JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
15 October 1997 *

In Case T-331/94,

IPK-München GmbH, a company incorporated under German law, established in Munich (Germany), represented by Hans-Joachim Priess, of the Brussels Bar, 13 Place des Barricades, Brussels,

applicant,

v

Commission of the European Communities, represented by Jürgen Grunwald, Legal Adviser, 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 annulment of the Commission's decision of 3 August 1994 not to pay the balance of financial assistance granted to the applicant in connection with a project to create a databank on ecological tourism in Europe,

* Language of the case: German.

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

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

Registrar: A. Mair, administrator,

having regard to the written procedure and further to the hearing on 25 June 1997,

gives the following

Judgment

Facts

1 When the Parliament finally adopted the general budget of the European Communities for the financial year 1992, it decided that 'a sum of at least ECU 530 000 will be used to support an information network on ecological tourism projects in Europe' (OJ 1992 L 26, p. 1, 659).

2 On 26 February 1992 the Commission published in the Official Journal a call for proposals with a view to supporting projects in the field of tourism and the environment (OJ 1992 C 51, p. 15). It stated that it intended to allocate a total of ECU 2 million to that programme and to select about 25 projects. The call for

proposals also stated that 'projects selected should be completed within one year after signature of the contract'. The word 'contract' referred to the declaration which the recipient of the aid was required to sign in order for the grant of the aid to take effect.

3 On 22 April 1992 the applicant, an undertaking established in Germany which is active in the field of tourism, submitted a project concerning the creation of a databank on ecological tourism in Europe. That databank was to be called 'Eco-data'. The applicant was to be responsible for coordinating the project. However, in order to carry out the work, the applicant had to collaborate with three partners, namely the French undertaking Innovence, the Italian undertaking Tourconsult and the Greek undertaking 01-Pliroforiki. The proposal did not specify how tasks would be distributed between those undertakings, but merely stated that they were all 'consultants specialized in tourism, as well as in information-and tourism-related projects'.

4 According to the proposal, the project would take 15 months. An initial period of four months was to be reserved for the adoption of planning measures (requirements analysis and data determination, database planning, network technical specifications). Subsequently, a period of eight months was to be spent developing the application software and carrying out a pilot phase. The pilot phase was to be accompanied by an initial system evaluation. Finally, three months were to be spent on a final evaluation of the system and system expansion. As regards the pilot phase, the proposal stated that it would consist of system implementation and evaluation in the Member States of origin of the four undertakings participating in the project, namely Germany, France, Italy and Greece. At the end of that phase, the databank was to be accessible to users. As regards the system expansion, the proposal stated that it would involve extension of the databank, in terms of both content and use, to the other Member States.

5 In a letter dated 4 August 1992 the Commission granted ECU 530 000 in aid to the Ecodata project, and requested the applicant to sign and return the 'declaration by the beneficiary of the aid' (hereinafter 'the declaration'), which was annexed to that letter and contained the conditions for receipt of the aid.

6 The declaration stipulated in particular that 60% of the total amount of aid would be paid when the Commission received the declaration, duly signed by the applicant; the balance was to be paid when the Commission had received and accepted the reports on the performance of the project, namely an interim report to be submitted within three months of the project commencing and a final report, accompanied by accounts, to be submitted within three months of completion of the project and by 31 October 1993 at the latest. The declaration stipulated that the latter date was a compulsory time-limit in the context of the budgetary rules of the Communities. Finally, the declaration stated that failure to observe the time-limits laid down for the submission of reports and necessary documents would amount to a renunciation of the right to payment of the balance of the aid.

7 The declaration was signed by the applicant on 23 September 1992 and received by the Commission on 29 September 1992. The first instalment of the aid was not, however, paid to the applicant upon receipt by the Commission of the signed declaration. Following a telephone conversation on this matter between the applicant and the Commission, a new declaration was sent to the applicant on 18 November 1992 by Mr von Moltke, Director General of Directorate-General XXIII responsible for enterprise policy, trade, tourism and social economics. On the basis of that new declaration, which had the same content as the declaration annexed to the letter of 4 August 1992, the first instalment of the aid was paid in January 1993.

