JUDGMENT OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)
25 February 1997 *

In Joined Cases T-149/94 and T-181/94,

Kernkraftwerke Lippe-Ems GmbH, a company incorporated under German law, established in Lingen, Ems (Germany), represented by Bernd Kunth, Gerhard Wiedemann, Manfred Ungemach and Helmut Nicolaus, Rechtsanwälte, Düsseldorf, with an address for service in Luxembourg at the Chambers of Alex Bonn, 62 Avenue Guillaume,

applicant,

v

Commission of the European Communities, represented by Jürgen Grunwald, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision 94/95/Euratom of 4 February 1994 relating to a procedure in application of the second paragraph

* Language of the case: German.

of Article 53 of the Euratom Treaty (OJ 1994 L 48, p. 45), and of Commission Decision 94/285/Euratom of 21 February 1994 relating to a proceeding in application of the second paragraph of Article 53 of the Euratom Treaty (OJ 1994 L 122, p. 30), and for damages,

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

composed of: A. Saggio, President, C. W. Bellamy, A. Kalogeropoulos, V. Tiili and R. M. Moura Ramos, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 18 September 1996,

gives the following

Judgment

Facts, legal background and procedure

1 The applicant, Kernkraftwerke Lippe-Ems GmbH (hereinafter 'KLE'), owns and operates a nuclear power station in Lower Saxony, Germany. It states that it follows a medium-term fuel supply policy and concludes supply contracts at regular intervals to cover its fuel requirements for up to five trading years.

2 In June 1993 it invited tenders for the supply of natural uranium in the form of uranium hexafluoride (UF_6). On 10 and 22 November 1993, it concluded a supply contract with the company which had made the most attractive offer, British Nuclear Fuels plc (hereinafter 'BNFL'), established in the United Kingdom. Under that contract, 400 tonnes of natural uranium in the form of UF_6 were to be delivered by 31 March 1995 at the latest to an enrichment company established within the Community. The purchase price agreed was US $22 per kilogram, excluding VAT. The contract was silent as to the place of origin of the uranium to be supplied, but BNFL undertook to inform KLE and the Euratom Supply Agency (hereinafter 'the Agency') of the country of origin on the occasion of each partial delivery at the latest. The contract stated that it was to take effect only with the agreement of the Agency.

3 Article 5 *bis* (d) of the Rules of the Supply Agency of 5 May 1960 determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials (OJ, English Special Edition 1959-1962, p. 46, hereinafter 'the Rules'), adopted under the sixth paragraph of Article 60 of the Euratom Treaty (hereinafter 'the Treaty'), as amended by the Agency Regulation of 15 July 1975 (OJ 1975 L 193, p. 37), provides that under a 'simplified procedure' a supply contract is, for the purposes of its conclusion, to be submitted to the Agency for signature. Under Article 5 *bis* (f), the Agency then has ten working days within which to act, either by concluding or by refusing to conclude the contract.

4 On 29 November 1993 the Agency received for signature the contract proposed by KLE and BNFL.

5 By letter of 10 December 1993, received on 13 December 1993, the last day of the period for signature of ten working days, the Agency asked KLE and BNFL for information as to the origin of the uranium which was the subject of the contract.

On 14 December 1993 BNFL informed the Agency that the uranium would come from the Commonwealth of Independent States (CIS), probably Russia.

6 By letter of 20 December 1993 the Agency informed the parties that its policy was to see to it that users in the European Atomic Energy Community (hereinafter 'the Community') '[did] not become overdependent on any single source of supply beyond reasonable limits, and that the acquisition of nuclear materials from CIS Republics [took] place at fair prices related to those of the market (i. e. reflecting cost of production and compatible with prices of producers in market economy countries)'. The Agency stated that its policy of diversification was aimed at confining the proportion of supplies from the CIS to 20 to 25% of individual Community users' needs. It considered that the contract submitted by KLE might make it too dependent on uranium from the CIS. It calculated that, taking into account total deliveries to KLE during the previous three years, KLE was entitled to acquire about 45 tonnes a year of natural uranium of CIS origin. KLE had, however, already contracted for quantities far exceeding the level of reasonable dependency for several years. Moreover, the proposed prices did not reflect normal production costs and were not comparable with prices charged in market economy countries. The Agency therefore considered that it was not appropriate to conclude the contract, but still asked the parties to submit their comments before it took a final decision.

7 On 29 December 1993 KLE referred the matter to the Commission under the second paragraph of Article 53 of the Treaty, alleging that the Agency had failed to act.

8 On 6 January 1994 it was notified of Decision No 1/94 of the Agency concerning the supply contract submitted on 29 November 1993. Pursuant to that decision, the Agency signed the contract of 10 and 22 November 1993 between KLE and BNFL with the addition of a condition that the natural uranium to be supplied could not come directly or indirectly from the CIS.

9 On 10 January 1994 the Commission informed KLE's representatives that in its opinion the Agency's decision communicated to KLE on 6 January had been taken within the time-limit laid down, so that the reference to the Commission was now devoid of purpose.

10 By letter of 20 January 1994 KLE made additional submissions in the procedure initiated on 29 November 1993, to take account of Decision No 1/94.

11 By another letter of the same date, it referred Decision No 1/94 to the Commission pursuant to the second paragraph of Article 53 of the Treaty.

12 With respect to the first procedure, concerning the Agency's alleged failure to act, the Commission adopted on 4 February 1994 Decision 94/95/Euratom relating to a procedure in application of the second paragraph of Article 53 of the Euratom Treaty (OJ 1994 L 48, p. 45). It rejected the requests made by KLE, which were based on the claim that the Agency had not taken a decision within the time-limit and asked the Commission in particular to instruct the Agency to conclude the contract of 10 and 22 November 1993. The Commission considered that the Agency had not failed to act, since it had been entitled to complete its documentation and the period of ten working days had therefore not started to run until the date when the additional information requested was received, namely 14 December 1993, and had not expired until 6 January 1994, the date on which Decision No 1/94 was actually taken.

13 With respect to the procedure concerning Decision No 1/94, the Commission adopted on 21 February 1994 Decision 94/285/Euratom relating to a procedure in application of the second paragraph of Article 53 of the Euratom Treaty (OJ 1995 L 122, p. 30). It considered that the Agency's decision was lawful on its merits and therefore rejected KLE's requests.

14 In those circumstances, KLE considered that the supply contract at issue could not be performed. BNFL and KLE did not proceed with it.

15 On 8 and 14 March 1994 KLE and BNFL concluded a new contract for the supply of 400 tonnes of uranium in the form of UF_6 at a price of US $27 per kilogram, subject to the condition that the uranium did not come directly or indirectly from the CIS. That contract was concluded by the Agency on 30 March 1994.

