

JUDGMENT OF THE COURT

6 March 2003 *

In Case C-41/00 P,

Interporc Im- und Export GmbH, established in Hamburg (Germany), represented by G.M. Berrisch, Rechtsanwalt,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber, Extended Composition) in Case T-92/98 *Interporc v Commission* [1999] ECR II-3521, seeking to have that judgment set aside in part,

the other party to the proceedings being:

Commission of the European Communities, represented by U. Wölker, acting as Agent, with an address for service in Luxembourg,

* Language of the case: German.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, R. Schintgen and C.W.A. Timmermans, Presidents of Chambers, C. Gulmann, D.A.O. Edward, A. La Pergola (Rapporteur), P. Jann, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges,

Advocate General: P. Léger,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 12 March 2002,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 11 February 2000, Interporc Im- und Export GmbH ('Interporc') brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment in Case T-92/98 *Interporc v Commission* [1999] ECR II-3521 ('the judgment under appeal'), by which the Court of First Instance partially dismissed its action for annulment of the Commission Decision of 23 April 1998 refusing it access to certain documents held by the Commission ('the contested decision').

Legal background

2 The Court of First Instance held:

‘1 In the wake, *inter alia*, of the Final Act of the Treaty on European Union signed at Maastricht on 7 February 1992 which contains a Declaration (No 17) on the right of access to information, and of several European Council meetings at which the commitment to a more open Community was reaffirmed (see, in that connection, Case T-105/95 *WWF UK v Commission* [1997] ECR II-313, paragraphs 1 to 3), the Commission and the Council, on 6 December 1993, adopted a Code of Conduct concerning public access to Council and Commission documents (OJ 1993 L 340, p. 41, hereinafter “the Code of Conduct”) to establish the principles governing access to the documents they hold. The Code of Conduct provides:

“The Commission and the Council will severally take steps to implement these principles before 1 January 1994.”

2 In implementation of that undertaking, on 8 February 1994, on the basis of Article 162 of the EC Treaty (now Article 218 EC), the Commission adopted Decision 94/90/ECSC, EC, Euratom on public access to Commission documents (OJ 1994 L 46, p. 58). Article 1 of that decision formally adopted the Code of Conduct, the text of which is annexed to the decision (hereinafter “Decision 94/90”).

3 The Code of Conduct sets out the following general principle:

“The public will have the widest possible access to documents held by the Commission and the Council.

‘Document’ means any written text, whatever its medium, which contains existing data and is held by the Commission or the Council.”

4 The factors which may be relied upon by an institution as grounds for rejecting an application for access to documents are listed in the Code of Conduct in the following terms:

“The institutions will refuse access to any document where disclosure could undermine:

—the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations),

—the protection of the individual and of privacy,

- the protection of commercial and industrial secrecy,

- the protection of the Community's financial interests,

- the protection of confidentiality as requested by the natural or legal persons that supplied the information or as required by the legislation of the Member State that supplied the information.

They may also refuse access in order to protect the institution's interest in the confidentiality of its proceedings.”

- 5 The Code of Conduct also states, under the heading “Processing of initial applications”:

“Where the document held by an institution was written by a natural or legal person, a Member State, another Community institution or body or any other national or international body, the application must be sent direct to the author” (“the authorship rule”).

- 6 On 4 March 1994, the Commission adopted a communication on improved access to documents (OJ 1994 C 67, p. 5, hereinafter “the 1994 communication”), giving details of the criteria for implementation of Decision 94/90. That communication states that “anyone may... ask for

access to any unpublished Commission document, including preparatory documents and other explanatory material”. With regard to the exceptions provided for in the Code of Conduct, the communication states that the Commission “may take the view that access to a document should be refused because its disclosure could undermine public and private interests and the good functioning of the institution....” On that point, the communication stresses: “There is nothing automatic about the exemptions, and each request for access to a document will be considered on its own merits.” As regards the processing of confirmatory applications, the 1994 communication states:

“If an applicant is told that access is to be refused, and is not satisfied with the explanation, he or she can ask the Commission’s Secretary-General to review the matter and either confirm or overturn the refusal.””

