ORDER OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
28 November 1996 *

In Case T-447/93 (92),

Associazione Italiana Tecnico Economica del Cemento (AITEC), an association governed by Italian law, established in Rome, represented by Wilma Viscardini Dona, of the Padua Bar, and Éric Morgan de Rivery, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume,

applicant,

v

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

defendant,

APPLICATION for taxation of costs pursuant to the judgment of the Court of First Instance of 6 July 1995 in Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971,

* Language of the case: French.

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

composed of: C. W. Bellamy, President, H. Kirschner, C. P. Briët, A. Kalogeropoulos and A. Potocki, Judges,

Registrar: H. Jung,

makes the following

Order

1 By application lodged at the Registry of the Court of Justice on 27 March 1992, the Associazione Italiana Tecnico Economica del Cemento ('AITEC'), an Italian cement producers' association, brought an action for annulment of the decision of 1 August 1991 contained in Commission communication 92/C 1/03 addressed pursuant to Article 93(2) of the EEC Treaty to other Member States and interested parties concerning aid to Heracles General Cement Company in Greece (OJ 1992 C 1, p. 4).

2 Similarly, by applications lodged at the Registry of the Court of Justice on 30 March 1992, Titan Cement Company SA, a company incorporated under Greek law, and the British Cement Association (BCA), together with three of its members, respectively brought actions for annulment of the same decision. The three cases were joined by order of the President of the Court of Justice of 15 October 1992 for the purposes of the written procedure, the oral procedure and the judgment.

3 By orders of the President of the Court of Justice of 12 October 1992 and 24 March 1993, the Hellenic Republic and, subsequently, Heracles General Cement Company were given leave to intervene in support of the form of order sought by the defendant in the three cases. They lodged their statements in intervention, which were common to the three joined cases, on 7 December 1992 and 3 July 1993 respectively.

4 On 27 September 1993, the Court of Justice referred the cases to the Court of First Instance.

5 In its judgment of 6 July 1995 in Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971, the Court of First Instance declared AITEC's action admissible and, like the other actions, well founded. The Commission was ordered to bear its own costs and to pay the costs incurred by the applicants, apart from those caused by the interventions. The interveners were ordered to bear their own costs and to pay the costs incurred by the applicants in the context of the interventions.

6 By letter of 1 February 1996, AITEC claimed reimbursement of the sum of BFR 7 566 995 in respect of recoverable costs which it had paid in order to defend its interests in the proceedings. It stated that that sum corresponded to the fees and disbursements paid to Siméon et Associés, Brussels and Paris, and to the Viscardini Dona Chambers, Padua, apart from the costs incurred in the context of the applications to intervene (BFR 180 000).

7 By letter of 14 February 1996, the Commission stated that it regarded that claim as excessive in the light of the consistent case-law of the Court of Justice, according to which the determination of such a claim must take into account the purpose and nature of the proceedings, their significance from the point of view of Community law, the difficulties presented by the case and the amount of work involved. In particular, it stated, with regard to the amount of work, that no objective data (for example, the number of hours charged) had been provided. It further observed that

the concept of 'expenses necessarily incurred', within the meaning of Article 91(b) of the Rules of Procedure of the Court of First Instance, must in principle be regarded as covering the remuneration of one lawyer only.

8 By application for taxation lodged at the Registry of the Court of First Instance on 10 June 1996, AITEC applied for the costs payable by the Commission to be fixed in the sum of BFR 7 566 497.

Summary of the arguments of the parties

9 AITEC considers that the case justified its instructing French chambers established in Brussels and specializing in Community law. However, since a significant proportion of the documentation was drawn up in Italian and concerned the Italian market, it also thought it appropriate to retain in the case its usual Italian competition lawyer. It further states that there was no duplication of work, and explains the way in which the tasks were allocated.

10 The case proved to be particularly difficult and time-consuming, by reason of the complexity of the facts and the ambiguous interpretation given by the Commission to its 1987 decision, and also of the protracted nature of State aid proceedings. AITEC draws attention, in particular, to the difficulty of producing evidence and providing figures in the absence of any serious economic research carried out on the initiative of the Commission in relation to the impact on intra-Community trade of the State measures in question.

11 AITEC claims to have been obliged to carry out lengthy research with a view to proving the erroneous nature of the Commission's interpretation of the judgment of the Court of Justice in Joined Cases 166/86 and 220/86 *Irish Cement* v *Commission* [1988] ECR 6473. The difficulties presented by the case and the

amount of work involved are evident from the fact that the Commission changed its arguments concerning the basis of its decision, switching from reliance on the Treaty to reliance on secondary legislation, from the coordination required with counsel in the other cases and from the very extensive research carried out into the issue of the admissibility of actions brought by associations.

12 According to the applicant, the financial interest presented by the dispute corresponded to the losses suffered by 12 of its members, estimated at LIT 186 billion.