8 By letter of 23 October 1992 the Commission informed the applicant that it assumed that the project had commenced on 15 October 1992 at the latest and that it therefore expected to receive the interim report by 15 January 1993. In the same letter, the Commission also asked the applicant to submit two additional interim

reports by 15 April 1993 and 15 July 1993, respectively. Finally, it repeated that the final report was to be presented by 31 October 1993 at the latest.

9 In November 1992 Mr Tzoanos, Head of Division within DG XXIII, invited the applicant and 01-Pliroforiki to a meeting, which took place in the absence of the two other partners in the project. According to the evidence of the applicant, which is not, as such, disputed by the defendant, Mr Tzoanos suggested during that meeting that the majority of the work be entrusted to 01-Pliroforiki and that the majority of funds be allocated to that undertaking.

10 The applicant was also asked to agree to the participation in the project of a German undertaking, Studienkreis für Tourismus, which had not been mentioned in the proposal for the project but was already involved in an ecological tourism project by the name of 'Ecotrans'. That participation was discussed, in particular, at a meeting at the Commission on 19 February 1993 during which the Commission insisted on the participation of Studienkreis für Tourismus.

11 A few days after the meeting on 19 February 1993, the Ecodata project case was withdrawn from Mr Tzoanos. A disciplinary procedure was subsequently initiated against Mr Tzoanos, together with internal investigations concerning the matters for which he had been responsible. The disciplinary procedure resulted in the dismissal of Mr Tzoanos. In contrast, no irregularities were revealed by the internal investigation concerning the administrative procedure resulting in the grant of aid to the Ecodata project.

12 In March 1993 the applicant, Innovence, Tourconsult and 01-Pliroforiki held a meeting to discuss an agreement on the structure of the project and, in particular, the distribution of tasks. That agreement was formally concluded on 29 March 1993.

13 The applicant submitted an initial report in April 1993, a second report in July 1993 and a final report in October 1993 (Annex 12 to the application, volume 1). It also invited the Commission to a presentation of the work which had been carried out. That presentation took place on 15 November 1993.

14 By letter dated 30 November 1993 the Commission informed the applicant that:

'... the Commission considers that the report submitted on the [Ecodata] project shows that the work completed by 31 October 1993 does not satisfactorily correspond with what was envisaged in your proposal dated 22 April 1992. The Commission therefore considers that it should not pay the outstanding 40% of its proposed contribution of ECU 530 000 for this project.

The Commission's reasons for taking this position include the following:

1. The project is nowhere near complete. Indeed the original proposal provided for a pilot phase as the fifth stage of the project. Stages six and seven respectively

were to be System Evaluation and System Expansion (to the twelve Member States) and it is clear from the timetable set out on page 17 of the proposal that these were to be completed as part of the project to be co-financed by the Commission.

2. The pilot questionnaire was manifestly over-detailed for the project in question having regard in particular to the resources available and the nature of the project. It should have been based on a more realistic appraisal of the principle information needed by those dealing with questions of tourism and the environment (...).

3. The linking together of a number of databases to establish a distributive database system has not been achieved at 31 October 1993.

4. The type and quality of data from the test regions is most disappointing, particularly as there were only 4 Member States with 3 regions in each. A great deal of such data as there is in the system is either of marginal interest or irrelevant for questions relating to the environmental aspects of tourism particularly at the regional level.

5. These reasons and others which are also apparent, sufficiently demonstrate that the project has been poorly managed and coordinated by IPK and has not been implemented in a manner which corresponds with its obligations.

...'

15 The applicant expressed its disagreement with the content of that letter, in particular in a letter to the Commission dated 28 December 1993. Meanwhile, it continued development of the project and made several public presentations. On 29 April 1994 the applicant met with representatives of the Commission in order to discuss their differences. By letter dated 3 August 1994 the Commission informed the applicant as follows:

'I am sorry that it was not possible to reply to you directly at an earlier stage following our exchange of letters and [the meeting of 29 April 1994].

... [T]here is nothing in your reply of 28th December which would lead us to change our opinion. However you raise a number of additional matters on which I would like to comment.

