pay the costs.

35 The Commission contends that the Court should:

— dismiss the action as inadmissible or, in the alternative, as unfounded;

— order the applicant to pay the costs.

Law

36 While not formally raising an objection of inadmissibility under Article 114 of the Rules of Procedure, the Commission submits that the action is inadmissible. The Court must therefore consider the admissibility of the action.

Arguments of the parties

37 The Commission claims, in the first place, that the applicant has not shown that the contested decision was of direct and individual concern to it. It has not proved that its situation was one of the three in which, according to the case-law, an action brought by an association is admissible.

38 As regards, first, the situation in which an association is distinguished individually because its own interests are affected, Forum 187's claim that it is acting on its own

behalf is a mere assertion and is not based on any element to show that its own interests are affected.

39 As regards, second, the situation in which a legal provision expressly grants powers of a procedural nature to an association, Forum 187's participation in the investigation procedure is not sufficient, according to the case-law, to give it standing to bring an action.

40 As regards, third, the situation in which an association represents the interests of applicants which would themselves have standing to bring proceedings, the Commission denies that Forum 187's action is admissible on the ground that the action in Case C-217/03 was held to be admissible, since the admissibility of an action must be assessed on the basis of the circumstances prevailing at the time when the action is brought, not on the basis of the identity of the applicant. That is in any event impossible where the applicant, as in the present case, is an association, given that its composition may change. The power of attorney annexed to the application does not support the assertion that the members of the applicant formally instructed it to act, and does not show that it represents centres which are affected by the contested decision.

41 The Commission states, moreover, that there is no evidence to support the claim that the applicant represents centres which obtained an extension of their authorisation for an indefinite period, or to show that it represents centres which could be directly and individually concerned by the contested decision.

42 In this respect, as regards the evidence produced by the applicant at the reply stage, the Commission contends, to begin with, in reliance on Article 48(1) of the Rules of Procedure, that it is inadmissible on the ground that the applicant has not given reasons for its belated production. Moreover, the belated production cannot be justified. Next, assuming the evidence to be admissible, the Commission observes that it has not been demonstrated how the 10 centres whose powers of attorney the applicant produces are concerned by the contested decision. The table annexed to its

reply conceals the names of the centres whose tax position it purports to show, and in the tax assessments produced the names of the centres have been redacted. There is thus no connection between the centres on whose behalf the applicant claims to be acting and the tax assessments produced by the applicant which are claimed to show their interest in maintaining the scheme at issue. There is nothing to allow information to be withheld from the main parties to proceedings, especially when it relates to admissibility. Finally, given that admissibility must be assessed at the date of making the application and that most of the assessments produced are later than that date, they cannot be taken into account.

43 The Commission submits, in the second place, that even if its members are affected by the contested decision, the applicant has not shown that they have an interest in its annulment. Membership of the applicant association does not imply the existence of an interest in restoring the possibility of benefiting from the scheme at issue. Thus, although when the procedure which led to the 2003 decision was initiated, all the coordination centres had an interest in the maintenance of the scheme, that is no longer the case, as the applicant moreover acknowledges. The Commission observes that from the 2006 tax year all Belgian undertakings, including the coordination centres, have been able to opt for the notional interest deduction scheme ('the RDIN') established by the Law of 22 June 2005 introducing a tax deduction for risk capital (Loi instaurant une déduction fiscale pour capital à risque, *Moniteur belge*, 30 June 2005, p. 30077). The applicant has moreover itself acknowledged that the scheme under Royal Decree No 187 is sometimes less advantageous than the RDIN and stated in October 2006 that some centres prefer to make use of the RDIN. In those circumstances, the Commission takes the view that, even if – what is not the case – the applicant's members include centres whose right to benefit from a transitional period is affected by the contested decision, they do not necessarily have an interest in contesting it, since its annulment would not necessarily improve their legal situation.

44 The Commission adds, in its rejoinder, that the fact that some centres received tax assessments for 2006 does not establish an interest in bringing proceedings. The RDIN is not equivalent to a complete exemption from tax, so that the fact that tax is owed for 2006 (or subsequently for 2007) does not prove that the centres are in a less favourable position under the RDIN than under the scheme for coordination centres. As regards the centre whose authorisation was renewed for an indefinite period, the

Commission submits that it should not be taken into account in the examination of admissibility, since nothing has been put forward to show that it is concerned by the contested decision. The columns in the table annexed to the reply relating to the additional tax payable as a result of the contested decision are blank, and there is no tax assessment which purports to concern it among those produced by the applicant.

