ORDER OF THE COURT
17 May 2002 *

In Case C-406/01,

Federal Republic of Germany, represented by W.-D. Plessing and M. Lumma, acting as Agents, assisted by J. Sedemund, Rechtsanwalt,

applicant,

v

European Parliament, represented by C. Pennara and E. Waldherr, acting as Agents, with an address for service in Luxembourg,

and

Council of the European Union, represented by E. Karlsson and J.-P. Hix, acting as Agents,

defendants,

* Language of the case: German.

ACTION FOR ANNULMENT of Article 3(1) in conjunction with Article 3(2) of Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products (OJ 2001 L 194, p. 26), in so far as those provisions prohibit the manufacture of cigarettes for export from the European Community to non-member countries,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola (Rapporteur), J.-P. Puissochet, M. Wathelet, R. Schintgen, V. Skouris, J.N. Cunha Rodrigues, C.W.A. Timmermans and A. Rosas, Judges,

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By an application lodged at the Court Registry on 12 October 2001, the Federal Republic of Germany brought under Article 230 EC an action for the annulment of Article 3(1) in conjunction with Article 3(2) of Directive 2001/37/EC of the

European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products (OJ 2001 L 194, p. 26), in so far as those provisions prohibit the manufacture of cigarettes for export from the European Community to non-member countries.

2 By separate documents lodged at the Court Registry on 12 and 26 November 2001 respectively, the Parliament and the Council raised an objection of inadmissibility under Article 91(1) of the Rules of Procedure.

3 The Parliament and the Council claim that the Court should:

— declare the action manifestly inadmissible, and

— order the Federal Republic of Germany to pay the costs.

4 By a document lodged at the Court Registry on 29 January 2002, the Federal Republic of Germany submitted its observations on the objection of inadmissibility in accordance with Article 91(2) of the Rules of Procedure. It claims that the Court should dismiss that objection.

Admissibility

Arguments of the parties

5 The Parliament and the Council claims that the action is out of time. There is no record of any delay in the distribution of the *Official Journal of the European Communities* of 18 July 2001 in which Directive 2001/37 was published. Consequently, in lodging the application at the Court Registry on 12 October 2001, the Federal Republic of Germany failed to comply with the time-limit laid down in the fifth paragraph of Article 230 EC and with Article 80(1)(a) and (b) and Article 81 of the Rules of Procedure. The Parliament and the Council claim that under those provisions the application should have been lodged by 11 October 2001 at the latest.

6 The Parliament and the Council further maintain that their calculation of the time-limit accords with the principles endorsed by the Court of First Instance in its order of 19 January 2001 in Case T-126/00 *Confindustria and Others* v *Commission* [2001] ECR II-85, which concerned the application of provisions of the Rules of Procedure of the Court of First Instance analagous to the provisions of the Rules of Procedure of the Court of Justice which are at issue in this case.

7 The applicant argues, however, that under Article 81(1) of the Rules of Procedure the two-month time-limit laid down in the fifth paragraph of Article 230 EC did not start to run from the 14th day following the publication of the Directive 2001/37 in the *Official Journal of the European Communities*, namely midnight on 1 August 2001, as the Parliament and the Council contend, but rather from

the beginning of the 15th day following publication, namely 2 August 2001 at 0.00h. The applicant argues that it is only then that the 14th day can be considered to have ended completely. The applicant also maintains that this interpretation accords with the spirit of Article 81(1) of the Rules of Procedure, which fixes the beginning and not the end of a time-limit. There is thus no justification for fixing the start of the time-limit at midnight at the end of a day rather than at the start of the following day.

8 The applicant submits that on that interpretation the two-month time-limit laid down in the fifth paragraph of Article 230 EC should be taken to have expired in this case at midnight on 2 October 2001. If the 10 days on account of distance is added, as provided for in Article 81(2) of the Rules of Procedure, the time-limit did not come to an end until midnight on 12 October 2001. As a result the applicant considers that it brought the action within the prescribed time-limit.

9 The applicant further submits that the objection of inadmissibility should also be dismissed in accordance with the right to effective judicial protection which constitutes a general principle of Community law (Case C-228/92 *Roquette Frères* [1994] ECR I-1445, paragraph 27).

