JUDGMENT OF THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)
2 October 2001 *

In Joined Cases T-222/99, T-327/99 and T-329/99,

Jean-Claude Martinez, Member of the European Parliament, residing in Montpellier (France),

Charles de Gaulle, Member of the European Parliament, residing in Paris (France), represented by F. Wagner, lawyer,

applicants in Case T-222/99,

Front national, established in Saint-Cloud (France), represented by A. Nivière, lawyer,

applicant in Case T-327/99,

Emma Bonino, Member of the European Parliament, residing in Rome (Italy),

Marco Pannella, Member of the European Parliament, residing in Rome,

Marco Cappato, Member of the European Parliament, residing in Vedano al Lambro (Italy),

* Languages of the case: French and Italian.

Gianfranco Dell'Alba, Member of the European Parliament, residing in Leghorn (Italy),

Benedetto Della Vedova, Member of the European Parliament, residing in Tirano (Italy),

Olivier Dupuis, Member of the European Parliament, residing in Rome,

Maurizio Turco, Member of the European Parliament, residing in Pulsano (Italy),

Lista Emma Bonino, established in Rome,

represented initially by A. Tizzano and G. M. Roberti, lawyers, and subsequently by G. M. Roberti,

applicants in Case T-329/99,

v

European Parliament, represented by G. Garzón Clariana, J. Schoo, H. Krück and A. Caiola, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for the annulment in Case T-222/99 of the European Parliament's decision of 14 September 1999 on the interpretation of Rule 29(1) of the Rules of Procedure of the European Parliament; in Case T-327/99 of the European Parliament's decision of 14 September 1999 dissolving with retroactive effect the 'Groupe technique des députés indépendants (TDI) — Groupe mixte'; and in Case T-329/99 of the European Parliament's decision of 14 September 1999 in which it adopted the view taken by the Committee on Constitutional Affairs on the conformity with Rule 29 of the Rules of Procedure of the European Parliament of the statement of formation of the 'Groupe technique des députés indépendants (TDI) — Groupe mixte',

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

composed of: J. Azizi, President, K. Lenaerts, R.M. Moura Ramos, M. Jaeger and M. Vilaras, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 13 February 2001,

gives the following

Judgment

Relevant provisions

1 Rule 29 ('Formation of political groups') of the Rules of Procedure of the European Parliament, in the version in force as from 1 May 1999 (OJ 1999 L 202, p. 1, hereinafter 'the Rules of Procedure'), reads:

'1. Members may form themselves into groups according to their political affinities.

2. A political group must comprise Members from more than one Member State. The minimum number of Members required to form a political group shall be twenty-three if they come from two Member States, eighteen if they come from three Member States and fourteen if they come from four or more Member States.

3. A Member may not belong to more than one group.

4. The President shall be notified in a statement when a political group is set up. This statement shall specify the name of the group, its members and its bureau.

5. The statement shall be published in the *Official Journal of the European Communities*.'

2 Rule 30 of the Rules of Procedure, concerning non-attached Members, reads:

'1. Members who do not belong to a political group shall be provided with a secretariat. The detailed arrangements shall be laid down by the Bureau on a proposal from the Secretary-General.

2. The Bureau shall also determine the status and parliamentary rights of such Members.'

3 Under Rule 23, the Conference of Presidents is to consist of the President of Parliament and the chairmen of the political groups who have a right to vote therein, and of two persons delegated from amongst the non-attached Members to attend meetings, without having the right to vote. Moreover, the possibility of tabling a motion for a resolution in order to wind up the debate on the election of the Commission is reserved to the political groups (Article 33), as is participation

in the Parliament's delegation to the Conciliation Committee (Article 82). In addition, under Rule 137 any political group may give an explanation of vote lasting not more than two minutes.

4 The Rules of Procedure also provide that a number of initiatives may only be taken by a political group or by at least 32 Members, in particular as regards

— nominations for the positions of President, Vice-Presidents and Quaestors (Rule 13);

— the opportunity to put questions to the Council or the Commission for an oral answer and to request that they be placed on the agenda of Parliament (Rule 42);

— tabling a proposal for a recommendation to the Council concerning subjects under Titles V and VI of the Treaty on European Union, or where Parliament has not been consulted on an international agreement within the scope of Rule 97 or Rule 98 (Rule 49);

— debates on topical and urgent subjects of major importance (Rule 50);

— renewed referral to Parliament under Rule 71(3);

— tabling a proposal to reject the Council's common position (Rule 79);

— tabling amendments to the Council's common position (Rule 80);

— proposals to request the Commission and the Council to take part in a debate before negotiations with an applicant State commence (Rule 96);

— proposals to request the Council not to authorise the opening of negotiations on the conclusion, renewal or amendment of an international agreement until Parliament has stated its position on the proposed negotiating mandate on the basis of a report from the responsible committee (Rule 97);

— tabling of amendments and recommendations drafted by the responsible committee within the framework of the common foreign and security policy (Rule 104);

— proposals to amend the draft agenda of Parliament (Rule 111);

— proposals for urgent debate (Rule 112);

— requests for a split vote (Rule 131);

— requests for voting by roll call (Rule 134);

— tabling amendments for consideration in plenary session (Rule 139);

— requests for referral back to committee (Rule 144);

— requests for closure of a debate (Rule 145);

— requests for adjournment of a debate (Rule 146);

— requests for suspension or closure of the sitting (Rule 147);

— contesting an interpretation of the Rules of Procedure by the responsible committee (Rule 180).

5 Rule 180, on the application of the Rules of Procedure, provides:

'1. Should doubt arise over the application or interpretation of these Rules of Procedure, the President may, without prejudice to any previous decisions in this field, refer the matter to the committee responsible for examination.

Where a point of order is raised under Rule 142, the President may also refer the matter to the committee responsible.

2. The committee shall decide whether it is necessary to propose an amendment to the Rules of Procedure. In this case it shall proceed in accordance with Rule 181.

3. Should the committee decide that an interpretation of the existing Rules is sufficient, it shall forward its interpretation to the President who shall inform Parliament.

4. Should a political group or at least thirty-two Members contest the committee's interpretation, the matter shall be put to the vote in Parliament.

Adoption of the text shall be by simple majority provided that at least one third of Parliament's component Members are present. In the event of rejection, the matter shall be referred back to the committee.

5. Uncontested interpretations and interpretations adopted by Parliament shall be appended in italic print as explanatory notes to the appropriate Rule or Rules, together with decisions on the application of the Rules of Procedure.

6. These explanatory notes shall constitute precedents for the future application and interpretation of the Rules concerned.

...'

Facts

6 By letter of 19 July 1999, a number of Members of the Parliament from various political factions notified the President of the Parliament, pursuant to Rule 29(4), of the formation of the 'Groupe technique des députés indépendants (TDI) — Groupe mixte' (Technical Group of Independent Members — Mixed Group) (hereinafter 'the TDI Group'), the declared purpose of which was to 'ensure that all Members are able to exercise their parliamentary mandates in full'.

7 The 'rules of constitution' of the TDI Group, appended to the letter referred to in the previous paragraph, state that:

'The individual signatory members affirm their total political independence of one another. And hence:

— freedom to vote independently both in committee and in plenary session,

— each member shall refrain from speaking on behalf of the Members of the group as a whole,

— the purpose of meetings of the group shall be to allocate speaking time and to settle any administrative and financial matters concerning the group,

— the Bureau of the group shall be made up of representatives of the individual members.'

8 The minutes of the plenary session of the Parliament on 20 July 1999 (OJ 1999 C 301, p. 1) record that the President of the Parliament announced that 'she had received from 29 Members notification of the formation of a new political group entitled "Groupe technique des députés indépendants" (TDI)'. By a letter of the same date addressed to the President of the Parliament, the presidents of the other political groups, taking the view that the condition relating to political affinities

provided for in Rule 29(1) was not satisfied in this case, requested that the question be referred to the Parliament's Commission on Constitutional Affairs for an interpretation of that provision and that the Members concerned be deemed to be non-attached pending a ruling from that Committee.

9 By a letter of 28 July 1999 the President of the Committee on Constitutional Affairs informed the President of the Parliament as follows:

'During its meeting on 27 and 28 July 1999 the Committee on Constitutional Affairs examined the request for an interpretation of Rule 29(1) of the Rules of Procedure referred to it by the Conference of Presidents at its meeting of 21 July 1999.

Following a detailed exchange of views and by 15 votes in favour and two against, with one abstention, the Committee on Constitutional Affairs interpreted Rule 29(1) of the Rules of Procedure as follows:

The constitution of the [TDI Group] is not in comformity with Rule 29(1) of the Rules of Procedure.

In fact, the constitution of this group, specifically Annex 2 to the letter of constitution addressed to the President of the European Parliament, excludes any political affiliation. It permits the various signatory members total political [independence] within the group.

I propose that the following wording be inserted by way of an interpretative note to Rule 29(1):

"The formation of a group which openly rejects any political character and all political affiliation between its Members is not acceptable within the meaning of this Rule."

...'

10 At its plenary session on 13 September 1999 the Parliament was informed by its President under Rule 180(3) of the Rules of Procedure of the contents of the letter of 28 July 1999 reproduced in the preceding paragraph. Under Rule 180(4) of the Rules of Procedure the TDI Group contested the interpretative note proposed by the Committee on Constitutional Affairs.

11 During the plenary session of 14 September 1999 and in accordance with the latter Rule, that interpretative note was put to a vote of the Parliament which adopted it by a majority of its members.

Procedure

12 By applications lodged at the Registry of the Court of First Instance on 5 October, 19 October and 22 November 1999 respectively, Messrs Martinez and de Gaulle

(Case T-222/99), the Front national (Case T-327/99) and Mrs Bonino, Messrs Pannella, Cappato, Dell'Alba, Della Vedova, Dupuis, Turco and La Lista Emma Bonino (hereinafter 'Mrs Bonino and Others') (Case T-329/99) brought the present actions for annulment.

13 By a separate document lodged at the Registry of the Court of First Instance on 5 October 1999, Mr Martinez and Mr De Gaulle applied under Article 242 EC for suspension of operation of the act of the Parliament of 14 September 1999. By order of 25 November 1999 (Case T-222/99 R *Martinez and De Gaulle* v *Parliament* [1999] ECR II-3397), the President of the Court of First Instance granted that application, whilst reserving costs.

14 The cases were initially assigned to a three-judge chamber. After hearing the parties the Court of First Instance decided on 14 November 2000 to assign the cases to a five-judge chamber in accordance with Article 51(1) of the Rules of Procedure of the Court of First Instance.

15 On hearing the views of the Judge Rapporteur, the Court of First Instance (Third Chamber, Extended Composition) decided to open the oral procedure. By way of measures of organisation of procedure, it requested the parties to produce certain documents and to reply to certain questions. The parties complied with these requests within the periods allowed.

16 The parties presented oral argument and replied to the questions put by the Court of First Instance at the hearings held on 13 February 2001.

17 After hearing the views of the parties, the Court of First Instance (Third Chamber, Extended composition) considers that these cases should be joined for the purposes of the judgment, in accordance with Article 50 of the Rules of Procedure.

Forms of order sought by the parties

18 In Case T-222/99 Mr Martinez and Mr De Gaulle claim that the Court should:

— annul the Parliament's decision of 14 September 1999 interpreting its Rules of Procedure;

— declare the interpretation of Rule 29(1) of the Rules of Procedure proposed by the Committee on Constitutional Affairs to be contrary to the Community legal order, the rule of law, the founding principles of the Union and fundamental rights;

— order the defendant to pay the costs.

19 In Case T-327/99 the Front national contends that the Court should:

— annul the Parliament's decision of 14 September 1999 dissolving the TDI Group;

— restore to the members of that group all their rights and privileges, both material and non-material, with retroactive effect to 19 July 1999, the date on which the President of the Parliament was notified of the formation of the TDI Group;

— reconstruct the careers of staff made available to the TDI Group in such a way that its assistants, technical aides and secretaries may be placed in the situation which ought to have been theirs, regard being had to the grades and steps which they would have had as members of the staff of a parliamentary group;

— order payment to the TDI Group, with effect from 19 July 1999, of the various fundings intended for political groups under the rules applicable to them;

— order the defendant to pay costs and lawyers' fees in the amount of FRF 52 500.

20 However, at the hearing the Front national withdrew the second, third and fourth forms of order sought, of which the Court took due note.

21 In Case T-329/99 Mrs Bonino and Others claim that the Court should:

— annul the Parliament's decision of 14 September 1999 declaring the formation of the TDI Group to be incompatible with Rule 29(1) of the Rules of Procedure;

— in the alternative, declare Rules 29(1) and 30 of the Rules of Procedure, taken together, to be illegal and inapplicable under Article 241 EC;

— order the defendant to pay the costs.

22 In each of the cases the Parliament contends that the Court should:

— dismiss the action as inadmissible or, in the alternative, as unfounded;

— order the applicant or applicants, as the case may be, to pay the costs.

Admissibility

23 Whilst not formally raising an objection of inadmissibility under Article 114 of the Rules of Procedure, the Parliament contends that the actions for annulment are inadmissible. It raises three pleas in that connection.

