ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
15 May 1997 *

In Case T-175/96,

Georges Berthu, a Member of the European Parliament of the European Communities, represented by Alexandre Varaut, of the Paris Bar,

applicant,

v

Commission of the European Communities, represented by Ulrich Wölker, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's 'decision' contained in a proposal for a regulation submitted to the Council on 16 October 1996 'on some provisions relating to the introduction of the euro' (COM(96) 499 final),

* Language of the case: French.

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

composed of: C. W. Bellamy, President, A. Kalogeropoulos and J. Azizi, Judges,

Registrar: H. Jung,

makes the following

Order

Facts giving rise to the case

1 On 16 October 1996 the Commission presented 'a proposal for a Council regulation on some provisions relating to the introduction of the euro' (COM(96) 499 final, hereinafter 'the proposal for a regulation').

2 Citing the fact that at the European Council at Madrid on 15 and 16 December 1995 it was decided *inter alia* that 'the name given to the European currency shall be the "euro"' and that that name 'will be used instead of the generic term "ecu" used by the Treaty to refer to the European currency unit' (see the second recital in the preamble to the proposal), the Commission included in the proposal for a regulation Article 2 which states:

'(1) As from 1.1.1999 every reference in a legal instrument to the ecu, as referred to in Article 109g of the Treaty and defined in Council Regulation (EC) No 3320/94, is replaced by a reference to the euro at the rate of one euro to

one ecu. References in a legal instrument to the ecu without such a definition shall be presumed to be references to the ecu as referred to in Article 109g EC and as defined in Council Regulation (EC) No 3320/94.'

3 In those circumstances, by application lodged at the Registry of the Court of First Instance on 4 November 1996, the applicant brought an action under the fourth paragraph of Article 173 of the EC Treaty for the annulment of the Commission's decision which, he submits, is contained in the proposal for a regulation.

4 In its defence lodged at the Registry of the Court of First Instance on 20 December 1996, the Commission raised a plea of inadmissibility pursuant to Article 114(1) of the Rules of Procedure, on which the applicant lodged his observations on 17 February 1997.

Forms of order sought

5 The applicant claims that the Court should:

— declare the application admissible;

— declare the contested decision unlawful.

6 In its plea of inadmissibility the Commission claims that the Court should:

— declare the application inadmissible;

— order the applicant to pay the costs.

7 In his observations on the plea of inadmissibility the applicant contends that the Court should:

— dismiss the plea of inadmissibility raised by the Commission;

— in the alternative, reserve its decision for the final judgment.

Admissibility

Pleas in law and arguments of the parties

8 The Commission submits that the application is manifestly inadmissible since, first, the proposal for a regulation which it submitted to the Council does not constitute an act open to challenge within the meaning of the case-law on the subject and, secondly, even it that were not the case, the applicant is nevertheless not

directly and individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty and so, for that reason as well, his application is inadmissible.

9 As regards, first, the nature of the contested measure, the Commission submits that a proposal for a regulation emanating from it, although a prerequisite for the Council to be able to act, does not *per se* have any binding or mandatory legal effect within the meaning of the case-law on the subject, since the Council is free either to adopt the proposed measure, with or without amendments, or not to act at all.

10 It adds that the contested proposal for a regulation constitutes merely the first stage in a procedure which is deemed to conclude with the adoption of a definitive measure and that, as a preparatory measure, it is deemed to 'disappear' when the definitive measure of which it forms the basis is adopted; it does not therefore constitute an act open to challenge.

11 On the question, secondly, whether the applicant is directly and individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty, the Commission submits that it follows from the preceding considerations that, inasmuch as the proposal for a regulation has no effect on the legal position of the applicant, he cannot claim to be directly concerned.

12 Furthermore, were the Council to adopt the proposal for a regulation, the applicant would not be able to claim that his legal position was affected because of certain attributes peculiar to him or by reason of circumstances differentiating him from all other persons and that by virtue of these factors he was distinguished

individually just as in the case of an addressee. On the contrary, as the applicant himself pointed out in his application, he is concerned by such an act merely 'as an ordinary person no different from anyone else'.

13 Lastly, the Commission states that, contrary to the applicant's assertion, even if the proposal for a regulation could affect 'the exercise of the national sovereignty of the Member States', that could not cause him 'direct and individual harm' justifying the admissibility of his action.