45 The Commission submits, moreover, that the applicant's position in Belgian law makes the application devoid of purpose. While the *Forum 187* order authorised, but did not oblige, the Belgian authorities to renew the authorisations of certain centres until judgment was given in the main proceedings, they renewed them, with the exception of four of the centres, until the end of 2005. None of the centres represented by the applicant applied for renewal of its authorisation before it expired, despite the fact that the *Forum 187* judgment had not yet been delivered. The Commission observes that there is no evidence to support the assertion that the retroactive renewal of authorisations was accepted practice in Belgium. Further, contrary to the applicant's assertions, it was not because of the contested decision that the centres lost their status but because of the expiry of their authorisations under Belgian law at the end of 2005.

46 As to whether the applicant has an interest in bringing proceedings on the ground that the contested decision prohibited the renewal of the authorisations, the Commission submits that there is nothing in the reply to show such an interest.

47 The Commission submits that its position is borne out by the adoption on 19 December 2008 of the Royal Decree adjusting the fiscal legislation on penalties in the case of non-payment or insufficient early payment by certain coordination centres (Arrêté royal adaptant la législation fiscale relative à la majoration en cas d'absence ou d'insuffisance de versement anticipé par certains centres de coordination, *Moniteur belge*, 30 December 2008, p. 68976), by which the Belgian authorities waived the penalties that should have been due from the centres for late payment of taxes for the 2007 and 2008 tax years. Thus, although they had argued for a longer transitional period in the observations they submitted in reply to the decision to extend

the formal investigation procedure (see paragraph 23 above), the Belgian authorities no longer took that point of view following the contested decision, so that their previous position cannot be used to show that the applicant has an interest in bringing proceedings.

48 In the third place, the Commission observes in its rejoinder that, in contrast to the position in relation to the challenge to the 2003 decision, the contested decision does not curtail the authorisations of the centres that were renewed until the end of 2005, and cannot be regarded as frustrating an expectation of renewal, since no such expectation could exist. Consequently, according to the Commission, the applicant is in effect seeking relief against the refusal to approve new aid which its members might benefit from but to which they are not entitled. The application is inadmissible in this respect too.

49 In the fourth place, even on the assumption that the evidence produced at the stage of the reply is admissible and sufficient to establish the applicant's standing to bring proceedings, the Commission submits that the application is admissible, at the very most, only in so far as it concerns the 10 centres in respect of which evidence has been produced.

50 The applicant observes, to begin with, that it is a non-profit-making association under Belgian law whose object, according to its statutes, is to promote the national and international interests of the coordination centres set up under Royal Decree No 187. It is acting in the present case both in its own interest and on behalf of its members, who have formally instructed it to do so. It states, in its reply, that it was instructed by 10 of its members to represent them in connection with the present action, and produces inter alia a table containing information on their situation, their powers of attorney authorising it to bring the proceedings, and the additional tax demands and notices of the amounts to be recovered addressed to those centres. It also states that its members have either submitted applications to the Belgian authorities for renewal of their authorisations or, in one case, obtained from those authorities a renewal for an indefinite period.

51 The applicant then submits that the 10 coordination centres it represents are directly and individually concerned by the contested decision and have an interest in challenging it, its application therefore being admissible. It states that, contrary to the Commission's argument, it does not claim that the admissibility found to exist in the *Forum 187* judgment means that the present action is admissible. It nevertheless relies on the reasoning in that judgment concerning the criteria of admissibility of an action for annulment brought by an association.

52 First, as regards direct and individual concern, the applicant submits that the centres it represents are directly concerned. As a result of the application of the contested decision, those centres can no longer benefit from the scheme for coordination centres, either from 31 December 2005 or from 31 December 2006. They are also, with the exception of one centre which obtained a renewal for an indefinite period, faced with tax demands for 2006 and 2007 (see paragraph 54 below). Those centres are also individually concerned, since they belong to a limited class of economic operators and are members of a group of persons who were identified or identifiable when the contested decision was adopted by reason of criteria specific to the members of the group. They therefore have standing to bring proceedings, as consequently does the applicant, whose function is to represent their interests. As regards the assertions that its members were not adversely affected by the contested decisions, and those concerning its composition, the applicant rejects them and refers to the table annexed to its reply, which contains the relevant information for each of the centres it represents.

