ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
13 February 1998 *

In Case T-276/97,

Guérin Automobiles EURL, a company in liquidation governed by French law, established at Alençon (France), acting in the person of Xavier Lemée, liquidator, represented by Jean-Claude Fourgoux, of the Paris and Brussels Bars, with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4 Rue Béatrix de Bourbon,

applicant,

v

Commission of the European Communities,

defendant,

APPLICATION for the annulment of Commission Decision SG(97) D/823182 of 25 April 1997 rejecting complaint IV/F-2/34.423, lodged by the applicant,

* Language of the case: French.

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

composed of: V. Tiili, President, C. P. Briët and A Potocki, Judges,

Registrar: H. Jung,

makes the following

Order

Facts

1 On 3 August 1992 Guérin Automobiles EURL (hereinafter 'Guérin Automobiles') lodged a complaint with the Commission against Volvo France SA, the importer of Volvo cars.

2 In the complaint it requested the Commission to declare, in accordance with Article 3(2) of Council Regulation No 17 of 6 February 1962, the first regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87), that there had been an infringement of Article 85 of the EEC Treaty.

3 Guérin Automobiles was declared insolvent by judgment of the Tribunal de Commerce, Alençon, of 22 May 1995. Xavier Lemée, its legal representative, was appointed as liquidator of the company.

4 By decision contained in a letter of 25 April 1997 the Commission definitively rejected the complaint of Guérin Automobiles of 3 August 1992.

5 The letter was sent by registered post with acknowledgement of receipt to the address of the liquidator, as follows:

'Guérin Automobiles
c/o M. Lemée
44, rue du Jeudi, BP 263
F-61008 Alençon Cedex'.

Procedure and forms of order sought

6 By application lodged at the Registry of the Court of First Instance on 20 October 1997 the applicant, represented by its liquidator, brought this action.

7 It asks the Court to

— annul the Commission's decision of 25 April 1997;

— acknowledge that the applicant reserves the right to bring an action for compensation under Article 215 of the EC Treaty;

— order the Commission to pay the costs.

Admissibility

Arguments of the applicant

8 The applicant claims that under the French legislation on bankruptcy of companies, the judgment in bankruptcy removing from the debtor the power to administer and dispose of its assets has the effect of substituting the liquidator for it as regards the exercise of rights over its property. In particular, only the liquidator can be the addressee of acts concerning the undertaking he represents.

9 The applicant points out in that respect that the Commission's letter of 25 April 1997 was addressed to 'Guérin Automobiles c/o M. Lemée' and not to 'Me Lemée pris en qualité de liquidateur judiciaire de la société Guérin automobiles' (M. Lemée in his capacity as liquidator of the company Guérin Automobiles).

10 He insists that the letter could not be regarded as legal notification because it made no mention of the remedies available to challenge it or the time-limit for lodging an action to that end, information which was essential for the preservation of its rights of defence.

11 It concludes that the letter cannot serve as the point from which time starts to run for determining the time-limit for bringing an action for annulment.

Findings of the Court

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

13 The Court considers that the information contained in the application and the documents annexed to it contain sufficient information to make it unnecessary to pursue the written procedure or to open the oral procedure.

14 It is settled case-law that the two-month time-limit provided for by Article 173 of the Treaty is a matter of public policy intended to ensure that legal positions are clear and certain and to avoid any discrimination or arbitrary treatment in the administration of justice, and the Court of First Instance may of its own motion consider whether it has been complied with (see *inter alia* Case C-246/95 *Coen* [1997] ECR I-403, paragraph 21, and Joined Cases T-121/96 and T-151/96 *Mutual Aid Administration Services* v *Commission* [1997] ECR II-1355, paragraphs 38 and 39).

15 The Commission's decision rejecting Guérin Automobiles' complaint was made in the form of a registered letter dated 25 April 1997. As shown by the stamp on the copy of that letter in the annex to the application, the liquidator became aware of the contents of the decision on 30 April 1997 at the latest.

16 By virtue of the fifth paragraph of Article 173 of the Treaty, and in accordance with Article 102 of the Rules of Procedure of the Court of First Instance and Article 1 of Annex II to the Rules of Procedure of the Court of Justice, the action for annulment ought to have been lodged, taking into account the extension of the time-limit allowed on account of distance, no later than two months and six days from 1 May 1997.

17 Acccordingly, since it was lodged on 20 October 1997, it is manifestly out of time.

18 The applicant seeks to rely on the fact that the addressee of the decision was wrongly described; but purely formal errors such as that cannot prevent the application of the time-limits laid down by the Treaty, provided that the addressee could see that it was addressed to him (order of the Court of Justice of 4 July 1984 in Case 82/84 *Metalgoi* v *Commission* [1984] ECR 2585).

19 The contents of the contested decision and the various references it contains are sufficient to show that the liquidator would have understood that the decision was addressed to him.

20 As regards the applicant's argument that the notification ought to have included a reference to the remedies available to challenge it and the time-limit for bringing an action, it is sufficient to note that Community law imposes no such requirement in a case such as this.

21 Finally, the applicant has neither established nor referred to unforeseeable circumstances or *force majeure* justifying derogation from the applicable time-limit under the second paragraph of Article 42 of the EC Statute of the Court of Justice, applicable to proceedings before the Court of First Instance by virtue of Article 46 of that Statute.

22 In the light of those considerations the action must be dismissed as manifestly inadmissible.

Costs

23 Since this order was made before the application was notified to the defendant and before the latter could incur any costs it is sufficient to order the applicant to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

1. The action is dismissed as manifestly inadmissible.

2. The applicant shall bear its own costs.

Luxembourg, 13 February 1998.

H. Jung — Registrar

V. Tiili — President