16 By applications lodged with the Registry of the Court of First Instance on 11 and 27 April 1994 respectively, KLE brought the present actions, which were registered as Cases T-149/94 and T-181/94.

17 By order of 23 March 1995, the Court (First Chamber, Extended Composition) joined the two cases for the purposes of the oral procedure and the judgment.

18 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory measures of inquiry. KLE replied in writing before the hearing to the questions put to it by the Court in the context of measures of organization of procedure. The parties presented oral argument and replied to the Court's oral questions at the hearing on 18 September 1996.

Forms of order sought by the parties

19 In Case T-149/94 KLE claims that the Court should:

— annul Decision No 94/95;

— order the Commission to pay the costs, including those incurred in the preliminary procedure.

20 In Case T-149/94 the Commission contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

21 In Case T-181/94 KLE claims that the Court should:

— annul Decision No 94/285;

— order Euratom to pay damages of DM 3 511 279.30, with interest at 6% per annum from 7 April 1994;

— order the Commission to pay the costs, including those incurred in the preliminary procedure, in so far as they have not been taken into account in the claim for damages.

22 In Case T-181/94 the Commission contends that the Court should:

— dismiss the claim for annulment;

— dismiss the claim for damages as inadmissible or, in the alternative, as unfounded;

— order the applicant to pay the costs.

Case T-149/94

23 KLE puts forward five pleas in law in support of its claim for annulment, alleging infringement of Article 5 *bis* (f) of the Rules and the provisions on supplies in Chapter 6 of the Treaty, breach of the principles of proportionality and legal certainty, breach of the rules on the division of powers, breach of the obligation to state reasons, and misuse of powers.

24 The first and second pleas call into question whether the Agency is entitled, first, to ask for supplementary information and, second, not to take a final decision until it has completed its documentation, that is, until it has in its possession the minimum information required by Article 5 *bis* (c) of the Rules.

25 Those two pleas should be examined together.

The first and second pleas alleging infringement of Article 5 bis (f) of the Rules and breach of the principles of proportionality and legal certainty

1. *Summary of the arguments of the parties*

26 KLE submits, first, that the contested decision infringes Article 5 *bis* (f) of the Rules. Under that provision, the Agency is to act, either by concluding or by

refusing to conclude the contract submitted to it, within ten working days from the date of receipt of the contract. In KLE's opinion, the Agency should have taken a final decision on 13 December 1993 at the latest, whereas in fact it took it on 6 January 1994, nearly four weeks later.

27 The fact that the Agency made a request for additional information within the prescribed period is not enough for it to be regarded as having acted within that period.

28 The discretion to seek additional information, relied on by the Agency on the basis of Article 5 *bis* of the Rules, contradicts the very objectives of the simplified procedure provided for therein. Article 5 *bis* defines, completely and exhaustively, the requirements which must be satisfied by the contracts to be concluded. In any event, the Agency must request the information it considers necessary promptly enough for the parties to the contract to be able to supply it within the period of ten working days.

29 Moreover, from 29 November 1993 the Agency had at its disposal all the information required by Article 5 *bis* of the Rules. KLE notes that under Article 5 *bis* (c)(5) the contract submitted does not have to state the country of origin of the materials to be supplied, provided that the supplier gives the user and the Agency an undertaking to inform them of the country of origin before delivery. It claims that that requirement was complied with in the contract in question.

30 Second, KLE submits that it was excessive to require the additional information, since the Agency would in any case not have signed the contract without excluding the possibility that the uranium might come from the CIS. Moreover, the delay in taking the decision exceeded the time needed for completing its documentation. KLE criticises the Commission for subjecting it to a procedure of indeterminate length by approving the Agency's demand for additional information. The Agency cannot be allowed to extend the period at will and thus arbitrarily delay decisions relating to the conclusion of contracts. In that connection, KLE alleges that the Commission infringed the principle that the administration must act lawfully in conjunction with the principle of legal certainty.

31 The Commission submits that the wording of Article 5 *bis* (c) of the Rules, which relates to the usual circumstances, requires, in the interests of completing the procedure swiftly, only certain minimum information, which may have to be supplemented in individual cases. Article 55 of the Treaty expressly acknowledges that the Agency is entitled to seek the information necessary to enable it to exercise its exclusive right to conclude supply contracts.

32 The period in question started to run only on the date when the Agency received the supplementary information. It would scarcely be compatible with the principles of the rule of law if the Agency, in order to comply with the time-limit in question, had to do without the necessary supplementary information and refuse to conclude the contract. In any case, the ten-day period does not constitute a mandatory time-limit but an administrative time-limit self-imposed by the Agency.

33 Subsequent notification of the country of origin is permissible only if the supplier was unable to provide that information at the time of entering into the contract. At

that time, however, BNFL was aware of the material's probable origin, since it communicated the corresponding information to the Agency within a day of being asked to do so, and since an offer such as that made by BNFL, suggesting a price and a precise delivery date, could be made only by an undertaking which had a definite idea of the source of the material to be supplied and the terms of the contract concluded at a previous stage.

2. *Findings of the Court*

34 Article 5 *bis* (c) of the Rules provides:

'The supply contract shall include at least the following information:

...

5. country of origin of the materials to be supplied. If the supplier is unable to provide this information at the time of entering into the contract, he shall give the user and the Agency an undertaking that he will subsequently inform them in writing of the country of origin of each part delivery,

...'.

35 The geographical origin of the materials to be supplied is thus one of the principal elements of a supply contract which have to be communicated to the Agency under Article 5 *bis* of the Rules. It is essential for the Agency to know the

geographical origin of the supplies in order to ensure reliability of supply — the aim of the supply policy pursued — as will be shown by the examination of Case T-181/94 (see in particular paragraphs 92 to 94 below).

36 Moreover, it is clear from the actual wording of Article 5 *bis* (c) of the Rules that later communication of the country of origin is permissible only if the supplier was unable to provide that information at the time of entering into the contract.

37 In the present case, it is apparent that KLE and its supplier had agreed, at least implicitly, that the materials would come from the CIS. BNFL communicated the probable origin of the uranium to the Agency one day after the request for information. Furthermore, as the Commission rightly submits, an offer such as BNFL's, proposing a price and a specific delivery date, could only be made by an undertaking which had a precise idea of the origin of the product to be delivered and the terms of the contract concluded at a previous stage. Moreover, as KLE conceded at the hearing, the price agreed between the parties was so low that it would seem highly likely to any trader in the sector that the materials would come from the CIS. Finally, it is reasonable to assume that a prudent trader would make inquiries about the source of uranium which is the subject of a supply contract.

38 By not stating the geographical origin of the uranium in the supply contract, even though it had been agreed between the parties at least implicitly, KLE was itself the cause of the Agency's administrative difficulties in coming to a decision. In

those circumstances, KLE was not entitled to rely on Article 5 *bis* (f) of the Rules, which provides for a period of ten working days within which the Agency must act, for cases which do not present any problems.

