3. *suspends execution of that Commission Decision until such time as the Court of First Instance has given final judgment on the main action;*

4. *reserves the costs.*

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## ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

**of 15 July 1998**

**in Case T-73/98 R: Société Chimique Prayon-Rupel SA v. Commission of the European Communities**

***(State aid — Proceedings for interim measures — Intervention — Interim measures — Urgency — None)***

(98/C 312/35)

*(Language of the case: French)*

In Case T-73/98 R Société Chimique Prayon-Rupel SA, incorporated in Engis (Belgium), represented by Bernard van de Walle de Ghelcke, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Freddy Brausch, 11 Rue Goethe, against the Commission of the European Communities (Agent: Dimitris Triantafyllou) — application for operation of Commission Decision SG (98) D631 on State aid cases N 198/97 and NN 81/97 to be suspended — Germany — Financial measures in favour of Chemische Werke Piesteritz GmbH, and for any other form of interim measure, the President of the Court made an order on 15 July 1998 in which he:

1. *allowed the Federal Republic of Germany to intervene in support of the Commission;*

2. *allowed the application by Société Chimique Prayon-Rupel SA for certain parts of its application for suspension of operation to be treated as confidential for the interlocutory stage of the proceedings;*

3. *dismissed the application for interim measures;*

4. *reserved judgment on costs.*

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## Action brought on 30 June 1998 by Hameico Stuttgart GmbH and Others against the Council of the European Union and the Commission of the European Communities

**(Case T-99/98)**

(98/C 312/36)

*(Language of the case: German)*

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 June 1998 by Hameico Stuttgart GmbH and others, Stuttgart (Federal Republic of Germany), represented by Gerrit Schohe, Rechtsanwalt, Hamburg (Germany), with an address for service in Luxembourg at the Chambers of Marc Baden, 34b Rue Philippe II.

The applicants claim that the Court should:

— declare that the defendants are obliged to compensate the applicants for the losses suffered and/or to be suffered by the applicants as a result of the application of Council Regulation (EEC) No 404/93 on the common organisation of the market in bananas, in particular Articles 17 to 19 and 21(2) thereof, and in consequence of the application of Commission Regulation (EEC) No 1442/93 laying down detailed rules for the application of the arrangements for importing bananas into the Community, inasmuch as, in accordance with those regulations, and in particular Article 19(2) of Regulation (EEC) No 404/93:

  — the inclusion of the applicants in the closed category of 'Category A' market operators (Article 2(a) of Regulation (EEC) No 1442/93) is conditional on their having marketed third-country bananas during the years 1989 to 1991,

  — the scope of the import licences to which the applicants are entitled within the framework of 'Category A' is conditional on the reference quantities accumulated by the applicants during the years 1989 to 1991, and

  — market operators who, during the period from 1989 to 1991, were established in the former German Democratic Republic were unable, prior to the point in time at which the territory of the former German Democratic Republic became part of the then European Economic Community (German reunification on 3 October 1990), to accumulate such quantities,

— order the parties to indicate, within a given period (to be prescribed by the Court) after delivery of its judgment, the amounts which they have agreed upon as being payable, or, if no such agreement is reached, order them to submit to the Court, within that period, their quantified proposals as to the sums which should be paid,

— reserve its decision as to costs.

*Pleas in law and main arguments adduced in support:*

The applicants, who are members of the Atlanta Group, are established in the territory of the former German Democratic Republic, or were established there during the period from 1989 to 1991. They are claiming *inter alia* compensation for the damage allegedly suffered by them as a result of the fact that, under the Community rules on the organisation of the market, they were not able to

accumulate initial reference quantities throughout the whole of the reference period (1989 to 1991), and were able to do so only during the period from 3 October 1990 to 31 December 1991.