24 In the first plea the Parliament claims, in Cases T-327/99 and T-329/99, that the act challenged by the applicants is non-existent. In the second it claims, in the three cases, that the act of 14 September 1999 is not subject to review by the Community judicature. The third plea, which is raised in the three cases, is that the act is not of direct and individual concern to the applicants within the meaning of the fourth paragraph of Article 230 EC.

First plea: non-existence of the contested act in Cases T-327/99 and T-329/99

25 In Cases T-327/99 and T-329/99 the Parliament pleads non-existence of the act whose annulment the applicants are seeking, that is to say its alleged decision of 14 September 1999 dissolving the TDI Group with retroactive effect and its alleged decision of the same date in which it adopted the view of the Committee on Constitutional Affairs as to the compliance with Rule 29 of the statement of formation of the TDI Group. On 14 September 1999 it simply adopted the interpretation of the aforementioned rule proposed by the Committee on Constitutional Affairs, to the effect that 'the creation of a group which openly

rejects any political character and all political affiliation between its Members is not acceptable within the meaning of this Rule.'

26 However, the Court of First Instance would emphasise that in order to determine whether an act may be the subject of a challenge in an action under Article 230 EC it is necessary to look at the substance of the act in question. The form in which an act or decision is adopted is in principle irrelevant to the right to challenge such acts or decisions by way of an application for annulment (Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraph 9, and Case C-147/96 *Netherlands* v *Commission* [2000] ECR I-4723, paragraph 27; and the order in Case C-50/90 *Sunzest* v *Commission* [1991] ECR I-2917, paragraph 12).

27 It must therefore be considered whether, notwithstanding the fact that the act of 14 September 1999 is formally the adoption by the Parliament of the interpretation of Rule 29(1) of the Rules of Procedure proposed by the Committee on Constitutional Affairs, it may be regarded as also embodying the decisions challenged by the applicants in Cases T-327/99 and T-329/99.

28 As regards Case T-327/99 it should be recalled that, after the President of the Parliament announced at the plenary session on 20 July 1999 that she had received the statement concerning formation of the TDI Group, the conformity of that group with Rule 29(1) of the Rules of Procedure was called in question by the presidents of the other political groups, who sought referral of the matter to the Committee on Constitutional Affairs and asked that the Members concerned be deemed to be non-attached pending the opinion of that committee.

29 The final minutes of the plenary session of the Parliament of 22 July 1999 (OJ 1999 C 301, p. 26) state that 'the application of Rule 29(1), with particular

regard to the formation of the [TDI] Group' was referred to the Committee on Constitutional Affairs. It is stated in paragraph 5 of the minutes of the meeting of that committee held on 27 and 28 July 1999 that its president was treating the request for interpretation addressed to it as relating to 'the question of the creation of the [TDI Group] for the purpose of establishing whether it was in conformity with the provisions of Rule 29(1) of the Rules of Procedure.'

30 By a letter dated 28 July 1999 (see paragraph 9 above), the President of the Committee on Constitutional Affairs informed the President of the Parliament that the said committee interpreted Rule 29(1) as not permitting the formation of the TDI Group on the ground that the statement concerning formation of that group excluded any political affiliation and gave total political independence within that group to the various signatories comprising it. The President proposed the insertion of the interpretative note to Rule 29(1) reproduced at paragraph 9 above, which was adopted by the Parliament at its plenary session on 14 September 1999.

31 It follows from the matters set out at paragraphs 28 to 30 above that an interpretation of Rule 29(1) was sought from the Committee on Constitutional Affairs following the announcement of the statement of formation of the TDI Group and the calling in question by the presidents of the other political groups of the conformity of that statement with the abovementioned provision. The interpretative note on that provision proposed by the Committee on Constitutional Affairs and approved by the Parliament on 14 September 1999 was adopted in respect of that statement and its terms were drawn in response to the specific case of that statement.

32 In those circumstances the Parliament cannot claim that the act of 14 September purports merely to give a general and abstract interpretation of Rule 29(1).

33 When it approved on 14 September 1999 the general interpretation of Rule 29(1) proposed by the Committee on Constitutional Affairs, the Parliament at the same time expressed its view on the statement concerning formation of the TDI Group. In the light of that general interpretation it found that that group did not comply with Rule 29(1) and was deemed never to have come into existence. Accordingly, and without there being any need in this connection for any further action, the Members who had declared the formation of the TDI Group and whom the Parliament, as it conceded at the hearing, had accepted as sitting in the meantime as members of the TDI Group were immediately deemed to be non-attached Members, a fact which the Parliament does not dispute.

34 It is clear from the decision adopted by the Bureau of the Parliament on 14 September 1999 concerning the allocation for the second half of 1999 of the credits entered in item 3707 of the Parliament's budget in respect of secretarial expenses, administrative and operating expenses and expenditure relating to the political activities of the political groups and of non-attached Members, that the decision adopted on that date by the Parliament finding that the TDI Group was non-existent produced its effects *ex tunc*. In fact, the abovementioned decision of the Bureau does not mention the TDI Group amongst the groups concerned by the allocation of those credits in regard to the half-year referred to, which includes the period from 19 July to 14 September 1999.

35 In the light of the analysis set out at paragraphs 28 to 34 above, the Parliament must be held to have decided on 14 September 1999 that the TDI Group was non-existent *ex tunc* for non-conformity with Rule 29(1).

36 The claim by the Front national for annulment of the Parliament's decision of 14 September 1999 dissolving the TDI Group with retroactive effect must be construed as referring to the decision mentioned in the preceding paragraph.

37 In the light of the foregoing considerations the plea of non-existence of the contested decision must be rejected as regards Case T-327/99.

38 As regards Case T-329/99, it appears from the verbatim report of the plenary session of the Parliament held on 13 September 1999 that in the course of that session the President made the following announcement:

'I am sure you remember that during its meeting on 27 and 28 July, the Committee on Constitutional Affairs... examined a request for interpretation of Rule 29(1) of the Rules of Procedure put forward by the Conference of Presidents during the meeting on 21 July.

The Committee on Constitutional Affairs ruled as follows: "The constitution of the Technical Group of Independent Members, a mixed group, is not in accordance with Rule 29(1) of the Rules of Procedure...." In fact, the Committee on Constitutional Affairs continues, "The constitution of this group, specifically Annex 2 to the letter of constitution addressed to the President of the European Parliament, excludes any political [affiliation]. It permits the various signatory members total political [independence] within the group."

The Committee on Constitutional Affairs requests that the following interpretation be inserted into Rule 29(1) of our Rules of Procedure: "The formation of a group which openly rejects any political character and all political affiliation between its Members is not acceptable within the meaning of this Rule."'

39 The verbatim report of the Parliament's plenary session of 14 September 1999 records that, following an observation by Mr Napolitano of the PSE Group to the effect that the provisional version of the minutes of the plenary session of 13 September 1999 gave an incomplete account of the statement by the President of the Parliament inasmuch as it did not reproduce the first part thereof concerning the non-conformity with Rule 29(1) of the statement of formation of the TDI Group, the President of the Parliament stated that the minutes would be rectified and supplemented in the sense desired.

40 Following interventions by Messrs Gollnisch and Dell'Alba of the TDI Group opposing rectification, the President of the Parliament stated:

'Mr Dell'Alba, one thing is clear: I know what I said yesterday, and not only do I know it, but I have here, in front of me, the text which I read out yesterday, and which nobody can dispute.

We have a procedure which makes provision for the adoption of the Minutes and which makes provision so that Members who think that the Minutes are not in line with what has been said can choose not to adopt them. I too, have the feeling that my ideas have indeed not been accurately reported, given the differences between the way that I expressed them and the way I see them reported here today.

The only thing I can do is, of course, to retain the correction Mr Napolitano is demanding, as I am more qualified than anyone to tell if my words have been correctly reported. Therefore, I cannot refuse to include this correction.'

41 Following an observation by Mr Pannella of the TDI Group, the President of the Parliament added:

'For the moment, I would ask everyone to present the corrections which they consider necessary to the Minutes, on other points as well as this one. In accordance with the way we have always done things, I will then declare the Minutes adopted with the corrections I have been informed of. Only afterwards will we proceed to the vote on your opposition to the interpretation.'

42 The minutes of the plenary session of 13 September 1999, completed as requested by Mr Napolitano, were subsequently approved by the Parliament. It follows that the view expressed by the Committee on Constitutional Affairs as to the conformity with Rule 29(1) of the statement of formation of the TDI Group, as reproduced at paragraph 38 above, forms an integral part of the interpretation of that rule which was voted on by the Parliament. There is nothing to indicate that in approving that interpretation the Parliament made a reservation in respect of the view so expressed.

43 In the light of those matters, the approval by the Parliament on 14 September 1999 of the interpretative note on Rule 29(1) proposed by the Committee on Constitutional Affairs must be construed as entailing adoption of that committee's view on the conformity with that Rule of the statement of formation of the TDI Group.

44 In any event, the analysis at paragraphs 28 to 34 above, from which it is clear that on 14 September 1999 the Parliament found the TDI Group to be non-existent for non-conformity with Rule 29(1), demonstrates that the Parliament decided on that date to adopt the view stated above.

45 It follows that the plea as to non-existence of the contested decision must also be rejected as regards Case T-329/99. Accordingly, that plea must be rejected in its entirety.

46 Following examination of this plea it must be concluded that by its act of 14 September 1999 the Parliament decided to adopt the general interpretation of Rule 29(1) proposed by the Committee on Constitutional Affairs and the view expressed by that committee concerning conformity with that Rule of the statement of formation of the TDI Group, and established the non-existence *ex tunc* of that group for non-observance of the condition referred to in that provision.

Second plea: non-actionable nature of the act of 14 September 1999

47 In the three cases the Parliament contends that its act of 14 September 1999 is not capable of forming the subject-matter of an action for annulment before the Community judicature. Essentially it is claiming that the act is concerned solely with the internal organisation of its work and produces no legal effects in regard to third parties.

48 As a preliminary point, the Court observes that the European Community is based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether their acts are in conformity with the basic constitutional charter, the Treaty, which established a complete system of legal remedies and procedures designed to permit the Court of Justice to review the legality of acts of the institutions (see Case 294/83 *Les Verts* v *European Parliament* [1986] ECR 1339, paragraph 23, Case 314/85 *Foto-Frost*

[1987] ECR 4199, paragraph 16, Case C-314/91 *Weber* v *Parliament* [1993] ECR I-1093, paragraph 8, and the order in Case C-2/88 Imm. *Zwartfeld and Others* [1990] ECR I-3365, paragraph 16; see also Opinion 1/91 [1991] ECR I-6079, paragraph 21).

49 In particular, the first paragraph of Article 230 EC provides that the Community judicature is to review the legality of acts of the Parliament intended to produce legal effects in regard to third parties.

50 In the present case, the act of 14 September 1999 was adopted in plenary session by a majority of the Members of the Parliament. For the purposes of the examination as to admissibility, that act must be regarded as an act of the Parliament itself (see, by analogy, *Les Verts* v *Parliament,* cited at paragraph 48 above, paragraph 20).

51 Next, it should be emphasised that for a claim for the annulment of an act of the Parliament to be admissible the first paragraph of Article 230 EC requires, in the light of the case-law, that a distinction be drawn between two categories of acts.

52 Acts of the Parliament which relate only to the internal organisation of its work cannot be challenged in an action for annulment (orders in Case 78/85 *Group of the European Right* v *Parliament* [1986] ECR 1753, paragraph 11, and Case C-68/90 *Blot and Front national* v *Parliament* [1990] ECR I-2101, paragraph 11; and judgment in *Weber* v *Parliament,* cited at paragraph 48 above, paragraph 9). That first class of measures includes acts of the Parliament which either do not have legal effects or have legal effects only within the Parliament as regards the

organisation of its work and are subject to review procedures laid down in its Rules of Procedure (*Weber* v *Parliament*, cited at paragraph 48 above, paragraph 10).

53 The second class comprises acts of the Parliament which produce or are intended to produce legal effects in regard to third parties or, in other words, acts going beyond the internal organisation of the work of the institution. Those acts are open to challenge before the Community judicature (*Weber* v *Parliament*, cited at paragraph 48 above, paragraph 11).

54 The Parliament contends that the act of 14 September 1999 comes within the first category and cannot therefore be challenged in an action for annulment. The applicants maintain that it belongs to the second category, so that their actions for annulment must be declared admissible.

55 In that connection, it should be recalled that the present applications seek annulment of the act of 14 September 1999 whereby the Parliament decided to adopt the general interpretation of Rule 29(1) proposed by the Committee on Constitutional Affairs and the view expressed by it on the conformity with that Rule of the statement of formation of the TDI Group and to declare the non-existence *ex tunc* of that group (see paragraph 46 above).

56 It is true that the purpose of the rules of procedure of a Community institution is to organize the internal functioning of its services in the interests of good administration. The rules laid down have therefore as their essential purpose to ensure the smooth conduct of the procedure (Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, paragraph 49).