39 On the other hand, the Court considers that in the present case the Agency was entitled, before the period provided for in Article 5 *bis* (f) of the Rules expired, to request the parties to provide the missing documentation by communicating to it the origin of the materials to be supplied. Neither Article 5 *bis* (f) of the Rules nor the Treaty precluded such a request, which was on the contrary justified in the circumstances of the case.

40 It appears from the documents in the case that the Agency took its decision on 6 January 1994, which was the tenth working day from 14 December 1993, the date when it received the information it had asked for. Such a lapse of time was reasonable and did not infringe Article 5 *bis* (f) of the Rules or breach the principles of proportionality and legal certainty relied on by the applicant.

41 Accordingly, the first and second pleas must be rejected as unfounded.

The third plea alleging breach of the rules on the division of powers

42 KLE did not pursue its third plea in law, alleging breach of the rules on the division of powers.

43 There is therefore no need to rule on whether this plea is well founded.

The fourth plea alleging breach of the obligation to state reasons

1. *Summary of the arguments of the parties*

44 KLE submits that the contested decision contains no reasoning to justify postponing the start of the period imposed on the Agency. It argues that the obligation to state reasons was also infringed on account of the contradictions and weaknesses in the reasoning of the Agency and the Commission. The Commission in particular did not explain why the information sought by the Agency and supposedly essential for its decision could not have been asked for within the period prescribed by the Rules. Moreover, the Commission failed to state its opinion on several important points raised by KLE before adopting the contested decision.

45 The Commission submits that neither it nor the Agency left KLE in any doubt as to the grounds for their decisions. The correspondence and the decisions as a whole contained a coherent statement of reasons from which KLE would easily have been able to deduce the main reasons for the attitude taken by the Agency and the Commission.

2. *Findings of the Court*

46 It is settled case-law in the context of the EC Treaty, first, that under Article 190 of that Treaty the reasons stated for a measure must disclose clearly and unequivocally the reasoning of the Community authority which adopted it, so as to make the persons concerned aware of the reasons for the measure and thus enable them

to defend their rights, and so as to enable the Community judicature to exercise its supervisory jurisdiction, and, second, that the extent of the obligation to state reasons must be assessed in the light of its context (Joined Cases T-551/93, T-231/94, T-232/94, T-233/94 and T-234/94 *Industrias Pesqueras Campos and Others* v *Commission* [1996] ECR II-247, paragraph 140).

47 Article 162 of the Euratom Treaty, on the obligation to state reasons, is substantially the same as Article 190 of the EC Treaty. It must therefore be interpreted by analogy with that provision.

48 In the present case, the Commission explained in point 10 of Decision 94/95:

'... This knowledge [of the origin of the materials] is particularly important in the present situation where natural uranium from the republics of the CIS is being sold on the world market in considerably greater quantities and at prices which bear no relation to production costs in a market economy. ... Such supplies are a threat to the diversification of sources of supply and, as a result, to the objective of regular and equitable supply ... Consequently, the Agency ... ensures that the Community does not become unreasonably overdependent on any one source of supply and that nuclear materials from the CIS are purchased at market-related prices.'

49 The Commission observed that KLE had already acquired large quantities of natural uranium from the CIS. It then noted that 'the items of information listed in

Article 5 *bis* (c) of the Agency Rules are minimum requirements only' and concluded that 'the Agency was justified to complete its information' (point 11 of the decision). Finally, it explained that the period had begun on the day following that on which the Agency received the supplementary information requested and had ended on the day when the Agency finally took its decision (points 12 and 13).

50 The reasons stated in Decision 94/95 thus clearly and unequivocally disclose the reasoning followed.

51 It follows that the fourth plea cannot be accepted.

The fifth plea alleging misuse of powers

1. *Summary of the arguments of the parties*

52 In support of its plea alleging misuse of powers, KLE essentially argues that the Agency and the Commission had no discretion, but were under an obligation to conclude the contract submitted by the applicant under the simplified procedure laid down in Article 5 *bis* of the Rules.

2. *Findings of the Court*

53 The concept of misuse of powers has a precisely defined scope in Community law and refers to cases where an administrative authority exercises its powers for a

purpose other than that for which they were conferred on it. In that respect, it has been consistently held that a decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated (*Industrias Pesqueras Campos*, paragraph 168).

54 KLE has adduced no evidence at all that the Agency and the Commission pursued an aim other than that of implementing the supply policy.

55 The fifth plea must therefore be rejected as well.

56 For all the above reasons, the application in Case T-149/94 must be dismissed as unfounded.

Case T-181/94

The claim for annulment

57 KLE puts forward five pleas in law as grounds for annulment: infringement of Article 5 *bis* of the Rules and the provisions on supplies in Chapter 6 of the Treaty, breach of the general principles of Community law, breach of the rules on the division of powers, breach of the obligation to state reasons, and misuse of powers.

1. *The first plea alleging infringement of Article 5 bis of the Rules and the provisions on supplies in Chapter 6 of the Treaty*

58 The first plea in law consists of four limbs, which will be examined in turn below.

59 The first limb of the first plea, alleging an infringement of the Agency's obligation to conclude the contract in accordance with Article 5 *bis* of the Rules, and the second limb, arguing that the supply policy as defined and applied in the present case is in breach of the first paragraph of Article 61, Article 60, the first paragraph of Article 65, and Articles 52(2) and 64 of the Treaty, both concern whether it is possible to depart from the operation of supply and demand in the exercise of the exclusive right to conclude contracts for the supply of uranium.

60 Those two limbs should therefore be considered together.

The first and second limbs of the first plea, alleging breach of the Agency's obligation to conclude the contract in accordance with Article 5 *bis* of the Rules, and infringement of the first paragraph of Article 61, Article 60, the first paragraph of Article 65, and Articles 52(2) and 64 of the Treaty

— Summary of the arguments of the parties

61 KLE submits that the principle of the market economy must be observed by the Agency in the exercise of its powers. It notes that Advocate General Roemer explained in his Opinion in Case 7/71 *Commission* v *France* [1971] ECR 1003, at p. 1031, that the supply scheme represents a compromise between a planned

economy and a market economy. It submits that, by virtue of Articles 60 and 65 of the Treaty, the balancing of supply and demand applies whatever the origin of the uranium.

62 KLE submits that in a market where supply exceeds demand and which is consequently dominated by buyers, the balancing procedure provided for in Article 60 of the Treaty is too complex, which explains the adoption of the simplified procedure in Article 5 *bis* of the Rules. The Commission disregarded the latter provision's place in the chapter of the Treaty on supplies. The object of that simplified procedure, namely to maintain direct contacts between users and producers, would become meaningless if the Agency were entitled to refuse to conclude contracts which had been submitted to it for signature in accordance with the Rules.