I now have to inform you that having fully considered the matter ... I see little point in our having a further meeting. I am therefore now confirming that we will not, for the reasons set out in my letter of 30 November and above make any further payment in respect of this project.

...'.

Procedure and forms of order sought by the parties

16 It is in those circumstances that, by application lodged at the Registry of the Court on 13 October 1994, the applicant brought the present proceedings.

17 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure without any preparatory inquiry. However, in connection with measures of organization of procedure, the parties were requested to reply in writing to a number of questions before the hearing.

18 The parties presented oral argument and replied to the oral questions of the Court at the hearing in open court on 25 June 1997.

19 The applicant claims that the Court should:

— annul the Commission's decision of 3 August 1994 refusing to pay the second instalment of financial aid granted to the applicant by its letter of 4 August 1992;

— order the defendant to pay the costs.

20 The defendant claims that the Court should:

— dismiss the application as inadmissible or, alternatively, as unfounded;

— order the applicant to pay the costs.

Admissibility

Arguments of the parties

21 The defendant claims that the action is inadmissible on the ground that it was not brought within the two-month period laid down in the fifth paragraph of Article 173 of the Treaty. It claims that the applicant was informed of the Commission's decision not to pay the balance of the aid by its letter dated 30 November 1993. That decision was definitive and was not subject to any re-examination in so far as the applicant did not put forward any new facts during the discussions which subsequently took place. The letter of 3 August 1994 therefore merely confirmed a previous decision.

22 According to the applicant, several phrases in the letter of 30 November 1993 indicate that the decision notified therein was not definitive. It refers in particular to the use of the word 'should' in the sentence in which the Commission states its intention not to pay the balance of the aid.

23 The applicant also observes that the decision notified in the letter of 3 August 1994 was adopted following a re-examination of the file and on grounds which were, in part, new.

Findings of the Court

24 According to settled case-law, an action for the annulment of a decision which merely confirms a previous decision not contested within the time-limit for bringing the proceedings is inadmissible (judgments in Joined Cases 166/86 and 220/86 *Irish Cement* v *Commission* [1988] ECR 6473, paragraph 16, and Case C-480/93 P *Zunis Holding and Others* v *Commission* [1996] ECR I-1, paragraph 14; order in Case C-12/90 *Infortec* v *Commission* [1990] ECR I-4265, paragraph 10). A decision is merely confirmatory of a previous decision if it contains no new factor as compared with the previous measure and was not preceded by a re-examination of the circumstances of the person to whom that previous measure was addressed (judgment in Case 54/77 *Herpels* v *Commission* [1978] ECR 585, paragraph 14; judgments in Case T-82/92 *Cortes Jimenez and Others* v *Commission* [1994] ECR-SC II-237, paragraph 14, and Case T-4/90 *Lestelle* v *Commission* [1990] ECR II-689, paragraph 24).

25 In the present case, the Commission arranged a meeting which took place on 29 April 1994, at which the subjects discussed included its refusal to pay the balance of the aid and the state of progress of the project. This can, in particular, be concluded from the parties' written answers to a question from the Court precisely concerning the subject-matter of the meeting of 29 April 1994.

26 The Court considers that that step should be regarded as a re-examination within the meaning of the case-law cited above. Indeed, even if, as the Commission insisted during the oral procedure, that meeting did not reveal any new information and was not such as to prompt the Commission to adopt a different position, the fact that a meeting was held to discuss the same issues as those dealt with in the letter of 30 November 1993 can only mean that the letter of 30 November 1993 did not definitively close the administrative procedure. In that respect, the Court considers that, if the Commission was of the opinion that the letter of 30 November 1993 comprised its final decision, it could simply have referred to that letter each time the applicant contacted it in respect of its refusal to pay the balance of the aid.

27 In those circumstances, the Commission's argument that the application was lodged out of time cannot be accepted. It follows that the action is admissible.

Substance

28 The applicant essentially makes two pleas in support of its action. The first plea alleges infringement of the principles of legal certainty and the protection of legitimate expectations. The second plea alleges that the Commission's decision was based on insufficient reasoning.