57 Nevertheless, that alone does not preclude an act of the Parliament such as that of 14 September 1999 from having legal effects in regard to third parties (Case C-58/94 *Netherlands* v *Council* [1996] ECR I-2169, paragraph 38) and thus from being capable of forming the subject-matter of an action for annulment brought before the Community judicature under Article 230 EC.

58 Accordingly, it is for the Court of First Instance to determine whether the act of 14 September 1999 may be regarded as producing or being intended to produce legal effects going beyond the internal organisation of the work of the Parliament.

59 The act of 14 September 1999 deprives the Members who declared the formation of the TDI Group of the opportunity of organising themselves by means of that group in a political group within the meaning of Rule 29, with the result that those Members are deemed to be non-attached under Rule 30. As is clear from the matters mentioned at paragraphs 3 and 4 above, those Members are placed, in carrying out their mandate, in a different situation to that linked to membership of a political group from which they would have benefited had the act of 14 September 1999 not been adopted.

60 The act of 14 September 1999 therefore affects the conditions under which the parliamentary functions of the Members concerned are exercised, and thus produces legal effects in their regard.

61 Elected under Article 1 of the Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage (OJ 1976 L 278, p. 5, 'the 1976 Act') as representatives of the peoples of the States brought together in the Community, the Members referred to at paragraphs 59 and 60

above must, in regard to an act emanating from the Parliament and producing legal effects as regards the conditions under which the electoral mandate is exercised, be regarded as third parties within the meaning of the first paragraph of Article 230 EC, irrespective of the position which they personally adopted at the plenary session on 14 September 1999 on the occasion of the vote on the interpretative note to Rule 29(1) proposed by the Committee on Constitutional Affairs.

62 Under those circumstances the act of 14 September 1999 cannot be deemed merely to be an act confined to the internal organisation of the work of the Parliament. Moreover, it should be noted that it is not subject to any verification procedure under the Rules of Procedure. Accordingly, under the criteria laid down by the Court in *Weber* v *Parliament*, cited at paragraph 48 above (paragraphs 9 and 10), it must be open to review by the Community judicature under the first paragraph of Article 230 EC.

63 In the light of all the foregoing the second plea must be rejected.

Third plea: that the applicants are not directly and individually concerned by the act of 14 September 1999

64 In the three cases the Parliament contends that the applicants are not directly and individually concerned within the meaning of the fourth paragraph of Article 230 EC by the act of 14 September 1999, which, it says, is a general and declaratory interpretation of a provision of a general nature.

65 As to whether the act of 14 September 1999 is of direct concern to the applicants, the Court finds, in the light of the analysis at paragraphs 59 and 60 above, that, without the need for any supplementary measure, it prevents Messrs Martinez and De Gaulle and the Members who brought the action in Case T-329/99 from forming themselves by means of the TDI Group into a political group within the meaning of Rule 29, something which directly impinges on the performance by them of their functions. The abovementioned act must therefore be regarded as directly affecting those applicants.

66 As regards Case T-327/99, it should be noted that the French political party known as the Front national is a legal person whose stipulated object is to promote via its members political ideas and projects in the context of national and European institutions. It presented a list of candidates at the election in June 1999 of representatives to the Parliament. The persons on that list who were elected to the Parliament all form part of the body of members declaring the formation of the TDI Group. Owing to the act of 14 September 1999, they are all in the situation described at paragraph 59 above, which directly impinges on the promotion of the ideas and projects of the party which they represent in the European Parliament and, hence, also on the attainment of that political party's stipulated object at European level.

67 The act of 14 September 1999 must therefore be regarded as directly affecting the Front national.

68 As regards the question whether the act of 14 September 1999 is of individual concern to the applicants, it has been consistently held that legal or natural persons can claim to be individually concerned only if the contested act affects them by virtue of attributes peculiar to them or by reason of circumstances differentiating them from all other persons (see, for example, Case 25/62

Plaumann v *Commission* [1963] ECR 95, at p. 107, Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 20, and Case T-12/93 *Comité Central d'Entreprise de Vittel and Others* v *Commission* [1995] ECR II-1247, paragraph 36).

69 Although in the present case the act of 14 September 1999 adopts the general interpretation of Rule 29(1) proposed by the Committee on Constitutional Affairs, it should be borne in mind, first, that that interpretation was sought from the aforementioned committee following an objection raised by the presidents of the political groups after the President of the Parliament had announced at the plenary session on 20 July 1999 that she had received a statement concerning formation of the TDI Group from a number of Members, including Messrs Martinez and De Gaulle, members of the Front national, and the Members who brought the action in Case T-329/99.

70 Next, it has been found that that interpretation was proposed by the Committee on Constitutional Affairs in regard to the specific case of that statement of formation (see paragraphs 29 to 31 above).

71 Finally, it is clear from the analysis in connection with the first plea that in the act of 14 September 1999 the Parliament adopted not only the general interpretation mentioned at paragraph 69 above but also the view expressed by the Committee on Constitutional Affairs as to the conformity with Rule 29(1) of the statement of formation of the TDI Group, and declared that group non-existent *ex tunc* for failure to comply with that provision (see paragraph 46 above).

72 Accordingly, the act of 14 September 1999 affects the applicants in Cases T-222/99 and T-327/99 and the Members bringing the action in Case T-329/99 owing to the specific decisions, referred to in the previous paragraph, contained

therein concerning the TDI Group, which differentiates the situation of those applicants from that of any other person. It therefore concerns them individually within the meaning of the case-law referred to at paragraph 68 above.

73 As regards Case T-329/99, it should further be stated that since one and the same action is involved, there is no need, once it has been established that the act of 14 September 1999 directly and individually affects the Members who brought this action, to verify whether that measure is also of direct and individual concern to Lista Emma Bonino, which is also an applicant in this case (Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraph 31).

74 In the light of the foregoing considerations the third plea must be rejected.

75 The actions for annulment must therefore be declared admissible.

Substance

76 In support of their claims for annulment, the applicants raise a series of pleas, some of which are common to the actions whilst others are specific to their own cases. Essentially, their arguments may be broken down into nine pleas.

77 The first plea is that the act of 14 September 1999 is based on an incorrect reading of Rule 29(1). The second plea alleges infringement of the principle of equal treatment and of the Rules, as well as the lack of a legal basis, inasmuch as the Parliament was wrong to review conformity of the TDI Group with Rule 29(1) and to take the view that the Members belonging to that group did not share political affinities. The third plea alleges infringement of the principle of equal treatment in regard to the members of the TDI Group. The fourth plea alleges infringement of the principle of democracy. The fifth plea alleges infringement of the principle of proportionality, the sixth infringement of the principle of freedom of association. The seventh plea is based on the alleged disregard of the parliamentary traditions common to the Member States. The eighth plea alleges infringement of essential procedural requirements, and the ninth is based on a presumption of misuse of procedure.

78 On examination of these pleas the applicants raising them in each case will be specified.

The first plea: that the act of 14 September 1999 is based on an incorrect reading of Rule 29(1)

79 In the three cases the applicants maintain that the act of 14 September 1999 is based on an incorrect reading of Rule 29(1) and runs counter to the spirit of the Rules of Procedure. In fact, the requirement as to political affinities laid down in that provision is optional. In the same way as Members are free to organise themselves in groups on the basis of political affinities, they have the right to form groupings according to other criteria. Thus Rule 29(1) should be interpreted as permitting Members to associate in accordance with their political affinities,

whilst not precluding groupings not having such affinities which seek to reconcile the demands associated with the efficient organisation of a parliamentary assembly with securing for their members the untrammeled exercise of their parliamentary functions.

80 On this question the Court of First Instance would point out that under Rule 29(1) Members may form themselves into groups according to their political affinities.

81 Such a provision in a rule dealing with the 'formation of political groups' must necessarily be construed as meaning that Members who choose to form a group within the Parliament may do so only on the basis of political affinities. The applicants' argument as to the optional nature of the criterion of political affinities referred to in that provision is therefore negated by the very terms of Rule 29(1), in conjunction with the heading of that Rule.

82 Moreover, the Rules of Procedure, in particular the provisions mentioned at paragraphs 1 to 5 above, invariably refer to political groups, which undeniably conveys the idea of the organisation of the European parliamentary assembly being based on the formation of groups of an exclusively political nature. That finding corroborates the argument put forward by the Parliament that the criterion of political affinities in Rule 29(1) constitutes a mandatory requirement for the formation of a group.

83 In the three cases the applicants maintain that their arguments are supported by the fact that the Parliament had never hitherto monitored observance of the condition as to political affinities and that technical groups have been allowed

there in the past. Thus the formation was authorised in 1979 of the 'Groupe de coordination technique des groupes et des parlementaires indépendants' (CDI Group); in 1984 of the 'Groupe arc-en-ciel' (Rainbow Group), comprising the Green-European Alternative Alliance, Agalev-Ecolo, Mouvement Populaire danois contre l'Appartenance à la Communauté Européenne (Danish Popular Movement against Membership of the European Community) and the Europe Free Alliance within the European Parliament; in 1987 of the Groupe technique de défense des groupes et des députés indépendants (Technical Group for the Defence of Independent Groups and Members (the CTDI Group); and in 1989 of the Rainbow Group within the European Parliament. The Front national also mentions the formation under previous legislatures of the Europe of the Nations Group.

84 None the less, even though the applicants' arguments as to the technical nature of the various groups mentioned in the previous paragraph is accepted, the fact that the formation of such groups was not called in question under a provision identical in terms to Rule 29(1) is not relevant in the context of the analysis set out at paragraphs 80 to 82 above, from which it follows unequivocally that the latter provision must be construed as requiring Members stating that they are forming themselves into a group to share political affinities.

85 The attitude adopted by the Parliament in regard to the statements of formation of the groups referred to at paragraph 83 above must be regarded as reflecting an assessment as to observance of the requirement of political affinities differing from that in the present case and dependent upon the specific content and context of each of those statements. Conversely, it cannot be deemed to constitute a legal interpretation according to which the requirement of political affinities mentioned in successive versions of the Parliament's Rules of Procedure could be regarded as optional.

86 The Front national and Mrs Bonino and Others maintain that their reading of Rule 29(1) is corroborated by the fact that the Parliament, in its composition

resulting from the last elections, allowed the formation of the Group for a Europe of Democracies and Diversities (the EDD Group), although that group is plainly a technical group.

87 However, the Court notes that the title of this group conveys a political vision of Europe shared by its members which justifies the Parliament in taking the view that, unlike in the present case, the requirement of political affinities laid down in Rule 29(1) was satisfied.

88 In any event, even though the applicants' arguments as to the technical nature of the EDD Group may be upheld, the fact that the Parliament did not question the conformity of that group with Rule 29(1) is irrelevant in the context of the examination conducted at paragraphs 80 to 82 above. It merely shows that the Parliament's assessment of the statement of formation of the EDD Group differed from the assessment in the present case of the statement of formation of the TDI Group.

89 It follows from the analysis set out in the two preceding paragraphs that the fact that the Parliament did not oppose formation of the EDD Group cannot in any event assist the applicants in challenging the mandatory nature of the requirement of political affinity laid down in Rule 29(1).

90 Mrs Bonino and Others also maintain that the fact that the Parliament has never called in question the legitimacy of the current political groups, even though their political identity has appeared doubtful in recent votes in plenary sessions, militates in favour of the reading of Rule 29(1) which they advocate.

91 However, no lesson can be drawn in relation to Rule 29(1) from the voting behaviour in plenary session of Members of the political groups comprising the current Parliament. The requirement of political affinity between the members of a group does not in fact preclude them in their day-to-day conduct from expressing different political opinions on any particular subject, in accordance with the principle of independence laid down in Article 4(1) of the 1976 Act and Rule 2 of the Rules of Procedure. The fact that members of one and the same political group may vote differently must therefore, under those circumstances, be regarded not as indicating a lack of political affinity amongst themselves but as illustrating the principle of a parliamentarian's independence.

92 Accordingly, the fact that members of one and the same political group may vote differently in plenary sessions, as well as the fact that the Parliament did not react to that conduct, cannot in any event be viewed as evidencing the optional nature of the requirement as to political affinity laid down in Rule 29(1).

93 Mrs Bonino and Others go on to claim that the fact that the Rules of Procedure do not provide for non-attached Members to be automatically affiliated to a mixed group with the same privileges as a political group militates in favour of the flexible interpretation of Rule 29(1) advocated by them.

94 However, the status accorded by the Parliament to Members not belonging to a political group cannot in any event be used to advocate a reading of Rule 29(1) which runs counter to a literal reading of that provision and to the other matters identified at paragraphs 80 to 82 above.

95 In the light of all those considerations the first plea must be rejected.

Second plea: infringement of the principle of equal treatment and of the provisions of the Rules of Procedure, as well as the lack of a legal basis, inasmuch as the Parliament was wrong to review conformity of the TDI Group with Rule 29(1) and to take the view that the members of that group did not share political affinity

96 Messrs Martinez and De Gaulle, together with the Front national, claim that there is no provision in the Rules of Procedure which confers on the Parliament the right to verify the political affinities of Members declaring that they are forming themselves into a group. The formation of groups is a matter for the Members, whose sole obligation is to make a statement of that fact to the President of the Parliament. There is no provision for any recognition procedure. Yet in the present case the Parliament arbitrarily reviewed the political expediency of the formation of the TDI Group and arrogated to itself the power to judge the political affinities and reasons which led to the formation of that group. In so doing, it contravened the letter and spirit of the Rules of Procedure.

