

ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
20 February 2004 \*

In Case T-319/03,

Graham French,

John Steven Neiger,

Michael Leighton,

John Frederick Richard Pascoe,

Richard Micklethwait,

Ruth Margaret Micklethwait,

represented by J.S. Barnett, Solicitor-Advocate,

applicants,

\* Language of the case: English.

against

**Council of the European Union**

and

**Commission of the European Communities,**

defendants,

APPLICATION for damages to compensate for the loss allegedly suffered by the applicants as a result of the failure of the Council and of the Commission to adopt measures concerning the infringement by certain United Kingdom courts of their obligation to refer questions to the Court of Justice for a preliminary ruling,

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

composed of: P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges,

Registrar: H. Jung,

II - 772

makes the following

## Order

### Facts and procedure

- 1 The applicants are members or former members (Names) of Lloyd's of London (hereinafter 'Lloyd's') and, as such, fully personally liable for their losses at Lloyd's.
- 2 In 1996 Lloyd's brought proceedings against the applicants in the Queen's Bench Division of the High Court of Justice (England & Wales) to recover sums allegedly due to it.
- 3 In the course of those proceedings, the applicants applied, on 9 March 1998, to the national court seized of the proceedings to refer a question to the Court of Justice under Article 234 EC for a preliminary ruling. That question ought to relate, according to the applicants, to the interpretation of the auditing requirements imposed by First Council Directive 73/239/EEC of 24 July 1973 on the coordination of the laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life insurance (OJ 1973 L 228, p. 3).

4 The High Court of Justice made no such reference to the Court and, on 13 March 1998, gave judgment ordering the applicants to pay their debts to Lloyd's.

5 The applicants lodged an application for leave to appeal to the Court of Appeal, which, on 31 July 1998, refused the application.

6 The applicants also petitioned the House of Lords for leave to appeal. That petition was dismissed as inadmissible in November 1998.

7 In October 1999, the applicants made a complaint, which was registered under No 99/5049, SG(99) A/12851, to the Commission. The subject-matter of that complaint was, according to the applicants, the failure by the United Kingdom courts to fulfil their obligations under Article 234 EC.

8 By letters of 16 June and 18 July 2003, the Commission informed the applicants that, following intervention of the competent Commission services, the United Kingdom authorities had amended the procedure of the Judicial Committee of the House of Lords, in order to ensure that such committee gives reasons for its decision when it refuses an application to make a reference for a preliminary ruling in a case where a question of Community law has been raised by an applicant by stating, in particular, the reasons why it is not appropriate to make a reference to the Court.

- 9 By application lodged at the Registry of the Court of First Instance on 12 September 2003, the applicants brought this action.

### Form of order sought by the applicants

- 10 The applicants claim that the Court should:

- order the Community to pay damages with interest thereon at the rate laid down by Section 35A of the Supreme Court Act 1981 or at such other rate as the Court may decide;
  
- grant all other relief to compensate for the loss suffered;
  
- order the defendants to pay the costs.

### Law

- 11 Under Article 111 of the Rules of Procedure of the Court of First Instance, where the action is manifestly inadmissible the Court of First Instance may, without taking further steps in the proceedings, give a decision on the action by reasoned order.

- 12 In this case, the Court considers that it has sufficient information from the documents in the file and has decided, pursuant to that article, to give a decision without taking further steps in the proceedings.
- 13 Under the first paragraph of Article 21 of the Statute of the Court of Justice, which, pursuant to the first paragraph of Article 53 of the Statute, applies to proceedings before the Court of First Instance, and under Article 44(1)(c) and (d) of the Rules of Procedure, the application must contain, among other things, the subject-matter of the proceedings, the form of order sought and a summary of the pleas in law on which the application is based. Those matters must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, if necessary without further information. In order to guarantee legal certainty and sound administration of justice, it is necessary, for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (orders of 28 April 1993 in Case T-85/92 *De Hoe v Commission* [1993] ECR II-523, paragraph 20, and 21 May 1999 in Case T-154/98 *Asia Motor France and Others v Commission* [1999] ECR II-1703, paragraph 49, and judgment in Case T-277/97 *Ismeri Europa v Court of Auditors* [1999] ECR II-1825, paragraph 29).
- 14 In order to satisfy those requirements, an application seeking compensation for damage allegedly caused by a Community institution must state the evidence from which the conduct alleged against the institution can be identified, the reasons for which the applicant considers there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (Case T-387/94 *Asia Motor France and Others v Commission* [1996] ECR II-961, paragraph 107, and Case T-195/95 *Guérin automobiles v Commission* [1997] ECR II-679, paragraphs 20 and 21).
- 15 In this case, it must be observed at the very outset that, according to the applicants, the damage suffered arises from their being ordered, on 13 March 1998, to pay their debts to Lloyd's and from the insolvency of some of them which occurred subsequently to that order.

- 16 As regards, next, the Council's allegedly unlawful conduct, the applicants claim that the fact that the Council has not included among its regulations provisions intended to ensure that national courts refer questions to the Court of Justice for a preliminary ruling constitutes a breach of a primary rule of law.
- 17 The Court observes however, in that regard, that the applicants have not specified the primary rule of law which the Council is alleged to have broken. Moreover, as regards the obligation for national courts whose decisions are not subject to appeal under national law to refer, under Article 234 EC, to the Court of Justice for a preliminary ruling a question on the interpretation of measures adopted by the Community institutions, the applicants do not explain how the Council has infringed that article.
- 18 In the case of the Commission's allegedly unlawful conduct, the applicants refer to Article 211 EC and to the complaint they made to it.
- 19 However, the applicants do not identify the conduct to be attributed to the Commission.
- 20 The applicants state, indeed, in that context, that, 'at the instigation of the Commission, the English courts have changed their procedure'. In that regard, it is important to note that the applicants do not dispute the Commission's statement in its letters of 16 June and 18 July 2003 that, 'following intervention of the competent Commission services the UK authorities have amended the Judicial Committee of the House of Lords' procedure'.

21 Finally, in the course of their argument on the existence of a causal link, the applicants allege that ‘the failure of the relevant authorities in the United Kingdom to have in place and to provide the applicants with a proper judicial procedure that complies with Article 234 EC prevented a correct analysis and interpretation of Directive 73/239 and so deprived the Court of Justice of any opportunity to consider the interpretation of the audit requirements of Directive 73/239 and of the related performance in the UK’.

22 The Court considers that that allegation, likewise, does not enable the conduct attributable to the defendants which could have caused the applicants any loss to be identified.

23 It follows that in their application the applicants have not identified with the requisite degree of clarity and precision any wrongful conduct of the defendants capable of giving rise to the damage which they plead.

24 In addition, the application does not enable a causal link between any unlawful conduct of the defendants and the damage pleaded by the applicants to be inferred.

25 Since the application does not comply with the minimum requirements of Article 44(1)(c) of the Rules of Procedure, the application must be dismissed as being manifestly inadmissible. It is not necessary, in those circumstances, for the application initiating the proceedings to be served upon the defendants.

## Costs

- 26 Since this order has been adopted before service of the application on the defendants and before they could have incurred costs, it is sufficient to order that the applicants must bear their own costs, in accordance with Article 87(1) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber),

hereby orders:

1. The application is dismissed.
2. The applicants shall bear their own costs.

Luxembourg, 20 February 2004.

H. Jung

Registrar

P. Lindh

President