# ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
10 September 2002 *

In Case T-287/01,

**Bioelettrica SpA,** established in Pisa (Italy), represented by O. Fabe Dal Negro, lawyer,

applicant,

v

**Commission of the European Communities,** represented by H. Støvlbaek and R. Amorosi, acting as Agents, assisted by M. Moretto, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that the termination, notified by the Commission to the applicant on 6 September 2001, of Contract BM/1007/94 IT/DE/UK/

* Language of the case: Italian.

PO, signed on 12 December 1994, relating to the implementation of the project entitled 'Energy Farm: an IGCC plant for the production of electricity and heat through gasification of SRF biomass (Phase I)' is void and illegal, and for an order that the Commission make good the harm allegedly sustained by the applicant as a result of the Commission's conduct,

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

composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges,

Registrar: H. Jung,

makes the following

## Order

### Facts

1 Pursuant to Council Regulation (EEC) No 2008/90 of 29 June 1990 concerning the promotion of energy technology in Europe (Thermie programme) (OJ 1990 L 185, p. 1), now repealed, on 20 December 1994 the Commission concluded with seven companies — Enel SpA ('Enel'), Lurgi Energie und Umwelt GmbH, Lurgi Italiana SpA, Cooperative Agricola 'Le Rene' ('Le Rene'), South Western

Power Ltd ('SWP'), European GasTurbines Ltd ('EGT') and EDP Electricidade de Portugal SA ('EDP') — Contract BM 1007/94 IT/DE/UK/PO ('the contract') relating to the implementation of the project entitled 'Energy Farm: an IGCC plant for the production of electricity and heat through gasification of SRF biomass (Phase I)', ('the project'). Lurgi Energie und Umwelt GmbH and Lurgi Italiana SpA — now Lurgi SpA — are part of the Lurgi group, which also included, during the period concerned, Lurgi Envirotherm GmbH, MG Engineering Lurgi and Lurgi AG. The various companies in that group involved in the events which gave rise to this case will hereinafter be referred to, without distinction, as 'Lurgi'.

2 Initially, the term of the project was set at 48 months, from 1 January 1995 to 31 December 1998 (Article 2(1) of the contract). The total cost of the project was estimated at ECU 36 698 720 (Article 3(1) of the contract). The Commission's financial contribution was originally limited to a maximum of ECU 10 197 229 (Article 3(2) of the contract).

3 Article 9 makes Italian law the law of the contract.

4 Under Article 8(2)(f) of the General Conditions set out in Annex II to the contract, the Commission may terminate the contract if a contractor does not start work on the date stated therein and if it considers any other date suggested to be unacceptable. The last sentence of Article 8(2) of the General Conditions provides that, in that event, the contractors must be given one month's notice of the termination of the contract, in writing, by means of a document accompanied by a form for acknowledgment of receipt or by registered letter. Under Article 8(4), if the contract is terminated on the basis of Article 8(2)(f), the

Commission may claim reimbursement of all or part of the financial contribution, together with interest calculated from the date of receipt of the relevant payment at the rate applied by the European Monetary Fund to its ECU transactions, plus two points.

5 Under Article 12 of the General Conditions, the Court of Justice of the European Communities has exclusive jurisdiction to deal with any dispute relating to the performance of the contract.

6 On 18 July 1995, Bioelettrica SpA ('Bioelettrica') was constituted by CISE Spa (99% owned by Enel), Lurgi, South Western Power Investments Ltd (100% owned by SWP), Energia Verde SpA (62% owned by Le Rene) and EDP. In accordance with Article 5 of its articles of association, its object is to construct and operate a thermal power station in Italy, fuelled by plant based biomass based on a fluidised bed air gasifier on a combined cycle (IGCC).

7 Under supplementary agreement No 1 to the contract, signed by the parties in January 1996, Bioelettrica became a party to the contract and took on the role of project coordinator, performed until then by Enel. By the same agreement, EGT withdrew from the contract although it retained the status of 'associate contractor'. Under supplementary agreement No 2 to the contract, signed by the parties between October 1996 and December 1998, SWP withdrew from the contract and its rights and obligations were taken over by the other parties to the contract. In accordance with supplementary agreement No 3 to the contract, signed by the parties between March and June 1997, Bioelettrica, as project coordinator, became responsible for administering the payments made by the Commission, including the advance paid under Article 4(1) of the contract.