First plea: infringement of the principles of legal certainty and the protection of legitimate expectations

Arguments of the parties

29 The applicant first challenges the fact that the project was to be completed by 31 October 1993 in order for the balance of the aid to be paid. According to the applicant, the fixing of that deadline is not valid in so far as the declaration and the Commission's letter to the applicant dated 23 October 1992 contain only conditions which were determined unilaterally by the Commission.

30 More specifically, the applicant argues, in effect, that the declaration does not constitute a contract because no consideration is provided to the Community by the beneficiary of the Community aid. It stresses that, according to the financial rules of the Communities, a contractual agreement between the Community and the beneficiary of aid exists only if some security is provided by the beneficiary.

31 The applicant notes, furthermore, that, according to the wording of the declaration, 31 October 1993 is the date on which the final report on the use of the funds is to be submitted, and not the date by which the project must actually be completed.

32 As regards the status of the project on 31 October 1993, although the applicant acknowledges that substantial delays did occur in the project, it maintains that its presentation on 15 November 1993 'was a resounding success' and that the report submitted in October 1993 contained 'concrete conclusions concerning the future structure of the Ecodata databanks'. It stresses that it submitted all the documents required by the declaration before 31 October 1993 and that all the expenditure was directly linked to the project and did not exceed the amount of aid granted.

33 The applicant concludes that it satisfied all the conditions laid down in the declaration in order for the balance of the aid to be paid. By refusing to make the payment for reasons relating to the state of progress and quality of the project, the Commission exceeded the terms of the declaration and, consequently, its powers. The Commission, therefore, infringed the principle of *patere legem quam ipse fecisti*. In the same way, its refusal to make the payment infringes the principle of *Selbstbindung* (the principle that the administration is bound by its previous acts), and the principle of the protection of legitimate expectations.

34 Finally, the applicant points out that the delay in carrying out the project was caused by the interference of officials of DG XXIII, namely interference aimed at allocating a large majority of the funds awarded to 01-Pliroforiki (see paragraph 9 above) and to ensure that the undertaking Studienkreis für Tourismus was accepted as a partner (see paragraph 10 above). On the basis of that alone, it is unwarranted to penalize the applicant by refusing to pay it precisely on the grounds that the project was completed late.

35 According to the Commission, the general principles relied on by the applicant do not constitute the legal framework in the light of which the contested decision should be evaluated. It claims that it is more relevant to examine the extent to which the applicant observed the conditions under which the aid was granted.

36 On that point, the Commission explains, first, that the time-limit laid down in the declaration was an absolute time-limit, based on the need to comply with the budgetary rules. The project had not been completed by the end of that period. In that respect, it notes that the databank was not truly operational on 31 October 1993 and, even if it was partially operational, the applicant and its partners had not incorporated the data relating to all the Member States, even though that task was expressly referred to in the description and timetable set out in the proposal of 22 April 1992. Moreover, the defendant observes that the final report still refers to the beginning, rather than completion, of the work. Furthermore, the defendant expresses its disappointment at the quality of the data collected in the pilot regions.

37 On the basis of the foregoing, the Commission concludes that the project in respect of which aid was granted was not carried out, within the stipulated period, in accordance with the conditions under which that aid was granted.

Findings of the Court

38 It is clear from the case-law relating to financial assistance granted by the Community that the obligation to comply with the financial conditions indicated in the decision granting the aid and the obligation actually to carry out the investment constitute essential duties for the beneficiary, and that their fulfilment is therefore a condition for the award of Community aid (judgment in 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 160).

39 In the present case, the financial conditions are indicated in the declaration annexed to the decision granting the aid. The letter of 4 August 1992 granting the aid to the applicant states that '[e]in Vordruck, in dem die allgemeinen Verpflichtungen dargelegt sind, die Empfänger eines Zuschusses der Kommission zu erfüllen haben, ist diesem Schreiben beigefügt' ['you will find herewith a declaration setting out the general obligations with which you must comply as a beneficiary of financial aid from the Commission']. The declaration bears the applicant's signature, accompanied by the words 'gelesen und gebilligt' ['read and approved'] and indicates, amongst the conditions for the grant of the aid, that the aid is to be used in connection with the project described in the proposal of 22 April 1992 and that a report on the use of the aid is to be submitted within three months of completion of the project and by 31 October 1993 at the latest. As regards the date of 31 October 1993, the declaration stipulates that that deadline is essential because of the limited duration of the credits committed to the action at issue.