97 The same applicants maintain that the Parliament was wrong to conclude that there were no political affinities between the Members who declared that they were forming themselves into the TDI Group. In fact the latter share political affinities connected to the wish to secure for all Members the untrammeled exercise of their mandates. The declaration of political independence contained in the rules governing formation of the TDI Group do not preclude the existence of such affinities. The act of 14 September 1999, it is claimed, is in reality a political decision without objective justification which gives free rein to the misconduct of political groups in the Parliament.

98 The Front national adds that the members of the TDI Group never in any way formally undertook not to work together. On the contrary, since the order in

Martinez and De Gaulle v *Parliament*, cited at paragraph 13 above, the TDI Group has operated like any other political group in the Parliament. It has submitted amendments to reports and moved resolutions.

99 Mr Martinez and Mr De Gaulle go on to claim that only the conduct in sittings of members of a group can reveal the political cohesion of that group. In that connection they cite, as does the Front national, recent examples of voting by roll call, which attest to a convergence of views as between the members of the TDI Group.

100 In order to reply to the parties' arguments under this plea, the Court of First Instance considers it appropriate to examine, first, whether the Parliament has competence to verify, as it did in the presence case, observance of Rule 29(1) by a group whose formation is declared by a number of Members in accordance with Rule 29(4). If that proves to be the case, it will be for the Court to determine, secondly, the extent of the margin of discretion enjoyed by the Parliament under that power and to examine, thirdly, whether the Parliament's conclusion that the TDI Group did not meet the requirement of political affinity laid down in Rule 29(1) is well founded.

101 On the first question, as is clear from Rule 180 of the Rules of Procedure, the Parliament has competence to ensure, if need be by referring a matter to the Committee on Constitutional Affairs, that its Rules of Procedure are being correctly applied and interpreted. In that respect it has competence specifically to monitor, as it did in the present case, compliance with the requirement of political affinity laid down in Rule 29(1) by a group declaring its formation to the President of the Parliament under Rule 29(4). To deny the Parliament that monitoring power would be tantamount to compelling it to deprive Rule 29(1) of all effectiveness.

102 With regard, next, to the question of the extent of the discretionary power enjoyed by the Parliament under that supervisory competence, the Court of First Instance observes that neither Rule 29 nor any other provision of the Rules of Procedure defines the concept of political affinity referred to at paragraph 1 of the abovementioned rule. Nor, moreover, do the Rules of Procedure require that the statement concerning formation of a group under Rule 29 be accompanied by any indication as to the political affinities of the members of that group.

103 Under those circumstances the concept of political affinity must be understood as having in each specific case the meaning which the Members forming themselves into a political group under Rule 29 intend to give to it, without necessarily openly so stating. It follows that Members declaring that they are organising themselves into a group under this provision are presumed to share political affinities, however minimal.

104 However, that presumption cannot be regarded as irrebuttable. Under the supervisory competence mentioned at paragraph 101 above, the Parliament has the power to examine whether the requirement laid down in Rule 29(1) has been observed where, as stated in the interpretative note to that provision adopted on 14 September 1999 (see paragraph 9 above), the Members declaring the formation of a group openly exclude any political affinity between themselves, in patent non-compliance with the abovementioned requirement.

105 That approach makes it possible to reconcile the broad view which needs to be taken of the concept of political affinity, owing to the subjective nature of that concept, on the one hand, with observance of the requirement laid down in Rule 29(1) on the other.

106 In the present case the Parliament, ratifying the view expressed by the Committee on Constitutional Affairs, considered that the statement of formation of the TDI Group did not comply with Rule 29(1) because it excluded any political affiliation and gave total political independence within that group to the various signatories comprising it. That assessment is within the limits of the discretionary power mentioned at paragraph 104 above.

107 That being the case, it is now for the Court of First Instance to ascertain whether that assessment was well founded, regard being had to the matters set out at paragraph 100 above.

108 In that connection the reference in the statement of formation of the TDI Group to the fact that the various signatories comprising it retain their voting freedom both in committee and in plenary assembly does not warrant the conclusion that there are no political affinities between those signatories. In fact, that is an expression of the principle of the independent mandate enshrined in Article 4(1) of the 1976 Act and Rule 2 of the Rules of Procedure and cannot therefore have any influence on assessment of a group's compliance with Rule 29(1) (see paragraph 91 above).

109 Nor does the fact that Members forming themselves into a group declare that they remain politically independent from one another suffice to warrant a finding that they do not share political affinities. A declaration of that kind is similarly in keeping with the principle of the independent mandate mentioned in the preceding paragraph.

110 None the less, in the present case, it is abundantly clear that the specific consequences attached by the members of the TDI Group to their declaration of

political independence, that is to say, on the one hand, the ban imposed on each member of the group from speaking in the name of all members of the group and, on the other, confining the purpose of meetings of the group to the allocation of speaking time and to settling financial and administrative questions concerning the group, provide consistent proof of the fact that the members of the group sought at all costs to avoid any appearance of being united by political affinities and totally ruled out working in the legislature towards the expression of common political intentions, ideas or objectives, however minimal. Those matters show that the members of the TDI Group agreed to eliminate any risk of being perceived as sharing political affinities and refused to regard the group as a vehicle for articulating joint political action, restricting it solely to financial and administrative functions.

111 Thus, the members of the TDI Group categorically rejected any common political affinity, undertook on no account to give the impression of sharing any such affinity and precluded in advance any action, even of an *ad hoc* nature, which might during the currency of that legislature have been conducive to that end.

112 The deliberate denial of political affinities between the members of the TDI Group is corroborated by certain extracts from the letter addressed by Members on the Lista Bonino to other Members on 13 September 1999, that is to say the day before the plenary session during which the Parliament ruled on the interpretation of Rule 29(1) proposed by the Committee on Constitutional Affairs.

113 Those extracts are as follows:

'...

At the inaugural session of our Parliament, Members on the Bonino List took the initiative of proposing to all Members not belonging to a political group that they should form themselves into a "single mixed" group. The objective was to put an end to the discriminatory treatment of non-attached Members under both the Parliament's Rules of Procedure and internal financial and administrative provisions. At a time when the Parliament is required to take on new tasks and responsibilities, we felt it our duty, even at the risk of giving the impression of being intent on forming political alliances *contra naturam*, to denounce the discrimination which has been going on for twenty years and is unworthy of a democratic parliament because it rides roughshod over the respect due to the will of the people.

...

In the interpretation of the Rules of Procedure adopted by a vote in the Committee on Constitutional Affairs which you will be asked to approve or reject during this session, it is said... that the TDI Group must be dissolved because its members have subscribed to a statement under which they abjure any political affinity and assert the total independence of the political representatives of which the group is comprised. It is indeed a mixed group which we wished to form prior to having it recognised, finally, by the [Rules of Procedure].'

114 By means of those statements the signatories of that letter were concerned to make clear to the other Members that, notwithstanding the initial impression which formation of the TDI Group might give, they shared no political affinity with the other members of that group and that the objective of their initiative was merely to enable all Members who specifically did not feel any political affinity with others to form themselves into a mixed group which would be allowed to enjoy the privileges accorded to political groups, in order to bring to an end the differential treatment suffered by those Members on account of their status as non-attached Members.

115 The applicants maintain that the declared purpose of the TDI Group, namely to ensure that all Members are fully able to exercise their parliamentary mandates (see paragraph 6 above), is proof of the existence of political affinities between the members of that group. In that connection it should be emphasised that, between 20 July 1999, the date on which the presidents of the other groups in the Parliament called in question the conformity with Rule 29(1) of the formation of the TDI Group, and 14 September 1999, the date on which the decision at issue was adopted, the members of the TDI Group, when faced with the doubts cast on the political nature of their group, at no point invoked its declared purpose in order to demonstrate the existence of political affinities between its members.

116 In their arguments at meetings when the issue of the TDI Group's conformity with Rule 29(1) was discussed, the members of that group essentially claimed that the condition laid down in that provision was not mandatory and did not require Members forming themselves into groups to give evidence of their political affinities, that neither the Parliament nor the other political groups were entitled to arrogate to themselves the function of judging the political affinities of the members of the TDI Group and that groups comprising Members not sharing political affinities had been permitted in the past and during the current legislature. In the same way, the members of the TDI Group cast doubt on the existence of political affinities between the members of the Parliament's political groups. They pointed, further, to the unfavourable treatment of non-attached Members in relation to the treatment of Members belonging to a political group, the contrast in that regard as between the situation in the Parliament and the parliamentary traditions of certain Member States, and the risk that the banning of the TDI Group could set a precedent.

117 At no point did they maintain that the aim pursued by formation of that group should be seen as proof of political affinities between them. On the contrary, it is clear from the matters referred to at paragraph 113 above that the purpose of the TDI Group was presented as being to enable Members having no such affinities with others to form themselves into a mixed group in order to enjoy the privileges accorded to political groups.

118 Thus, the applicants cannot criticise the Parliament for not interpreting the purpose declared in the statement of formation of the TDI Group as evidence of the existence of political affinities between the members of that group.

119 In any event, that declaration cannot negate the analysis set out at paragraphs 111 to 115 above, from which it is clear that the members of that group openly sought to deny that it was political in nature.

120 The examination conducted at paragraphs 110 to 119 above warrants the conclusion that the Parliament was right to take the view that the statement of formation of the TDI Group evinced a total and manifest absence of political affinities between the members of that group. In taking that view, the Parliament did not, contrary to the applicants' assertions, arrogate to itself the right to pass judgment on the political affinities of the members of that group. It did no more than find, on the basis of the abovementioned statement, that those members were openly denying any such affinity, thus themselves rebutting the presumption in favour of political affinities mentioned at paragraphs 103 and 104 above. That being the case, short of depriving Rule 29(1) of any effect, the Parliament could not but find that the TDI Group had failed to comply with that provision.

121 That analysis is not affected either by the fact mentioned by the Front national that, since the date of the order in *Martinez and De Gaulle* v *Parliament*, cited at paragraph 13 above, amendments to reports have been put forward and resolutions moved on behalf of the TDI Group, or by evidence produced by Messrs Martinez and De Gaulle, and by the Front national, as to the voting behaviour of members of the TDI Group in recent plenary sessions.

122 In fact, as regards matters initiated on behalf of the TDI Group, it is clear from the documents produced by the Front national at the request of the Court of First Instance that those were all initiated either by one Member belonging to the TDI Group or by Members from a particular component part of that group. None of them were initiated by Members belonging to more than one component part of the TDI Group. That finding further evidences the total absence of political affinities between the members of that group, as indicated in the statement concerning its formation.

123 As regards the voting behaviour of members of the TDI Group in recent plenary sessions, it should be noted that, as the Parliament has correctly pointed out in its pleadings, concordant voting patterns within that group may disguise wide discrepancies in the individual political motives informing the votes of each individual member, and cannot therefore be regarded as evidence of the existence of political affinities between the members of that group.

124 It is important to add that the circumstance and the matters referred to in paragraph 121 above are all subsequent to the act of 14 September 1999, with the result that they cannot in any event affect examination of whether the Parliament's assessment in that act as to the TDI Group's non-compliance with Rule 29(1) is well founded.

125 In the light of all those considerations the second plea must be rejected.

Third plea: infringement of the principle of equal treatment in regard to the members of the TDI Group

126 This plea may be divided into three limbs. In the first limb the applicants claim that the act of 14 September 1999 constitutes discrimination between members of the TDI Group and Members belonging to a political group. In the second limb they maintain that the abovementioned measure discriminates against the TDI Group in relation to other technical groups. In the third limb they allege discrimination between the TDI Group and the political groups constituting the current legislature.

The first limb

127 In the three cases the applicants claim that the act of 14 September 1999 constitutes discrimination against Members not belonging to a political group.

128 Membership of such a group confers, they say, a number of benefits in terms of parliamentary privileges and from the administrative, substantive and financial points of view; members of the TDI Group are deprived of these benefits owing to the fact that the act of 14 September 1999 confers on them the status of non-attached Member. By banning the TDI Group that act confirms, to the detriment of the members of that group, discrimination within the Parliament against non-attached Members, thus breaching equality between Members as regards the conditions under which their parliamentary mandates are exercised.

129 The same arguments are put forward by Mrs Bonino and Others in support of the objection of illegality raised by them under Article 241 EC to Rule 29(1) and Rule 30 of the Rules of Procedure taken together.

130 The Court of First Instance considers that this objection of illegality should be examined first.

131 The Parliament contends that the objection is inadmissible.

132 It argues that the Rules of Procedure do not come within the category of acts which may be challenged by way of an objection of illegality under Article 241 EC. Moreover, Rule 30 of the Rules of Procedure was not the legal basis for the act of 14 September 1999, which was not a measure enacted in implementation of Rule 29 thereof, with the result that in the present case those two provisions cannot be held to be illegal.

