ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
10 July 2002 *

In Case T-387/00,

Comitato organizzatore del convegno internazionale 'Effetti degli inquinamenti atmosferici sul clima e sulla vegetazione', having its registered office in Rome, Italy, represented by P. Grassi and G. Russo, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by G. Valero Jordana and R. Amorosi, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

APPLICATION for annulment of the measure allegedly contained in a letter from the Commission requesting the applicant to repay part of the sums granted under financing contract B4/91/3046/11396 concluded between the Commission and the applicant to enable the organisation of a conference to study the effects of atmospheric pollutants on climate and vegetation,

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

composed of: M. Vilaras, President, V. Tiili and P. Mengozzi, Judges,

Registrar: H. Jung,

makes the following

Order

Facts

1 The applicant's mission was to organise a conference of international studies entitled 'Effects of atmospheric pollutanta on climate and vegetation', which was held in Taormina, Italy, from 26 to 29 September 1991.

2 To that end, on 20 December 1991 the applicant and the Commission entered into a contract (hereinafter 'the contract') under which the Commission undertook to finance part of the costs incurred in printing the documentation relating to the conference. More specifically, Clause 3 of the contract stipulated that the Commission undertook to pay to the applicant the agreed amount of no more than 20 000 euros or the equivalent of 71.57% of the total cost entered under the conference budget's item of expenditure 'Printed Matter' if the amount of that item were less than the estimated amount.

3 Under Clause 4 of the contract, 80% of the agreed amount was to be paid to the applicant within 60 days from the date of signature and the balance within 60 days from the receipt and approval by the Commission of the conference report and final budget. That clause also stipulated that those documents were to reach the Commission by 28 February 1992, and the Commission reserved the right to refuse payment if that time-limit was not observed.

4 Clause 13 stipulated that any dispute arising out of the contract was subject to the exclusive jurisdiction of the courts and tribunals of Brussels.

5 In performance of the contract, the Commission transferred the sum of 16 000 euros to the applicant.

6 By fax of 23 February 1992, the applicant's legal representative informed the Commission that he was unable to supply the documents relating to the conference on the date stipulated in the contract, because they had been destroyed

in a fire at the offices of Melograno Congressi, the company responsible for organising the conference. He had requested certified copies from the bodies involved and planned to forward that documentation as soon as he had received it.

7 By letter of 11 June 1996 sent to the applicant's legal representative, the Commission claimed repayment of the advance of 16 000 euros paid in performance of the contract. Enclosed with the letter was a debit note for that amount, in which it was stated that the claim for repayment was justified by the debtor's failure to fulfil its contractual obligations.

8 By fax of 6 August 1997, the applicant's treasurer sent the Commission a final account of the conference proceedings and also two invoices — one issued by Melograno Congressi and the other by a translation company, Linguistlink Ltd, relating to the preparation of printed matter for the conference — for a total amount of ITL 51 900 000.

9 On 29 June 1999, Commission Directorate-General Budget sent the applicant a letter repeating the request for repayment of the advance of 16 000 euros, stating that Directorate-General Environment had confirmed the claim for repayment, since the documents forwarded by the applicant had been considered to have no probative value.

10 By letter of 24 September 1999 sent to the Commission's Directorates-General Budget and Environment, the applicant's lawyer, acting on the authority of Melograno Congressi and the applicant's legal representative, complained that his principals had not been notified of the decision that the documents lacked probative value and that, in any event, the decision appeared to lack a statement

of reasons. He also disputed the substance of the decision and noted the applicant's right to contest it before the Court of First Instance. Finally, he asked the Commission to send him the decision in question and to specify which evidential documents it considered needed to be submitted.

11 By letter of 2 October 2000, the applicant's lawyer, having received no response from the Commission, requested it to pay to his principals the balance of the financial contribution granted under the contract, namely 4 000 euros.

12 On 10 October 2000, the Commission's Directorate-General Budget sent a letter to the applicant's lawyer, its legal representative and Melograno Congressi, in which it explained the reasons why Directorate-General Environment had considered that the documents sent by the applicant lacked probative value and repeated its request for repayment of the advance paid in performance of the contract.