Factual background to the dispute

3 As to the facts, the Court of First Instance recorded:

‘7 Imports of beef and veal into the Community are subject, as a rule, to customs duty and an additional levy. Under the General Agreement on Tariffs and Trade (GATT), each year the Community opens a so-called “Hilton” quota. Under that quota, certain quantities of high-quality beef (“Hilton Beef”) from Argentina may be imported into the Community free of

any levies and subject only to duty in accordance with the applicable common customs tariff. In order to qualify for that exemption, a certificate of authenticity from the Argentine authorities is required.

- 8 The Commission was informed that certificates of authenticity had been found to have been falsified and, in collaboration with the customs authorities of the Member States, initiated inquiries into the matter in late 1992 and early 1993. When the customs authorities came to the conclusion that falsified certificates of authenticity had been presented to them, they took action for post-clearance recovery of the import duty.
- 9 After those falsifications had been discovered, the German authorities sought post-clearance recovery of import duty from the applicant, which requested remission of that duty, claiming that it had presented the certificates of authenticity in good faith and that certain deficiencies in the control procedure were attributable to the competent Argentine authorities and to the Commission.
- 10 By decision of 26 January 1996, addressed to the Federal Republic of Germany, the Commission declared that the applicant's request for remission of the import duty was not justified.
- 11 By letter of 23 February 1996 to the Secretary-General of the Commission and to the Directors-General of Directorates-General ("DG") I, VI and XXI, the applicant's lawyer requested access to certain documents relating to

control procedures for imports of Hilton Beef and to the inquiries which gave rise to the German authorities' decisions to effect post-clearance recovery of import duty. The request concerned 10 categories of document....

- 12 By letter of 22 March 1996, the Director-General of DG VI refused the request for access both as regards the correspondence with the Argentine authorities and the records of the discussions prior to the granting and opening of the "Hilton" quotas and as regards the correspondence with the Argentine authorities following the discovery of the falsified certificates of authenticity. That refusal was based on the exception for protection of the public interest (international relations). As regards the remaining documents, the Director-General also refused access to those emanating from the Member States or the Argentine authorities, on the ground that the applicant should address its request directly to the various authors of those documents.

- 13 By letter of 25 March 1996, the Director-General of DG XXI refused the request for access to the report of the internal inquiry into the falsifications which had been drawn up by the Commission, basing that refusal on the exception for protection of the public interest (inspections and investigations) and the exception for protection of the individual and of privacy. As regards the positions taken by DG VI and DG XXI concerning other requests for remission of import duty and the minutes of the meetings of the committee of experts from the Member States, the Director-General of DG XXI refused access to the documents on the basis of the exception for protection of the institution's interest in the confidentiality of its proceedings. As regards the remaining documents, he refused access to those emanating from the Member States, on the ground that the applicant should address its request directly to the various authors of those documents.

- 14 By letter of 27 March 1996, the applicant's lawyer submitted a confirmatory application within the meaning of the Code of Conduct to the Secretary-General of the Commission. In that letter, he challenged the justification for the grounds on which the Directors-General of DG VI and DG XXI refused access to the documents.

- 15 By application lodged at the Registry of the Court of First Instance on 12 April 1996, the applicant and two other German firms brought an action for annulment of the Commission's decision of 26 January 1996 (Case T-50/96).

- 16 By letter of 29 May 1996, the Secretary-General of the Commission rejected the confirmatory application in the following terms:

“Following an examination of your request, I regret to have to inform you that I confirm the decision of DG VI and DG XXI for the following reasons.

The documents requested all concern a Commission decision of 26 January 1996 (doc. COM (C)96 180 final) which has since become the subject-matter of an application for annulment brought by your representative (Case T-50/96).

Consequently, and without prejudice to other exceptions which might justify refusing access to the documents requested, the exception for protection of the public interest (court proceedings) is applicable. The Code of Conduct cannot oblige the Commission, as a party to a pending action, to provide the other party with documents relating to the dispute.”

...

