ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
7 March 1997 *

In Case T-184/95,

Dorsch Consult Ingenieurgesellschaft mbH, a company incorporated under German law, established in Munich (Germany), represented by Karl M. Meessen, with an address for service in Luxembourg at the Chambers of Patrick Kinsch, 8-10 Rue Mathias Hardt,

applicant,

v

Council of the European Union, represented by Yves Crétien, Legal Adviser, Stephan Marquardt and Antonio Tanca, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the Chambers of Bruno Eynard, Director General of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

and

Commission of the European Communities, represented by Peter Gilsdorf and Allan Rosas, Principal Legal Advisers, and Jörn Sack, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendants,

* Language of the case: German.

APPLICATION under Article 178 and the second paragraph of Article 215 of the EC Treaty for compensation for the damage allegedly suffered by the applicant as a result of the adoption of Council Regulation (EEC) No 2340/90 of 8 August 1990 preventing trade by the Community as regards Iraq and Kuwait (OJ 1990 L 213, p. 1),

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

composed of: C. W. Bellamy, President, A. Kalogeropoulos and V. Tiili, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 By application lodged at the Registry of the Court of First Instance on 27 March 1996 Elliniki Viomichania Oplon SA (hereinafter 'EBO'), a limited company incorporated under Greek law and established in Athens, represented by M. Stathopoulos and N. Anagnostou, of the Athens Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand Rue, applied to intervene in Case T-184/95 in support of the form of order sought by the applicant.

2 The application to intervene was submitted pursuant to the second paragraph of Article 37 of the EC Statute of the Court of Justice, applicable to the procedure before the Court of First Instance by virtue of the first paragraph of Article 46 of that statute and was made in accordance with Article 115 of the Rules of Procedure of the Court of First Instance.

3 The application to intervene was served on the parties in accordance with Article 116 of the Rules of Procedure.

4 The President of the Second Chamber referred the application to the Second Chamber for decision, pursuant to the third subparagraph of Article 116(1) of the Rules of Procedure.

5 By letters lodged at the Registry of the Court on 28 May 1996 the Commission and the Council pleaded that EBO's application to intervene was inadmissible and submitted that EBO had not established an interest in the result of the case, as required by Article 115(2) of the Rules of Procedure.

Arguments of the parties

6 In its application to intervene EBO states that, on the basis of a contract and a supplementary agreement concluded on 12 January and 25 September 1987 with the Iraqi Ministry of Defence, it had agreed to supply products of a total value of USD 83 214 000 fob to that country. Payment was to have been made by means of a banker's letter of credit, opened by the Central Bank of Iraq in an irrevocable, divisible and transferable form and through the Commercial Bank of Greece. Under the payment arrangements, 10% of the value of each consignment had to be paid on presentation of the necessary freight documents and an invoice, the remaining 90% becoming automatically payable 24 months after each delivery.

7 By telex of 20 January 1987 the Central Bank of Iraq informed EBO of the opening in its favour of the abovementioned letter of credit which, after endorsement by EBO, was extended from 25 March 1990, the date to which it was initially valid, until 30 May 1991.

8 EBO performed all its contractual obligations, whereupon the Central Bank of Iraq paid to it 10% of the value of each consignment. However, the remaining 90% of the value of the goods, which should have been paid 24 months after the date of the issue of each bill of lading, together with interest at a rate of 4% per annum, has still not been paid. EBO therefore has a claim against the Iraqi authorities amounting to USD 75 451 500.

9 EBO states that the Central Bank of Iraq is refusing to discharge its liability towards it and that it is relying to that end on United Nations Security Council Resolution 661(1990) of 6 August 1990, on the basis of which the Council adopted Regulation (EEC) No 2340/90 of 8 August 1990 preventing trade by the Community as regards Iraq and Kuwait (OJ 1990 L 213, p. 1), which prohibits all activities and business with Iraq. According to EBO, by adopting that regulation without providing for compensation for the losses which would have to be borne by persons with existing commercial links with Iraq and the legal persons governed by private and public law in that State, such as EBO's links with the Iraqi Ministry of Defence and the Central Bank of Iraq, the Community institutions caused the Community to incur liability. In its particular case, that liability resulted from the fact that the adoption of Regulation No 2340/90 had prevented it from recovering the sums owed from the Central Bank of Iraq.

10 EBO claims that its legal interest in intervening in the dispute arises from the fact that it, like the applicant, has a right to require the Community to pay to it USD 75 451 500, plus interest at a rate of 8% with effect from 9 August 1990, by assigning its claim against the Central Bank of Iraq to it.

11 The Council contends that EBO has not shown an interest in intervening and that, consequently, its application is inadmissible. Since the subject-matter of the dispute is an action for compensation brought by a private-law person against the Community, no other individual has an interest in the outcome of the dispute, inasmuch as the judgment to be given will not have any direct or indirect effect on its situation. In any event, EBO's application to intervene does not explain its interest in intervening.

12 The Council disputes that EBO can be regarded as having an interest in intervening merely because of the fact that, since it is in a situation comparable to that of the applicant, it too has a right to compensation to assert against the Community on account of the adoption of Regulation No 2340/90. Since that right has no substantive connection whatsoever with that of the applicant, the means of exercising such a right is not by the submission of an application to intervene, but by the bringing of an action for compensation against the Community. The Council considers that if, for the purpose of such an action, the applicant has a general 'interest' in the result of the present case, that does not, however, enable it to 'establish an interest' in the result of the case, within the meaning of the second paragraph of Article 37 of the Statute of the Court of Justice.

