ORDER OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)
29 September 1997 *

In Case T-70/97,

Région Wallonne, represented by Jean-Marie de Backer, Olivier Ralet and Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Fiduciaire Myson SARL, 30 Rue de Cessange,

applicant,

v

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, 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 the annulment of Commission Decision 97/271/ECSC of 18 December 1996 concerning the financial assistance granted by the Région Wallonne to the steel undertaking Forges de Clabecq (OJ 1997 L 106, p. 30),

* Language of the case: French.

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

composed of: A. Saggio, President, A. Kalogeropoulos, V. Tiili, R. M. Moura Ramos and K. J. Pirrung, Judges,

Registrar: H. Jung,

makes the following

Order

Facts

1 In June 1996 the Belgian authorities notified the Commission of financial assistance to be granted by the Région Wallonne (Region of Wallona), through Société Wallonne de la Sidérurgie (hereinafter 'SWS'), a company which it wholly owns, to the steel undertaking Forges de Clabecq. That assistance consisted, chiefly, of a capital injection of BFR 1 500 million.

2 Pending a Commission decision authorizing that assistance and to enable the undertaking to continue to operate, the Région Wallonne granted bridging loans (in the form of advance payments on the capital increase), waived claims in respect of loans by SWS and rescheduled the undertaking's debts to financial institutions which were partially in public hands.

3 In its decision 97/271/ECSC of 18 December 1996 concerning the financial assistance granted by the Région Wallonne to the steel undertaking, Forges de Clabecq (OJ 1997 L 106, p. 30; hereinafter 'the decision' or 'the contested decision'), the Commission considered that the assistance constituted aid prohibited by Article 4 of the ECSC Treaty and Belgium was consequently required to abolish the aid and to demand that aid already paid be reimbursed.

4 On 19 December 1996, the administrators of the Forges de Clabecq announced that the undertaking was entering voluntary liquidation. By judgment of the Tribunal de Commerce (Commercial Court), Nivelles of 3 January 1997 the liquidation was formally commenced.

5 The decision was notified to the Belgian authorities on 23 January 1997 and was published in the Official Journal on 24 April 1997.

Procedure and arguments of the parties

6 In those circumstances, by application lodged at the Registry of the Court of Justice on 25 February 1997, the applicant brought an action for annulment of the Commission's decision. The action was registered under the number C-95/97.

7 By order of 21 March 1997, the Court of Justice held that it was manifestly not competent on the ground that the Région Wallonne cannot be treated as a Member State and referred the action to the Court of First Instance (order of the Court in Case C-95/97 *Région Wallonne* v *Commission* [1997] ECR I-1787). The action was registered at the Registry of the Court of First Instance under the number T-70/97.

8 By a document lodged at the Registry of the Court of First Instance on 5 May 1997, the Commission raised a plea of inadmissibility. The applicant submitted its observations on the plea of inadmissibility on 4 July 1997.

9 The applicant claims that the Court should:

— annul the decision;

— order the defendant to pay the costs.

10 The defendant claims that the Court should:

— dismiss the application as inadmissible;

— order the applicant to pay the costs.

Law

11 Article 114(3) of the Rules of Procedure provides, that unless the Court of First Instance otherwise decides, the remainder of the proceedings concerning the plea of inadmissibility are to be oral. The Court considers that in the present case there is sufficient information on the file and it is not necessary to open the oral procedure.

Admissibility

Arguments of the parties

12 In support of its plea of inadmissibility, the Commission states that the applicant manifestly does not have capacity to bring proceedings under the second paragraph of Article 33 of the ECSC Treaty.

13 In the alternative, the Commission claims that the applicant does not even have a right of action under the fourth paragraph of Article 173 of the EC Treaty, which is relied upon by the applicant but does not apply in the present case. In that respect, it notes that the applicant stressed that the financial assistance was paid, not by the Région Wallonne, but by SWS, which is an independent body. According to the Commission, the applicant thus implicitly acknowledged that it was neither directly nor individually concerned by the Commission's decision.

14 The Commission also points out that in matters of State aids, liability always lies with the Member State concerned, irrespective of the public authority (national, regional or municipal) which granted the aid. In that connection, it recalls that its decisions on State aids are always addressed to the Member State and that, when it initiates proceedings against a Member State under Article 169, that Member State cannot reasonably rely on the conduct of internal State authorities in order to contest the alleged infringement of the Treaty. It also recalls that regional and local authorities play no independent role in the administrative proceedings undertaken by the Commission in matters of State aids. According to the Commission, it is apparent from all the foregoing that, in the present case also, the decision adopted affects only the Member State in question and not the applicant.

15 The Commission notes, furthermore, that recognizing the right of internal State authorities to bring actions would result in an increase in the number of actions.

The existence of a right of direct action for both Member States and regional and local authorities would also have other disadvantages, in particular the possibility of 'forum shopping' (it is likely that actions would be brought under the fourth, rather than the first paragraph of Article 173 of the EC Treaty, in order to have a right of appeal). Also, if a Member State intends to comply with the Commission's decision and therefore not to bring proceedings, the internal State authority on whose initiative the aid was granted could undermine that proper performance by initiating proceedings.