- 18 By application lodged at the Registry of the Court of First Instance on 9 August 1996, the applicant brought an action for annulment of the Commission's decision of 29 May 1996 confirming its refusal to allow the applicant access to certain of its documents. By its judgment in Case T-124/96 *Interporc I* [1998] ECR II-231, the Court of First Instance held that the statement of reasons in the decision of 29 May 1996 was inadequate and annulled that decision.
- 19 Moreover, in the course of proceedings in Case T-50/96, in response to the request of the Court of First Instance of 15 December 1997, the Commission produced certain documents some of which were the same as those requested by the applicant in the course of proceedings in *Interporc I*. In the present case the applicant has confirmed that the confirmatory application has ceased to have any purpose in so far as it relates to the documents the Commission produced at the request of the Court of First Instance in Case T-50/96.
- 20 In implementation of the judgment in *Interporc I*, the Commission sent to the applicant's lawyer a further decision dated 23 April 1998 concerning the applicant's confirmatory application of 27 March 1996 and containing an identical conclusion to that in the annulled decision of 29 May 1996 but stating different reasons... The contested decision reads as follows:

“... ”

As regards the documents emanating from the Member States and the Argentine authorities, I would advise you to request a copy directly from those Member States and from the authorities concerned. Whilst the Code of Conduct provides that 'the public will have the widest possible access to

documents held by the Commission and the Council', the fifth paragraph provides that 'where the document held by an institution was written by a natural or legal person, a Member State, another Community institution or body or any other national or international body, the application must be sent direct to the author'. The Commission can therefore in no circumstances be accused of an abuse of rights; it is merely applying its decision of 8 February 1994 governing the implementation of the Code of Conduct.

All the other documents concern pending legal proceedings (Case T-50/96) and fall within the exception based on the protection of the public interest, and, in particular, of the proper conduct of court proceedings, expressly provided for by the Code of Conduct. To disclose them on the basis of provisions relating to public access to Commission documents is likely to be damaging to the interests of the parties in those proceedings, and in particular to the rights of the defence, and would be contrary to the special provisions governing the disclosure of documents in court proceedings.”

The judgment under appeal

- 4 In support of its action for annulment of the contested decision the applicant relied, before the Court of First Instance,
 - as regards the documents emanating from the Commission, on three pleas in law alleging that the Commission infringed, first, the Code of Conduct and Decision 94/90, second, Article 176 of the EC Treaty (now Article 233 EC) in conjunction with the judgment in *Interporc I* and, third, Article 190 of the EC Treaty (now Article 253 EC), and
 - as regards the documents emanating from the Member States or the Argentine authorities, on three pleas alleging, first, the unlawfulness of the

contested decision in so far as it is based on the authorship rule, second, infringement of the Code of Conduct adopted by Decision 94/90 and, third, infringement of Article 190 of the Treaty.

5 The Court of First Instance upheld the plea alleging infringement of the Code of Conduct adopted by Decision 94/90 on the ground that the Commission had misapplied the exception based on the protection of the public interest (court proceedings) and it therefore annulled the contested decision in so far as it refused to authorise access to documents emanating from the Commission.

6 However, the Court of First Instance held that the contested decision should not be annulled in so far as it refused access, on the basis of the authorship rule, to the documents emanating from the Member States or the Argentine authorities.

7 The Court of First Instance gave the following reasons for its rejection of the plea alleging the unlawfulness of the contested decision in so far as it is based on the authorship rule:

'55 It follows from the judgment in *Interporc I*, first, that the Secretary-General was required, under Article 176 of the Treaty, to take a further decision in implementation of that judgment and, second, that the decision of 29 May 1996 is deemed to have never existed.

56 Accordingly, it cannot be inferred from Article 2(2) of Decision 94/90 and the 1994 communication that the Secretary-General could not rely on grounds other than those on which he took a position in his initial decision.

He was therefore entitled to undertake a full review of the applications for access and base the contested decision [not only on the exception based on the protection of the public interest (court proceedings) but also] on the authorship rule.’

- 8 In rejecting the plea alleging infringement of the Code of Conduct adopted by Decision 94/90, the Court of First Instance held:

‘66 ... it must be held that, so long as there is no rule of law of a higher order according to which the Commission was not empowered, in Decision 94/90, to exclude from the scope of the Code of Conduct documents of which it was not the author, the authorship rule can be applied....

...