8 On 30 May 1997, a contract for an amount of ITL 35 000 million was concluded between Bioelettrica, as principal, and Lurgi, as contractor, for Lurgi to carry out work on the design, construction, installation and testing of a gasification plant for the thermal power station referred to in paragraph 6 above ('the contract of 30 May 1977'). Under point 1.1 of the Special Conditions annexed to that contract, the work was to be carried out within 30 months.

9 By supplementary agreement No 4 to the contract, signed by the parties between January and December 1998, the Commission's maximum financial contribution was raised to ECU 10 897 229. It was subsequently raised to ECU 11 897 229 by supplementary agreement No 5 to the contract, signed by the parties in December 1998.

10 By fax of 7 April 1999, Lurgi informed Bioelettrica that it considered that the technical specifications contained in the contract of 30 May 1997 should be amended in order to improve the efficiency of the gasification plant. It added that those amendments, which were detailed in the fax, would inevitably involve an increase in the project costs.

11 Following an exchange of letters between Lurgi and Bioelettrica intended to enable Bioelettrica to appreciate the need for the suggested technical amendments, on 16 September 1999 Bioelettrica and Lurgi signed a memorandum of understanding laying down the essential variations to be made to the gasification plant project and providing that the remuneration payable to Lurgi for completing the project would be raised to ITL 46 300 000 000.

12 By letter of 23 December 1999, Bioelettrica, on the basis of the terms of the memorandum of understanding referred to in the previous paragraph, informed Lurgi that the time-limits laid down therein for completion of the agreed actions,

in particular for conclusion of an agreement amending the terms of the contract of 30 May 1997 and for delivery by Lurgi of bank documents relating to the increase in the cost of the works, had expired without any of those actions being undertaken. It suggested that the parties should agree urgently the terms of the amendments to be made to the aforementioned contract and that Lurgi should supply the abovementioned bank documents.

13 On 5 January 2000, the Commission sent a letter to Bioelettrica informing it that it would extend the time-limit for completing the project to 31 December 2003.

14 In response to a request made by Bioelettrica on 21 April 2000 for information to enable it to reassess Lurgi's recommendations for technical amendments, Lurgi stated, in a letter to Bioelettrica dated 5 May 2000, that it considered the technology which had been envisaged in the contract of 30 May 1997 to be obsolete. It also stated that, pending clarification on that point, it had decided to suspend work.

15 In a letter to Bioelettrica dated 23 May 2000, Lurgi enclosed a new, detailed statement of the technical amendments it considered necessary and pointed out that those amendments would mean an overall increase of DEM 27 563 099 in the cost of the works.

16 In a letter sent to Lurgi on 6 June 2000, Bioelettrica rejected the contentions put forward in the letter referred to in the preceding paragraph, but stated that it was prepared to proceed in accordance with the amendments set out in the memorandum of understanding signed in September 1999. It added that, if that proved impossible, it would be constrained to revert to the terms of the contract of 30 May 1997.

17 On 27 June 2000, Bioelettrica wrote to Mr Millich, of the Commission's Directorate General (DG) for Energy and Transport, describing the developments since 1999 and the problems connected with Lurgi's proposals, and stating that it intended calling on Lurgi to resume work within 15 days.

18 In a letter sent to Lurgi on 28 June 2000, Bioelettrica stated that Lurgi was not justified in suspending work and called on it to resume work and to submit a work schedule within 15 days.

19 On 24 July 2000, a meeting took place in Brussels between representatives of the Commission and of Bioelettrica.

20 By letter of 14 September 2000, Mr Millich asked Lurgi for full details of the various technical amendments suggested and their cost.

21 In the light of the information provided to it by Bioelettrica on 14 November 2000 concerning the course of action contended for by Lurgi, and following a meeting held in Brussels on 18 and 19 December 2000 between representatives of the Commission and of Bioelettrica, Mr Hanreich, of the DG for Energy and Transport, by letter of 4 January 2001 addressed to Bioelettrica, Enel, Lurgi EDP and Le Rene, expressed his staff's concerns regarding the economic feasibility of the technology recommended by Lurgi. He gave the addressees of that letter until 9 February 2001 to provide him with evidence to show that the technological proposals put forward by Lurgi would produce results within a reasonable time-limit. As an alternative, he suggested that they submit for assessment by the Commission another technical proposal based on innovative technology com-

patible with the terms of the contract, pointing out, however, that the Commission would not grant any extension of the duration of the contract. He warned them that, if they did not give a satisfactory reply, the contract would be terminated.