63 Consequently, under the simplified procedure, the Agency has no discretion. A refusal to conclude a contract is possible only with regard to the general conditions set out in the Rules. The Agency's powers are reduced to monitoring the state of the market, as referred to in the third recital in the preamble to the Regulation of the Agency of 15 July 1975 which inserted Article 5 *bis* into the Rules of 5 May 1960, and to ascertaining whether the parties have complied with their obligation to provide information under that article. By adding a restrictive clause to the contract even though the contract was in accordance with the Rules, the Agency exceeded its powers, as the Commission should have recognized.

64 Furthermore, according to KLE, the Treaty rules do not allow the Agency to draw up and apply a policy involving diversification of sources of supply, to fix quotas, and thus to restrict the freedom to choose the source of the uranium.

65 It submits that the oversupply of natural uranium on the market is attributable not only to the States of the former Union of Soviet Socialist Republics (USSR) but also to the fact that substantial stocks of uranium have been marketed in the West. It is clear that when there is excess supply, actual production from mines with high operating costs declines. That situation does not, however, correspond to a 'structural deficiency', since the criterion which should be used is not actual production, which is merely a 'snapshot', but the production capacity available. Production could be increased globally, so that the 'structural deficiency' is reduced to zero. The substantial fall in prices during periods characterized by an excess of supply is typical of a sensitive market.

66 Under the first paragraph of Article 61 of the Treaty, the Agency is obliged in principle to meet all orders, on the terms resulting from the balancing of supply and demand in accordance with Article 60 and the first paragraph of Article 65, unless prevented from doing so by legal or material obstacles. The latter restriction is in the nature of a derogation and must therefore be interpreted strictly. The Commission made an error of law in asserting, with reference to its supply policy, that there was a legal obstacle, without ascertaining whether in the present case there actually was an obstacle within the meaning of the first paragraph of Article 61 of the Treaty.

67 KLE submits that the geographical origin of the uranium to be supplied does not constitute a legal or material obstacle within the meaning of the first paragraph of Article 61 of the Treaty. Only the exception in the second paragraph of Article 65 empowers the Agency to determine the geographical origin of the uranium to be delivered. Under that provision, the Agency may decide on the origin, provided that conditions which are at least as favourable as those specified in the order are secured for the user. However, the Agency did not offer KLE a contract which was as favourable as the contract at issue.

68 KLE submits further that the Agency has no right to interfere in the setting of prices. Under Article 67 of the Treaty, a price negotiated in the simplified procedure can be contested only in the circumstances provided for in the Treaty. Exceptions can be found in Articles 68 and 69. It is not even necessary to examine whether the conditions for the application of the first paragraph of Article 68, concerning pricing practices designed to secure a privileged position for certain users, are met, because the Agency has no power in any case to refuse to conclude a contract on the basis of Article 68. In accordance with the second and third paragraphs of that article, the Agency can at most report the practice to the Commission, which alone has power to intervene. It is only the Council which has the right to fix prices, under Article 69 of the Treaty.

69 In KLE's opinion, the trade agreement referred to by the Commission, signed on 18 December 1989 and concluded by Commission Decision 90/117/Euratom of 27 February 1990 concerning the conclusion on behalf of the European Atomic Energy Community of the Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation (OJ 1990 L 68, p. 2, hereinafter 'the Trade Agreement'), cannot justify any interference in the setting of prices. First of all Article 14 of the Trade Agreement is not directly applicable, since it is not sufficiently clear and precise and gives the Community institutions a margin of discretion. Moreover, it is not an exception provided for in the Treaty within the meaning of Article 67, which would allow intervention concerning prices. Besides, even in the context of Article 64 of the Treaty, which provides that the Agency may act within the framework of agreements concluded between the Community and a third State, Article 14 of the Trade Agreement does not allow minimum prices to be fixed, since to do so the Council's exclusive right to fix prices, referred to in the first paragraph of Article 69 of the Treaty, would have to be circumvented. The Agency thus cannot rely on that provision to refuse an offer at prices allegedly unrelated to market prices, unless it is authorized to do so under the Treaty rules on the division of powers, which is not the case.

70 In the present case, the actual price of the natural uranium concentrate (U_3O_8) was US $20.86 per kilogram (US $8.02 per pound), taking interest and conversion costs into account. That price, comparable to the pure costs of production of the most efficient Western uranium mines, lay between the spot market prices for uranium from the CIS and uranium not from the CIS.

71 KLE challenges the Commission's finding that to authorize the applicant to obtain further uranium supplies from the CIS would secure it a privileged position, which would constitute a legal obstacle within the meaning of the first paragraph of Article 61 of the Treaty. Having regard to the acknowledged freedom of users to negotiate supply contracts with producers of their choice and to the excess supply of uranium, all users had the same opportunity of gaining access to resources.

72 The Commission replies that the Rules are always subject to the provisions of the Treaty. It observes that in the *Commission* v *France* judgment, cited above (paragraph 43), the Court of Justice held that 'the fact that market conditions may during a given period have rendered less necessary the use of the supply mechanisms prescribed by the Treaty does not suffice to deprive the provisions relating to these mechanisms of their mandatory character'. The Commission states that the exclusive right to conclude contracts, conferred on the Agency by Article 52(2)(b) of the Treaty, includes the right to refuse to conclude them. That right of refusal includes, as a measure which is less strict, the power to authorize conclusion of the contract subject to specific conditions.

73 Before applying the first paragraph of Article 65 of the Treaty, which refers to the procedure for balancing supply and demand provided for in Article 60, it must be ascertained that there are no legal obstacles to meeting the orders, within the meaning of the first paragraph of Article 61. Such an analysis appears in point 21

of Decision 94/285. Moreover, the first paragraph of Article 61 is not a derogation, but obliges the Agency to examine each order and ascertain whether meeting it is precluded by legal or material obstacles.

74 The Commission draws attention, first of all, to the policy of diversification of the Community's external sources of supply in the energy sector, set out in Council Resolution 86/C 241/01 of 16 September 1986 concerning new Community energy policy objectives for 1995 and convergence of the policies of the Member States (OJ 1986 C 241, p. 1, hereinafter 'the Council Resolution').

75 It notes the rapid increase in the volume of supplies from the CIS since 1990 (1989: 0 tonnes, 1990: 600 tonnes, 1991: 2 100 tonnes, 1992: 3 100 tonnes).

76 It also observes that the price of nuclear materials from the CIS was extremely low, until recent developments subsequent to the events at issue in the present case.

77 Having regard to the growth of exports from the CIS, it was necessary to apply a permissible degree of dependence with respect to supplies from there. That degree had to be determined in relation in particular to the existing long-term production capacity in the CIS. Since that represented some 25% of world uranium production, the Agency took that percentage as the upper limit of permissible dependence with respect to supplies from the CIS.