40 The Court finds that it is clear from the aforementioned conditions of the declaration that, first, the funds were intended to be used to cover the main phases of the project as described in the proposal dated 22 April 1992 (see paragraph 4 above) and, second, that the report to be submitted by 31 October 1993 at the latest was intended to be a final report on the use of the funds, meaning that that date represented the deadline for completion of the project described in the proposal dated 22 April 1992. Furthermore, the applicant itself referred to the report submitted in October 1993 as 'a final report' and on page 89 of that report (Annex 12 to the application, volume 1) expressly recalled that 31 October 1993 was the deadline for completion of the project as originally proposed. Similarly, it is clear from the evidence before the Court that the applicant was aware and acknowledged that the aid could be reduced if it did not observe the deadline fixed by the Commission. This is clear, for example, from the agreement dated 29 March 1993 concluded between the applicant and its partners (Annex 9 to the application), which stipulates, in the paragraph concerning performance of the work, that '[t]he Contracting Parties agree that a deadline has been fixed by the Commission of the European Communities which may not be exceeded since this would endanger the grant'.

41 As regards the applicant's observation of the conditions under which the aid was granted, as defined above, it should be noted that as at 31 October 1993, the work intended to extend the system to the regions and Member States other than those covered by the pilot phase of the project had not been carried out. This is clear in particular from page 6 of the final report, according to which '[t]his final report contains the results of the test phase of the [Ecodata]-Project. It is however necessary to underscore that [Ecodata] is not ending now, but rather just starting' and from page 32 of that report, which confirms that the pilot phase was restricted to Germany, France, Italy and Greece.

42 Furthermore, it should be noted that the final report submitted by the applicant in October 1993 is drafted with considerable reserve, even as regards the pilot phase, the development of application software and system evaluation. In particular, pages 94 to 96, 100 and 106 of the final report state that the collection of data has not been completed, even in the pilot regions (Germany: '... many of the questions could not be answered at present'; France: '... fieldwork in France proved to be extremely difficult. ... data collection will continue'; Italy: 'In terms of quantity, the field work carried out in Italy proved that 70-80% of the check list data is available. ... In terms of quality we met some difficulties'; Greece: '... data collection was difficult'). On page 195 of the final report, the applicant adds that '[i]n the near future, it will be necessary to improve the methods of data collection'. A statement on page 166 of the report suggests that the system has not yet been evaluated. In particular, it states that '[t]he database for the Test regions provides an initial stock of data on the relationship between tourism and the environment and on the environmental situation in touristic regions. It also allows to stipulate

procedures for data evaluation'. Page 171 of the report confirms that the system evaluation is still to be carried out ('Two evaluation approaches will be used in the [Ecodata] analysis'). The report also uses the future tense to describe various aspects of the software ('The remote application will be constructed using Asymetrix Toolbook as a Microsoft Windows application. It will require a VGA colour screen, Microsoft Windows version 3.1 or later, a modem, and correctly configured communications software for operating the modem. In later phases it will also require a CD-ROM drive, but in the pilot phase a large hard disk will be adequate. ...').

43 The Court considers that, in those circumstances, the Commission was quite right to conclude that, in terms of both quantity and quality, the results of the work corresponded only in part to the project proposed by the applicant and subsidized by the Community and that faced with that inadequate performance it reacted reasonably in refusing to pay the balance of the aid.

44 In the light of the observations set out above, the applicant cannot successfully rely on the general principles pleaded.

45 As regards, first, the principle *patere legem quam ipse fecisti*, or *Selbstbindung*, the Court finds that the applicant did not observe the conditions under which the aid was granted, so that the Commission cannot be accused of having breached that

principle. Indeed, the Commission did nothing more than apply the clause of the declaration in which the beneficiary accepted that it would not be entitled to receive any balance if the time-limits stipulated in the declaration were not observed (see paragraph 6 above).

