# ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
6 February 1997 *

In Case T-64/96,

**Filippo de Jorio**, adviser to the Economic and Social Committee of the European Communities, represented by Lucio Filippo Longo, of the Rome Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicant,

v

**Council of the European Union**, represented by Maria Cristina Giorgi, Legal Adviser, and Thérèse Blanchet, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Director General of its Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

APPLICATION brought under Articles 173 and 175 of the EC Treaty concerning allowances for members of the Economic and Social Committee,

* Language of the case: Italian.

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

composed of: B. Vesterdorf, President, C. P. Briët and A. Potocki, Judges,

Registrar: H. Jung,

makes the following

## Order

### Legislative framework

1 Article 193 of the EC Treaty ('the Treaty') established an Economic and Social Committee ('the ESC') having advisory status, and provided that it was to consist of representatives of the various categories of economic and social activity.

2 Pursuant to the fourth paragraph of Article 194 of the Treaty, the Council, acting by a qualified majority, is to determine the allowances of members of the ESC.

3 The Committee of the Regions ('the CoR'), established under Article 198a of the Treaty which was inserted into the Treaty by the Treaty on European Union, is also a body having advisory status consisting of representatives of regional and local bodies.

4 Unlike the ESC, the CoR may itself fix the allowances of its members, provided that it observes the provisions adopted in the context of the budgetary procedure.

## Facts of the case

5 The applicant was appointed a member of the ESC by Council Decision 94/660/EC, Euratom, of 26 September 1994 appointing members of the Economic and Social Committee for the period from 21 September 1994 to 20 September 1998 (OJ 1994 L 257, p. 20).

6 By letters dated 21 December 1994 and 26 January 1995 the President of the ESC complained to the President of the Council about the fact that the CoR is itself entitled to fix the allowances of its members, whereas the ESC, whose members perform parallel and equivalent tasks, does not have that right. He pointed out that that situation is viewed by the advisers of the ESC as discriminatory as compared with the situation of CoR advisers. He went on to request that the same right should be granted to the ESC as to the CoR as regards allowances paid to its members, adding that that was a matter of dignity.

7 By letter of 1 March 1995 the Council Presidency replied to the Presidency of the ESC that the fourth paragraph of Article 194 of the Treaty did not allow any action to be taken on the claim by the ESC for autonomy in determining the financial status of its members. None the less, it stated that it was willing to reexamine the question of an upgrading of the allowances of the members of the ESC, if the ESC could justify this on the basis of technical objective considerations.

8 Subsequently, the Council's budgetary committee drew up a draft of a new decision based on the fourth paragraph of Article 194 of the Treaty concerning the allowances of the members of the ESC.

9 By letter dated 1 June 1995 the President of the ESC informed the President of the Council that the ESC bureau had unanimously decided to reject that draft decision. However, it stated that, were one to regard the increase in allowances proposed as a simple correction in the light of cost of living trends, the ESC bureau would be prepared to accept it provided that that increase was not accompanied by any special condition.

10 Thus, the Council increased the daily allowances of the members of the ESC by Decision 95/358/EC, Euratom of 29 June 1995 on the granting of daily allowances to Members of the Economic and Social Committee, alternates and experts (OJ 1995 L 205, p. 38, hereinafter 'Decision 95/358').

## Contentious procedure and forms of order sought by the parties

11 By application lodged at the Registry of the Court of First Instance on 10 May 1996 the applicant brought this action for annulment under Article 173 of the Treaty and an application for a declaration of a failure to act based on Article 175 of the Treaty.

12 The written procedure followed the normal course. On 9 December 1996 the Council lodged its rejoinder.

13 The applicant did not formulate a specific form of order sought.

14 The Council contends that the Court of First Instance should:

— dismiss the application as inadmissible;

— in the alternative, dismiss the action as unfounded;

— order the applicant to pay the costs.

15 By a document lodged on 24 October 1996 the Kingdom of the Netherlands sought leave to intervene in the case in support of the form of order sought by the defendant.