78 Secondly, the Commission argues that an agreement concluded under Article 64 or the second paragraph of Article 101 of the Treaty may create an obstacle within the meaning of the first paragraph of Article 61. It refers in the present case to the Trade Agreement concluded under the second paragraph of Article 101.

79 It notes that Article 6 of the Trade Agreement states that 'unless otherwise specified in this Agreement, trade and other commercial cooperation between the Contracting Parties shall be conducted in accordance with their respective regulations', and that according to Article 14 of the Trade Agreement 'goods shall be treated between the Contracting Parties at market-related prices'. It concludes that under Article 64 of the Treaty, applied together with those two provisions, it is for the Agency to ensure that nuclear materials from the CIS are supplied in the Community at market-related prices. The Trade Agreement does not fix import quotas but aims to promote the principles of the market economy in the CIS and the harmonious development and diversification of trade in the nuclear field.

80 Thirdly, the Commission submits that the second paragraph of Article 65 of the Treaty is inapplicable in the present case, since the Agency did not decide on the geographical origin of the supplies.

81 To the argument based on the Treaty provisions concerning prices, the Commission replies that Article 67 of the Treaty concerns the usual circumstances in which prices are set. However, the Community is not prohibited from defending itself against supplies from non-member countries at ruinous prices, in particular by concluding agreements under public international law. The prohibition in Article 68 of discriminatory pricing practices refers solely to Community producers, who are the only traders on whom legal obligations may be imposed under Article 67.

82 As to the level of prices, the Commission regards the price of US $22 per kilogram of uranium in the form of UF_6 as exceptionally low. After deducting conversion costs, the price amounts to only US $18 per kilogram (US $6.93 per pound) of U_3O_8.

83 The Commission submits that contracts for quantities of uranium from the CIS at very low prices may have been concluded in the interests of users. It explains that users generally cover their basic requirements by means of multi-annual contracts but may also cover occasional needs, up to about 10% of their annual requirements, on the spot market. KLE covered more than 150% of its annual requirements by buying materials from the CIS on the spot market.

84 To infringe the principles of the Community supply policy for the benefit of individual users would confer a privileged position within the meaning of Article 52(2)(a) of the Treaty on those users, since they would secure unacceptable prices and competitive advantages, compared with their rivals.

— Findings of the Court

85 The supply system established by Chapter 6 of the Treaty must be considered in the light of the aims of the Community. In this regard, it is apparent from the structure of the Treaty that the task of the Agency is to guarantee one of the essential aims which the Treaty assigns to the Community, in Article 2(d), namely reliability of supplies, in accordance with the principle of equal access to resources laid down in Article 52(1) of the Treaty. This is clear from Article 52(2)(b) of the Treaty, which establishes that specialized body expressly for that purpose and

confers on it in principle exclusive rights in order to ensure that Community users receive regular and equitable supplies of nuclear materials both from the Community and from non-member countries. Under that provision, the system for ensuring supplies must be operated by the Agency, which, in order to perform its task, has the exclusive right to conclude contracts for the supply of those products from inside or outside the Community (see Joined Cases T-458/93 and T-523/93 *ENU* v *Commission* [1995] ECR II-2459, paragraph 57).

86 In particular, the simplified procedure introduced by Article 5 *bis* of the Rules does not deprive the Agency of its exclusive rights (*ENU* v *Commission*, paragraph 73). Even within the framework of the simplified procedure, the Agency therefore has the right to object to a contract which might prejudice the achievement of the objectives of the Treaty.

87 Moreover, the principle of balancing supply and demand must as a general rule be observed in the exercise of the Agency's exclusive right to conclude supply contracts. That obligation, which applies as a matter of principle, follows in particular from Article 60 and the first paragraph of Article 65 of the Treaty, which concern the balancing mechanism, from Article 67, which states that prices are to be determined by that balancing exercise, and from the second paragraph of Article 65, which provides that if the Agency decides on the geographical origin of supplies from outside the Community it is obliged to secure conditions for the user which are at least as favourable as those specified in the order.

88 The Treaty provides for one specific exception, however, to observance of the principle of supply and demand. Under the first paragraph of Article 61, the Agency is obliged to meet all orders, 'unless prevented from so doing by legal or material obstacles'. As the Commission rightly submits, the Agency must therefore ascertain in each case whether there are any legal or material obstacles to meeting the order.

89 In the present case, the Commission argues that there were three such obstacles, that is to say, one deriving from the requirements of the policy of diversification of external sources of supply, one relating to the level of prices stemming from the Trade Agreement, and one deriving from the obligation to ensure equal access to resources.

90 It should be noted to begin with that where decisions concerning economic and commercial policy and nuclear policy are involved, the Agency has a broad discretion when exercising its powers. In those circumstances, review by the Court must in any event be confined to identifying any manifest error of assessment or misuse of powers (*ENU* v *Commission*, paragraph 67).

91 With respect to the first obstacle, the Commission considers that the prices offered in the CIS are so low that Community users are tempted to cover as much of their requirements as possible with nuclear materials from the CIS. It submits that if unlimited imports from the CIS were allowed, Community undertakings would become dependent on that source of supply. There would be a twofold disadvantage. First, continuity of supplies could not be guaranteed in the long term. Second, alternative sources might disappear. The Commission recalls that a policy of diversification was approved by the Council in its Resolution of 16 September 1986. It submits that the risk that massive imports of nuclear materials from the CIS at prices considerably lower than Western prices would imperil the reliability of supplies in the Community is thus an obstacle within the meaning of the first paragraph of Article 61 of the Treaty.

92 The Court considers that the Agency may lawfully bar imports of nuclear materials if those imports are liable to jeopardize the achievement of the aims of the Treaty, in particular by their effect on sources of supply. Such a risk may be regarded as a legal obstacle, within the meaning of the first paragraph of Article 61

of the Treaty, to meeting an order (*ENU* v *Commission*, paragraph 64). To put it differently, in order to ensure geographical diversification of external sources of supply, the Agency has a discretion — exercising its exclusive right to conclude contracts for the supply of ores and other nuclear fuels so as to ensure reliability of supplies in accordance with the principle of equal access to resources, in conformity with the task conferred on it by the Treaty — to bar certain imports of uranium which would reduce such diversification (*ENU* v *Commission*, paragraph 68).

93 In the present case, with respect to the possible existence of a threat to reliability of supplies, it is common ground that the volume of supplies from the CIS imported into the Community has increased substantially since 1990. The Commission argues that there is a structural deficiency of world production as compared to use of uranium, but KLE does not accept that. According to a diagram of natural uranium production and consumption in the West from 1994 to 2004, submitted by KLE, nominal production capacity will exceed demand in 2000. However, it should be noted that, according to that diagram, demand will still exceed supply between 1994 and 2000.