53 Second, as regards its interest and that of its members in bringing proceedings, the applicant submits that the Commission's comments on Belgian legislation other than Royal Decree No 187 are immaterial, since the present case concerns only the lawfulness of the contested decision and that royal decree is the only Belgian legislation that is relevant to the case. There is therefore no need to make a comparative assessment of that royal decree and the RDIN. Moreover, the positions mentioned by the Commission (see paragraph 43 above) are immaterial, since the relative advantages of the RDIN and the scheme for coordination centres vary from one centre to another, and in any event the present case relates solely to the lawfulness of the retroactive

transitional periods established by the Commission. Finally, none of the centres represented by the applicant renounced the status of coordination centre for the year 2006 in favour of the RDIN, and only one did so from 2007. None of the centres whose authorisation was valid beyond the date of the contested decision, 13 November 2007, opted for the RDIN.

54 The Belgian authorities' decision to implement the contested decision and to recover tax for 2006 and 2007 demonstrates the financial and legal interest of the 10 centres in question. With the exception of the centre whose authorisation was renewed for an indefinite period, they received demands from the Belgian authorities for the retroactive payment of additional tax as a result of the loss of their status of coordination centre. Some centres thus received supplementary tax demands, mostly followed by notices specifying the amounts to be recovered. The total amount due was more than EUR 40 million. As to the centre which obtained a renewal for an indefinite period, its interest was to avoid the retroactive recovery of tax for 2007.

55 The applicant submits that the fact that the Belgian authorities granted renewals to the centres concerned by the *Forum 187* judgment, with four exceptions, only until 31 December 2005 does not affect their ability to benefit from the scheme at issue after that date and until the end of a reasonable prospective transitional period. Thus, contrary to the Commission's argument, Royal Decree No 187 continues to be the legal basis of the authorisations. Moreover, neither the Belgian authorities nor the centres accepted that their authorisations could not be renewed after 31 December 2005 for a reasonable period.

56 As regards the fact that the Belgian authorities had indicated in 2001 and 2002 that they would not extend the scheme at issue beyond 2005, the applicant submits that

developments after the 2003 decision induced those authorities to seek an alternative to the scheme and to fix an appropriate transitional period for the centres which were adversely affected by the 2003 decision and benefited from the *Forum 187* order.

57 Moreover, the Belgian authorities did not abandon the application of the scheme at issue to the centres whose authorisations expired before 31 December 2005. On the contrary, they asked the Commission to set a prospective transitional period. Following the *Forum 187* judgment, the possibility that the centres concerned by that judgment could obtain a renewal until 2010, with effect from 1 January 2006, was mentioned in a letter to the applicant from the Belgian Finance Minister in July 2006. In addition, the supplementary tax demands addressed to the centres show that the impossibility of renewing their authorisations after 31 December 2005 resulted exclusively from the contested decision, not from an earlier decision of the Belgian authorities. Those authorities had enacted, but not implemented, the 2006 law extending the transitional period to 2010. Further, in a letter of 14 August 2007, the Belgian tax authorities granted certain centres an additional period for filing their tax returns for 2007 because of the uncertainty as to the expiry date of their status. That period was extended on 21 November 2007 in view of the contested decision.

Findings of the Court

58 Actions brought by associations such as Forum 187, whose function it is to defend the collective interests of the coordination centres set up in Belgium, are admissible in three situations, according to the case-law: where they represent the interests of undertakings which themselves have standing to bring proceedings; where they are distinguished individually because of the impact on their own interests as associations, in particular because their position as a negotiator has been affected by the measure sought to be annulled; and where a legal provision expressly confers on

them a number of rights of a procedural nature (order in Case T-122/96 *Federolio* v *Commission* [1997] ECR II-1559, paragraph 60; order in Case T-196/03 *EFfCI* v *Parliament* [2004] ECR II-4263, paragraph 42; and order in Case T-170/04 *FederDoc and Others* [2005] ECR II-2503, paragraph 49; see also, to that effect, the *Forum 187* judgment, paragraph 56 and the case-law cited).

59 In the present case, it should be noted, first, that the applicant stated that it was acting both on its own account and on behalf of those of its members which had instructed it to bring the present action. However, as the Commission has observed, the applicant did not produce any evidence to show that its own interests were affected.

60 Next, it is clear that no legal provision confers rights of a procedural nature on the applicant, nor indeed did the applicant rely on any provision.