**Admissibility of the action**

*Arguments of the parties*

Action for annulment

16 In its defence the Council maintains that the action for annulment is inadmissible because it does not comply with the requirements of Article 44(1) of the Rules of Procedure.

17 It points out that under the terms of subparagraphs (c) and (d) of that provision the application must contain *inter alia* 'the subject matter of the proceedings and a summary of the pleas in law on which the application is based' and 'the form of

order sought by the applicant'. However, the application is silent on these points. It points to no act whose annulment the applicant seeks and contains no discernible form of order in that connection. Accordingly, in the light of the order of the Court of First Instance of 29 November 1993 in Case T-56/92 *Koelman* v *Commission* [1993] ECR II-1267, paragraph 19, the application lacks the degree of precision required for it to be admissible.

18 Moreover, the only act which could possibly have formed the subject-matter of an action for annulment is Decision 95/358 published in the *Official Journal of the European Communities* on 31 August 1995. However, if the applicant were seeking to proceed against that decision, his action for annulment would be manifestly out of time and therefore inadmissible. In fact, the period for bringing an action of two months, increased by the period on account of distance of 10 days in the case of Italy, expired well before the lodging of the application on 10 May 1996.

19 In his reply the applicant states that the act whose annulment he is seeking is 'the Council's refusal to accede to the request by the President of the ESC for a reconsideration by the Council of the allowances to be granted to members of the Economic and Social Committee.'

20 He was informed, he said, of this decision by a facsimile transmitted on 13 February 1996. Therefore, by lodging his application on 10 May 1996, that is to say within 60 days of being informed thereof, he observed the time limit for bringing his action.

21 In its rejoinder the Council states that it does not fully understand which decision the applicant is requesting the Court of First Instance to annul, being unaware in particular of the 'Council's refusal' to which the applicant refers. That confusion merely reinforces its view that the action for annulment is inadmissible as it does not comply with Article 44(1) of the Rules of Procedure (see paragraph 17 above).

22 In any event, even if, which is denied, the starting point of the period for bringing an action was 13 February 1996, as the applicant contends, the period of two months for bringing an action, increased by the period on account of distance of 10 days, expired on 23 April 1996, that is to say well before the lodging of the application on 10 May 1996. The action for annulment is therefore out of time and consequently inadmissible.

The claim for a declaration of a failure to act

23 In its defence the Council contends that the action for a declaration of a failure to act is inadmissible because it does not comply with the requirements of Article 44(1) of the Rules of Procedure.

24 In fact, although slightly clearer than the action for annulment, inasmuch as it criticizes the Council for 'having done nothing' or again criticizes that institution for the fact that, allegedly, the members of the ESC 'still do not have economic status', the action for a declaration of a failure to act is none the less confused and incoherent, thus also lacking the degree of precision required by Article 44(1) of the Rules of Procedure in order to be admissible (see also paragraph 17 above).

25 Moreover, the Council points out that an action for a declaration for a failure to act is admissible only if the applicant previously requested the defendant institution to act. Such a request to act is an 'essential initial formality' in the absence of which the action for a declaration of a failure to act must be held to be inadmissible.

26 In the present case, the applicant never addressed to the Council a request to act within the meaning of the second paragraph of Article 175 of the Treaty, so that its application for a declaration of a failure to act must be declared inadmissible.

27 Finally, the Council emphasizes that it is not and has never been guilty of a failure to act as regards fixing the allowances of the members of the ESC, owing to the fact that since 1958 it has regularly fixed those allowances, most recently in its Decision 95/358.

28 In its reply the applicant does not counter the Council's argument on the alleged inadmissibility of its claim for a declaration of a failure to act. Asserting that he does not wish to become lost 'in subtleties' he requests the Court of First Instance to 'adjudicate on the substance of this serious problem and not to rule on objections of inadmissibility'.

*Court's appraisal*

29 Under Article 111 of the Rules of Procedure, where an application is manifestly inadmissible, the Court of First Instance may, without taking further steps in the proceedings, give a decision on the action by reasoned order.