133 In that connection the Court of First Instance points out that Article 241 EC gives expression to the general principle conferring upon any party to proceedings the right to challenge, in order to seek annulment of a decision of direct and individual concern to that party, the validity of a previous act of the institutions which forms the legal basis of the decision which is being challenged, if that party was not entitled under Article 230 EC to bring a direct action challenging that act, by which it was thus affected without having been in a position to ask that it be declared void (Case 92/78 *Simmenthal* v *Commission* [1979] ECR 777, paragraph 39, and Case 262/80 *Andersen* v *Parliament* [1984] ECR 195, paragraph 6).

134 An objection of illegality may not therefore be limited to acts in the form of a regulation within the meaning of Article 241 EC. That article must be interpreted widely in order to secure proper review of acts of the institutions of a general nature in favour of persons precluded from bringing direct actions against such acts, where they are affected by implementing decisions which are of direct and individual concern to them (*Simmenthal*, paragraphs 40 and 41; Joined Cases T-6/92 and T-52/92 *Reinarz* v *Commission* [1993] ECR II-1047, paragraph 56).

135 Moreover, the scope of that article must extend to acts of the institutions which were relevant to the adoption of the decision forming the subject-matter of the action for annulment, even if such acts did not formally constitute the legal basis of that decision (Case T-146/96 *De Abreu* v *Court of Justice* [1998] ECR-SC I-A-109 and II-281, paragraph 27).

136 It should be added that an objection of illegality must not go beyond what is necessary to resolve the dispute. The intention of Article 241 EC is not to allow a party to contest at will the applicability of any act of a general nature in support of any application. There must a direct legal link between the individual decision contested and the general act in question (Case 21/64 *Dalmas Macchiorlati e Figli* v *High Authority* [1965] ECR 175, Case 32/65 *Italy* v *Council and Commission* [1966] ECR 389 at p. 409, Joined Cases 140/82, 146/82, 221/82 and 226/82 *Walzstahlvereinigung and Thyssen* v *Commission* [1984] ECR 951, paragraph 20, and *Reinarz*, cited at paragraph 134 above, paragraph 57).

137 In the present case the terms of Rules 29 and 30 of the Rules of Procedure, which affect the conditions under which Members carry out their mandate, are undeniably general in nature. They apply to situations determined objectively and have legal effects with regard to categories of persons referred to in a general and

abstract manner (see, by analogy, Joined Cases 44/74, 46/74 and 49/74 *Acton and Others v Commission* [1975] ECR 383, paragraph 7, and Case 206/87 *Lefebvre Frère et Soeur* v *Commission* [1989] ECR 275, paragraph 13). The applicants are therefore not in a position to seek the annulment thereof under Article 230 EC.

138 Moreover, the decisions taken by the Parliament in the act of 14 September 1999 (see paragraph 46 above) are directly founded on the fact that Rule 29(1) of the Rules of Procedure makes the formation of a group within the Parliament dependent on the existence of political affinities between the Members concerned. That provision formed the basis for the challenge by the presidents of the other political groups to the formation of the TDI Group and, following that challenge, formed the subject-matter of the interpretation adopted by the Parliament on 14 September 1999. Under that provision, as defined by the abovementioned interpretation, the Parliament established the non-existence of the TDI Group and, pursuant to Rule 30, deemed the Members concerned to be non-attached. The combined application of those two provisions therefore determined the existence and content of the act of 14 September 1999.

139 Accordingly, it may be concluded that there is a direct legal link between the act of 14 September 1999 and Rules 29(1) and 30 of the Rules of Procedure to which Mrs Bonino and Others are raising an objection of illegality.

140 That being so, and inasmuch as the action for annulment brought by Mrs Bonino and Others has been declared admissible (see paragraph 75 above), the objection of illegality raised by those parties to Rules 29(1) and 30 of the Rules of Procedure must be declared admissible.

141 It is now appropriate to examine whether that objection is well founded inasmuch as it alleges infringement of the principle of equal treatment.

142 In addition to the arguments set out at paragraph 128 above, Mrs Bonino and Others maintain that, if Rule 29(1) is to be interpreted as prohibiting the formation of a group of Members who do not share political affinities, the legality of that provision in conjunction with Rule 30 of the Rules of Procedure may be challenged under the principle of non-discrimination. The combined application of those provisions means that Members having no political affinity with others may neither organise themselves into a group within the meaning of Rule 29 of the Rules of Procedure nor claim automatic attachment to a mixed group. Those Members are deemed to be non-attached, which prejudices the untrammeled exercise by them of their parliamentary mandates.

143 As they confirmed at the hearing, Mrs Bonino and Others are challenging the legality of the abovementioned provisions as precluding both the formation on a voluntary basis of a technical group by Members sharing no political affinity and the automatic attachment of such Members to a mixed group.

144 In that connection, the Court of First Instance points out, first, that under the case-law the Parliament is authorised by virtue of the power to determine its own internal organisation conferred on it by Articles 25 CS, 199 EC and 112 EA to take appropriate measures to ensure the proper functioning and conduct of its proceedings (Case 230/81 *Luxembourg* v *Parliament* [1983] ECR 255, paragraph 38, and Joined Cases C-213/88 and C-39/89 *Luxembourg* v *Parliament* [1991] ECR I-5643, paragraph 29).

145 In the present case, as the Parliament rightly states, having political groups meets a number of legitimate objectives dictated by the social and political circumstances peculiar to parliamentary democracies, by its specific features compared with national parliaments and by the functions and responsibilities conferred on it by the Treaty; technical or mixed groups, like the TDI Group, which bring together Members sharing no political affinity cannot assist in the attainment of these objectives.

146 In fact, the formation of the Parliament in political groups comprising Members from more than one Member State and sharing political affinities appears, first, to be a measure consonant with the efficient organisation of the work and procedures of the institution in order in particular to allow the joint expression of political wills and the emergence of compromises, the latter being particularly necessary owing to the very high number of Members of the Parliament, the exceptional diversity of cultures, nationalities, languages and national political movements represented in it, the great diversity of the Parliament's activities and the fact that, unlike national parliaments, the Parliament does not have the traditional dichotomy between majority and opposition. Against that background a political group within the meaning of Rule 29 of the Rules of Procedure performs a function which a group of Members without political affinities would be unable to do.

147 Secondly, organisation in political groups is justified by the extent, particularly since the adoption of the Treaty on European Union and the Treaty of Amsterdam, of the Parliament's responsibilities in performing the tasks conferred on the Community by the EC Treaty and in the procedure for adopting the Community acts necessary for the performance of those tasks (see Articles 7, 192 to 195, 200 and 201 EC). In particular, the proper functioning and conduct of the procedure under Article 251 EC for the joint adoption of Community acts by the Parliament and the Council (the co-decision procedure) requires that, where recourse must be had to the Conciliation Committee under paragraphs 3 to 5 of that provision in order to reach an agreement on a common project, political compromises be first worked out within the Parliament. It is then necessary for

the Parliament's delegation entrusted with the task of negotiating with the Council in the Conciliation Committee to be made up of Members able to reflect the political composition of the Parliament, authorised to speak on behalf of other Members and in a position to be supported once an agreement is found with the Council; to that a political group can effectively contribute, unlike a group consisting of Members who do not share political affinities.

148 Thirdly, the dual requirement for the organisation of Members into political groups, namely that the members of a political group must share political affinities and come from more than one Member State, enables local political particularities to be transcended and promotes the European integration sought by the Treaty. Thus the political groups contribute to the attainment of the political objective pursued by Article 191 EC, that is to say the emergence of political parties at European level as a factor for integration within the Union, contributing to forming a European awareness and to expressing the political will of the citizens of the Union. Such a role could not be performed by a technical or mixed group made up of Members abjuring any political affinity amongst themselves.

149 It follows from the foregoing analysis that the combined provisions of Rule 29(1) and Rule 30 allowing within the Parliament only the formation of groups founded on political affinities and providing that the Members not belonging to a political group are to sit as non-attached Members under the conditions laid down by the Bureau of the Parliament, rather than authorising them to form a technical group or to constitute a mixed group, constitute measures of internal organisation which are warranted by the special characteristics of the Parliament, the constraints under which it operates and the responsibilities and objectives assigned to it by the Treaty.

150 Next, it should be emphasised that, under the case-law, the principle of non-discrimination, which constitutes a fundamental principle of law, prohibits

comparable situations from being treated differently or different situations from being treated in the same way, unless such difference in treatment is objectively justified (see, for instance, Case C-174/89 *Hoche* [1990] ECR I-2681, paragraph 25, and the case-law cited).

151 In the present case the Members of the Parliament all have a mandate bestowed on them democratically by the electorate and all assume the same task of political representation at European level (see paragraph 61 above). In that respect they are all in the same situation.

152 It is certainly the case that Rule 29(1) in conjunction with Rule 30 introduces a distinction between two categories of Members, those belonging to a political group within the meaning of the Parliament's internal rules and those who sit as non-attached Members under the conditions laid down by the Bureau of the Parliament. That distinction is justified, however, by the fact that the former satisfy, unlike the latter, a requirement under the Rules of Procedure dictated by the pursuit of legitimate objectives (see paragraphs 145 to 149 above).

153 Accordingly, such a distinction cannot be held to constitute an infringement of the principle of non-discrimination as defined in the case-law (see paragraph 150 above).

154 In their pleadings the applicants claim in support of their arguments that non-attached Members under Rule 30 of the Rules of Procedure are discriminated against compared with members of political groups. They identify a number of

differences in treatment applied in regard to parliamentary rights and financial, administrative and material benefits as between non-attached Members and members of political groups, which they say amount to unlawful discrimination.

155 However, it appears from the parties' pleadings and the documents produced by them at the request of the Court that those differences in treatment, which are not disputed by the Parliament, stem not from the combined provisions of Rule 29(1) and Rule 30 of the Rules of Procedure, but from a series of other internal provisions of the Parliament.

156 Thus:

— the denial to the two representatives of the non-attached Members at the conference of presidents of the voting rights enjoyed by the chairmen of the political groups or their representatives stems from Rule 23;

— the fact that the non-attached Members, unlike the political groups, may not table a motion for a resolution at the conclusion of the debate on the election of the Commission stems from Rule 33;

— the fact that non-attached Members are excluded from the work of the Parliament's delegation to the Conciliation Committee, whilst the political groups are represented either in that delegation or in the latter's internal preparatory meetings stems from Rule 82;

— the fact that a non-attached Member can enjoy the benefit of the parliamentary privileges conferred on the political groups only with the support of 31 other Members stems from the various provisions of the Rules of Procedure identified at paragraph 4 above;

— the fact that non-attached Members of the same political tendency, unlike the political groups, do not have the right to explain their collective position on a final vote stems from Rule 137;

— the fact that the non-attached Members are not taken into consideration on allocating the offices of President of the Parliament and of Quaestor, President and Vice-President of Committees and interparliamentary delegations mentioned in Chapters XX and XXI of the Rules of Procedure, that they are taken into consideration on a secondary basis for the allocation of posts of members of those committees and delegations and that they are excluded from the *ad hoc* delegations established by the Conference of Presidents and the delegation to the Conference of European Affairs Committees referred to in Rule 56 of the Rules of Procedure stems from application of the D'Hondt method used by the Parliament for allotting the abovementioned posts, and from the fact that the representatives of the non-attached Members sitting on the Conference of Presidents, the competent body in that regard, do not have a right to vote;

— the difference of treatment applied as between non-attached Members and political groups in terms of secretarial staff is the result of decisions by the Bureau of the Parliament adopted under Rule 22;

— the different treatment accorded to non-attached Members and to political groups in regard to the allocation of credits under budget item 3707 on specific expenditure of the Parliament for secretarial costs, administrative and operating costs and costs in connection with the political activities of the political groups and non-attached Members stems from decisions of the Bureau of the Parliament adopted under Rule 22;

— the fact that non-attached Members, unlike the political groups, are excluded from the benefit of services provided by the Parliament, particularly in regard to simultaneous interpretation, is the consequence of the Parliament's administrative rules concerning meetings of the political groups.

157 It is of course for the Parliament to determine whether the situation arising from application of the various internal provisions identified in the previous paragraph is in all respects in conformity with the principle of equal treatment as defined in the case-law (see paragraph 150 above). In that connection it should be emphasised that, although the attainment of the legitimate objectives pursued by the Parliament by means of its organisation in political groups justifies the fact that those groups, and thus the Members belonging to them, enjoy certain privileges and facilities denied to non-attached Members, it is for the Parliament to examine under the relevant internal procedures whether the differences in treatment as between those two categories of Member stemming from the abovementioned internal provisions are all necessary and thus objectively

justified in the light of the abovementioned objectives. If appropriate, it will be for the Parliament under its power of internal organisation to remedy the inequalities inherent in those provisions which do not satisfy that requirement of necessity and which might consequently be held to be discriminatory on review by the Community judicature of acts of the Parliament adopted under those provisions (see paragraphs 48 to 62 above).

158 However, in the present case, it is plain that Mrs Bonino and Others are not pleading illegality of the various provisions listed in paragraph 156 above. At the hearing they confirmed that the objection of illegality in their action for annulment concerned Rules 29(1) and 30 of the Rules of Procedure, and not the internal provisions of the Parliament dealing with the status of non-attached Member.