13 By letter of 11 December 2000, the applicant's lawyer asked the Commission's Directorate-General Budget to withdraw the request for repayment and to reexamine the file. Otherwise, he reserved the right to bring an action before the Court of First Instance against the decision contained in the letter from Directorate-General Budget of 10 October 2000.

Procedure

14 By document lodged at the Court Registry on 28 December 2000, the applicant brought this action under the fourth paragraph of Article 230 EC.

15 On 30 March 2001, by separate document, the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance. The applicant submitted its observations on that objection on 11 May 2001.

16 By letter sent to the Court Registry, the applicant submitted an additional pleading after the end of the written procedure. As no provision is made for such a pleading in the Rules of Procedure, the Court of First Instance (Fourth Chamber) decided not to register it.

Forms of order sought

17 In its application, the applicant claims, in essence, that the Court should annul, wholly or in part, the decision of 10 October 2000 and order the Commission to pay the costs.

18 In its objection of inadmissibility, the Commission contends that the Court should:

— dismiss the action as manifestly inadmissible;

— order the applicant to pay the costs.

19 In its observations on the objection of inadmissibility, the applicant claims that the Court should:

— reject the objection of inadmissibility as out of time or unfounded;

— assign the case to the Court of First Instance sitting in plenary session;

— designate an Advocate General;

— order the Commission to pay the costs.

Law

The requests to assign the case to the Court of First Instance sitting in plenary session and to designate an Advocate General

20 It should be pointed out first of all that, under Article 12 of the Rules of Procedure, the Court of First Instance is to lay down criteria by which cases are to

be allocated among the Chambers by a decision published in the *Official Journal of the European Communities*. In accordance with that provision, the Court of First Instance, at its plenary meetings held on 4 July 2000 and 19 September 2001, laid down the following criteria for the assignment of cases to the Chambers for the period from 1 October 2000 to 30 September 2002 (OJ 2000 C 259, p. 14, and OJ 2001 C 289, p. 22):

'(a) Actions concerning the implementation of the rules on State aid or the rules on trade protection measures shall be assigned, with effect from the lodging of the application and without prejudice to any subsequent application of Articles 14 and 51 of the Rules of Procedure, to Chambers with an extended composition of five Judges.

(b) All other cases shall be assigned, with effect from the lodging of the application and without prejudice to any subsequent application of Articles 14 and 51 of the Rules of Procedure, to Chambers of three Judges.'

21 In accordance with the above rules, the present case was assigned to a Chamber of three Judges.

22 It should also be pointed out that Articles 14, 18, 19 and 51 of the Rules of Procedure give the Chamber hearing a case the right to request the Court of First Instance sitting in plenary session to refer the case either to the Court of First Instance sitting in plenary session or to a Chamber composed of a different

number of Judges and to designate an Advocate General. That is a right and not an obligation, and its exercise is subject to the criteria specified in the Rules of Procedure; these are, for referral to the Court of First Instance sitting in plenary session or to a Chamber composed of a different number of Judges, the legal difficulty or the importance of the case or special circumstances and, for the designation of an Advocate General, the legal difficulty or the factual complexity of the case (see to that effect the order in Case T-47/92 *Lenz* v *Commission* [1992] ECR II-2523, paragraph 31; and the judgment in Case T-497/93 *Hogan* v *Court of Justice* [1995] ECR II-703, paragraphs 25 and 27).

23 However, it must be stated that, in this case, the conditions justifying referral of the case to the Court of First Instance sitting in plenary session or designation of an Advocate General are not fulfilled.

Jurisdiction of the Court of First Instance

24 Under Article 114(3) of the Rules of Procedure, the remainder of the proceedings on a plea of inadmissibility is to be oral, unless the Court of First Instance otherwise decides.

25 The Court considers that, in the present case, the documents in the file provide all the information it needs and decides, pursuant to that provision, to give a ruling without taking further steps in the proceedings.

Arguments of the parties

26 In its objection of inadmissibility, the defendant points out the similarities between the present case and Case T-149/00 *Innova* v *Commission* [2001] ECR II-1, in which the Court of First Instance made an order on 9 January 2001. The defendant states that, in that case, the proceedings related to performance of a contract concluded by the Commission which did not contain any clause conferring jurisdiction on the Court of First Instance to rule on disputes arising out of its performance but did include a clause conferring jurisdiction on the courts and tribunals of Brussels. The defendant maintains that, in the present case, as there is no arbitration clause in favour of the Court of First Instance, the Court should, as it did in the order in *Innova* v *Commission*, cited above, declare that it has no jurisdiction to hear the case and dismiss the action as inadmissible.