94 In those circumstances, at the time when the Commission adopted Decision 94/285, the possibility could not be ruled out that ensuring a regular and equitable supply in accordance with Article 2(d) of the Treaty could be jeopardized if imports of nuclear materials from the CIS were permitted to continue in unlimited quantities and replaced supplies from other sources for a certain time without there being any guarantee of continuity of supplies in the long term.

95 The existence of the first legal obstacle relied on by the Commission must therefore be accepted.

96 With respect to the second obstacle, the Commission submits that the supply system established by the Treaty aims at ensuring that nuclear materials are imported into the Community at market-related prices. That principle has in particular been recognized by Article 14 of the Trade Agreement as applicable in relations between the Community, on the one hand, and the USSR or subsequently the CIS States, on the other.

97 As the Commission observes, the Court of Justice has held that an international agreement concluded by the Community may create rights and obligations for undertakings.

98 It held as follows with respect to the Convention on the Physical Protection of Nuclear Materials, Facilities and Transports (Ruling 1/78 [1978] ECR 2151, paragraph 36):

'The tasks to be carried out by the Community will relate in essence to the supply arrangements and the management of the nuclear common market ... The relevant provisions of the Treaty, together with the provisions of the Convention itself, which, once it has been concluded by the Community, will form an integral part of Community law, will provide an appropriate legal basis for the necessary implementing measures.'

99 Article 14 of the Trade Agreement thus forms part of Community law. Moreover, by virtue of Article 64 of the Treaty, the Agency must act, where appropriate, within the framework of agreements concluded between the Community and a third State.

100 In order to verify whether Article 14 of the Trade Agreement was applied correctly in the present case by the Agency and the Commission, the available data on prices must be analyzed. According to a table annexed to the Agency's annual

report for 1993, the average price varied, from 1990 to 1993, between US $29.39 and US $21.17 per pound of U_3O_8 for long-term multiannual contracts and between US $9.68 and US $9.05 per pound of U_3O_8 for spot market contracts. According to KLE, the actual price set in its contract was US $8.02 per pound of U_3O_8; according to the Commission, it was only US $6.93 per pound of U_3O_8. Having regard to the fact that, according to its reply to a written question from the Court, KLE attempted to cover not merely occasional requirements but its basic requirements for a fifteen-month period by the supply contact in question, that contract, concluded at a price which was even lower than the average spot market price, did not comply with the rule that supplies are to take place at market-related prices.

101 The existence of a second legal obstacle within the meaning of the first paragraph of Article 61 of the Treaty must in those circumstances be regarded as proven.

102 With respect to the third obstacle to concluding the contract, allegedly deriving from the obligation to ensure equal access to resources and to prevent one user from being given a privileged position in relation to competitors, it must be considered that, if imports are to be limited, the application of a permissible threshold of dependence, fixed by reference to the state of the market at a maximum percentage of individual users' consumption, is justified in order to guarantee equal access to resources, in accordance with Article 52(1) of the Treaty.

103 The Agency, within the bounds of its broad discretion, fixed the permissible degree of dependence at a maximum of 25%, taking account *inter alia* of the existing long-term production capacity of the CIS and of the fact that that represented some 25% of world production.

104 In the present case, it is common ground that KLE had already bought quantities of uranium from the CIS which exceeded that limit.

105 The Commission was thus entitled to find, in that respect, that there was a legal obstacle within the meaning of the first paragraph of Article 61 of the Treaty.

106 Furthermore, contrary to KLE's assertions, the specific provisions on prices in the Treaty, that is to say Articles 67 to 69, cannot be interpreted as precluding the application of the first paragraph of Article 61 of the Treaty on the ground that in the simplified procedure the Agency or the Commission may not interfere with the prices negotiated except under the conditions laid down in Articles 68 or 69. The aim of Article 61 is in fact to enable the Agency, where there is a legal or material obstacle of whatever kind to meeting an order, to block that order, thus derogating if need be from the balancing of supply and demand, a principle which applies with respect to prices by virtue of Article 67. Moreover, contrary to KLE's claims, the Agency did not in any way fix the price by inserting in the contract a clause on the origin of the materials to be delivered.

107 For all the above reasons, the Agency did not commit an error of law or manifest error of assessment when it refused to conclude the supply contract in question unconditionally and inserted in that contract a condition that the uranium was not to come from the CIS.

108 The Commission's decision confirming that of the Agency cannot therefore be declared unlawful.

109 The first and second limbs of the first plea are thus unfounded and must be rejected.

The third limb of the first plea, alleging infringement of the aims of Article 1 of the Treaty

— Summary of the arguments of the parties

110 KLE considers that Decision 94/285 conflicts with the task of the Community, which, according to the second paragraph of Article 1 of the Treaty, is 'to contribute to the raising of the standard of living in the Member States and to the development of relations with the other countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries'. It submits that the Commission and the Agency were guided only by the interests of producers and did not in fact take the interests of users into account. Moreover, the Agency's policy gave only feeble protection to producers within the Community, who cover only 20% of the Community's uranium requirements, and benefited producers in certain non-member countries.

111 The Commission claims that if all users of natural uranium obtained their supplies essentially or entirely from the CIS, Community production of natural uranium would collapse in a few years for lack of sufficient demand, which would be contrary to the Community interest. Moreover, imports at prices which are not market related damage not only the industrial undertakings which produce UF_6 in the Community but also all undertakings whose activities are upstream of that production.

112 Furthermore, the Community cannot afford to give some non-member countries, to the detriment of all others, privileged access in the short term to the Community market and thereby enable those non-member countries to acquire a dominant position and eject from the market partners who have been operating there for a long time, including developing countries. Similarly, the Commission has to combat the dangers arising from the fact that, structurally, demand far exceeds production capacity.

— Findings of the Court

113 The Agency seeks to ensure reliability of supplies and to guarantee continuity of supplies to Community users. It is *inter alia* in the interest of the Community nuclear industry that a particular source of supply should not become too large in relation to alternative sources. It is likewise in the interest of the Community as a whole and consistent with the aim of developing trade with other countries that imports should take place at market-related prices, as shown in particular by Article 14 of the Trade Agreement. As the Court has already stated above, Decision 94/285 thus corresponds to the requirements of the supply policy. It does not therefore conflict with the task of the Community.

114 Consequently, the third limb of the first plea is unfounded and must be rejected.

The fourth limb of the first plea, alleging breach of the rules of the common market in natural uranium, in particular Article 2(g) and Article 92 et seq. of the Treaty

— Summary of the arguments of the parties

115 KLE argues that, as far as at all possible and by virtue of the concept of the market economy inherent in the chapter of the Treaty on supplies, traders must be guaranteed the freedom to obtain supplies freely from a supplier of their choice established in another Member State. It submits that that freedom is protected by Article 2(g) and Article 92 et seq. of the Treaty. Since the supply contract at issue was of a purely intra-Community nature, that freedom was undermined in the present case.