14 The applicant contends that he is individually and directly concerned by the change in name of the European currency from 'ecu' to 'euro' since, as an ordinary person, he will, like everyone else, have to use the new European currency on a daily basis as from 1 January 2002.

15 Furthermore, such a change in the name of the European currency, carried out in breach of the provisions of the Treaty, will affect the exercise of national sovereignty in such a serious manner that it should be regarded as causing him direct and individual harm. According to the applicant, on 12 August 1996 the Danish Supreme Court held admissible an action brought by natural persons challenging the legality of certain provisions of the EC Treaty, on the ground that infringement of national sovereignty constituted such serious harm that each of them were directly and individually concerned. According to the applicant, that case-law, even though at a level different from that of the Court of Justice, should nevertheless be transposed into Community law.

16 Lastly, the applicant states that if the Court holds his action inadmissible on the ground that the proposal for a regulation does not constitute an act open to challenge for the purposes of Article 173 of the Treaty, he will bring the same action against the final decision of the Council should it adopt the Commission's proposal for a regulation.

Findings of the Court

17 Under Article 114(1) of the Rules of Procedure, if a party so requests, the Court is to determine the question of admissibility as a preliminary issue, subject to Article 114(3) and (4). Since the documents in the case provide it with sufficient information, the Court considers that there is no need to open the oral procedure.

18 It is appropriate to begin by examining the question whether the proposal for a regulation submitted to the Council by the Commission on 16 October 1996 constitutes an act for the purposes of the fourth paragraph of Article 173 of the Treaty and, if it does, whether the applicant is directly and individually concerned by it.

19 According to well-established case-law, in order to ascertain whether measures are acts for the purposes of the fourth paragraph of Article 173, it is necessary to look to their substance, the form in which they are cast being, in principle, immaterial in that respect. Thus any measure the legal effects of which are binding on, and capable of affecting the interests of, the applicant by bringing about a distinct change in his legal position is an act or decision which may be the subject of an action for a declaration that it is void. In the particular case of acts or decisions adopted by a procedure involving several stages, an act is in principle open to review only if it is a measure definitively laying down the position of the institution concerned on the conclusion of that procedure, it follows that a preliminary or purely preparatory measure may not form the subject of any action for its annulment (Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraphs 9 to 12; Case 302/87 *Parliament* v *Council* [1988] ECR 5615, paragraphs 14 to 16; Case C-282/95 P *Guérin Automobiles* [1997] ECR I-1503, paragraph 34; Case T-64/89

Automec v *Commission* [1990] ECR II-367, paragraphs 41 and 42; Case T-36/92 *SFEI and Others* v *Commission* [1992] ECR II-2479, paragraph 43; Case T-277/94 *AITEC* v *Commission* [1996] ECR II-351, paragraph 51).

20 In this case the proposal for a regulation submitted by the Commission to the Council 'on some provisions relating to the introduction of the euro' takes as its legal basis Article 235 of the Treaty, which provides: 'If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.'

21 As that provision of the Treaty shows, in order to take the 'appropriate measures', the Council is free to adopt, with or without amendments, the proposal for a regulation submitted to it by the Commission, or to refuse to adopt it. It follows that since the Commission's proposal for a regulation is part of a legislative process involving several stages, it is only an intermediate measure intended solely to pave the way for a final measure, namely a Council regulation, without definitively determining the position that the Council will adopt. Consequently such a proposal for a regulation cannot be regarded as producing binding legal effects within the meaning of the case-law cited above (see paragraph 19).

22 Accordingly, the proposal for a regulation submitted by the Commission to the Council cannot be regarded as an act open to challenge as contemplated in the fourth paragraph of Article 173 of the Treaty and this action must be dismissed as inadmissible; there is no need to examine the Commission's other argument to the effect that the applicant is, furthermore, not directly and individually concerned by the contested act.

Costs

23 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. Since the applicant has been unsuccessful, and having regard to the form of order sought by the defendant, he must be ordered to bear his own costs and pay those of the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

1. The action is dismissed as manifestly inadmissible.

2. The applicant is ordered to pay the costs.

Luxembourg, 15 May 1997.

H. Jung

Registrar

C. W. Bellamy

President