159 In any event, any infringement of the principle of equal treatment by one or other of those internal provisions can affect only the legality of the provision concerned and of the act adopted by the Parliament pursuant to it. It cannot affect the analysis conducted at paragraphs 144 to 153 above.

160 It follows from that analysis (paragraphs 144 to 159 above) that the objection of illegality concerning Rule 29(1) and 30 of the Rules of Procedure, inasmuch as it alleges infringement of the principle of equal treatment, must be rejected as unfounded.

161 The same analysis serves to negate the arguments put forward by the applicants under the first limb of the plea in question, which is based on matters identical to

those alleged by Mrs Bonino and Others in challenging the conformity with the principle of equal treatment of Rule 29(1) in conjunction with Rule 30 (see paragraphs 127 to 129 above).

162 In fact it is clear that by depriving the Members who, like those who declared they were forming themselves into the TDI Group, have no shared political affinities of the opportunity of forming a political group within the meaning of the Parliament's internal rules and by conferring on them the status of non-attached Member, the act of 14 September 1999 is merely drawing the consequence of their failure to observe the requirement of political affinity laid down in Rule 29(1) and applying to them the solution provided for in Rule 30 for Members not satisfying that requirement.

163 However, the conformity of those two provisions with the principle of equal treatment cannot be challenged (see paragraphs 144 to 159 above).

164 It follows that the act of 14 September 1999 cannot be deemed to conflict with that principle.

165 It should be added that the differences of treatment alleged by the applicants in support of their arguments to which, owing to their non-attached status, the Members concerned by the act of 14 September 1999 are subject in carrying out their mandate (see paragraphs 155 and 156 above) stem not from that measure but from the Parliament's internal provisions identified at paragraph 156 above whose lawfulness is, however, not called in question by the applicants.

166 Thus, in addition to what has been stated at paragraph 158 above, in Case T-327/99, the Front national, pointing out the difference of treatment accorded in various respects to non-attached Members in relation to members of the political groups, stated:

'This is so far-reaching that it may legitimately be asked whether it is not the provisions of the Rules of Procedure which should be called in question for establishing such discrimination. But that is not the subject-matter of this action' (application, p. 8).

167 At the hearing the applicants confirmed that they were not challenging the legality of the internal provisions mentioned at paragraph 156 above.

168 In the light of all the foregoing considerations the first limb of the plea under examination should be rejected.

The second limb

169 In the three cases the applicants maintain that the act of 14 September 1999 entails unjustified discrimination inasmuch as it prohibits formation of the TDI Group although under earlier legislatures formation of a number of technical groups was allowed, namely the CDI Group; the 'Groupe arc-en-ciel' (Rainbow Group), comprising the Green-European Alternative Alliance, Agalev-Ecolo, Mouvement Populaire Danois contre l'Appartenance à la Communauté Européenne (Danish Popular Movement against Membership of the European Community) and the Europe Free Alliance within the European Parliament; the CTDI

Group and the group 'Arc-en-ciel' au Parlement Européenne (Rainbow Group within the European Parliament). The Front national also mentions the admittance under earlier legislatures of the Europe of Nations Group.

170 The authorisation under the current legislature of the EDD Group, which is preeminently of a technical nature, bears out the discriminatory nature of the act of 14 September 1999 in regard to members of the TDI Group.

171 In that connection the Court of First Instance points out that it follows from the analysis set out at paragraphs 100 to 124 above that the Parliament was right to deem the TDI Group to be non-existent for failure to comply with Rule 29(1) on the ground that the members of that group had openly excluded any political affinity amongst themselves and denied that the group was in any way political. In those circumstances, the applicants cannot in any event effectively plead the different assessment made by the Parliament concerning the statements of formation of the groups referred to in the two preceding paragraphs.

172 It should be added that the applicants have not challenged the Parliament's argument that, unlike the Members who declared the formation of the TDI Group, those who declared the formation of those different groups in no case openly rejected the notion of shared political affinity. The situation of the TDI Group and that of those other groups cannot therefore be regarded as comparable, with the result that a difference of treatment as between the former and the latter is justified.

173 In that connection Mrs Bonino and Others contend that the Parliament's argument is tantamount to reducing the requirement of political affinity to a purely formal one which is satisfied once Members declaring that they are forming themselves into a group do not openly deny the existence of any political

affinity amongst themselves. That argument would, it is contended, alter the scope of Rule 29. Moreover, the lack of any express denial of political affinity as between the members of the groups referred to at paragraphs 169 and 170 above cannot hide the fact that extreme political disparities exist between those members. Furthermore, there is no difference between a group which, like the TDI Group, openly denies any political affinity between its members and a group which, like the CDI Group, expressly declares that each member retains his or her political programme and the freedom to speak and vote both in committee and in plenary session.

174 The applicants' argument cannot be upheld, however. As is shown by the analysis conducted at paragraphs 110 to 114 above, the denial of political affinities as between the members of the TDI Group is not purely formal. It was the deliberate will of those members to avoid being perceived as sharing any such affinities. In the face of such a plain denial the Parliament could not do other than take cognisance of that absence of political affinity and declare the TDI Group non-existent for failure to comply with the requirement laid down in Rule 29(1) of the Rules of Procedure; not to do so would rob that provision of any effectiveness.

175 On the other hand, it was legitimate, in the light of all the relevant facts, to take the view, based on the absence of any express denial of political affinity by the groups referred to at paragraphs 169 and 170 above, that the political disparity between the members of those groups, the designation of technical group given to some of them or, in the case of the CTDI Group, the reasons of a practical nature invoked by the Members concerned in their statements concerning formation of the group, did not preclude the existence of a minimum of political affinity between members of those groups and therefore did not warrant doubt as to the presumption of political affinity mentioned at paragraph 103 above.

176 The fact alleged by Mrs Bonino and Others concerning the CDI Group that the statement of formation of that group preserved the political independence and

speaking and voting freedom of the members of that group in committee and in plenary session, even if such is established to be the case, is not, for the reasons set out at paragraphs 91, 108 and 109 above, such as to contradict the foregoing analysis. The same is true, as regards the CTDI Group, of the declaration of political independence of its members.

177 With specific regard to the EDD Group it should be added that, contrary to the assertions by the Front national in its pleadings, its name conveys a political conception of Europe shared by the Members belonging to that group which is, moreover, reflected in the charter adopted by it in November 1999.

178 The charter, which was produced by the Parliament, contains the following statements:

'The group is open to members subscribing to a European association of sovereign nation States and accepts the United Nations Declaration on Human Rights and parliamentary democracy.

EDD advocates the construction of a stable and democratic Europe of nation States founded on the diversity and cultures of its peoples. It is open to persons who are reticent concerning increased European integration and centralisation.'

179 Those statements warrant the view that Members belonging to the EDD Group share political affinities characterised by the desire to secure the sovereignty of

the Member States and diversity of the peoples of Europe, and not to see excessive importance accorded to European integration and centralisation. Those statements help to account for the fact that the Parliament did not see fit to call in question the compliance by this group with the requirement laid down in Rule 29(1).

180 It should also be stated that, contrary to the assertions of the Front national, the fact that members of the EDD group may vote differently in plenary session is, for the reasons stated at paragraph 91 above, of no relevance in assessing the compliance of that group with Rule 29(1). Accordingly, the Front national cannot effectively rely on that matter in support of this plea.

181 It is clear from the foregoing considerations that the applicants' arguments as to unjustified discrimination between the TDI Group and the groups mentioned at paragraphs 169 and 170 above must be rejected.

182 Messrs Martinez and De Gaulle go on to claim that the example of those groups gave rise, over the course of the last twenty years, to a legitimate expectation concerning the permissibility of technical groups within the Parliament. In prohibiting the TDI Group the act of 14 September 1999 is therefore in breach of the principle of the protection of legitimate expectations.

183 In that connection, it is settled case-law that the principle of protection of legitimate expectations is one of the fundamental principles of the Community

(see, in particular, Case C-104/97 P *Atlanta* v *European Community* [1999] ECR I-6983, paragraph 52). It applies where the Community institution in question gave to those concerned specific assurances giving rise on their part to reasonable expectations (T-489/93 *Unifruit Hellas* v *Commission* [1994] ECR II-1201, paragraph 51, and the case-law cited therein, and Case T-113/96 *Dubois et Fils* v *Council and Commission* [1998] ECR II-125, paragraph 68).

184 However, in the present case, the absence of opposition by the Parliament to statements concerning the formation of groups not having the same characteristics as the TDI Group (see paragraphs 172 to 180 above) cannot be regarded as a specific assurance giving rise in the minds of the Members who declared that they were forming that group reasonable expectations as to its compliance with Rule 29(1).

185 It should be added that as soon as the statement concerning formation of the TDI Group was made its compliance with Rule 29(1) was contested. Moreover, there is no evidence in the file to suggest that, between the time when the legality of the TDI Group was called in question and the adoption of the act of 14 September 1999 the Members making the statement concerning that group's formation received a specific assurance from any organ of the Parliament which could have led them reasonably to expect that the TDI Group met the requirements of the abovementioned provision.

186 It follows that the arguments of Messrs Martinez and De Gaulle alleging infringement of the principle of the protection of legitimate expectations must be rejected.

187 In the light of all the foregoing, the second limb of the plea under examination must be rejected.

The third limb

188 In the three cases the applicants claim that the legitimacy of the political groups making up the current Parliament has never been challenged. Yet in recent votes on sensitive political questions the existence of political affinities between the Members of those groups appeared doubtful, whereas the members of the TDI Group have demonstrated great political cohesion. That bears out the discriminatory nature of the act of 14 September 1999.

189 However, the analysis at paragraphs 100 to 124 above demonstrates that the Parliament was right to establish the non-existence of the TDI Group for non-conformity with Rule 29(1) on account of the express denial of any political affinity by the Members comprising that group. In the course of that analysis it was noted that the correctness of the Parliament's assessment could not be invalidated by the fact that in recent sessions the members of that group have adhered to similar voting patterns (see paragraphs 123 and 124 above).

190 Under those circumstances the applicants cannot effectively rely on the different assessment made by the Parliament in regard to statements concerning the formation of the political groups making up the current Parliament.

191 It should be added that the applicants have adduced no evidence to show that those groups openly abjured, as did the TDI Group, any political identity. For the reasons set out at paragraph 91 above, the fact that members of the same political group vote differently on specific questions cannot be regarded as constituting evidence of that kind.

192 In the light of the foregoing considerations the third limb of the plea under examination must be rejected.

193 Accordingly, the third plea must be rejected in its entirety.

Fourth plea: infringement of the principle of democracy

194 In Cases T-222/99 and T-329/99 the applicants maintain that the contested measure infringes the principle of democracy which is common to the Member States and on which the European edifice is founded (Articles 6, 7 and 49 EU and 309 EC; Opinion of Advocate General Tesauro in *Netherlands* v *Council*, cited at paragraph 57 above, point 19). Under that principle, the people must share in the exercise of power through a representative assembly (Case T-135/96 *UEAPME* v *Council* [1998] ECR II-2335, paragraph 88).

195 Mrs Bonino and Others claim that in the present case prohibiting the formation of the TDI Group deprives the independent Members of the privileges reserved to political groups and seriously prejudices the exercise of their democratic mandates. It therefore also affects the political representation of the voters.

196 Where there are several possible interpretations of Community law, it is appropriate to choose the one which best enables the full attainment of the democratic values of the Union (Opinion of Advocate General Tesauro in Case C-300/89 *Commission* v *Council* [1991] ECR I-2867, I-2878).

197 In regard to Rule 29(1) it is appropriate to choose from the several possible interpretations of that provision the one which best safeguards the principle of democracy and participation by the people in the exercise of power through a representative assembly (*Commission* v *Council*, cited in the preceding paragraph).

198 The arguments set out in paragraphs 194 to 197 above are also relied on by Mrs Bonino and Others in support of their claim that Rule 29(1) in conjunction with Rule 30 is unlawful inasmuch as those provisions are contrary to the principle of democracy.

199 The Court of First Instance considers it appropriate to examine first the objection of illegality, which is admissible for the reasons set out at paragraphs 133 to 140

above, inasmuch as that objection alleges infringement of the abovementioned principle, in the light of the arguments set out in paragraphs 194 to 197 above and those stated at paragraph 142 above which are raised by Mrs Bonino and Others in this connection.

200 It must be noted that whilst the principle of democracy is indeed a founding principle of the European Union (*UEAPME* v *Council*, cited at paragraph 194 above, paragraph 89), it does not preclude the Parliament from adopting measures of internal organisation, such as Rule 29(1) in conjunction with Rule 30, which enable it to perform as well as possible, and in keeping with its special characteristics, the institutional role and the objectives assigned to it by the treaties (see paragraphs 144 to 149 above).

201 It is true that Members who are non-attached within the meaning of Rule 30 are deprived in exercising their functions of the benefit of a number of material, administrative, financial and parliamentary privileges which are accorded to the political groups. However, as noted at paragraphs 155 and 156 above, that situation stems not from the provisions of Rule 29(1) in conjunction with Rule 30 but from the Parliament's internal rules identified at paragraph 156 above.