116 The Commission considers that KLE's argument on this point is also unfounded.

— Findings of the Court

117 The freedom of an undertaking to obtain supplies from a supplier of its choice established in another Member State must be exercised within the limits laid down by the Treaty and set out above, in particular in such a way as to ensure that reliability of supplies is not jeopardized. In the present case, KLE's contract came up against certain legal obstacles which, under the first paragraph of Article 61 of the Treaty, restrict that freedom. While KLE's supplier was indeed a company established in the Community, it acted only as an intermediary, the source of the materials to be supplied being the CIS.

118 In those circumstances, the fourth limb of the first plea must also be rejected.

2. *The second plea alleging breach of the principle of legal certainty and of the principles of equal treatment and proportionality*

Summary of the arguments of the parties

119 KLE argues, first, that there was a breach of the principle of legal certainty. It submits that the Agency's conduct lacked transparency, in that it disclosed the criteria for its decision only in the context of the present proceedings. The Agency did not observe the law, since it did not act in accordance with transparent rules and criteria.

120 KLE argues, second, that there was a breach of the principle of equal treatment, in connection with the assessment criteria adopted by the Agency and the Commission. It emphasizes that reliability of supplies must be assessed according to the position of the end user of each energy source. From the point of view of electricity supplies, no end user is dependent on KLE. Electricity production in Germany depends on nuclear energy only to a limited extent. For a customer of KLE, reliability of supplies of natural uranium plays a less important part than for a customer of an undertaking which provides most of a country's electricity supply by means of nuclear energy.

121 KLE argues, third, that there was a breach of the principle of proportionality. In its opinion, the aim of diversification could equally well be achieved, while maintaining competition on the Community market, by means of the second paragraph of Article 65 of the Treaty. Moreover, Articles 70 and 72 of the Treaty provide for powers which do not affect the rights of users in the Community and enable the Commission or the Council to pursue such aims of the Agency as they consider to be correct.

122 The Commission contests the complaint alleging lack of transparency. It considers that KLE must necessarily have been aware of all the essential conditions of the policy of diversification of supply.

123 As regards the complaint alleging breach of the principle of equal treatment, the Commission considers that KLE's arguments are unfounded. Furthermore, regardless of the proportion of electricity of nuclear origin at the national level, this case is concerned with the conduct of KLE, which, if it were the general rule, would place Community producers of natural uranium at risk and threaten in the medium or long term, by an unwarranted increase in dependence on the States of the CIS, reliability of supplies for the entire Community in the field of nuclear energy.

124 The Commission considers that it did not breach the principle of proportionality either. Development of healthy competition to implement the aims of the Community requires that offers at prices which are not market related should be excluded.

Findings of the Court

125 With respect to the allegation relating to the principle of legal certainty, it must be stated that the measures on which the Agency's approach is based, namely the Council Resolution, which sets out in the second indent of point 5(a) the aim of geographical diversification of the Community's external sources of supply, and the Trade Agreement, which provides in Article 14 that prices must be market related, have both been published in the *Official Journal of the European Communities*. The principle of equal access to resources is laid down in Article 52(1) of the Treaty itself.

126 Moreover, in the Agency's annual report for 1992 (see the general survey of the supply situation in the Community), it was stated that imports of natural uranium from the CIS accounted for some 25% of net Community requirements and that contracts had already been concluded for future deliveries of very substantial quantities from that source. The level of supplies of materials from the CIS was regarded as critical by the Agency and the Commission, since if the trend observed from 1990 onwards were to continue, reliability of supplies in the future might be threatened. The report explained that a working group of experts, set up within the Advisory Committee, had concluded that the materials and services from the CIS were being offered on the Community market at prices which were unrelated to production costs in the West. The report stated that the Commission and the Agency considered that corrective measures were justified, based principally on the exclusive right to conclude contracts. It also stated that the Agency's policy had in general been favourably received.

127 Having regard to the existence of easily accessible sources of information which a reasonably diligent trader in this very particular and clearly identified sector must be taken to know, it cannot be said that there was a lack of transparency.

128 Consequently, the complaint alleging breach of the principle of legal certainty must be rejected.

129 It was the Agency itself which adopted an internal guideline figure relating to the 'permissible degree of dependence', a guideline under which each trader in the Community is allowed to cover no more than about 25% of his requirements with materials from the CIS.

130 While that upper limit of permissible dependence was admittedly not published as such, that circumstance cannot make Decision 94/285 unlawful. That threshold was simply an internal assessment criterion which the Agency took into account to ensure equal access to resources for Community users. It was not a strict rule, since the development of the situation on the market in question required a flexible approach. Moreover, in the circumstances of the case, KLE should have understood that, since it had already bought large quantities of materials from the CIS, further imports on its part might be regarded as contrary to the interests of the Community.

131 As to the principle of equal treatment, KLE appears to consider in its written pleadings that the principle is infringed if, in assessing the situation, no account is taken of the varying degree of dependence on nuclear materials from the CIS of undertakings established in the different Member States. At the hearing, however, it argued that the unlawful difference in treatment consisted in the Commission's failure to fulfil its duty of ensuring that all traders submit their contracts for the supply of nuclear materials to the Agency for conclusion. On that point, the

Commission replied at the hearing that it knew of no case in which a contract had not been submitted to the Agency.

132 Furthermore, the Agency applies a threshold of permissible dependence in order to ensure equal access to resources for undertakings established in the Community. Such an approach is justified on the basis of Article 52(1) of the Treaty. The Agency and the Commission cannot be required to take account of the particular circumstances prevailing in different Member States. On the other point, KLE has not shown that there were cases in which the Agency and the Commission failed to object to an infringement of Article 5 *bis* of the Rules.

133 In those circumstances, the complaint alleging breach of the principle of equal treatment cannot be upheld.

134 Finally, on the principle of proportionality, KLE claims that the desired result could have been achieved within the framework of the second paragraph of Article 65, under which the Agency may decide on the geographical origin of supplies provided that conditions which are at least as favourable as those specified in the order are secured for the user, or of Articles 70 and 72 of the Treaty, relating to support for prospecting programmes and to the building up of commercial and emergency stocks.

135 Application of those provisions would not, however, have been able to solve the problem, in that the Agency, considering the aims of its supply policy, had to block imports from the CIS at non-market-related prices. Moreover, the contract was approved on condition that the materials did not come from the CIS. Such a condition cannot be disproportionate, for the reasons stated above, in particular in paragraphs 92 to 94.

136 The complaint alleging breach of the principle of proportionality must therefore be rejected as well.

3. *The third plea alleging breach of the rules on the division of powers*

Summary of the arguments of the parties

137 KLE submits that neither the Agency nor the Advisory Committee is a Community institution within the meaning of Article 3(1) of the Treaty. It argues that the establishment of the common supply policy is reserved to the Community's political institutions, namely the Commission and the Council. The Agency is responsible only for the commercial aspect of supply. In particular, it has no power to fix import quotas. Since the Trade Agreement is subject to primary Community law, it cannot confer power on the Agency to develop a supply policy either.