22 By letter of 6 February 2001 addressed to Bioelettrica, Mr Hanreich stated that the Commission agreed to extend to 9 March 2001 the time-limit for replying referred to in the previous paragraph.

23 On 28 February 2001, a meeting was held in Pisa between representatives of the parties to the contract in order to try to reduce the cost of the works relating to the gasification plant. At that meeting Lurgi stated, in particular, that it was still prepared to execute the works and that the problems encountered were financial, not technical.

24 By letter of 9 March 2001, Bioelettrica gave the Commission a report of the meeting referred to in the previous paragraph. It stated that, as it was waiting for information from Lurgi, it was unable to provide the evidence requested by the Commission before 16 March 2001. It also mentioned that, at the same time as carrying on negotiations with Lurgi, it was assessing the feasibility of other technical solutions. In addition, it gave the Commission details of the identity of its shareholders and the composition of its board of directors.

25 By letter of 16 March 2001, Lurgi informed the Commission that it was prepared to carry on with the works. However, it added that, after receiving a letter from Bioelettrica dated 5 March 2001 calling in question the content of the agreement reached at the Pisa meeting, it was unable to continue working. It therefore asked the Commission to intervene in order to enable the project to proceed.

26 After several letters of formal notice had been sent to Lurgi by Bioelettrica and Enel, Bioelettrica, by letter dated 13 April 2001, informed Lurgi that, as it had still not received the technical information requested and in view of the fact that Lurgi had suspended all work connected with the project for almost a year, it had decided to terminate the contract of 30 May 1997.

27 By letter to Lurgi dated 24 April 2001, Bioelettrica confirmed its decision referred to in the previous paragraph.

28 In a note dated 20 April 2001, Bioelettrica gave the Commission a summary of developments since the adoption of the memorandum of understanding referred to in paragraph 11 above. It put forward a series of alternative solutions and stated that the proposal submitted by the Finnish company Carbona seemed to it to be the most suitable. Bioelettrica let it be known that, subject to the Commission's agreement, it was prepared to open negotiations with Carbona.

29 By letter of 24 May 2001, Bioelettrica informed the Commission of several significant decisions taken by its board of directors in relation to the project.

30 In a fax sent to Bioelettrica on 28 May 2001, Mr Millich, in reply to Bioelettrica's letter mentioned in the previous paragraph, drew attention to the lack of any real progress in the performance of the contract. However, he said that the Commission was prepared to discuss the latest developments with Bioelettrica.

31 In August 2001, Bioelettrica sent the Commission the 11th intermediate technical report relating to the contract, covering the period from 1 October 2000 to 30 June 2001. The report set out the possible alternative solutions for the

gasification plant, in particular that submitted by Carbona, which Bioelettrica considered the most viable. Bioelettrica stated that it was envisaged that a contract would be concluded with Carbona in October 2001 and that the project would be completed before the end of the period indicated in paragraph 13 above.

32 On 6 September 2001, Mr Hanreich, of the DG for Energy and Transport, sent Bioelettrica a letter ('the letter of 6 September 2001') worded as follows:

'Further to my letters of 4 January 2001... and 6 February 2001..., and on the basis of the information contained in Mr Fratti's letter... and in the 11th technical report submitted by Bioelettrica on 16 August 2001, my staff have concluded that it is impossible to complete the programme of work within the time-limit stipulated in the contract.

The Commission has therefore decided to terminate the contract in accordance with Article 8(2)(f) of the General Conditions laid down in Annex II thereto. The Commission has also decided, in accordance with Article 8(4) of the General Conditions, to request reimbursement of the whole of its financial contribution, plus interest from the date on which the payments were received.

The Commission's staff will contact you to give you instructions concerning the amount and the procedure for reimbursement.

As coordinator, you are requested to inform all the contractors of the content of this letter.'