- 69 It must be held, [as regards the interpretation of that rule] that the authorship rule, however it may be characterised, lays down an exception to the general principle of transparency in Decision 94/90. It follows that this rule must be construed and applied strictly, so as not to frustrate the application of the general principle of transparency (Case T-188/97 *Rothmans International v Commission* [1999] ECR II-2463, paragraphs 53 to 55).

...

73 It is clear, on examination of the five types of documents [referred to in the contested decision], that their authors are either the Member States or the Argentine authorities.

74 It follows that the Commission has applied the authorship rule correctly in taking the view that it was not required to grant access to those documents. It cannot, therefore, have committed an abuse of rights....'

9 The Court of First Instance also rejected the plea alleging infringement of Article 190 of the Treaty on the following grounds:

'77 According to consistent case-law, the obligation to state reasons, laid down in Article 190 of the Treaty, means that the reasoning of the Community authority which adopted the contested measure must be shown clearly and unequivocally so as to enable the persons concerned to ascertain the reasons for the measure in order to protect their rights and the Community judicature to exercise its power of review....

78 In the present case, in the contested decision the Commission referred to the authorship rule and informed the applicant that it should request a copy of the documents in question from the Member States concerned or the Argentine authorities. Such a statement of reasons shows clearly the reasoning of the Commission. The applicant was thus in a position to know the justification for the contested measure and the Court of First Instance is in a position to exercise its power to review the legality of that decision.

Accordingly, the applicant is not justified in maintaining that a more specific statement of reasons was required (see *Rothmans International v Commission*, cited above, paragraph 37).’

The appeal

- 10 By its appeal, Interporc claims that the Court should:
 - set aside the judgment under appeal in so far as, first, it rejects the claim for annulment of the contested decision in so far as it refuses access to documents emanating from the Member States or the Argentine authorities and, second, orders it to bear its own costs;
 - annul the contested decision in its entirety;
 - order the Commission to pay the costs of the appeal and the costs of the proceedings before the Court of First Instance.
- 11 Interporc relies on two pleas in support of its appeal. The first alleges that the Court of First Instance erred in law as regards the assessment made by the Commission of the request for access to the file (paragraphs 55 to 57 of the judgment under appeal). The second plea alleges, as its main argument, that the authorship rule is void on the ground that it infringes a rule of law of a higher order and, in the alternative, that that rule has been misinterpreted and misapplied and that the Commission has breached its obligation to state reasons laid down by Article 190 of the Treaty (paragraphs 65 to 79 of that judgment).

- 12 The Commission contends that the appeal should be dismissed as inadmissible and, in the alternative, as unfounded, and that the appellant should be ordered to bear the costs of the appeal. However, should the authorship rule be declared void, it requests that the effects of the Court's judgment be limited to the documents sent after delivery of that judgment.

Admissibility of the appeal

Arguments of the parties

- 13 The Commission contends that the appeal is inadmissible in its entirety. First, it is inadmissible in so far as Interporc seeks the annulment of the contested decision in its entirety. Since that decision has already been annulled in part by a judgment of the Court of First Instance which is enforceable in that respect, it cannot be annulled a second time in its entirety. Second, in support of the two pleas submitted, rather than indicating clearly the aspects of the judgment under appeal it takes issue with and the legal arguments intended specifically to support its claim for annulment, the appellant confines itself to repeating or reproducing verbatim the pleas and arguments already put before the Court of First Instance.
- 14 Interporc counters that, as the infringement of rules of law by the Court of First Instance is generally inseparable from the pleas in the action and the legal provisions cited in them, a fresh presentation of those pleas in the appeal is often inevitable. The Commission's position as regards the admissibility of the appeal thus tends to limit disproportionately the scope for bringing appeals. Furthermore, contrary to the Commission's submission, the pleas it relies on are supported by argument and criticise the reasoning of the Court of First Instance sufficiently clearly.