61 It must therefore be ascertained whether the coordination centres which the applicant represents, or some of them, have standing to bring proceedings. The Court finds it appropriate to begin by examining the Commission's submission that they have no interest in bringing proceedings.

62 On this point, it is settled case-law that an action for annulment brought by a natural or legal person is admissible only in so far as the applicant has an interest in the annulment of the contested measure. Such an interest presupposes that the annulment of the measure must of itself be capable of having legal consequences and that the action must be likely, if successful, to procure an advantage for the party who brought it (see order in Case T-387/04 *EnBW Energie Baden-Württemberg* v *Commission* [2007] ECR II-1195, paragraph 96 and the case-law cited).

63 That interest must be vested and present (Case T-138/99 *NBV and NVB* v *Commission* [1992] ECR II-2181, paragraph 33) and is evaluated as at the date on which the action is brought (Case 14/63 *Forges de Clabecq* v *High Authority* [1963] ECR 357, at 371, and Case T-159/98 *Torre and Others* v *Commission* [2001] ECR II-395, paragraph 28). It must, however, continue until the final decision, failing which there will be no need to adjudicate (see, to that effect, Case C-362/05 P *Wunenburger* v *Commission* [2007] ECR I-4333, paragraph 42 and the case-law cited).

64 In the present case, the applicant did not produce in its application any specific information on the centres it represents in connection with the present action. At the reply stage, it produced the powers of attorney given to it by 10 of its members for bringing this action. It also annexed to the reply a table showing the situation of its members, but not naming them, from which it appears in particular that, of the 10 members it represents, only the member numbered 35 in that table ('Centre No 35') obtained a renewal of its authorisation for an unlimited period, while the other nine centres obtained renewals until 31 December 2005. It also provided supplementary tax notices and demands addressed by the Belgian tax authorities to some of the members it represents in this case.

65 It should be observed, to begin with, that the Commission is wrong to claim, on the basis of Article 48(1) of the Rules of Procedure, that the evidence produced by the applicant at the stage of the reply is inadmissible because the applicant did not give reasons for its late production. In accordance with that provision, the parties may make offers of evidence in support of their arguments in the reply and rejoinder, but must then give reasons for the delay in making the offer. However, according to the case-law, evidence in rebuttal and the amplification of offers of evidence, in response to evidence in rebuttal put forward by the opposing party in the defence, are not covered by the time-bar rule in Article 48(1) of the Rules of Procedure. That provision concerns offers of fresh evidence and must be read in the light of Article 66(2) of those rules, which expressly provides that evidence may be submitted in rebuttal and previous evidence may be amplified (see judgment of 12 September 2007 in Case

T-448/04 *Commission* v *Trends*, not published in the ECR, paragraph 52 and the case-law cited).

66 In the present case, the offers of evidence made by the applicant in its reply constitute an amplification of the evidence offered in its application and are intended to respond to the arguments on the inadmissibility of the action put forward by the Commission in the defence. Consequently, the time-bar rule in Article 48(1) of the Rules of Procedure does not apply to them, so that the evidence in question is admissible.

67 It must also be noted that, in reply to a request by the Court, the applicant indicated the numbers in the first column of the table annexed to the reply to which the 10 centres it claims to represent correspond.

68 The interest in bringing proceedings of the 10 centres the applicant claims to represent in the present case must be examined in the light of all those considerations.

69 As regards, first, Centre No 35, it must be observed that the applicant produced, in its reply, a document by which that centre confirms that it gave authority to the applicant to seek the annulment of the contested decision. However, it is clear that that document is dated 31 October 2008, more than five months after the action was brought. No other evidence has been produced to show that, on the date on which the action was brought, Centre No 35 had given the applicant authority to act in the present case. On being questioned on this point at the hearing, the applicant stated that Centre No 35 had voted in favour of bringing the action at a meeting. No report or minutes of that meeting was added to the case-file, however, nor indeed did the applicant even propose to do this after the hearing. In those circumstances, the

applicant cannot be regarded as having brought the present action on behalf of Centre No 35 and hence as representing that centre's interests in this case. It follows that the situation of that centre cannot be taken into account for the purposes of examining the admissibility of the present action. Moreover, in a letter to the Commission of 27 January 2009 (see paragraph 32 above), Centre No 35 contends, without making any reference to the present action, that the contested decision is of no concern to it.

70 As regards, second, the other nine centres, it must first be noted that they gave valid powers of attorney to the applicant before the bringing of the present action.