138 The Commission submits that within the legal framework of the Community, the Agency, as a body provided for in the Treaty, is entrusted with the task of taking the necessary measures thereunder. The Agency's function is not limited to 'commercial' questions, but also includes the power to take certain 'policy' decisions, as KLE puts it. The Agency's implementing measures and the exercise of its right to conclude contracts are supported by the Commission and the Council, which in the present case did not make use of the existing possibilities of raising objections. Moreover, the Agency does not pursue 'commercial' policy objectives, but

objectives of supply policy in the nuclear field, for which the Community has exclusive competence both internally and in external relations, as the Court of Justice confirmed in Ruling 1/78 (paragraph 14).

139 As to the Advisory Committee, the Commission states that it was set up by the Council when laying down the statutes of the Agency pursuant to the second paragraph of Article 54 of the Treaty. The function of the Advisory Committee is to assist and advise the Agency. It is a liaison body between the Agency on the one hand and users and interested circles on the other. The Commission considers that in so far as KLE raises complaints against the Advisory Committee, they should be directed to the Council, not to the Agency or the Commission.

Findings of the Court

140 On the basis of the analysis above (see in particular paragraphs 85 to 109), it appears that in the present case the Agency followed the path outlined by the Council and Commission and acted within the bounds of its broad discretion to take decisions in the field of economic and commercial policy and of nuclear policy (*ENU* v *Commission*, paragraph 67). In any event, in so far as KLE disputes the Agency's powers, it should be noted that Decision 94/285 was adopted by the Commission. In exercising its power of review of the act of the Agency referred to it by KLE under the second paragraph of Article 53 of the Treaty, the Commission adopted the Agency's assessment as its own. It thus approved the details of the supply policy and its implementation by the Agency, in accordance with the procedure established by the Treaty.

141 The third plea is therefore unfounded and must also be rejected.

4. *The fourth plea alleging breach of the obligation to state reasons*

Summary of the arguments of the parties

142 KLE considers that the reasons stated for Decision 94/285 do not reveal the structural relationship between the powers of the Agency and the Treaty, and contain nothing to show that the Commission took KLE's legal arguments into account. In particular, it submits, the Commission failed to explain why KLE would become dependent on uranium from the CIS and in what respect the purchase price agreed in the supply contract did not correspond to the conditions of the market economy or was not related to market prices.

143 The Commission submits on this point that KLE misunderstands the spirit and purpose of the reference procedure. It considers that in view of the short periods allowed to interested parties for referring an act of the Agency to the Commission and to the Commission for taking its decision, excessive requirements cannot be imposed in respect of the statement of reasons in the letter of reference or that in the decision of the Commission. In the present case, the Commission's statement of reasons was adequate. Moreover, all the relevant legal arguments put forward by KLE were taken into consideration when the decision was adopted.

Findings of the Court

144 The Court has already noted (see paragraph 46 above) that the reasons stated for a measure must disclose clearly and unequivocally the reasoning of the Community authority which adopted it, so as to enable the persons concerned to ascertain the reasons for the measure and thus to defend their rights and so as to enable the Community judicature to exercise its supervisory jurisdiction, and that the scope of the obligation to state reasons must be assessed in the light of its context.

145 The Commission made it clear in its decision that the Agency is not obliged to meet orders where there are legal or material obstacles to doing so (point 14 of Decision 94/285). It went on to mention the supply policy, the general objective of diversification of sources of supply and the measures on which it is based, such as the Council Resolution (points 15 and 16). It then referred first to Article 64 of the Treaty, under which the Agency may act within the framework of agreements concluded between the Community and a third State, and second to the Trade Agreement, in particular Article 14 thereof (point 21). Finally, the Commission explained that an increase in the proportion of total supplies from the CIS, which at that time was set at 20 to 25%, would be difficult to reconcile with the Community's long-term supply interests (point 33).

146 In view of the context and of the fact that it was preceded by the letter of 20 December 1993, referred to in paragraph 6 above, and by the decision which was the subject of the first action, Decision 94/285 discloses clearly and unequivocally the principal reasons for the refusal to conclude the contract submitted by KLE.

147 The fourth plea therefore cannot be accepted either.

5. *The fifth plea alleging misuse of powers*

Summary of the arguments of the parties

148 In support of the plea of misuse of powers, KLE essentially submits, in this action as well, that the Agency and the Commission had no discretion but were under an obligation to conclude the contract submitted by KLE.

Findings of the Court

149 As already stated above (see paragraph 53), the concept of misuse of powers has a precisely defined scope in Community law and refers to cases where an administrative authority exercises its powers for a purpose other than that for which they were conferred on it. In that respect, it has been consistently held that a decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated.

150 KLE has not shown that the Agency and the Commission pursued an aim other than that of implementing the Euratom supply policy.

151 For that reason, the fifth plea must be rejected as well.

152 It follows that the present claim for annulment must be dismissed in its entirety as unfounded.

The claim for damages

153 KLE essentially seeks an order requiring the Community, pursuant to the second paragraph of Article 188 of the Treaty, to make good the damage allegedly caused to it by the Agency, in failing to conclude the supply contract in the form submit-

ted to it and adding a further condition, and by the Commission, in failing to comply with its obligations under the Treaty.

154 While submitting observations on the substance, the Commission argues that the claim for damages is inadmissible, since it should be directed against the Agency, not the Commission. It considers that the Agency is not relieved of liability for its acts merely because they may be referred to the Commission for their lawfulness to be reviewed.

155 The Court notes that under the second paragraph of Article 188 of the Euratom Treaty, in order for the Community to incur non-contractual liability, a set of conditions must be fulfilled, relating to the unlawfulness of the conduct alleged against the Community institutions, actual damage and the existence of a causal link between the conduct and the alleged damage (*ENU* v *Commission*, paragraph 90, and Case C-308/87 *Grifoni* v *Commission* [1990] ECR I-1203, paragraph 6).

156 In the present case, as the Court has held, the conduct alleged against the Agency and the Commission's refusal to accede to the requests submitted to it by KLE are not vitiated by any irregularity. The claim for damages must consequently be dismissed as unfounded, without there being any need to consider its admissibility.

Costs

157 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful and the Commission has applied for an order for costs, the applicant must be ordered to pay the costs.

On those grounds,

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

hereby:

1. Dismisses the applications;

2. Orders the applicant to pay the costs.

Saggio Bellamy Kalogeropoulos

Tiili Moura Ramos

Delivered in open court in Luxembourg on 25 February 1997.

H. Jung A. Saggio

Registrar President