Findings of the Court

- 15 To begin with, it must be recalled that, according to settled case-law, it follows from Article 225 EC, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, in particular, Case C-352/98 P *Bergaderm and Goupil v Commission* [2000] ECR I-5291, paragraph 34, and Case C-248/99 P *France v Monsanto and Commission* [2002] ECR I-1, paragraph 68).
- 16 Thus, where an appeal merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court, it fails to satisfy the requirements to state reasons under those provisions (see *inter alia* the order of 25 March 1998 in Case C-174/97 P *FFSA and Others v Commission* [1998] ECR I-1303, paragraph 24).
- 17 However, provided that the appellant challenges the interpretation or application of Community law by the Court of First Instance, the points of law examined at first instance may be discussed again in the course of an appeal (Case C-210/98 P *Salzgitter v Commission* [2000] ECR I-5843, paragraph 43). Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the Court of First Instance, an appeal would be deprived of part of its purpose (see *inter alia* the order of 10 May 2001 in Case C-345/00 P *FNAB and Others v Council* [2001] ECR I-3811, paragraphs 30 and 31, and the judgment in Case C-321/99 P *ARAP and Others v Commission* [2002] ECR I-4287, paragraph 49).

- 18 In the present case the appeal, taken as a whole, specifically seeks to challenge the position adopted by the Court of First Instance on various points of law raised before it at first instance. It indicates clearly the aspects of the judgment under appeal which are criticised and the pleas in law and arguments on which it is based.
- 19 It is clear from the appeal as a whole that, in support of its claim for annulment, the appellant challenges paragraphs 55 to 57 and 65 to 79 of the judgment under appeal, which constitute the essential basis for paragraphs 2 and 3 of the operative part of that judgment. That part of the judgment examines the contested decision only to the extent that, by that decision, the Commission refuses the appellant access to documents emanating from the Member States or the Argentine authorities. Thus, in asking the Court to ‘annul the contested decision in its entirety’, the appellant clearly intended to limit its claim for annulment to the part of the decision which had not already been annulled by the Court of First Instance.
- 20 As regards the first plea in particular, the appellant refers to paragraphs 55 to 57 of the contested judgment in order to demonstrate that the Court of First Instance was in breach of Community law in ruling that the Commission could adopt a further decision refusing access on the basis of the authorship rule.
- 21 As regards the second plea of the appeal, the appellant refers first to paragraphs 65 and 66 of the judgment under appeal in connection with the first part of that plea, then to paragraphs 69 and 70 of that judgment in connection with the second part of that plea and, finally, to paragraphs 77 to 79 of the judgment in connection with the third part of the plea. The appellant takes the view that the Court of First Instance disregarded a principle of law of a higher order relating to transparency, given an erroneous interpretation in law of the authorship rule and misapplied Article 190 of the Treaty respectively.

- 22 It follows that the Commission's argument regarding the inadmissibility of the appeal as a whole on the ground that it seeks the annulment of the contested decision in its entirety cannot be upheld. Similarly, the objection of inadmissibility raised against the first and second pleas, according to which the appellant merely repeats arguments already raised before the Court of First Instance, must be dismissed.
- 23 It follows from the foregoing that the appeal is admissible.

Substance

The first plea of an error of law by the Court of First Instance as regards the assessment made by the Commission of the request for access to the file

Arguments of the parties

- 24 Interporc submits that, in the judgment under appeal, the Court of First Instance made an error of law in not accepting, as regards the reasons stated for the contested decision, that the Commission failed to assess carefully and impartially all the relevant matters of fact and of law in the case. Thus, the Court of First Instance did not correctly assess the appellant's argument that the decision is based on an incomplete legal appraisal of the possible grounds for refusal. On the

contrary, the Court of First Instance expressly based the alleged lawfulness of the contested decision on the mistaken premiss that the Secretary-General had undertaken a full review of the application for access (see paragraph 56 of the judgment under appeal).