33 Bioelettrica sent the letter of 6 September 2001 to the other contractors.

34 By letter dated 18 September 2001 to the Commission, Bioelettrica disputed whether the Commission had grounds for its decision to terminate the contract. It pointed out that part of the work relating to the project had been carried out and that the failure to complete the remainder was due to Lurgi's breach of its contractual commitments. It drew attention to the work schedule contained in the 11th technical report and stated that it was convinced it could finish the works by December 2003. It asked the Commission to review its decision to terminate the contract and to arrange a meeting in order to resolve the dispute.

35 By a letter to the Commission dated 10 October 2001, Bioelettrica reiterated its request for a meeting to be arranged with the Commission.

36 On 8 November 2001, it sent a letter to the Commission repeating the content of its letter of 18 September 2001. On the same day, it sent a copy of both the aforementioned letters — of 6 September and 10 October 2001 — to a number of Commission officials and members of the staff of the Italian Permanent Representation to the European Union to bring the matter to their attention.

## Procedure

37 It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 20 November 2001, Bioelettrica ('the applicant') brought these proceedings under Article 238 EC.

38 By a document lodged at the Registry of the Court of First Instance on 1 March 2002, the Commission submitted an application for a decision that there is no need to adjudicate pursuant to Article 113 of the Rules of Procedure.

39 In a document lodged at the Registry of the Court of First Instance on 19 March 2002, the applicant submitted its observations on the application for a decision that there is no need to adjudicate.

**Forms of order sought by the parties**

40 The applicant claims that the Court should:

— declare the action admissible;

— declare that the termination of the contract notified by letter of 6 September 2001 is void and that, consequently, the contract is valid and effective;

— find that the termination of the contract is unlawful in respect of the applicant and that, consequently, the contract is valid and effective;

— order the Commission to pay to the applicant an amount, to be fixed during the proceedings, by way of compensation for the damage which the applicant has suffered;

— declare that the applicant is not required to make any reimbursement to the Community;

— order the Commission to pay the costs.

41 The applicant also requests that a number of witnesses be heard by way of measures of inquiry.

42 In its application for a decision that there is no need to adjudicate, the Commission claims that the Court should:

— declare that the action is devoid of purpose and that there is no need to give judgment;

— order that the costs be shared.

43 In its observations on the application for a decision that there is no need to adjudicate, the applicant claims that the Court should:

— declare the action admissible;

— determine and find that the termination of the contract deriving from the letter of 6 September 2001 was revoked only when the Commission's application was lodged on 1 March 2002;

— determine and find that the Commission is contractually liable and, consequently, order it to pay to the applicant an amount, to be fixed during the proceedings, by way of compensation for the damage which the applicant has suffered;

— order the Commission to pay the costs;

— adopt the measures of inquiry requested in the originating application.

**The application for a decision that there is no need to adjudicate**

*Arguments of the parties*

44 The Commission states that, on 20 November 2001, after receiving the applicant's letter of 18 September 2001 referred to in paragraph 34 above, it sent a letter ('the letter of 20 November 2001') to the applicant informing it of the Commission's decision to give it 30 days to enable it to state how long it would need to conclude the contract to be awarded to Carbona. It also asked the applicant to explain in detail how it would be feasible to complete, by the end of

2002, the various stages (construction, assembly, installation, putting into service) prior to the inspection stage. The Commission stated that, in the light of the information provided by the applicant, it might reconsider its position. However, the applicant brought the present action before receiving the Commission's abovementioned letter.

45 In reply to the letter of 20 November 2001, the applicant stated, in a letter sent to the Commission on 19 December 2001, that, according to the 11th technical report, full implementation of the gasification system proposed by Carbona would take 27 months from the date on which the contract was concluded, originally envisaged to be the end of September 2001. The applicant added, however, that, following the Commission's decision to terminate the contract, it had broken off negotiations with Carbona, with which no contract had been signed, so that the time-limits mentioned in the aforementioned report could no longer be met. Furthermore, it shared the Commission's view that the inspection stage could not be successfully completed within the time-limits, though it pointed out that this was a supplementary stage. The Commission states that it has not yet expressed its views on the reply given by the applicant in its letter of 19 December 2001.

46 The Commission submits that, by offering the applicant the opportunity, in its letter of 20 November 2001, to show that it was feasible to complete the project in compliance with the conditions and time-limits stipulated in the contract, it cancelled the effects of the termination notified in the letter of 6 September 2001. The contract is therefore still in force.