The applicants maintain that the organisation of the market has had the effect of depriving them of quantities, since it did not provide for any transitional rules which would have enabled third-country operators to adapt their business arrangements gradually to the organisation of the market and to write off the investments made by them on the basis of the quantities imported prior to the entry into force of the organisation of the market. The applicants were able to use only a small part of the initial reference period from 1989 to 1991 in order to accumulate reference quantities. They received far fewer import licences than they would have received if, like all other third-country operators, they had had the benefit of a reference period of three years.

The applicants complain of breach of the rights of the defence, in that the Commission refused to hear the views of third-country operators unless those operators presented their views jointly with the Community operators and ACP operators, speaking 'with one voice'. The applicants further allege a breach of the prohibition of discrimination contained in Article 40(3) of the EC Treaty and breach of the principle of the protection of legitimate expectations as regards third-country operators generally (who were given no opportunity to adapt themselves gradually to the drastic reduction in quantities). In addition, the application to the applicants of the common organisation of the market has prejudiced their freedom to engage in commercial activities. Finally, the applicants plead infringement of the decision of the Dispute Settlement Body of the World Trade Organisation (WTO), according to which essential provisions of the common organisation of the market, in particular the system of licences established by it, are incompatible with the General Agreement on Tariffs and Trade and the General Agreement on Trade in Services. Consequently, the Community is liable to compensate the applicants by placing them in the position which they would haved occupied if the common organisation of the market, which is contrary to the WTO rules, had never entered into force.

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**Action brought on 13 July 1998 by Fratelli Murri SpA against the Commission of the European Communities**

**(Case T-106/98)**

(98/C 312/37)

*(Language of the case: German)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 July 1998 by Fratelli Murri SpA, Rome (Italy), represented by Karl-Gustav von Luschka, Rechtsanwalt, Plauen (Germany), with an address for service in Luxembourg at the Chambers of Claude Medernach, of Arendt & Medernach, 8—10 Rue Mathias Hardt, Luxembourg.

The applicant claims that the Court should:

— order the defendant to pay the applicant the sum of USD 7 923 791 together with interest thereon at a rate of 10 % from 25 September 1991,

— order the defendant to pay the costs.

*Pleas in law and main arguments adduced in support:*

The applicant, a property and construction company limited by shares and incorporated under Italian law, alleges that it undertook work on the basis of a contract entered into with the defendant for the 'Baardaheere Agricultural Experimental Station' development aid project launched on the basis of the Third ACP-EEC Lomé Convention for Somalia and for the execution of a project under the aegis of the Sixth European Development Fund in Somalia.

The defendant's liability is now at issue as the administrator of that development fund and employer of a member of staff answerable to it, namely its Somalia delegate, on the ground of his unlawful conduct resulting in an obligation to pay damages. In spite of the unrest akin to civil war in 1990 and 1991, that delegate allegedly held the applicant to its obligations under its contract with the defendant notwithstanding the grave concerns voiced by the applicant about remaining in the country any longer. Further, the delegate even urged the applicant that it should maintain and oversee the works which had been constructed for a period of at least two months beyond the performance of the contract. The applicant notified the defendant in writing as long ago as 1991 of resultant claims for compensation particularly since the applicant had incurred damage in the total amount of USD 7 923 791 as a result of warlike acts committed by the guerillas (destruction and theft of plant and equipment and plundering and wreaking devastation at the head office and workshops) and the associated costs (evacuation costs, claims for compensation from foreign staff, etc.).

The applicant considers the fact that the defendant's delegate repeatedly ordered that the contract be performed and the project maintained and overseen, notwithstanding the foreseeability of the disintegration of Somalia's State structures, to amount to unlawful conduct attributable to the defendant. It alleges that the delegate, who was aware of that situation although he may have failed to make a correct assessment of how it would develop, did not give permission for the works to be prematurely terminated and the machines and equipment to be removed from the country in time. Consequently there was a breach of the principle of proportionality. If the delegate had properly and fairly weighed up the interests of the parties, he would — not least as a result of the applicant's repeated express warnings as to the dangerousness of the situation — have seen that the development aid project was not secure in the long term and so was doomed. Instead, the