10 In this connection, the applicant submits that both the relevant authorities of the Federal Republic of Germany and its representatives in the present action formed the view, on the basis of this interpretation of Articles 80 and 81 of the Rules of Procedure, that the two-month time-limit laid down in the fifth paragraph of Article 230 EC started to run on 2 August and, allowing for the extension on account of distance, finished at midnight on 12 October 2001. The construction contended for by the Parliament and the Council, if endorsed, would mean that these provisions of the Rules of Procedure are manifestly ambiguous, which in turn would undermine the right to effective judicial protection.

Findings of the Court

11 Under Article 92(1) of the Rules of Procedure, where the Court clearly has no jurisdiction to take cognisance of an action or where the application is manifestly inadmissible, it may by reasoned order, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action. In the present case the Court considers that the information in the file is sufficient to enable it to rule on the admissibility of the action without taking further steps in the proceedings.

12 Since the action is directed against a measure published in the *Official Journal of the European Communities* of 18 July 2001, it should be recalled, first, that under Article 81(1) of the Rules of Procedure, 'where the time allowed for initiating 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 80(1)(a), from the end of the 14th day after publication thereof in the *Official Journal of the European Communities*'.

13 Secondly, under Article 80(1)(a) and (b) of the Rules of Procedure, when reckoning periods of time prescribed *inter alia* by the EC Treaty and the abovementioned Rules of Procedure, the day on which the event from which they are calculated took place is not to be taken into account and such periods are to end on the expiry of whichever day in the last month (if the period concerned is expressed in months) falls on the day which bears the same number as the day on 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. In the case of a measure which has to be published, the Court held 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'. The Court added that, where the time-limit for commencing proceedings is expressed in months, that period therefore expires at the end of the day which, in the month indicated by the time-limit, bears the same number as the day from which time started to run, that is to say the day of notification (*Misset* v *Council*, paragraph 8).

15 The same reasoning can be applied to the case, provided for under Article 81(1) of the Rules of Procedure, where time-limits begin to run from the publication of the measure in question. In that provision it is stated specifically that these periods are to be calculated, for the purposes of Article 80(1)(a) of the same rules, 'from the end of the 14th day after publication'. Article 81(1) of the rules therefore gives the applicant 14 full days in addition to 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 In the present action the starting point for the two-month period prescribed by the fifth paragraph of Article 230 EC was accordingly postponed from 18 July 2001 to 1 August 2001, which allowed the applicant a further period of 14 full days, including the day of 1 August 2001 until midnight.

17 In accordance with Article 80(1)(b) of the Rules of Procedure, 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 from which the period is to be calculated, this period expired at the end of 1 October 2001.

18 In the present case, taking into account the 10-day extension to be added to the time-limit for bringing an action under Article 81(2) of the Rules of Procedure, the full time-limit for the action to be brought expired on Thursday 11 October 2001 at midnight, since this day is not on the list of official holidays laid down in Article 1 of the annex to the Rules of Procedure.

19 Consequently, the present action, which was brought on 12 October 2001, is out of time.

20 In so far as the applicant relies on the right to effective judicial protection, that right is in no way undermined by the strict application of Community rules concerning procedural time-limits which, according to settled case-law, meets the requirements of legal certainty and the need to avoid all discrimination or arbitrary treatment in the administration of justice (*Misset* v *Council*, paragraph 11).

21 With regard to the applicant's submission that ambiguity in the Rules of Procedure made its mistake in interpreting those rules an excusable error, it should be noted that 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 applicant, justifying derogation from the strict application of the abovementioned rules.

22 Finally, the applicant has not established or even argued the existence of unforeseeable circumstances or of *force majeure* which would allow the Court 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.

23 The action must therefore be dismissed as manifestly inadmissible.

24 In the circumstances it is not necessary to rule on the applications for intervention made under Article 93(1) of the Rules of Procedure by the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Finland, the United Kingdom of Great Britain and Northern Ireland and the Commission.

Costs

25 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. Since the Parliament and the Council asked that the Federal Republic of Germany be ordered to pay the costs and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders:

1. **The action is dismissed.**

2. **The Federal Republic of Germany is ordered to pay the costs.**

Luxembourg, 17 May 2002.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President