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

In Case T-275/97,

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/3183 of 25 April 1997 rejecting the complaint by which Guérin Automobiles challenged the standard distribution contract for Nissan cars in France and its application (Case IV-35.095 (Guérin/Nissan France),

* Language of the case: French.

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

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

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 On 27 May 1994 Guérin Automobiles EURL (hereinafter 'Guérin Automobiles') lodged a complaint with the Commission against Nissan France SA, the importer of Nissan cars and a subsidiary of the Japanese Nissan manufacturer, challenging the standard distribution contract for Nissan cars in France and its application. The complaint was registered by the Commission on 6 June 1994 under No IV-35.095.

2 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.

3 By decision contained in a letter of 25 April 1997 the Commission definitively rejected the complaint of Guérin Automobiles of 27 May 1994.

4 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'.

5 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, in which 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.

Law

6 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.

7 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.

8 According to the fifth paragraph of Article 173 of the Treaty, an action for annulment must be instituted within two months of publication of the contested measure, or of its notification to the applicant, or, in the absence thereof, of the day on which it came to the knowledge of the latter. It is settled case-law that that time-limit 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).

9 It is not disputed in this case that the contested measure was notified to 'Guérin Automobiles, c/o M. Lemée' by letter of 25 April 1997. The liquidator had knowledge of it by 30 April 1997 at the latest, as shown by his stamp on the copy of the letter attached as annex 7 to the application.

10 It follows that the application, which was registered at the Registry of the Court of First Instance on 20 October 1997, was not brought within the two month time-limit laid down in the fifth paragraph of Article 173 of the Treaty, increased by the six-day extension on account of distance in accordance with Article 102(2) 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.

11 The applicant argues, however, that time does not start to run from the date of the Commission's letter, 25 April 1997, because it was addressed to 'Guérin Automobiles, c/o M. Lemée', and not to 'M[e] Lemée pris en qualité de liquidateur judiciaire de la société Guérin automobiles' (Maître Lemée in his capacity as liquidator of the company Guérin Automobiles). It claims that under Article 148 et seq. of French Law 85-98 of 25 January 1985 on bankruptcy of companies (*Journal Officiel de la République française* of 26 January 1985), 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 and actions over its property. In particular, only the liquidator can be the addressee of acts concerning the undertaking he represents.

12 That argument cannot be upheld in view of the fact that in this case the contested measure was in fact notified to the liquidator in person and at his address, the Commission having, in any case, complied for the purposes of such notification with the instructions given by the applicant's lawyer in his fax of 21 April 1997, as the Commission reminded him in its letter of 26 August 1997 (see annex 6 to the application).

13 The use of the words 'Guérin Automobiles, c/o M. Lemée' appears sufficient in so far as, first, a company which is in liquidation, although deprived of the power to administer and dispose of its assets, continues to exist until winding up has been completed and, secondly, the abbreviation 'c/o', which is in common use, is an acceptable way of indicating, in the context of this case, the fact that the company was represented by the liquidator appointed by the judgment in bankruptcy.

14 Even if the phrase were incorrect, the error which the applicant seeks to rely on would in any event be a purely formal one, and purely formal errors do not affect the regularity of notification provided that the measure in question actually reached the addressee and the latter 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). Those requirements are fulfilled in this case since the liquidator could not have misunderstood either the significance of the notification or the fact that it was addressed to him in his capacity as liquidator of Guérin Automobiles. In that regard it should be noted that the Commission's letter of 25 July 1996 (see annex 4 to the application), which constituted notification under Article 6 of Regulation No 99/63/EEC of the Commission of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition 1963, p. 47), employed the same formula and that the applicant's lawyer stated in

his reply of 29 August 1996 that 'Guérin Automobiles acknowledges receipt of [that] letter' (see annex 5 to the application).

15 Furthermore, the applicant has neither established nor even 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.

16 Lastly, the applicant maintains that the liquidator could not regard the Commission's letter of 25 April 1997 as official notification because the letter made no mention of the remedies available to challenge it or of the time-limit for lodging an action to that end, information which was essential, it maintains, for the preservation of its rights of defence.

17 All that need be said in that respect is that Community law does not require any such condition to be fulfilled in a case such as this.

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

Costs

19 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 (Second 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

A. Kalogeropoulos — President