ORDER OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)
23 February 1995 *

In Case T-490/93,

Bremer Vulkan Verbund AG, a company governed by German law, established in Bremen (Germany), represented by Hans-Jürgen Rabe, Rechtsanwalt of Hamburg and of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Turk & Prum, V 13B Avenue Guillaume,

applicant,

v

Commission of the European Communities, represented by Ben Smulders and Jürgen Grunwald, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision 93/412/EEC of 6 April 1993 concerning aid awarded by the German Government to Hibeg and by

* Language of the case: German.

Hibeg via Krupp GmbH to Bremer Vulkan AG, facilitating the sale of Krupp Atlas Elektronik GmbH from Krupp GmbH to Bremer Vulkan AG (OJ 1993 L 185, p. 43),

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

composed of: K. Lenaerts, President, R. Schintgen, C. P. Briët, R. García-Valdecasas and C. W. Bellamy, Judges,

Registrar: H. Jung,

makes the following

Order

1 By application lodged at the Registry of the Court of Justice on 1 July 1993, Bremer Vulkan Verbund AG ('Bremer Vulkan') brought an action against the Commission (Case C-339/93) for the annulment of Commission Decision 93/412/EEC of 6 April 1993 concerning aid awarded by the German Government to Hibeg and by Hibeg via Krupp GmbH to Bremer Vulkan AG, facilitating the sale of Krupp Atlas Elektronik GmbH from Krupp GmbH to Bremer Vulkan AG (OJ 1993 L 185, p. 43). According to Article 4 of the Commission's decision, that decision was addressed to Germany.

2 By application lodged at the Registry of the Court of Justice on 25 June 1993, Germany brought an action against the Commission for the annulment of the same decision (Case C-329/93).

3 By application lodged at the Registry of the Court of Justice on 28 June 1993, Hanseatische Industrie-Beteiligungen ('Hibeg') brought an action against the Commission for the annulment of the same decision (Case C-335/93).

4 By orders of 27 September 1993 the Court of Justice referred Cases C-335/93 and C-339/93 to the Court of First Instance pursuant to Article 4 of Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1993 L 144, p.21). Cases C-355/93 and C-339/93 were registered under numbers T-488/93 and T-490/93 respectively.

5 The Commission in its defences, lodged at the Registry of the Court of Justice on 8 September 1993, requested the Court of First Instance to decline jurisdiction in Cases C-335/93 and C-339/93, which the Court of Justice was about to refer to it, in order to enable the Court of Justice, pursuant to the second sentence of the third paragraph of Article 47 of the Statute of the Court of Justice of the EEC ('the Statute'), to rule on all the applications, since they sought the same relief and in view of the fact that the main action was that brought by Germany, the actions brought by Hibeg and Bremer Vulkan in fact being in the nature of interventions in support of Germany.

6 In its reply of 18 November 1993, Bremer Vulkan also requested the Court of First Instance to decline jurisdiction in Case T-490/93 in accordance with the second sentence of the third paragraph of Article 47 of the Statute in order to enable the Court of Justice to order the three cases to be joined and to rule on the applications at the same time. By document of 22 November 1994 Bremer Vulkan reiterated its request that the Court of First Instance should decline jurisdiction.

7 By document registered at the Registry of the Court of First Instance on 19 November 1993, Hibeg requested that the Court of First Instance should decline jurisdiction in Case T-488/93 and, by document of 24 November 1994, it reiterated that request.

8 According to the third paragraph of Article 47 of the Statute, where the Court of Justice and the Court of First Instance are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice has delivered judgment. However, where applications are made for the same act to be declared void, the Court of First Instance may also decline jurisdiction in order that the Court of Justice may rule on such applications.

9 The Court of Justice has not suspended, pursuant to the third paragraph of Article 47 of the Statute, the proceedings in Case C-329/93. The Court of First Instance must therefore decide whether to suspend the proceedings in Case T-490/93 or to decline jurisdiction.

10 It should first of all be noted that the applicants, Hibeg and Bremer Vulkan, and the Commission have all stated that they are in favour of the Court of First Instance declining jurisdiction to enable the cases to be conducted simultaneously before the Court of Justice.

11 Moreover, in the present case, the actions brought before the Court of Justice and the Court of First Instance are for the annulment of the same act, namely Decision 93/412 of 6 April 1993.

12 Since the second paragraph of Article 37 of the Statute precludes natural or legal persons from intervening in disputes between Member States, on the one hand, and institutions of the Community, on the other, the only possibility for natural or legal persons to put forward their pleas in law and factual and legal arguments in disputes which concern them is to bring an action themselves, in cases in which they have standing to do so, before the competent court.

13 Since the Court of Justice has not suspended the proceedings before it in Case C-329/93, it is in the interests of the proper administration of justice that the court with jurisdiction to hear the proceedings instituted by a Member State should be able to take into consideration the various pleas in law and factual and legal arguments relied upon by the natural or legal persons concerned in support of their applications for annulment of the same act.

14 In this case, the mere suspension, pending delivery of judgment by the Court of Justice, of the proceedings pending before the Court of First Instance would not enable the Court of Justice to examine the pleas in law and arguments relied upon by the applicant, Bremer Vulkan, in Case T-490/93 against the contested decision.

15 In the light of the foregoing, the Court of First Instance should, in accordance with the third paragraph of Article 47 of the Statute and Article 80 of its Rules of Procedure, decline jurisdiction in Case T-490/93 and refer the file on the case to the Court of Justice in order to enable the latter to rule on the applications for annulment.

On those grounds,

THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)

hereby orders:

1. **The Court of First Instance declines jurisdiction in Case T-490/93, *Bremer Vulkan Verbund AG* v *Commission of the European Communities*, in order to enable the Court of Justice to rule on the applications for annulment;**

2. **The costs are reserved.**

Luxembourg, 23 February 1995

H. Jung — K. Lenaerts

Registrar — President