- 25 In that regard Interporc points out that it had argued before the Court of First Instance that a request for access to documents, particularly a confirmatory application, must be the subject of a full and impartial examination by the Commission which must take account of all the grounds for refusal which the Code of Conduct adopted by Decision 94/90 allows. Only respect for that requirement makes effective judicial review of Community decisions possible, particularly where they fall within the remit of discretionary powers.
- 26 Moreover, according to the appellant, the Commission no longer had the right to base the contested decision on a new ground for refusal provided for by the Code of Conduct, such as the authorship rule, which it did not cite in its decision of 29 May 1996, which was annulled by the judgment in *Interporc I*. If that were not so, the Commission's practice would frustrate the subjective right of access to documents and create an unacceptable gap in protection by the courts since an individual would be obliged to bring actions until such time as the Commission had exhausted all the grounds for refusal liable to be used against that individual and could no longer justify a further refusal.
- 27 According to the Commission, the fact that, for procedural reasons, the decision of 29 May 1996 and the contested decision were based on a single ground for refusal, that is to say the protection of the public interest, or on that ground in conjunction with the authorship rule, does not of itself make those decisions incomplete. An administration has the right to base a decision on a single determinative ground, without it being necessary to take account of other possible grounds for refusal. Moreover, it is not acceptable that the Commission,

following annulment by the Court of First Instance of a decision it has taken, should be effectively deprived of the right to cite relevant, and in fact mandatory, exceptions provided for by the Code of Conduct adopted by Decision 94/90.

Findings of the Court

- 28 As a preliminary point, it should be noted that when the Court of First Instance annuls an act of an institution, that institution is required, under Article 176 of the Treaty, to take the measures necessary to comply with the Court's judgment.
- 29 In order to comply with a judgment annulling a measure and to implement it fully, the institution is required, according to settled case-law, to have regard not only to the operative part of the judgment but also to the grounds which led to the judgment and constitute its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the annulled measure (Joined Cases 97/86, 99/86, 193/86 and 215/86 *Asteris and Others v Commission* [1988] ECR 2181, paragraph 27, and Case C-458/98 P *Industrie des poudres sphériques v Council* [2000] ECR I-8147, paragraph 81).
- 30 However, Article 176 of the Treaty requires the institution which adopted the annulled measure only to take the necessary measures to comply with the judgment annulling its measure. Accordingly, that Article requires the institution concerned to ensure that any act intended to replace the annulled act is not affected by the same irregularities as those identified in the judgment annulling the original act (Case C-310/97 P *Commission v AssiDomän Kraft Products and Others* [1999] ECR I-5363, paragraphs 50 and 56).

- 31 Therefore, given that, as the Court of First Instance held at paragraph 55 of the judgment under appeal, it followed from the judgment in *Interporc I*, first, that the decision of 29 May 1996 was deemed to have never existed and, second, that the Secretary-General was required, under Article 176 of the Treaty, to take a further decision, the Court of First Instance was correct in ruling, at paragraph 56 of the judgment under appeal, that the Secretary-General was entitled to undertake a full review of the applications for access and, therefore, could rely, in the contested decision, on grounds other than those on which he based the decision of 29 May 1996, notably the authorship rule.
- 32 The possibility of a full review which the Court of First Instance mentions also implies that the Secretary-General was not supposed, in the contested decision, to reiterate all the grounds for refusal provided for by the Code of Conduct to adopt a decision correctly implementing the judgment in *Interporc I*, but had simply to base its decision on those it considered, in exercising its discretion, to be applicable in the case.
- 33 It follows that the first plea must be rejected.

The first part of the second plea alleging that the authorship rule is void on the ground that it breaches a principle of law of a higher order

Arguments of the parties

- 34 By the first part of its second plea, Interporc submits that the Court of First Instance, at paragraphs 65 and 66 of the judgment under appeal, erred in law in denying that the principle of transparency was a principle of law of a higher

order. According to Interporc the authorship rule is unlawful in that it breaches the principles of transparency and of the review of administrative activity by the public, which are guaranteed by freedom of access to documents. The fact that those general principles of a higher order are fundamental to the Community legal order is now confirmed by Article 255 EC, read in conjunction with the second paragraph of Article A and Article F(1) of the Treaty on European Union (now, after amendment, the second paragraph of Article 1 EU and Article 6(1) EU). Strict adherence to those general principles is thus an essential factor in guaranteeing the democratic structure of the European Union and the legitimacy of the exercise of the Community's sovereignty.

35 Interporc submits that, under those principles, the Commission cannot evade its obligation to disclose the documents it holds, by confining itself to referring applicants to the authors of those documents, where the legal and technical conditions for the effective exercise of the right of access to those documents is not thereby guaranteed.