47 The Commission claims that, following the letter of 20 November 2001, the action has become devoid of purpose and that there is no longer any need to give a ruling in accordance with Article 113 of the Rules of Procedure.

48 The applicant contends that the terms of the letter of 20 November 2001 are such that it cannot be read as a revocation of the termination notified in the letter of 6 September 2001. Since the Commission had given clear and unambiguous notice of termination in the letter of 6 September 2001, it should have done the same — according to the applicant — when revoking that termination. As the Commission had never made the meaning of its letter of 20 November 2001 clear to the applicant before lodging, on 1 March 2002, its application for a decision that there is no need to adjudicate, it may be concluded that the revocation took place only when the Commission lodged that application, in which its intentions are clearly stated.

49 The applicant states that it took note of the letter of 20 November 2001 before bringing its action, as is clear from the information contained in the faxes relating to the sending of its application to the Court of First Instance and to the sending by the Commission of the abovementioned letter. However, that letter confirmed the termination notified on 6 September 2001, so the applicant had to bring its action as soon as it received that letter if it was not to be out of time.

50 The applicant submits out that, although the purported withdrawal of the termination referred to by the Commission in its application of 1 March 2002 may render devoid of purpose its claim for a finding that the termination is void and unlawful, its action also seeks a finding that the Commission is contractually liable and should be ordered to pay the applicant compensation for the damage caused by non-fulfilment of the contract following the termination on 6 September 2001. The abovementioned withdrawal does not repair the damage suffered by the applicant on account of the termination. On the contrary, the damage continued to accrue owing to the uncertainty fuelled by the Commission by its letter of 20 November 2001, by its failure to respond to the applicant's requests for a meeting to be arranged between them and by its failure to say, in response to the applicant's letter of 19 December 2001, whether or not it intended to continue with the contract. The applicant therefore considers that the dispute remains unresolved and that a judgment should still be given.

51 The applicant adds that its claims relating to the Commission's liability in respect of its conduct after the action had been brought should be declared admissible inasmuch as they constitute an extension of its claim for compensation based on the Commission's contractual liability, formulated in its originating application (see Case 306/81 *Verros* v *Parliament* [1983] ECR 1755; Case T-106/95 *FFSA and Others* v *Commission* [1997] ECR II-229, and Case T-118/96 *Thai Bicycle* v *Council* [1998] ECR II-2991). If those claims were to be regarded as constituting a fresh plea, that plea would be declared admissible under Article 48(2) of the Rules of Procedure, in so far as it is based on a fact which came to light in the course of the procedure, namely, the withdrawal of the termination invoked by the Commission in its submissions of 1 March 2002. Since, according to the applicant, the originating application identifies the various factors which constitute the Commission's contractual liability, its pleadings should not be amended, but simply explained in the light Commission's conduct after the action was lodged (see to that effect Case 14/81 *Alpha Steel* v *Commission* [1982] ECR 749).

52 Referring to the arguments formulated in its originating application as regards the Commission's contractual liability relating to the period before the action was brought, the applicant criticises the Commission for failing to act after the lodging of that application in spite of the applicant's repeated requests for withdrawal of the termination and for a meeting with the Commission's staff to discuss the matter. Owing to the Commission's inertia and the uncertainty it engendered with respect to the fate of the contract, the applicant had no option but to suspend all activity, particularly its negotiations with Carbona. Furthermore, by its ambiguous attitude, the Commission prevented, and continues to prevent, the applicant from performing the contract within the time-limits laid down, for which reason the Commission can be held responsible for the delay in implementing the project. For all those reasons, the Commission failed, in the present case, to comply with the principle that agreements must be performed in good faith laid down in Article 1375 of the Codice Civile (Italian Civil Code) and in Italian case-law and legal literature.

53 As regards the damage, the applicant claims that it is the consequence of the Commission's inertia both before and after the action was brought, so that it cannot be regarded as having been repaired by the withdrawal of the termination

of the contract. The applicant adds that, owing to the continuing uncertainty and the delay caused by the Commission's failure to act, it is unable to assess accurately the damage it has suffered to date. It does not rule out that the possibility that the delay in implementing the project may become so protracted as to finally jeopardise the feasibility of the project, and stresses how much damage it would suffer if the project were completely abandoned. In those circumstances, it requests, referring to Article 49 of the EC Statute of the Court of Justice, that the assessment of the damage be deferred until a subsequent judgment, other than that which will establish the illegality of the Commission's conduct in this case.

