

ORDER OF THE COURT
5 February 1992 *

In Case C-59/91,

French Republic, represented by Edwige Belliard, acting as Agent, and Claude Chavance, acting as Deputy Agent, with an address for service in Luxembourg at the French Embassy, 9 Boulevard Prince Henri,

applicant,

v

Commission of the European Communities, represented by P. Hetsch, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, representing the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision 90/644/EEC of 30 November 1990 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1988 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund,

THE COURT,

composed of: O. Due, President, Sir Gordon Slynn, R. Joliet, F. A. Schockweiler, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Díez de Velasco, M. Zuleeg and J. L. Murray, Judges,

* Language of the case: French.

Advocate General: G. Tesauro,
Registrar: J.-G. Giraud,

after hearing the Opinion of the Advocate General,
makes the following

Order

- 1 By application lodged at the Court Registry on 12 February 1991 the French Government requested, pursuant to Article 173 of the EEC Treaty, the annulment of Commission Decision 90/644/EEC of 30 November 1990, notified to it on 3 December 1990, on the clearance of the accounts presented by the Member States in respect of the expenditure for 1988 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund in so far as the Commission had rejected eligible expenditure in respect of export refunds and the additional levy in the milk sector.
- 2 By application lodged on 26 March 1991 the Commission raised an objection of inadmissibility under Article 91(1) of the Rules of Procedure of the Court on the ground that the action was out of time.
- 3 The Commission alleges that the action was not brought within the period of two months prescribed in the third paragraph of Article 173 of the EEC Treaty. Since the applicant had received notification of the contested decision on 3 December 1990, the period of two months expired on 3 February 1991. In view however of the extension of time on account of distance provided for under Article 81(2) of the Rules of Procedure of the Court, which amounts to six days for French applicants, the period allowed for commencing proceedings expired in the present case on 9 February 1991. The proceedings were not initiated, however, until 12 February 1991.

- 4 In the applicant's view the period allowed for commencing proceedings expired not on Saturday 9 February 1991 but Monday 11 February 1991. Pursuant to Article 81(1) of the Rules of Procedure of the Court the period began to run on the day following notification of the contested decision, that is to say on 4 December 1990. Taking into account the six days allowed on account of distance the period expired on 10 February 1991. Since that date fell on a Sunday the time-limit was extended under Article 80(2) of the Rules of Procedure to 11 February 1991. The action was therefore brought at most one day after expiry of the time-limit.
- 5 In that respect the applicant contends that it is not responsible for exceeding the time-limit since it did everything necessary to have the application lodged at the Court Registry in good time. It states that the application was posted 'express delivery' on 8 February 1991 and ought, in the normal course of the post, to have reached the Court no later than the next day. In its view the time-limit was exceeded because of unforeseeable circumstances or *force majeure*, within the meaning of the second paragraph of Article 42 of the Statute of the Court of Justice, connected either with the carnival weekend during which no post could in fact be delivered to the Court Registry between the afternoon of Saturday 9 February and the morning of Tuesday 12 February or with the extremely bad weather conditions at the end of the week in question.
- 6 As the Court has already held in its judgment in Case 152/85 *Misset v Council* [1987] ECR 223 and in its order of 15 May 1991 in Case C-122/90 *Emsland-Stärke v Commission* (not published in the ECR), where, as in the present case, the period of time allowed for commencing proceedings is expressed in calendar months, that period expires at the end of the day which, in the month indicated by the time-limit, bears the same number as the day from which time was set running, that is to say the day of notification. To that there is added the period of grace on account of distance.
- 7 It follows that in the present case, taking account of the period of six days allowed to the applicant on account of distance, the period allowed for commencing proceedings expired on 9 February 1991. The action brought on 12 February 1991 is therefore out of time.

- 8 As regards the applicant's argument that the belatedness of the application ought not in the present case to lead to its inadmissibility, it must be borne in mind that, as the Court has repeatedly held, no derogation from the application of the Community rules on procedural time-limits may be made save where the circumstances are quite exceptional, in the sense of being unforeseeable or amounting to *force majeure*, in accordance with the second paragraph of Article 42 of the Statute of the Court of Justice, since the strict application of Community rules on procedural time-limits serves the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice (see, in particular, judgment in Case 42/85 *Cockerill-Sambre v Commission* [1985] ECR 3749; judgment in *Misset*, cited above; and judgment in Case 276/85 *Cladakis v Commission* [1987] ECR 495).
- 9 The circumstances cited by the applicant cannot be regarded as exceptional in the sense of amounting to unforeseeable circumstances or *force majeure* within the meaning of the abovementioned provision.
- 10 First, the applicant cannot validly claim that, by sending the application by 'express delivery' on 8 February 1991, it did everything necessary to ensure that it would arrive in time, that is to say in the present case, on the following day, when it had a period of six days on account of distance calculated on the basis of the normal period for postal delivery taking into account any problems in the postal service. In those circumstances it cannot rely on any exceptional malfunctioning of those services in order to avoid the loss of rights resulting from the expiry of the procedural time-limit.
- 11 Secondly as regards the circumstances connected with the carnival weekend and the bad weather conditions, it is sufficient to point out that they relate only to the period after 9 February 1991 and could not have prevented the lodging of the application at the Court Registry on Saturday 9 February 1991.
- 12 It follows from the foregoing that the application must be dismissed as inadmissible.

Costs

- 13 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- 1. Dismisses the application as inadmissible;**
- 2. Orders the applicant to pay the costs.**

Luxembourg, 5 February 1992.

J.-G. Giraud
Registrar

O. Due
President