71 Next, in accordance with Article 1 of the contested decision, which amended Article 2 of the 2003 decision, those centres benefit from the scheme for coordination centres until 31 December 2005.

72 Moreover, following the *Forum 187* order, the Belgian authorities renewed those centres' authorisations for a period expiring on 31 December 2005 and, despite their requests to the Belgian authorities, they did not obtain extensions of their authorisations for the period from 1 January 2006 to 31 December 2010.

73 The limitation of the authorisations of those nine centres to 31 December 2005 was decided by the Belgian authorities alone, who were not compelled to do so. The *Forum 187* order suspended the 2003 decision in so far as it prohibited the renewal of the authorisations of the coordination centres, without setting a time-limit for the length of the renewals other than the delivery of the Court of Justice's judgment in the main proceedings. Moreover, as the applicant accepted at the hearing in reply to a question from the Court, the Belgian authorities could have renewed the authorisations of the nine centres for an indefinite period, as indeed was done in the case of four centres,

despite the fact that, in accordance with the *Forum 187* order, the renewal could not have effect beyond the *Forum 187* judgment.

74 It follows that, since 31 December 2005, the nine centres in question have no longer had a valid authorisation under Belgian law, and thus no longer validly benefit from the tax scheme for coordination centres.

75 In those circumstances, those nine centres cannot put forward a claim to the application of a transitional period within the meaning of the *Forum 187* judgment expiring later than the period laid down in the contested decision, namely 31 December 2005.

76 The very purpose of a transitional period is to ensure the passage from one situation to another, in this case from the situation in which the centres in question benefit from the tax scheme for coordination centres to that in which they no longer do so. Therefore, according to the *Forum 187* judgment (paragraph 163), the centres concerned by that judgment, including the nine centres in question, had to be allowed a reasonable transitional period so that they could adapt to the consequences of the 2003 decision.

77 Since, from 31 December 2005, the nine centres in question no longer benefit from the tax scheme for coordination centres, any period subsequent to that date during which they benefited from that scheme could not be regarded as having the purpose of enabling them to adapt, given that they are already in that new situation. Consequently, if the present action were to be successful, the nine centres could not

retroactively be granted a transitional period after 31 December 2005, in that such a period would be devoid of purpose.

78 The impossibility of benefiting, even retroactively, from a longer transitional period where centres no longer have a valid authorisation follows, moreover, from the *Forum 187* order. In connection with the application for suspension of the 2003 decision prohibiting the renewal of the authorisations of certain centres, the President of the Court of Justice considered that, if the suspension sought were not granted, a decision on the main issue in favour of the applicants would, as regards the transitional regime, be largely ineffective, since any financial measures which might be taken did not appear suitable for retroactively restoring the stability of the legislation applicable to the coordination centres (*Forum 187* order, paragraph 146).

79 Accordingly, having regard to the subject-matter of the action, namely the annulment of the contested decision in so far as it does not provide for a reasonable transitional period, the annulment of that decision on that basis would not procure any benefit for the nine centres.

80 None of the arguments put forward by the applicant can call into question the above considerations.

81 As regards the argument that, in essence, the centres would be able to benefit from the tax scheme for coordination centres after 31 December 2005, with Royal Decree No 187 continuing to be the legal basis of authorisations (see paragraphs 55 to 57 above), it admittedly follows from the case-law that, if it cannot be excluded that an applicant may, if its action is successful, be able to put forward certain claims before the national authorities, or at least have its application examined by them, the

applicant has an interest in bringing the action (see, to that effect, Case T-9/98 *Mitteldeutsche Erdöl-Raffinerie* v *Commission* [2001] ECR II-3367, paragraphs 34 and 38, and judgment of 12 September 2007 in Case T-348/03 *Koninglijke Friesland Foods* v *Commission*, not published in the ECR, paragraph 72).

