

Case T-15/02

BASF AG

v

Commission of the European Communities

(Intervention)

Order of the Court of First Instance (Fourth Chamber), 25 February 2003 II- 215

Summary of the Order

*Procedure — Intervention — Conditions for admissibility — Interest in the outcome of the dispute — Dispute concerning the annulment of a Commission decision finding an infringement of Article 81(1) EC — Dispute confined to the annulment or reduction of the fines imposed on the applicant — Decision imposing a fine on the applicant for leave to intervene no longer amenable to review — Absence of interest
(EC Statute of the Court of Justice, Arts 37, second para., and 46, first para.)*

The concept of an interest in the result of the case, within the meaning of the second paragraph of Article 37 of the Statute of the Court of Justice which, pursuant to the first paragraph of Article 46 of the Statute, is applicable to the procedure before the Court of First Instance, must be defined in the light of the precise subject-matter of the dispute and be understood as meaning a direct, existing interest in the ruling on the forms of order sought and not as an interest in relation to the pleas in law put forward. The expression 'solution' is to be understood as meaning the operative part of the final judgment which the parties ask the Court to deliver. In order to adjudicate on the admissibility of an application for leave to intervene, it is necessary, in particular, to ascertain whether the intervener is directly affected by the contested decision and whether his interest in the result of the case is established. In that context, it is necessary to distinguish between prospective interveners establishing a direct interest in the ruling on the specific act whose annulment is sought and those who can establish only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties.

An applicant for leave to intervene does not have a direct, existing interest where, when the Commission has found that a number of undertakings infringed Article 81(1) EC, the subject-matter of the main action is confined to the annulment or reduction of the total amount of the fines imposed on the applicant, even though the applicant, by its action, seeks to call in question the Commission's assessment of the cooperation shown by the applicant for leave to intervene during the administrative procedure. Where the decision imposing a fine on the applicant for leave to intervene does not form the subject-matter of the main action and, moreover, has not formed the subject-matter of an action and is not amenable to appeal, a judgment annulling or varying the decision contested by the applicant would not in any way alter the decision adopted in respect of the applicant for leave to intervene and, by virtue of the case-law, the principle *non bis in idem* would preclude the Commission from undertaking a fresh assessment in depth of the commission of the infringement referred to in that decision.

(see paras 26-27, 32, 34-36)