54 As regards costs, the applicant claims that they should be borne in their entirety by the Commission pursuant to the second subparagraph of Article 87(3) of the Rules of Procedure and the case-law of the Court of Justice, according to which even a successful party may be ordered to pay the costs in proceedings which have arisen as a result of the conduct of that party (Case 125/80 *Arning* v *Commission* [1981] ECR 2539). Furthermore, in the present case there continues to exist an application for a declaration that the Commission is contractually liable and for an order that it pay compensation for the damage suffered by the applicant.

*Findings of the Court*

55 The Court notes, first, that the letter of 20 November 2001 sent by Mr Hanreich to the applicant, on which the Commission relies in support of its application for a decision that there is no need to adjudicate, is worded as follows:

'Dear Mr Caloni,

Thank you for your letters of 18 September and 8 November 2001.

In those letters, you say that Bioelettrica is able to perform the contract in accordance with the conditions laid down in it.

My technical staff are of the opinion that it is impossible, in practical terms, to perform the contract successfully in accordance with the specifications laid down in Annex I, entitled "Technical Annex". That is why the 11th technical report was not accepted by the Commission, which subsequently sent the letter of 6 September 2001.

That assessment still represents our view notwithstanding the arguments put forward in your abovementioned letters. However, I would ask you to send us, within 30 days after receipt of this letter, a clear response to the points raised below.

1. On 27 July 2001, when the 11th technical report was sent, no contract had yet been concluded with Carbona. Please state the period of time needed to conclude such a contract and forward to us an undertaking from Carbona that the contract will be concluded within the time-limit you envisage.

2. The contract was signed on 22 December 1994 and expires on 31 December 2003. After the original expiry date of 31 December 1998 was deferred to 31 December 2003, my staff informed you on several occasions that the Commission would not agree to any further extension of the term of the contract. The contract provides for a 12-month monitoring stage, which means that the plant must be constructed, assembled and operating by 31 December 2002. Please provide the Commission with detailed explanations and reasons to show that this is feasible. Please also send us confirmation from Carbona and the other contractors of the length of time they will need to complete their work.

Depending on your reply and the arguments you put forward, the Commission might reconsider its position.

...'

56 It must be observed that, in the letter reproduced in the previous paragraph, the Commission maintains the position it set out in its letter of 6 September 2001, regarding its decision to terminate the contract in the light of the conclusion reached by its technical staff that it was materially impossible to implement the project in accordance with the stipulations of the contract, and states that any review of that position will depend on the information provided by the applicant in response to its requests for clarification. The wording of the letter of 20 November 2001 therefore precludes its being regarded as constituting a withdrawal of the decision to terminate the contract contained in the letter of 6 September 2001.

57 As regards the Commission's claim, made in its statement of 1 March 2002, that it cancelled the effects of the termination notified in the letter of 6 September 2001, with the result that the contract is still in force, it is important to point out that that claim is based on an interpretation of the letter of 20 November 2001 which is contradicted by the very wording of that letter. In the circumstances, that claim is incorrect and must be rejected.

58 In the light of the analysis made in the three preceding paragraphs, it must be held that the decision to terminate the contract contained in the letter of 6 September 2001 was not withdrawn by the letter of 20 November 2001.

59 Secondly, the Court finds, from a reading of the originating application, that it contains, in point F of the 'Law' section, a claim for compensation for the damage which the applicant maintains it has suffered on account of the alleged illegality

of the decision to terminate the contract notified to it by the letter of 6 September 2001, and of the inertia displayed by the Commission in this matter. Even if it were assumed that the Commission had subsequently withdrawn its decision to terminate the contract contained in that letter — which is not the case — the Court would therefore have to give a ruling, in relation to the abovementioned claim for compensation, on the legality of the Commission's conduct with regard to the adoption of that decision and the inertia alleged by the applicant.

60 For all those reasons, the application for a decision that there is no need to adjudicate must be dismissed.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber),

hereby orders:

**1. The application for a decision that there is no need to adjudicate is dismissed;**

**2. The costs are reserved.**

Luxembourg, 10 September 2002.

H. Jung

Registrar

M. Jaeger

President