82 In the present case, however, even if the action were successful, the centres represented by the applicant would not have any claim to put forward before the Belgian authorities specifically concerning the transitional period for their benefit which is the subject-matter of the present action. As appears from the foregoing, even if they intended to do so, the Belgian authorities could not grant those centres, even retroactively, an extension of the transitional period that was granted them, since they no longer benefit from the tax scheme for coordination centres. The applicant is therefore wrong in considering that the fact that the Belgian authorities renewed the authorisations of the centres in question only to 31 December 2005 does not affect their ability to benefit from the tax scheme for coordination centres after that date. Next, the provisions of the 2003 decision declaring that scheme to be aid incompatible with the common market and requiring the Belgian authorities to abolish it or amend it so as to make it compatible with the common market were not annulled by the Court of Justice in the *Forum 187* judgment. They thus have effect since the adoption of the 2003 decision, so that the Belgian authorities could not renew the authorisations of the centres in question on the sole basis of Royal Decree No 187. Moreover, if the contested decision were annulled, a new decision of the Commission would be needed to define the new transitional period the centres could benefit from, as the General Court is not entitled, in an action for annulment, to substitute another decision for the contested decision or to amend that decision (order in Case C-428/98 P *Deutsche Post* v *IECC and Commission* [2000] ECR I-3061, paragraph 28, and Case T-199/99 *Sgaravatti Mediterranea* v *Commission* [2002] ECR II-3731, paragraph 141).

83 In those circumstances, the conclusion must be, first, that the centres in question cannot base an interest in bringing proceedings on the application of Royal Decree No 187 after 31 December 2005 and, second, that it is not material that the Belgian

authorities did not rule out allowing them to benefit from the scheme at issue after that date or that they considered that those centres might be able to benefit from it.

84 Furthermore, an applicant cannot rely on future uncertain circumstances to establish his interest in seeking annulment of the contested measure (see Case T-141/03 *Sniace* v *Commission* [2005] ECR II-1197, paragraph 26 and the case-law cited). It is clear that, the above considerations notwithstanding, none of the evidence put forward by the applicant allows it to be established with certainty that if the contested decision were annulled the Belgian authorities would retroactively extend the authorisations of the centres in question beyond 31 December 2005 on the basis of Royal Decree No 187. The supplementary tax notices addressed to the coordination centres by the Belgian tax authorities, produced by the applicant in its reply, are in fact evidence to the contrary.

85 As to the 2006 law, it cannot in any event justify an interest in bringing proceedings on the part of the nine centres in question. The provisions of that law which concern the tax scheme for coordination centres did not come into force. The date of their entry into force was to be fixed, in accordance with Article 298 of the law, by a royal decree made in the Council of Ministers, which was not adopted. As appears from recital 18 of the contested decision, the Belgian authorities made that entry into force conditional on confirmation by the Commission that it had no objections. However, the contested decision provides, in Article 3, that the 2006 law is incompatible with the common market in so far as it is designed to extend the scheme for coordination centres beyond 31 December 2005 by means of new decisions renewing authorisations. It must be noted that, according to the sixth recital in the preamble to the royal decree of 19 December 2008, the Belgian authorities 'accepted the [contested decision] not to bring into force [the 2006 law]' in so far as it related to the scheme for coordination centres, and informed the taxpayers concerned. It follows that the Belgian

authorities do not intend to bring that law into force. Moreover, the applicant does not expressly challenge the contested decision in so far as it relates to the 2006 law.

86 Finally, the applicant's argument that the centres' interest in bringing proceedings is demonstrated by the Belgian authorities' decision to implement the contested decision and recover tax for 2006 and 2007 (see paragraph 54 above) must be rejected. Since from 31 December 2005 they no longer validly enjoyed, under Belgian law, the authorisation needed to benefit from the tax scheme under Royal Decree No 187, those centres were obliged from that date to pay tax in accordance with the general system, or the RDIN if they had opted for that scheme. That situation results, as already stated, primarily from the Belgian authorities' decision to limit their authorisation to 31 December 2006, not from the contested decision. The centres in question cannot now find support, to show that they have an interest in bringing proceedings against that decision, in the fact that they did not think they had to pay tax under the general system and instead paid tax under the scheme for coordination centres, although they had no right to do so under Belgian law.

87 It follows that the nine centres whose interests the applicant validly represents in the present case cannot show that they have an interest in bringing proceedings, and do not therefore have standing to seek the annulment of the contested decision.

88 Consequently, the applicant's situation is not one of those in which an action brought by an association may, in accordance with the case-law cited in paragraph 58 above, be declared admissible.

89 The present action must accordingly be dismissed as inadmissible.

Costs

90 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. In the present case, since the applicant has been unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. Dismisses the action as inadmissible;

2. Orders Forum 187 ASBL to pay the costs.

Martins Ribeiro Papasavvas Dittrich

Delivered in open court in Luxembourg on 18 March 2010.

[Signatures]