16 In the alternative, the Commission claims that the applicant failed to respect the time-limits for bringing proceedings. In that respect, it points out that the applicant was aware of the decision well before 23 January 1997, which is, moreover, apparent from several passages in the application. The Commission considers that, in those circumstances, the time-limit of one month should be calculated from 18 December 1996.

17 According to the applicant, the Court of Justice held in its order of 21 March 1997 that, in the present case, the second paragraph of Article 33 of the ECSC Treaty should be applied in conjunction with the fourth paragraph of Article 173 of the EC Treaty. Furthermore, the Court of Justice allegedly held that the applicant is a legal person and, as such, may bring an action before the Court of First Instance under the second paragraph of Article 33 of the ECSC Treaty.,

18 The applicant considers that, in any event, proceedings under the second paragraph of Article 33 of the ECSC Treaty may be brought by any natural or legal person and not only by undertakings and associations of undertakings. It bases that conclusion on Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1993 L 144, p. 21) which contains the phrase 'actions brought by natural or legal persons pursuant to the second paragraph of Article 33 ... of the ECSC Treaty', whilst the original text of the decision referred to 'actions brought against the Commission pursuant to the second paragraph of Article 33 and Article 35 of the ECSC Treaty by undertakings or by associations of undertakings'. According to the applicant, the Council introduced that amendment in its capacity as constitutional legislature.

19 Furthermore, the applicant considers that the EC Treaty takes precedence over the ECSC Treaty, since the latter will expire in 2002. Finally, to give differing interpretations to Article 33 of the ECSC Treaty, on the one hand, and to Article 173 of the EC Treaty, on the other, would be tantamount to discrimination. On that point, the applicant points out that its application is undeniably admissible under Article 173 of the EC Treaty, since the Court of Justice has already given a ruling to that effect in another case brought by the applicant against the Commission concerning a decision on State aids (Joined Case 62/87 and 72/87 *Exécutif Régional Wallon and Glaverbel* v *Commission* [1988] ECR 1573, paragraph 8).

20 Finally, the applicant challenges the Commission's argument that the application was lodged outside the time-limits. It claims that it adhered, in all respects, to the time-limit laid down in the third paragraph of Article 33 of the ECSC Treaty and that, furthermore, it is not possible to challenge a decision before notification thereof, since that would amount to challenging a measure without legal effect.

Assessment of the Court

21 First of all, the Court considers that, contrary to what is claimed by the applicant, the Court of Justice did not adopt a position in its order of 21 March 1997, cited above, on the admissibility of the application under the second paragraph of Article 33 of the ECSC Treaty and the fourth paragraph of Article 173 of the EC Treaty. On the contrary, the order states that in so far as the applicant bases the admissibility of its application on those provisions, the case falls within the jurisdiction of the Court of First Instance.

22 Similarly, and contrary to what is suggested by the applicant, Article 33 of the ECSC Treaty has not been amended since the Court of First Instance was created. That observation is not invalidated by the fact that the Council used different wording when listing the powers of the Court of First Instance. Indeed, that list must be interpreted in the light of Article 33 of the ECSC Treaty, which provides an exclusive enumeration of the persons entitled to bring an action for a declara-

tion that a measure is void (judgment in Case 222/83 *Commune de Differdange* v *Commission* [1984] ECR 2889, paragraph 8). In particular, as regards legal persons, the Court of Justice held in that judgment that, since undertakings and associations of undertakings may bring actions under the second paragraph of Article 33 of the ECSC Treaty for a declaration that a measure is void, local authorities have no right to bring such proceedings under that provision.

23 It follows from the foregoing that the applicant has no right of action under the second paragraph of Article 33 of the ECSC Treaty.

24 Finally, the Court observes that Article 173 of the EC Treaty does not apply to the present application, which seeks the annulment of a decision adopted under the ECSC Treaty. In that connection, the applicant cannot rely on the principle of equal treatment, in complaining that actions for annulment under Article 173 of the EC Treaty may be brought by a broad group of natural and legal persons, whilst actions under Article 33 of the ECSC Treaty may be brought only by two clearly defined groups of legal persons. Indeed, it is clear from Article 232 of the EC Treaty that the provisions of the EC Treaty do not affect the provisions of the ECSC Treaty which, consequently, retain their own scope (see Case 239/84 *Gerlach* [1985] ECR 3507, paragraph 9 and 328/85 *Deutsche Babcock Handel* [1987] ECR 5136, paragraph 10).

25 It follows from all the foregoing that the application must be declared inadmissible, without it being necessary to rule on the defendant's argument that the action was also brought out of time.

Costs

26 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 the Commission asked for the applicant to be ordered to pay the costs, the applicant must be ordered to bear its own costs and those of the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber, Extended Composition)

hereby orders:

1. The application is dismissed as inadmissible.

2. The applicant is ordered to pay the costs.

Luxembourg, 29 September 1997

H. Jung — Registrar

A. Saggio — President