46 Similarly, the applicant's reliance on the principle of the protection of legitimate expectations can be of no avail. If a beneficiary of financial aid from the Community does not observe the conditions on which the aid is granted it cannot legitimately expect payment of the full amount awarded. In such circumstances, it cannot therefore invoke the principle of the protection of legitimate expectations in order to obtain payment of the balance of all the aid initially granted (judgments in Case C-181/90 *Consorgan* v *Commission* [1992] ECR I-3557, paragraph 17, and C-189/90 *Cipeke* v *Commission* [1992] ECR I-3573, paragraph 17; judgment in Case T-73/95 *Oliveira* v *Commission* [1997] ECR II-381, paragraph 27).

47 Finally, the Court considers that the applicant cannot claim that the Commission caused the delay in the completion of the project. The applicant waited until March 1993 before starting discussions with its partners concerning the distribution of tasks with a view to completing the project, even though it was responsible for coordination of the project. Thus, the applicant allowed one-half of the time envisaged for completing the project to elapse before it was reasonably able to commence proper work. Even though the applicant has provided some evidence that one or more officials of the Commission did interfere in the project between November 1992 and February 1993, it has not established at all that this interference prevented it from engaging in proper cooperation with its partners before March 1993.

48 It is apparent from the foregoing that the first plea must be rejected.

The second plea: insufficient reasoning

Arguments of the parties

49 The applicant also raises a plea of infringement of Article 190 of the Treaty. It considers that insufficient reasons were stated for the letters of 30 November 1993 and 3 August 1994. In particular, points 1 to 5 of the letter of 30 November 1993 are imprecise and general and the letter of 3 August 1994 contains no reasoning relating to the state of completion of the project.

50 The Commission considers that its letters of 30 November 1993 and 3 August 1994 completely satisfy the requirements laid down by the case-law concerning the obligation to state reasons. In particular, the reasons set out in those letters enabled the applicant to review the legality of the decision and the Court to perform its review functions.

Findings of the Court

51 A decision reducing the amount of financial aid must clearly show the grounds which justify a reduction of the amount of aid initially authorized, since such a decision has serious consequences for the person receiving the aid (judgments in *Consorgan* v *Commission* and *Cipeke* v *Commission*, cited above, paragraphs 15 to 18; judgment in Case T-450/93 *Lisrestal* v *Commission* [1994] ECR II-1177, paragraph 52; judgment in Case T-85/94 *Branco* v *Commission* [1995] ECR II-45, paragraph 33).

52 The Court considers that the letter of 3 August 1994, to which the present proceedings relate, clearly indicates the reasons which prompted the Commission to refuse to pay the balance of the aid. It is sufficient to note that the letter of 3 August 1994 refers essentially to the reasons set out in the letter of 30 November

1993, and that that letter clearly indicates the reasons for the Commission's refusal by recalling the conditions under which the aid was granted and setting out, one by one, the respects in which performance of the project was defective. The Court recalls, in that respect, that a decision is sufficiently reasoned when it refers to a document which is already in the possession of the recipient and contains the reasons on which the institution based its decision (see judgment in *Industrias Pesqueras Campos and Others* v *Commission*, cited above, paragraph 144).

53 Furthermore, both in its application and subsequently during the proceedings, the applicant responded to the reasoning expounded by the Commission in its letters of 3 August 1994 and 30 November 1993 concerning its refusal to pay the balance of the aid; that demonstrates that the applicant was in possession of the information necessary to enable it to defend its rights. Similarly, the Court was in possession of the information necessary to enable it to exercise its power of review as to the legality of the decision. In those circumstances, the reasoning cannot be held to be insufficient (see judgment in Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 15 and Case T-150/89 *Martinelli* v *Commission* [1995] ECR II-1165, paragraph 65).

54 It follows that the second plea must also be rejected.

55 It follows from all the foregoing that the application must be dismissed.

Costs

56 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 Commission has applied for costs to be awarded against the applicant and since the latter has been unsuccessful, the applicant must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicant to pay the costs.

Saggio Tiili Moura Ramos

Delivered in open court in Luxembourg on 15 October 1997.

H. Jung A. Saggio

Registrar President