27 In its observations on the objection of inadmissibility, the applicant points out that, by letter of 9 February 2001 sent to the Court Registry, the defendant asked for a one-month extension to the time-limit for submitting its defence and gave as a reason for its request the need to consult various departments. The applicant points out that, at the time it submitted the request for an extension, the defendant already had all the information it needed to lodge its objection of inadmissibility. The extra time had therefore been obtained unreasonably. Although a thorough study of the questions raised in this case may have been necessary in order to submit a defence containing an in-depth analysis of the case, the extension would not, in any event, have been justified for submission of an objection of inadmissibility under Article 114 of the Rules of Procedure. The applicant therefore requests the Court to declare that the objection of inadmissibility is out of time on the ground that it was lodged after the expiry of the period originally prescribed.

28 As regards the merits of the objection of inadmissibility raised by the defendant, the applicant formally notes the settled case-law of the Court of Justice and the Court of First Instance declaring inadmissible actions brought in circumstances such as those of this case.

29 However, it points out that the Commission's practice of carrying out activities covered by its public authority powers, such as granting financial contributions to natural or legal persons, by means of private-law contracts without arbitration clauses based on Article 238 EC, has the effect of removing those activities from review by the Community judicature under Article 230 EC. The financing by the Commission of a project or event such as the one in the present case is based on an assessment of the public interest in carrying it out and can be granted only by the adoption of a decision within the meaning of Article 249 EC, which is subject to review by the Court of First Instance.

30 In that regard, the applicant points out that the contractual form and the arbitration clause in favour of the Belgian courts were imposed on it by the Commission. Otherwise, it would have been refused the contribution requested.

31 Finally, the applicant maintains that it is clear both from the wording of the contested measure and from the circumstances of the case that the Commission was convinced that it was acting in a public law context and exercising public authority powers. By way of example, the applicant cites the fact that in the contested measure the Commission referred to the possibility, if payment were not made, of bringing enforcement proceedings. Those proceedings could be initiated only if the contested measure was in fact a decision. The applicant also points out that, in the contested measure, the Commission did not dispute the jurisdiction of the Court of First Instance.

32 Since the Commission's conduct was likely to mislead the applicant with regard to the nature of the relations between the parties and the legal remedies available to the applicant, that conduct should at the very least be taken into consideration by the Court of First Instance in its order as to costs.

Findings of the Court

33 It should be pointed out that, under Article 46(1) of the Rules of Procedure of the Court of First Instance, the defendant is to lodge a defence within one month after service on him of the application. Under Article 46(3), the time-limit laid down in paragraph 1 may be extended by the President on a reasoned application by the defendant.

34 As regards the assertion that the objection of inadmissibility was out of time, it should be noted that the defendant, by letter lodged at the Court Registry on 12 February 2001 in accordance with the abovementioned provisions of the Rules of Procedure, requested the Court of First Instance to extend the time-limit for submitting its defence, on the ground that it needed to consult various internal departments. Further to that request, it was granted a further period of approximately one month.

35 Contrary to what the applicant maintains, the fact that the defendant chose, before the end of that period, to raise an objection of inadmissibility under Article 114 of the Rules of Procedure, instead of lodging a defence containing an in-depth analysis of the case, does not put in question whether its request for an extension was in accordance with the relevant provisions of the Rules of Procedure or lead to the conclusion that that request was unlawful. Although it is indeed the case that the objection of inadmissibility raised by the defendant is based essentially on the content of the contract, a copy of which was attached to the originating application, and that, therefore, when the request for an extension was made the defendant already had all the information it needed to raise its objection, the fact remains that it could have chosen either not to raise any objection as to the admissibility of the action or to dispute admissibility in the

defence. In both those situations, it would have had to go into the substance of the case, which might reasonably entail the need to consult the various Commission departments involved.