202 Under the conditions laid down at paragraph 157 above and subject to possible review by the Community judicature, it is, of course, for the Parliament to determine whether the situation described in the preceding paragraph is in all respects compatible with the principle of democracy. Under that principle the conditions under which Members who have been democratically vested with a parliamentary mandate exercise that mandate cannot be affected by their not belonging to a political group to an extent which exceeds what is necessary for the attainment of the legitimate objectives pursued by the Parliament through its organisation in political groups.

203 However, in the present case Mrs Bonino and Others are not challenging the legality of the internal provisions identified at paragraph 156 above (see paragraph 158 above).

204 In any event, if any of those internal provisions infringes the principle of democracy, that can only affect the legality of the provision concerned and of acts adopted by the Parliament pursuant to it; it cannot, as such, undermine the analysis conducted at paragraphs 144 to 149 and 200 above.

205 It follows from the foregoing analysis (see paragraphs 200 to 204 above) that inasmuch as the objection of illegality concerning Rule 29(1) and 30 is based on infringement of the principle of democracy, it must be dismissed as unfounded.

206 The same analysis leads to rejection of the arguments put forward by the applicants in the context of the plea under examination which are based on elements identical to those alleged by Mrs Bonino and Others in challenging the conformity with the principle of democracy of Rule 29(1) in conjunction with Rule 30 (see paragraphs 194 to 198 above).

207 By depriving the Members who, like those who declared they were forming themselves into the TDI Group, have no shared political affinities of the opportunity of forming a political group within the meaning of the Parliament's internal rules and by conferring on them the status of non-attached Member, the act of 14 September 1999 is merely drawing the consequence of their failure to

observe the requirement of political affinity laid down in Rule 29(1) and applying to them the solution provided for in Rule 30 for Members not satisfying that requirement (see paragraph 162 above).

208 The compatibility of those two provisions with the principle of democracy is not open to challenge. It is clear from the analysis in paragraphs 144 to 149 and 200 above that those rules are intended to enable the Parliament to perform as well as possible the institutional role and objectives assigned to it by the treaties.

209 Under those circumstances the act of 14 September 1999 cannot be held to be contrary to the principle of democracy.

210 It should be added that the impediments complained of by the applicants in support of their plea (see paragraph 195 above) and suffered by the Members affected by the act of 14 September 1999 in the exercise of their functions stem not from that measure but from the Parliament's internal provisions identified at paragraph 156 above, the lawfulness of which is not, however, challenged by the applicants in the context of these actions for annulment (see paragraphs 166 and 167 above).

211 In the light of the foregoing considerations the fourth plea must be rejected.

Fifth plea: infringement of the principle of proportionality

212 Mrs Bonino and Others maintain that the act of 14 September 1999 infringes the principle of proportionality. They claim that the flexible interpretation of Rule 29

on which the formation of the TDI Group rests enables, as that act does not, the demands associated with the efficient organisation of a parliamentary assembly to be reconciled with securing for all Members the untrammelled exercise of their parliamentary functions.

213 Those arguments are also relied on by Mrs Bonino and Others in support of their objection of illegality concerning the combined provisions of Rules 29(1) and 30.

214 The Court of First Instance considers it appropriate to examine first the objection of illegality, which is admissible for the reasons set out at paragraphs 133 to 140 above, inasmuch as that objection alleges infringement of the principle of proportionality, in the light of the arguments set forth at paragraph 212 above and those stated at paragraph 142 above which are raised by Mrs Bonino and Others in this connection.

215 It should be emphasised in that connection that, under the case-law, the principle of proportionality requires measures adopted by the Community institutions to be appropriate and necessary for meeting the objectives legitimately pursued by the legislation in question, and where there is a choice between several appropriate measures, the least onerous measure must be used (see, in particular, Case 15/83 *Denkavit Nederland* [1984] ECR 2171, paragraph 25, and Case 265/87 *Schräder* [1989] ECR 2237, paragraph 21).

216 In the present case, it is clear from the analysis at paragraphs 144 to 149 above that the combined provisions of Rule 29(1) and Rule 30 constitute measures of internal organisation which are appropriate and necessary in the light of the legitimate objectives described in the abovementioned paragraphs. In fact, in the light of its specific characteristics and operating constraints, only groups made up

of Members sharing political affinities within the meaning of Rule 29(1) enable the Parliament to perform the institutional tasks and the objectives assigned to it by the Treaty. If Members declaring that they are forming a group as provided for in Rule 29(1) share no political affinity, the Parliament has no choice but to prohibit the formation of such a group and, as provided for by Rule 30, to deem them to be non-attached, since otherwise it would jeopardise the attainment of the legitimate objectives which it pursues by means of its organisation in political groups.

217 Accordingly, Rule 29(1) in conjunction with Rule 30 cannot be regarded as measures which, in breach of the principle of proportionality, go beyond what is appropriate and necessary in order to attain the legitimate objectives referred to in the preceding paragraph.

218 It is true that non-attached Members within the meaning of Rule 30 do not enjoy, in the exercise of their functions, the same advantages as those conferred on the members of political groups. However, as has been noted at paragraphs 155 and 156 above, that situation stems not from the combined provisions of Rule 29(1) and Rule 30 but from the internal rules of the Parliament identified at paragraph 156 above.

219 The Parliament does have a duty to consider, under the conditions mentioned in paragraph 157 above and subject to possible review by the Community judicature, whether such a situation complies with the principle of proportionality, by verifying whether in the case of each of the internal provisions identified at paragraph 156 above, a less stringent solution would be just as appropriate for achieving the legitimate objectives pursued by the Parliament by way of its political group structure.

220 However, in the present case it should be recalled that Mrs Bonino and Others are not challenging the legality of the internal provisions mentioned in the preceding paragraph (see paragraph 158 above).

221 In any event, if any of those internal provisions infringes the principle of proportionality, that can only affect the legality of the provision concerned and of acts adopted by the Parliament under it: it cannot, as such, undermine the analysis conducted at paragraphs 144 to 149 and 215 to 217 above.

222 It follows from the foregoing analysis (paragraphs 215 to 221) that inasmuch as the objection of illegality concerning Rule 29(1) and Rule 30 alleges infringement of the principle of proportionality, it must be rejected as unfounded.

223 In the light of the considerations set out in paragraphs 144 to 160, 200 to 205 and 215 to 222 above, the objection of illegality raised by Mrs Bonino and Others concerning the combined provisions of Rule 29(1) and Rule 30 must be dismissed.

224 The analysis conducted at paragraphs 215 to 221 above leads to the rejection of the arguments put forward by Mrs Bonino and Others in the context of the plea under examination, which overlap with the allegations by those applicants challenging the conformity of Rule 29(1) in conjunction with Rule 30 with the principle of proportionality (see paragraphs 212 and 213 above).

225 By depriving the Members who, like those who declared they were forming themselves into the TDI Group, have no shared political affinities of the opportunity of forming a political group within the meaning of the Parliament's internal rules and giving them the status of non-attached Member, the act of 14 September 1999 is merely drawing the consequence of their failure to observe the requirement of political affinity laid down in Rule 29(1) and applying to them the solution provided for in Rule 30 for Members not satisfying that requirement (see paragraph 162 above).

226 However, the conformity of those two provisions with the principle of proportionality is not open to challenge (see paragraphs 144 to 149 and 215 to 217 above).

227 In those circumstances the act of 14 September cannot be held to infringe the principle of proportionality.

228 It should be added that the imbalance complained of by Mrs Bonino and Others (see paragraph 212 above) as between the requirements of the efficient functioning of the Parliament and the securing for all Members of the untrammelled exercise of their parliamentary mandates stems not from the act of 14 September 1999 but from the Parliament's internal provisions identified at paragraph 156 above, the lawfulness of which is not, however, challenged by the applicants (see paragraphs 158 and 167 above).

229 In the light of the foregoing considerations the fifth plea must be rejected.

Sixth plea: infringement of the principle of freedom of association

230 Messrs Martinez and De Gaulle claim that the act of 14 September 1999 infringes the freedom of association guaranteed by Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). They maintain that, by virtue of that freedom, the Members must be authorised to form themselves into a group in order to gain access to a number of privileges necessary for the proper functioning of democracy without at the same time having to subject themselves to a political programme which is binding and prejudicial to their political independence and the democratic process. By prohibiting formation of the TDI Group when the legitimate purpose of that group was to put an end to the discrimination suffered by the non-attached Members the Parliament is restricting freedom of association for political reasons.

231 It should be emphasized that the principle of freedom of association which is enshrined in Article 11 of the ECHR and stems from the constitutional traditions common to the Member States is one of the fundamental rights which, as the Court has consistently held and as is reaffirmed in the preamble to the Single European Act and in Article 6(2) EU, are protected in the Community legal order (Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 79, and Case C-235/92 P *Montecatini* v *Commission* [1999] ECR I-4539, paragraph 137).

232 Nevertheless, even if that principle were intended to apply to the internal organisation of the Parliament, it should be stressed that it is not absolute. Restrictions may be imposed, for legitimate reasons, on the exercise of freedom of association, provided that those restrictions do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the

very substance of that right (see to that effect Case 5/88 *Wachauf* [1989] ECR 2609, paragraph 18, and Case C-292/97 *Karlsson and Others* [2000] ECR I-2737, paragraph 45; see also the Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, § 65).

233 In the present case, the principle of freedom of association does not preclude the Parliament in the context of its power of internal organisation from making formation of a group of Members of the Parliament subject to a requirement of political affinity dictated by the pursuit of legitimate objectives (see paragraphs 145 to 149 above) and from prohibiting, as in the act of 14 September 1999, the formation of a group which, like the TDI Group, is in patent breach of that requirement. Such measures, which are based on legitimate grounds, do not affect the right of Members concerned to organise themselves into a group provided that the conditions laid down in that connection by the Rules are observed.

234 In those circumstances the principle of freedom of association cannot effectively be relied on by Messrs Martinez and De Gaulle in order to challenge the validity of the interpretation of Rule 29(1) of the Rules of Procedure adopted by the Parliament and its refusal to recognise the TDI Group.

235 In the light of those considerations the sixth plea must be dismissed.

Seventh plea: disregard of the parliamentary traditions common to the Member States

236 Messrs Martinez and De Gaulle claim that by banning the formation of mixed groups when such a ban is not warranted by the terms of Rule 29 the Parliament

espoused in its act of 14 September 1999 an interpretation of that provision which is at variance with most legislation and parliamentary practice in the Member States. They point to the situation in the Italian and Spanish parliaments, where independent Members are automatically entered in a mixed group enjoying the same status and privileges as the political groups.

237 They also highlight the characteristics of the German parliamentary system. That system, which in its conception is analogous to the European parliamentary system, permits the formation of mixed parliamentary groups with the agreement of the Bundestag. Moreover, the case-law of the German Constitutional Court secures to Members not belonging to a political group rights equivalent to those of parliamentarians forming part of such a group. The German parliamentary system, which is regarded as the strictest in Europe, is therefore less prejudicial to the individual rights of Members than that reflected in the interpretation adopted by the Parliament in its act of 14 September 1999.

238 The Front national asserts that the level of discrimination applied in the Parliament as between non-attached Members and Members belonging to political groups is not to be found in any national parliament. The examples drawn from the parliamentary practice of various Member States (the Kingdom of Spain, the Italian Republic, the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden, the Republic of Austria and the Federal Republic of Germany) show that the act of 14 September 1999 is manifestly contrary to comparative parliamentary law.

239 Mrs Bonino and Others assert that the Parliament's refusal to recognise the right of non-attached Members to enjoy the privileges attaching to membership of a political group contrasts with the parliamentary practice of several Member States.

240 In that connection the Court of First Instance considers, first of all, that even if the case-law to the effect that in ensuring that fundamental rights are safeguarded the Community judicature is obliged to draw inspiration from the constitutional traditions common to the Member States (Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125, paragraph 4, and Case 4/73 *Nold* v *Commission* [1974] ECR 491, paragraph 13) applies by analogy to the parliamentary traditions common to the latter, the act of 14 September 1999 banning the formation of groups whose members abjure, as in the present case, any political affinity cannot be adjudged contrary to a parliamentary tradition common to the Member States.

241 In fact, the information provided by the applicants in their pleadings indicates no more than that the formation of technical or mixed groups is permitted by some national parliaments.

242 However, it does not necessarily mean that the national parliaments which, like the Parliament, make formation of a group within the parliament subject to a requirement of political affinity would not interpret a statement concerning the formation of a group such as the TDI Group in the same way as the Parliament did in its act of 14 September 1999. Nor does that information warrant the conclusion that formation of a group such as the TDI Group, whose members expressly state that it is entirely unpolitical, would be possible in the majority of national parliaments.

243 Next, it should be recalled that the alleged discrimination by the Parliament resulting from the act of 14 September 1999 as between Members who are non-attached, as are the Members which declared the formation of the TDI Group, and members of political groups stems not from that act but from the Parliament's internal provisions identified at paragraph 156 above.

244 In those circumstances, without its being necessary to conduct a comparative-law examination of the status accorded to non-attached or independent Members in the different national parliaments, the applicants' argument that the act of 14 September 1999 discriminates as between members of the TDI Group and members of political groups in a manner contrary to the parliamentary traditions common to the Member States must be rejected.