13 The Commission also claims that the application to intervene is inadmissible because EBO's right to require compensation from the Community for the damage allegedly suffered is time-barred on account of the fact that it was not exercised within the period of five years provided for in Article 43 of the Statute of the Court of Justice. According to the Commission, it is therefore clear that, even if the applicant were to succeed, EBO could not bring an action for compensation against the Community. It observes that if, as the applicant also claims, the origin of EBO's alleged damage is to be found in the adoption of Regulation No 2340/90, it is nevertheless the case that, even taking into account all the time-limits which might be applicable, any action based on that regulation is barred from the end of

1995. In that case, it is irrelevant whether the Iraqi authorities' refusal to pay the sums owed to EBO was made after that date and whether, in so doing, they invoked Regulation No 2340/90.

14 According to the Commission, EBO is, as regards the rules on the limitations of actions, in a legal situation fundamentally different from that of the applicant, so that it cannot be acknowledged to have a legitimate interest in intervening in support of the form of order sought by the applicant. The question whether the case should be decided otherwise if the loss of EBO's right on time grounds was not manifest can, in the Commission's view, be left in abeyance.

Findings of the Court

15 Under the second paragraph of Article 37 of the Statute of the Court of Justice, the right to intervene in cases submitted to the Court of First Instance is open to any person establishing an interest in the result of the case.

16 As regards an application to intervene made in an action for compensation for damage allegedly caused by rules of Community law, the Court of Justice has held that the interest in question must exist in relation to the form of order sought by one of the parties to the main proceedings and not in relation to the pleas in law and arguments relied on (order of the Court of Justice of 19 October 1983 in Case 114/83 *Société d'Initiatives et de Coopération Agricoles* v *Commission* (unreported), which, in the present case, would mean that EBO would be precluded from establishing its interest solely by reference to the applicant's pleas in law and arguments concerning the alleged illegality of Regulation No 2340/90. However, in its order of 20 March 1985 in Case 253/84 *Groupement Agricole d'Exploitation en*

Commun v *Council and Commission* (unreported), the Court of Justice allowed an application to intervene on the ground that 'in the context of an application for compensation for damage allegedly caused by rules of Community law, the forms of order sought by the parties to the main proceedings, and thus also the interveners' interest, may be understood as concerning, besides payment of compensation, the incidental finding of the illegality of a Community provision'.

17 Faced with those two different approaches, this Court considers that, in accordance with previous case-law, it should determine the principles to apply in a case such as the present, where the application to intervene is made by an undertaking whose interest lies in defending its own situation, which, although comparable to that of the applicant in the main proceedings, is nevertheless different from it inasmuch as the rights which the two parties wish to assert against the Community concern different losses (see the order of the Court of Justice in Case 111/63 *Lemmerz-Werke* v *High Authority* [1965] ECR 883, 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 16, and in Case T-87/92 *Kruidvat* v *Commission* [1993] ECR II-1375, paragraph 11).

18 In such a context, an interest in the result of the case, within the meaning of the second paragraph of Article 37 of the Statute of the Court of Justice, must be understood as a direct and continuing interest in the outcome of the application and a strict distinction should be drawn, by analogy with the order in *Kruidvat* v *Commission*, between interveners establishing a direct and continuing interest in the outcome of the application 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 to the proceedings.

19 In that regard, the Court finds that in the present case, EBO in its application to intervene has merely described the origin and nature of its claim against the Central Bank of Iraq and submitted that the Community institutions, by adopting Regulation No 2340/90, have made themselves liable for the damage which it allegedly suffered as a result of the fact that the Iraqi authorities, invoking United Nations Security Council Resolution 661(1990) of 6 August 1990, which served as the basis for adopting that regulation, refused to honour their contractual obligations to it. Any economic operator finding himself in a situation analogous to that of the applicant could claim that he had an interest in intervening on account of the effects which Regulation No 2340/90 had had on his relationship and commercial links with Iraq. However, if any economic operator were to be allowed to intervene in any case to which an economic operator in a similar situation is a party and which could give rise to a judgment whose grounds might influence the manner in which the defendant institutions would deal with his own — different — situation, it would be difficult or even impossible to establish a clear distinction between interveners who establish an interest in the result of the case and those who do not establish such an interest (see, by analogy, the orders in *Kruidvat* v *Commission*, paragraph 13, and *Rijnoudt and Hocken* v *Commission*, cited above, paragraph 22).

20 Consequently, an interest such as that on which EBO relies cannot be regarded as a direct interest in the result of the case for the purposes of the second paragraph of Article 37 of the Statute of the Court of Justice, but is to be regarded as an interest resulting indirectly from the mere similarity between the situations in question which does not, therefore, provide a proper legal ground for its application to intervene.

21 Having regard to the foregoing, the application to intervene should be dismissed and it is not necessary to rule on the Commission's submission that EBO has no interest in intervening on the ground that, even if the applicant were to be successful, EBO's right to bring an action for compensation against the Community under Articles 178 and 215 of the Treaty would be time-barred.

Costs

22 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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 defendants have not made any application in regard to costs, each party should be ordered to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

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

2. **EBO and each of the defendants shall bear their own costs relating to the application to intervene.**

Luxembourg, 7 March 1997.

H. Jung
Registrar

C. W. Bellamy
President