30 In the present case it is appropriate to apply that article.

31 First of all it should be observed that, in accordance with Article 19 of the EC Statute of the Court and Article 44(1)(c) of the Rules of Procedure, any application must state the subject-matter of the proceedings and contain a summary of the pleas in law on which it is based. That information must be sufficiently clear and precise so as to enable the defendant to prepare his defence and the Community judicature to adjudicate upon the action, if necessary without any other information in support. In order to ensure legal certainty and the proper administration of justice, for an action to be admissible, the essential factual and legal elements on which it is based must appear, at least summarily, but in a coherent and comprehensible fashion from the text of the application itself (judgment of the Court in Case C-52/90 *Commission* v *Denmark* [1992] ECR I-2187, paragraph 17; order in *Koelman* v *Commission* cited above, paragraph 21).

32 However, in the present case, it is not possible to discern unambiguously from the application either the act whose annulment is sought or the failure to act by the Council which the Court is asked to declare. Moreover, the application does not contain a clear and precise summary of the pleas in law raised.

33 It follows that the application does not satisfy the conditions laid down in Article 19 of the Statute of the Court and Article 44(1)(c) of the Rules of Procedure for it to be admissible.

34 It should be observed, next, that, by virtue of Article 19 of the Court and Article 44(1)(d) of the Rules of Procedure, the application must state the form of order sought by the applicant.

35 However, in the present case, the application seeks no specifically framed form of order. Nor does the reply. Although, in certain circumstances, the failure to specify the form of order sought may be remedied by the Community judicature where such form of order may be inferred from the whole of the arguments contained in the application (order of the court in Case C-388/93 *Pia Hifi* v *Commission* [1994] ECR I-387, paragraphs 8 to 10), such an inference is not possible in the present case, since the arguments contained in the application manifestly lack clarity and precision (see paragraph 32 above).

36 It follows that the application does not satisfy the conditions laid down in Articles 19 of the Statute of the Court and Article 44(1)(d) of the Rules of Procedure in order for it to be admissible.

37 Furthermore, as regards more specifically the claim for annulment, even if the alleged 'Council's refusal to accede to the request of the President of the ESC for reconsideration by the Council of the allowances to be granted to members of the Economic and Social Committee' could be deemed to be an actionable decision within the meaning of Article 173 of the Treaty, at all events the applicant was out of time in bringing his action.

38 In fact, as the applicant has himself submitted, he was informed of this decision on 13 February 1996. Consequently, by lodging his application on 10 May 1996, he did not observe the mandatory time-limit of two months and 10 days (on account of distance) provided for in the fifth paragraph of Article 173 and in Article 102(2) of the Rules of Procedure for the lodging of an action for annulment by an applicant resident in Italy.

39 Finally, as regards more specifically the claim for a declaration of a failure to act, it is clear from the whole file that, prior to bringing this action, the applicant did not duly follow the pre-litigation procedure by addressing to the Council a request to act within the meaning of the second paragraph of Article 175 of the Treaty. Thus he omitted to fulfil an essential formal requirement which entails the inadmissibility of his claim for a declaration of a failure to act (see, to this effect, the judgment in Case 17/57 *Steenkolenmijnen* v *High Authority* [1959] ECR 1).

40 Moreover, whilst the applicant seems to suggest in his application that the pre-litigation procedure was correctly followed in the present case, since 'the President of the ESC constantly reminded the Council of Ministers of the need to take a decision', it should be observed that, even if that could be construed as a request to act within the meaning of the second paragraph of Article 175 of the Treaty, that request would not cure the abovementioned defect inasmuch as an action for failure to act must be brought by the person who prior thereto had requested the defendant institution to act.

41 In the light of the foregoing this action must be dismissed as clearly inadmissible.

## The application to intervene

42 Under those circumstances it is not necessary to give a decision on the application for leave to intervene made by the Netherlands.

## Costs

43 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 those incurred by the Council.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

**1. The action is dismissed as clearly inadmissible.**

**2. The applicant shall pay the costs.**

Luxembourg, 6 February 1997.

H. Jung — Registrar

B. Vesterdorf — President