

ORDER OF THE PRESIDENT OF THE FOURTH CHAMBER
OF THE COURT OF FIRST INSTANCE

18 March 1997 *

In Case T-135/96,

Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises (UEAPME), an association formed under Belgian law, established in Brussels, represented by Francis Herbert, of the Brussels Bar, and Geneviève Tuts, of the Liège Bar, with an address for service in Luxembourg at the Chambers of Carlos Zeyen, 67 Rue Ermesinde,

applicant,

v

Council of the European Union, represented by Frédéric Anton, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

APPLICATION for annulment in whole or, in the alternative, in part of Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4),

* Language of the case: French.

THE PRESIDENT OF THE FOURTH CHAMBER
OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

- 1 By application lodged at the Court Registry on 5 September 1997 the Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises (UEAPME), an association formed under Belgian law, established in Brussels, brought an action under the fourth paragraph of Article 173 of the EC Treaty for the annulment in whole or, in the alternative, in part of Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4).

- 2 By application lodged on 24 January 1997 the Confédération Générale des Petites et Moyennes Entreprises et du Patronat Réel (CGPME), an association formed under French law, established in Puteaux (France), the Union Professionnelle Artisanale (UPA), an association formed under French law, established in Paris, the Nationaal Christelijk Middenstandsverbond (NCMV), an association formed under Belgian law, established in Brussels, the Koninklijke Vereniging MKB-Nederland, an association formed under Netherlands law, established in Delft (Netherlands), the Fédération des Artisans, an association formed under Luxembourg law, established in Luxembourg, the Confederazione Generale Italiana del Artigianato (Confartigianato), an association formed under Italian law, established in Rome, the Wirtschaftskammer Österreich, an organization governed by Austrian public law, established in Vienna, and the Bundesvereinigung der Fachverbände des deutschen Handwerks eV (BFH), an association formed under German law, established in Bonn, represented by Paul Beghin, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers at 67 Rue Ermesinde, applied for leave to intervene in these proceedings in support of the form of order sought by the applicant.

- 3 The application to intervene was made in accordance with Article 115 of the Rules of Procedure of the Court of First Instance and submitted pursuant to the second paragraph of Article 37 of the EC Statute of the Court of Justice.
- 4 The CGPME and the other associations, all of them members of the UEAPME, the applicant, are national organizations representing the interests of small and medium-sized enterprises ('SME') in several Member States.
- 5 They claim to have a direct and specific interest in the result of the case before the Court. First, they find themselves obliged to call in question the decision-making process of which the contested directive is the outcome because they fear that that process could set a precedent justifying the exclusion of representatives of SMEs from future negotiations. They further point out that the UEAPME was excluded from negotiations on the subject of flexible working hours. Secondly, they are affected at national level by the directive, which must be transposed either by means of collective bargaining or by laws, regulations and administrative provisions. In either of those two cases they would be faced with the content of the directive, which does not lay down a specific, harmonized regime on three matters that are sensitive for the SMEs and which presents them with a *fait accompli* inasmuch as they could not obtain a hearing during the negotiations at European level. Moreover, the various methods of transposition available to the Member States could result in an unharmonized application of the directive, thus giving rise to distortions in competition. The CGPME and the other associations point out that, according to well established case-law, the intervention of associations, groups or federations representing a socio-professional category or an industry at European level is admissible in proceedings before the Community judicature (judgments of the Court of Justice in Case 113/77 *NTN Toyo Bearing and Others v Council* [1979] ECR 1185, Case 155/79 *AM & S Europe v Commission* [1982] ECR 1575, Joined Cases 43/82 and 63/82 *VBVB and VBBB v Commission* [1984] ECR 19 and Joined Cases 228/82 and 229/82 *Ford v Commission* [1984] ECR 1129).

- 6 The application for leave to intervene was served on the parties. By letter of 11 February 1997 the applicant stated that it supported the application. The defendant, however, raised an objection to it on 12 February 1997. According to the defendant, the CGPME and the other associations, which are members of the applicant, have not established an interest distinct from that represented by the applicant. The case-law referred to in the application for leave to intervene is of no relevance in the present case since, in the cases in question, the interveners had an interest distinct from that of the party in support of which they sought to intervene.
- 7 Under Article 16 and the third subparagraph of Article 116(1) of the Rules of Procedure, the President of the Fourth Chamber has power to decide on the application by means of an order.
- 8 Under the second paragraph of Article 37 of the Statute of the Court of Justice, the right to intervene is subject only to the condition that the applicant for leave to intervene establishes an interest in the result of the case submitted to the Court of First Instance.
- 9 Without it being necessary to rule on whether in principle an applicant for leave to intervene must always establish that he has an interest distinct from that of the party in support of which he seeks to intervene, it must be held that, in the present case, the CGPME and the other associations have established an interest distinct from that of the applicant. Since the content of the directive restricts the freedom to negotiate of the CGPME and the other associations which, in their capacity as national representative organizations, are called upon to participate in the transposition of the directive, it affects their own interests as representative organizations at national level, whereas the interest of the applicant is above all to be able to participate in the negotiations on the framework agreement at European level.

- 10 In those circumstances, the CGPME and the other associations have established an interest in intervening in the present case.

On those grounds,

THE PRESIDENT OF THE FOURTH CHAMBER
OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The Confédération Générale des Petites et Moyennes Entreprises et du Patronat Réel (CGPME), the Union Professionnelle Artisanale (UPA), the Nationaal Christelijk Middenstandsverbond (NCMV), the Koninklijke Vereniging MKB-Nederland, the Fédération des Artisans, the Confederazione Generale Italiana del Artigianato (Confartigianato), the Wirtschaftskammer Österreich and the Bundesvereinigung der Fachverbände des deutschen Handwerks eV (BFH) are granted leave to intervene in Case T-135/96 in support of the form of order sought by the applicant.
2. The Registrar shall serve on the interveners a copy of every document served on the parties.
3. A period shall be prescribed within which the interveners must state in writing the pleas in law relied on in support of the form of order which they seek.

4. Costs are reserved.

Luxembourg, 18 March 1997.

R. Grass

Registrar

K. Lenaerts

President