245 In the light of those considerations the seventh plea must be rejected.

Eighth plea: infringement of essential procedural requirements

246 The Front national raises a plea alleging infringement of essential procedural requirements. This plea is divided into three limbs. In the first limb the Front national maintains that the scope of the act of 14 September 1999 is not confined to interpretation of the Rules of Procedure. In the second limb it claims that dissolution of the TDI Group was not voted on in plenary session. In the third limb it alleges infringement of the right to be heard.

The first limb

247 In the first limb of this plea the Front national maintains that the act of 14 September 1999 is more than a general and declaratory interpretation. It amounts to a decision with retroactive effect to the date of the statement concerning the formation of the TDI Group, making formation of a group dependent on a new condition which under Rule 29 was optional, namely the

existence of political affinities between the members of the group in question. In support of its arguments the Front national cites examples of technical groups permitted under earlier legislatures, and under the current one, which show that in the present case the Parliament used its discretion to enforce observance of an optional condition in breach of a customary rule on which doubt had never previously been cast.

248 The Court of First Instance construes the argument raised by the Front national in this limb of the plea as a claim, first, that the Parliament infringed essential procedural requirements by deciding, by means of the act of 14 September 1999, not only to adopt the general interpretation of Rule 29(1) of the Rules of Procedure proposed by the Committee on Constitutional Affairs, but also to establish the non-existence *ex tunc* of the TDI Group.

249 That argument must be rejected.

250 The Court of First Instance notes, on the one hand, that the Front national does not identify the essential procedural requirements alleged to have been infringed by the Parliament when it decided on 14 September 1999 to confirm the non-existence *ex tunc* of the TDI Group in the light of the general interpretation of Rule 29(1) of the Rules of Procedure adopted on the same day in plenary session.

251 In that connection it should be noted that under Rule 180(5) and (6), interpretations by the Parliament are adopted in the form of explanatory notes to the corresponding rule or rules and those explanatory notes constitute precedents in particular for the application of the rules concerned. Unlike Rule

181(3), which concerns amendments to the Rules of Procedure, and under which any such amendment is to enter into force only on the first day of the part-session following its adoption, under the abovementioned provisions of Rule 180 the application to a specific case of the interpretation of a provision of the Rules of Procedure adopted by the Parliament is not subject to any time-limit or formality.

252 On the other hand, with regard to the *ex tunc* effect of the decision confirming the non-existence of the TDI Group, the interpretation by the Parliament of a rule elucidates and specifies its meaning and scope as it ought to be and ought to have been understood and applied from the time of its entry into force. It follows that the provision as so construed may be applied to situations arising prior to the adoption of the interpretative decision.

253 The Court of First Instance construes the argument put forward by the Front national in this limb of the plea as seeking to claim, secondly, that since technical groups were allowed under previous legislatures and under the current one, the Parliament has altered the tenor of Rule 29(1) by refusing, notwithstanding the hitherto consistent interpretation of that provision, to recognise the formation of the TDI Group. The Parliament thus made the condition relating to political affinities mandatory, which it had not been before, and unjustifiably imposed its authority to monitor compliance with that condition.

254 In that connection, it should be noted that, for the reasons stated at paragraphs 84, 85 and 87 to 89 above, the fact that the Parliament did not oppose the formation of the groups referred to by the Front national in the course of its

arguments does not affect the analysis conducted at paragraphs 80 to 82 and 101 to 124 above. That analysis shows that the criterion of political affinity which, according to statements made at the hearing on behalf of the Parliament, appeared in all the earlier versions of its Rules of Procedure in terms identical to those of Rule 29(1), must be regarded as having constituted from the beginnings of that institution a mandatory requirement for the formation of a political group. It is also clear from that analysis that, by virtue of its competence to apply and interpret its Rules of Procedure, the Parliament enjoys a margin of discretion authorising it to prohibit the formation of a group which, like the TDI Group, patently fails to fulfil that condition.

255 In the light of those considerations the first limb of the plea under examination must be rejected.

The second limb

256 In the second limb of the plea under examination the Front national maintains, first, that the Committee on Constitutional Affairs was not competent to take a specific decision concerning the conformity with Rule 29(1) of the statement of formation of the TDI Group.

257 In that connection the Court of First Instance points out that, under the terms of paragraph XV.8 of Annex VI to the Rules of Procedure, the Committee on Constitutional Affairs is responsible for matters relating to the interpretation of the Rules of Procedure pursuant, in particular, to Rule 180 thereof.

258 Under Rule 180(1), should doubt arise as to the application or interpretation of the Rules of Procedure, the President of the Parliament may refer the matter to the Committee on Constitutional Affairs for examination. Under paragraph 3 of that rule, should that committee decide that an interpretation of the existing rules is sufficient, it is to forward its interpretation to the President, who is to inform Parliament thereof.

259 The provisions mentioned in the two preceding paragraphs must be construed as giving competence to the Committee on Constitutional Affairs, where a question is referred to it, to propose to the Parliament its interpretation of the rule in connection with the specific problem giving rise to such referral.

260 In the present case it is clear from the matters stated at paragraphs 29 and 30 above that the Committee on Constitutional Affairs was seised of the question of the application of Rule 29(1) in regard specifically to the statement concerning formation of the TDI Group. They also indicate that, following the committee's meeting on 27 and 28 July 1999, it first informed the President of the Parliament that it interpreted Rule 29(1) as not permitting the formation of the TDI group on the ground that the statement concerning formation of that group excluded any political affiliation and gave total political independence within that group to the various signatories comprising it, and secondly proposed an interpretation of that provision based on the specific case giving rise to the referral.

261 In so doing the Committee on Constitutional Affairs remained within the limits of the powers attributed to it by paragraph XV.8 of Annex VI to and Rule 180 of the Rules of Procedure.

262 Secondly, the Front national alleges that the decision to dissolve the TDI Group was not voted on in plenary session. Only the general interpretation of Rule 29(1) proposed by the Committee on Constitutional Affairs was put to the vote, and once that interpretation had been adopted the President of the Parliament declared that the vote had related also to the abovementioned decision. Since under Rule 180(4) of the Rules of Procedure it ought to have given its view only on that interpretation, the Parliament was thus involved in the adoption of a text of which it did not have full cognisance.

263 In that connection it should be remembered that at the plenary session of 13 September 1999 the President of the Parliament read out to the Parliament the contents, reproduced at paragraph 38 above, of the letter addressed to it on 28 July 1999 by the President of the Committee on Constitutional Affairs. She thus informed the Parliament, first, of the specific interpretation of Rule 29(1) proposed by that committee concerning the statement of formation of the TDI Group, together with the grounds thereof, and, secondly, of the contents of the text which that committee had proposed be inserted by way of a general interpretation of Rule 29(1).

264 On that information and following the opposition stated by the TDI Group to that general interpretation, the Members took part in the vote on it whilst being aware of the implications of such a vote for the statement of formation of the TDI Group. They necessarily understood that, in ruling on the abovementioned interpretation, they were at the same time ruling on the conformity with Rule 29(1) of that statement and, thus, on the fate of the TDI Group. In those circumstances there was no reason to have a separate vote on that point.

265 In the light of those considerations the second limb of the plea under examination must be rejected.

The third limb

266 In the third limb of the plea under examination the Front national submits that by not organising, in advance of adoption of the act of 14 September 1999, a debate which would have enabled the members of the TDI Group to defend themselves against the charge that they shared no political affinities, the Parliament failed to observe the right to be heard and the rights of the defence. It adds that the debates of the Committee on Constitutional Affairs took place in closed session and that the members of the TDI Group participated therein *qua* institutional members of that committee.

267 The Court of First Instance notes, however, that between 20 July 1999, the date on which the presidents of the political groups called in question the conformity with Rule 29(1) of the TDI Group, and 14 September 1999 the members of that group were on several occasions able to put their point of view to the other Members concerning criticisms as to the failure of that group to comply with the abovementioned provision.

268 In the first place, the minutes of the meeting of the Conference of Presidents of 21 and 22 July 1999 mentions two interventions by Mrs Bonino, acting president of the TDI Group, under point 2 of the agenda, dealing with the formation of that group. During that meeting she 'presented a memorandum mentioning several technical groups which had previously come into existence and noting that the Parliament's Rules of Procedure on the issue of political affinity had not changed.' She also 'expressed reservations as to the assessment of the criterion of political affinity.'

269 Secondly, the report of the meeting of the Committee on Constitutional Affairs of 28 July 1999 relates under the point dealing with 'the interpretation of Rule 29 in regard to the formation of the [TDI Group]' interventions by Messrs Speroni and Dupuis. The indication '(TDI)' appearing next to their names shows that they spoke on behalf of the TDI Group and were perceived as speaking in that capacity by the other members of the Committee.

270 In particular Mr Speroni said:

'All the formalities concerning the formation of a group were observed. The mixed group is not inconsistent with the existence of other groups as a means of bringing non-attached Members out of limbo. A "lack of political affinities" is also to be observed in other groups in the European Parliament... The status of individual parliamentarian is not effective. It is not for the other groups to decide on the creation or not of other groups... Rule 29 does not require proof of such "political affinities". At a minimum level, a minimum of affinities on a minimum common basis.'

271 In regard to that meeting it should be added that it is not apparent from the minutes that the committee met in closed session. Moreover, the Front national adduces no evidence to show that Members not on that committee sought to participate in its work under Rule 166(3) of the Rules of Procedure and were prevented from doing so.

272 Thirdly, on examination of the point on the agenda of the plenary session of the Parliament of 14 September 1999 concerning adoption of the minutes of the meeting of the day before, Mr Gollnisch made the following statement on behalf of the TDI Group:

'I would also like to say very briefly, if you do not mind, why, in our opinion, this interpretation must not be upheld. Rule 29(4) of our Rules of Procedure states that a group declaration must show the designation of the group, the names of its members, and the composition of its bureau. These are the only three requirements stipulated in our Rules of Procedure.

If, ladies and gentlemen, you choose to interpret the rule in a way which goes beyond the letter of Parliament' s law, even though it is extremely clear, perhaps out of scorn for the rights of minorities or as a way of expressing the large Parties' hegemonic desires, I would like to draw your attention to the fact that you would be creating an *extremely* important and damaging precedent which might rebound on any of the Groups or sub-groups of this House one day.

You would, in effect, be allowing the majority of the House, the way it currently stands, to make decisions on political allegiances which might exist between any MEPs who may nevertheless have signed the constitution of a group, and we know very well that there are, even within groups with a majority, factions which are certainly in disagreement with one another on a common political programme.'

273 In the light of those considerations the third limb of the plea under examination must be dismissed.

274 It follows that the eighth plea must be rejected in its entirety.

Ninth plea: presumption of misuse of procedure

275 The Front national seeks to rely on a presumption of misuse of procedure. Referring to amendments in the past to Rule 14 on the opening address of the new legislature, Rule 34 concerning the motion of censure on the Commission and Rule 126 on the quorum, it claims that the act of 14 September 1999 is indicative, like those amendments, of the Parliament's desire systematically to reduce the rights of certain Members, particularly those representing the Front national.

276 The Court of First Instance observes, however, that according to settled case-law, there is a misuse of powers, of which misuse of procedure is merely another form, only if the contested measure appears, on the basis of objective, relevant and consistent factors, to have been taken with the exclusive purpose, or at any rate the main purpose, of achieving an end other than those stated (see, in particular, Case C-285/94 *Italy* v *Commission* [1997] ECR I-3519, paragraph 52, and Case T-143/89 *Ferriere Nord SpA* v *Commission* [1995] ECR II-917, paragraph 68).

277 In the present case examples drawn from previous amendments of the Parliament's Rules of Procedure are not such as to prove that the decisions adopted by the Parliament on 14 September 1999 (see paragraph 46 above) were led by a deliberate intention on its part to affect the rights of certain Members, in particular those of the applicant in Case T-327/99. On the contrary, the analysis

set out at paragraphs 101 to 124 above shows that the Parliament entirely lawfully used its discretionary power in regard to the conformity of a group with the requirement of political affinity laid down in Rule 29(1) and that, faced with a case in which the lack of political affinity was as patently clear as it was in the statement concerning the formation of the TDI Group, it could not but establish the non-existence of that group for failure to observe the abovementioned requirement.

278 It follows that the ninth plea must be rejected.

279 In the light of all the foregoing considerations the actions for annulment must be dismissed.

Costs

280 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the applicants have been unsuccessful, each of them is to bear its own costs and those incurred by the Parliament in the relevant case including, as regards Case T-222/99, the costs relating to the application for interim measures.

On those grounds,

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

hereby:

1. **Orders the joinder of Cases T-222/99, T-327/99 and T-329/99 for the purposes of the judgment;**

2. **Dismisses the actions;**

3. **Orders the applicants in each case to bear their own costs and those incurred by the Parliament including, as regards Case T-222/99, the costs relating to the application for interim measures.**

Azizi Lenaerts Moura Ramos

Jaeger Vilaras

Delivered in open court in Luxembourg on 2 October 2001.

H. Jung
Registrar

M. Jaeger
President