13 In its written observations submitted on 12 August 1996, the Commission considers that the applicant has failed to show any indispensable need for the involvement of two lawyers, taking into account, for example, the nature of the dispute, the need for an analysis of economic and legal issues and the examination of complex facts, as required by the case-law of the Court of First Instance cited by AITEC's counsel.

14 It maintains that the fees of Ms Viscardini include a certain amount of work relating to the interventions, the cost of which the Commission is not in any case required to bear.

15 It denies that the case presented any significant difficulties. The essential issue was the degree of analysis and reasoning required of the Commission's decision and the determination in that regard of the question whether the dispute involved a 'classic' case of the application of a previously approved scheme, and thus whether the judgment in *Irish Cement* v *Commission*, cited above, was applicable. It is difficult to see how that question could have obliged counsel for AITEC 'to carry out a comprehensive examination of the case-law relating to aid schemes'. Nor could it have required him to undertake 'various research activities'.

16 The Commission points out that the amount of aid in issue was relatively small, totalling ECU 170 million. Moreover, the amount of the losses suffered by 12 members of AITEC, namely LIT 186 billion, to which the Court referred solely in the context of admissibility, was merely an estimate and should thus be treated with some caution.

17 In conclusion, the Commission regards the amount claimed as excessive and, in the absence of the provision by AITEC of any precise, relevant information, it requests the Court to tax the recoverable costs in a maximum sum of BFR 1 200 000, by analogy with the assessment contained in the order of the Court of Justice in Case C-222/92 DEP *SFEI and Others* v *Commission* [1994] ECR I-5431.

Findings of the Court

18 According to Article 91(b) of the Rules of Procedure, recoverable costs are regarded as including 'expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers'.

19 It must be recalled, as a preliminary point, that the Community judicature is not empowered to tax the fees payable by the parties to their own lawyers but may determine the amount of those fees which may be recovered from the party ordered to pay the costs. It follows that the Court is not obliged to take account of any national scales of lawyers' fees or any agreement in relation to fees concluded between the party concerned and his agents or advisers. In the absence of Community provisions laying down fee scales, the Court of First Instance must make an unfettered assessment of the facts of the case, taking into account the purpose and nature of the proceedings, their significance from the point of view of Community law, as well as the difficulties presented by the case, the amount of work generated by the dispute for the agents and advisers involved and the financial

interest which the parties had in the proceedings (orders of the Court of First Instance in Case T-78/89 DEP *PPG Industries Glass* v *Commission* [1993] ECR II-573, paragraph 36, and in Case T-2/93 (92) *Air France* v *Commission* [1995] ECR II-533, paragraph 16).

20 In the present case, the Commission denies that the costs of instructing more than one lawyer are recoverable. According to the case-law of the Court of First Instance, however, where the dispute presents particular difficulties, the remuneration of more than one lawyer may be regarded as falling within the ambit of 'expenses necessarily incurred' (see the order in *PPG Industries Glass* v *Commission*, cited above, paragraphs 39 and 40).

21 AITEC was obliged to submit arguments concerning the Italian market, relating above all to the admissibility of its action, by using various documents in Italian. Consequently, the services of its Italian lawyer were necessary for the presentation of its case.

22 As regards the amount of those necessary expenses, it must be stated that the applicant was obliged to coordinate its pleadings with those of the other Greek and United Kingdom applicants. Moreover, the fees of the Italian lawyer in fact include the cost of certain work relating to the interventions, which the Commission is not required to bear.

23 As regards the fees of the French lawyer, a specialist in Community law, it must be observed that the case raised complex issues. The admissibility of an action for annulment brought by a trade association was the subject of a fresh approach by the Court. The substance of the case was also complex, since the Commission's approach was shown to be contradictory. Furthermore, the proceedings concerned economic factors arising for the most part outside Italy. In addition, it was appropriate to take into consideration the circumstances of a parallel decision concerning

aid granted to Halkis. The annulment of the contested decision was based on the fact that the Commission had failed to examine the effects of the aid on intra-Community competition outside Greece, in Italy and the United Kingdom. Those special circumstances of the present case justified recourse to two lawyers, and it is appropriate, in the Court's view, to fix the recoverable fees and expenses in the maximum sum of BFR 3 500 000.

24 In view of the fact that the Court of First Instance, in fixing the recoverable costs, has taken into account all the circumstances of the case up until the time of giving its decision, there is no need for a separate ruling on the costs incurred by the parties for the purposes of these ancillary proceedings (see, for example, the order of the Court of Justice in Case T-84/91 DEP *Meskens* v *Parliament* [1993] ECR II-757, paragraph 16).

On those grounds,

THE COURT OF FIRST INSTANCE
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hereby orders:

The total amount of the costs recoverable by the applicant in Case T-447/93 is fixed in the sum of BFR 3 500 000.

Luxembourg, 28 November 1996.

H. Jung — Registrar

C. W. Bellamy — President