36 In any event, even if the applicant's arguments are well founded, it must be remembered that, under Article 113 of the Rules of Procedure, the Court of First Instance may at any time, of its own motion, consider whether there exists any absolute bar to proceeding with an action, including, according to the case-law, the jurisdiction of the Community Court to entertain the application (Case T-174/95 *Svenska Journalistförbundet* v *Council* [1998] ECR II-2289, paragraph 80). Review by the Court of First Instance is therefore not limited to absolute bars to proceedings raised by the parties.

37 In respect of the merits of the objection of inadmissibility raised by the defendant, it should be noted that it is settled case-law that, under the combined provisions of Article 238 EC and Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended, the Court of First Instance has jurisdiction to give judgment in disputes relating to contractual matters brought before it by natural or legal persons only pursuant to an arbitration clause. If it were otherwise, the Court would be extending its jurisdiction beyond the limits placed by Article 240 EC on the disputes of which it may take cognisance, since that article leaves to national courts or tribunals ordinary jurisdiction over the other disputes to which the Community is a party (orders in Case T-186/96 *Mutual Aid Administration Services* v *Commission* [1997] ECR II-1633, paragraph 47, and in *Innova* v *Commission*, cited above, paragraph 25).

38 In the present case, there is no clause conferring jurisdiction on the Court of First Instance to hear disputes arising out of the performance of the contract. In fact, the provision concerning the settlement of disputes, which is contained in Clause 13 of the contract, expressly stipulates that any dispute between the Commission

and the other party to the contract is to be subject to the jurisdiction of the Brussels courts. It is common ground that this dispute, which concerns the Commission's claim for repayment of an advance on the ground that the applicant allegedly failed to fulfil its contractual obligations, falls within the scope of Clause 13 of the contract.

39 Moreover, it cannot be maintained that that provision defeats the exclusive jurisdiction conferred on the Community Court by the fourth paragraph of Article 230 EC. That jurisdiction concerns only the regulations, directives or decisions referred to by Article 249 EC, which the institutions must adopt under the conditions laid down by the Treaty. In the present case, the contested measure forms part of a contractual framework from which it is not separable and it is not, therefore, one of the measures referred to by Article 249 EC, actions for the annulment of which fall within the exclusive jurisdiction of the Community Court under the fourth paragraph of Article 230 EC (orders in *Mutual Aid Administration Services* v *Commission*, cited above, paragraphs 50 and 51, and *Innova* v *Commission*, cited above, paragraph 28).

40 As regards the applicant's argument that the Commission, by carrying on an activity covered by its public authority powers, such as granting the financial contribution at issue, by means of a private-law contract, without an arbitration clause based on Article 238 EC, had removed that activity from review by the Community judicature under Article 230 EC, it need only be pointed out that, even if well founded, that argument cannot put in question the fact that the contested measure is inseparable from the contractual framework of which it forms part and cannot therefore provide a basis for the jurisdiction of the Court of First Instance under Article 230 EC.

41 It is apparent from all the above that, in the absence of an arbitration clause, the Court of First Instance lacks jurisdiction to hear and determine an application which, although based on the fourth paragraph of Article 230 EC, must in fact be regarded as an action resting on a contractual basis.

42 The application must therefore be dismissed as inadmissible.

Costs

43 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. However, under Article 87(3) the Court of First Instance may order a party, even if successful, to pay costs which it considers that party to have unreasonably or vexatiously caused the opposite party to incur.

44 In this case, it is not necessary to apply the latter provision. Contrary to what the applicant claims, it cannot be asserted that the Commission's conduct caused or furthered this dispute. Firstly, Clause 13 of the contract expressly confers exclusive jurisdiction on the courts and tribunals of Brussels to hear disputes arising out of the contract and, secondly, since the relations between the applicant and the defendant were purely contractual, the Commission was not required — by virtue of the principles relating to access to justice and sound administration — to inform the applicant of its position with regard to determining which court has jurisdiction to hear the present dispute or to dispute the applicant's statements in that regard.

45 In the light of the foregoing, since the applicant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. **The application is dismissed as inadmissible.**

2. **The applicant is ordered to pay the costs.**

Luxembourg, 10 July 2002.

H. Jung
Registrar

M. Vilaras
President