36 The Commission contends that, while transparency is a political principle which can be derived from the principle of democracy, that alone does not allow any principle of law to be inferred.

37 Moreover, even if there were a general principle of law relating to the transparency of access to documents, the appellant has not established that that principle is necessarily breached by the fact that the relevant rules allow access only to the documents drawn up by the institution concerned.

Findings of the Court

- 38 As a preliminary point, it should be noted that, at paragraphs 35 and 36 of its judgment in Case C-58/94 *Netherlands v Council* [1996] ECR I-2169, the Court held that there had been a progressive affirmation of individuals' right of access to documents held by public authorities, a right which has been reaffirmed at Community level on various occasions, in particular in the declaration on the right of access to information annexed (as Declaration 17) to the Final Act of the Treaty on European Union, which links that right with the democratic nature of the institutions.
- 39 Moreover, the importance of that right was confirmed by the developments in the Community legal framework after the adoption of the contested decision. Thus, first, Article 255(1) EC, which was inserted into the Community legal order by the Treaty of Amsterdam, provides that '[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents...'. Second, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), adopted pursuant to Article 255 EC, lays down the principles and conditions for exercising that right in order to enable citizens to participate more closely in the decision-making process, to guarantee that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system and to contribute to strengthening the principles of democracy and respect for fundamental rights.
- 40 As regards the validity of the authorship rule as provided for by the Code of Conduct adopted by Decision 94/90 which the Commission had to apply at the time of the adoption of the contested decision, the Court of First Instance pointed out, at paragraph 65 of the judgment under appeal, that the Court, at paragraph 37 of the judgment in *Netherlands v Council*, cited above, held that so long as the

Community legislature has not adopted general rules on the right of public access to documents held by the Community institutions, the institutions must take measures as to the processing of such requests by virtue of their power of internal organisation, which authorises them to take appropriate measures in order to ensure their internal operation in conformity with the interests of good administration.

- 41 In the light of that case-law, the Court of First Instance held, at paragraph 66 of the judgment under appeal, that, so long as there was no rule of law of a higher order according to which the Commission was not empowered, in Decision 94/90, to exclude from the scope of the Code of Conduct documents of which it was not the author, the authorship rule could be applied.
- 42 As to that, it must be held that the Court of First Instance was right to cite paragraph 37 of the judgment in *Netherlands v Council*, cited above, and draw the conclusion that the authorship rule, as provided for by the Code of Conduct adopted by Decision 94/90, was enacted pursuant to the power of internal organisation which the Commission must exercise in accordance with the requirements of good administration, where no general rules on the subject have been adopted by the Community legislature.
- 43 Against that background, given the developments in this field as outlined at paragraphs 38 and 39 of this judgment, it must be held that the Court of First Instance did not err in law in holding, at paragraph 66 of the judgment under appeal, that, in the absence, at the time when the contested decision was adopted, of a principle or general rules of Community law expressly providing that the Commission was not empowered, under its power of internal organisation, to enact the authorship rule as provided for by the Code of Conduct adopted by Decision 94/90, that rule could be applied in the case.

44 The first part of the second plea must therefore be rejected.

The second part of the second plea, alleging misinterpretation and misapplication in law of the authorship rule

Arguments of the parties

45 In the alternative, Interporc submits that the judgment under appeal is based on a misinterpretation and misapplication in law of the authorship rule, in that although the Court of First Instance accepted, at paragraph 69 of that judgment, the need to interpret that rule strictly, it did not do so in this case.

46 According to Interporc, in the light of the principle of the widest possible access to documents held by the Commission laid down by Decision 94/90, the authorship rule must be interpreted like the other exceptions provided for by the Code of Conduct. The Commission therefore can exercise a discretion in each individual case as regards recourse to the system of exceptions, a discretion which it exercises subject to review by the Community Courts. The Commission was thus required in this case to indicate for each of the documents concerned the reasons why disclosure would be contrary to the interest which must be protected. If the Court of First Instance had intended to interpret the authorship rule in a genuinely strict way it should have incorporated those principles in the authorship rule.

47 The Commission recognises that the authorship rule represents a limitation on the principle of the widest possible access to documents held by the Commission

and must therefore, as far as possible, be interpreted strictly. However, the wording of that rule would plainly allow such a strict interpretation only if there were doubts as to the author of the documents. According to the Commission, there were manifestly no such doubts in the present case.

Findings of the Court

- 48 The aim pursued by Decision 94/90 as well as being to ensure the internal operation of the Commission in conformity with the interests of good administration, is to provide the public with the widest possible access to documents held by the Commission, so that any exception to that right of access must be interpreted and applied strictly (see Joined Cases C-174/98 P and C-189/98 P *Netherlands and Van der Wal v Commission* [2000] ECR I-1, paragraph 27).
- 49 In that regard, it must be held that, under the Code of Conduct adopted by Decision 94/90, a strict interpretation and application of the authorship rule imply that the Commission must verify the origin of the document and inform the person concerned of its author so that he can make an application for access to that author.
- 50 As is clear from paragraphs 72 and 73 of the judgment under appeal, in the contested decision the Commission informs the appellant that the documents in respect of which it has made an application for access emanate either from the Member States or from the Argentine authorities and states that it must apply directly to the authors of those documents.

51 It follows that the Court of First Instance did not err in law in holding, at paragraph 74 of the judgment under appeal, that the Commission applied the authorship rule correctly as provided for by the Code of Conduct adopted by Decision 94/90, in taking the view that it was not required to allow access to documents of which it was not the author.

52 The second part of the second plea must therefore be rejected as unfounded.

The third part of the second plea alleging infringement of the obligation to state reasons

Arguments of the parties

53 Interporc submits that the Court of First Instance erred in law in holding, at paragraph 78 of the judgment under appeal, that the Commission had properly discharged the obligation to state reasons incumbent upon it under Article 190 of the Treaty. According to the appellant, the Court of First Instance was not in a position to ascertain, from the reasons given for the contested decision, whether the Commission had also exercised its discretion on the question of the possibility of exercising effectively the right of access to documents *vis-à-vis* the Member States and the Argentine authorities.

54 The Commission contends that it fulfilled the obligation to state reasons as derived from Article 190 of the Treaty. It contends that the argument supporting the third part of the second plea in the appeal concerning infringement of the obligation to state reasons is indissolubly linked to that supporting the second part of that plea.

Findings of the Court

- 55 It must be observed that it is settled case-law that the statement of reasons required by Article 190 of the Treaty must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, in particular, Case C-367/95 P *Commission v Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63, and Case C-113/00 *Commission v Spain* [2002] ECR I-7601, paragraphs 47 and 48).
- 56 As regards a request for access to documents covered by Decision 94/90 and held by the Commission, the Commission, where it refuses access, must assess in each individual case whether they fall within the exceptions listed in the Code of Conduct adopted by the decision (see *Netherlands and Van der Wal v Commission*, cited above, paragraph 24).
- 57 In the contested decision, the Commission justifies its refusal of access to certain documents by the authorship rule as provided for by the Code of Conduct adopted by Decision 94/90. It refers expressly to the rule, provides a detailed list

of the documents requested which it holds but of which it is not the author, indicates the author of each of them and informs the appellant that it must apply directly to the authors of those documents to obtain access to the information contained in them.

58 Accordingly, the Court of First Instance did not err in law in holding, at paragraph 74 of the judgment under appeal, that the reasons stated for the contested decision meet the requirements of Article 190 of the Treaty.

59 It follows that the third part of the second plea must be rejected as unfounded.

60 It follows from all the foregoing considerations that the appeal must be dismissed.

Costs

61 Under the first subparagraph of Article 69(2) of the Rules of Procedure, which applies to the appeal procedure by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the Commission has applied for costs and Interporc has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the appeal;
2. Orders Interporc Im- und Export GmbH to pay the costs.

Rodríguez Iglesias	Puissochet	Schintgen
Timmermans	Gulmann	Edward
La Pergola	Jann	Colneric
von Bahr	Cunha Rodrigues	

Delivered in open court in Luxembourg on 6 March 2003.

R. Grass
Registrar

G.C. Rodríguez Iglesias
President