ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

3 March 1998 *

In Case T-610/97 R,

Hanne Norup Carlsen, residing in Kokkedal (Denmark),

Ingeborg Fangel, residing in Copenhagen,

Nicolas Fischer, residing in Copenhagen,

Jørgen Erik Hansen, residing in Frederiksberg (Denmark),

Marianne Henriksen, residing in Karrebæksminde (Denmark),

Ole Donbæk Jensen, residing in Copenhagen,

* Language of the case: Danish.

Yvonne Petersen, residing in Copenhagen,

Iver Reedtz-Thott, residing in Copenhagen,

Lars Ringholm, residing in Ringsted (Denmark),

Arne Würgler, residing in Hellerup (Denmark),

represented by Karen Dyekjær-Hansen and, at the hearing, by Katja Høegh, both of the Copenhagen Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicants,

v

Council of the European Union, represented by Jean-Claude Piris, Director-General of its Legal Service, Bjarne Hoff-Nielsen, Head of Division, and Martin Bauer, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

APPLICATION for interim measures, requesting, first, an injunction ordering the Council to release to the Højesteret (Danish Supreme Court) and the parties in the case pending before that court documents DOK. R/2026/77 (ENV.118) (AGRI 563) and DOK. R/1867/77 (JUR.95) (ENV.106) and, secondly, that the Højesteret and the parties to the proceedings be required not to divulge, in the course of any public hearing, the tenor of the documents so released,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

makes the following

Order

Facts and procedure

1 By application lodged at the Registry of the Court of First Instance on 23 December 1997, the applicants, Hanne Norup Carlsen, a social counsellor, Ingeborg Fangel, a student, Nicolas Fischer, a computer operator, Jørgen Erik Hansen, a watchman, Marianne Henriksen, a fishmonger, Ole Donbæk Jensen, a shipyard worker, Yvonne Petersen, unemployed, Iver Reedtz-Thott, a tenant farmer, Lars Ringholm, a journalism student, and Arne Würgler, a musician, brought an action pursuant to Article 173 of the EC Treaty for the annulment of the Council's decision of 3 November 1997 declining to release documents DOK. R/2026/77 (ENV.118) (AGRI 563), DOK. R/1867/77 (JUR.95) (ENV.106) and DOK. R/2048 dk/77 (ENV.119) (AGRI 568), reproducing the opinions of the Legal Services of the Council and the Commission.

2 By separate document lodged at the Registry of the Court of First Instance on 6 January 1998, the applicants applied, pursuant to Article 186 of the Treaty, for interim measures, requesting, first, an injunction ordering the Council to release the said documents to the Højesteret and the parties in the case pending before that court and, secondly, that the Højesteret and the parties to the proceedings be required not to divulge, in the course of any public hearing, the tenor of the documents so released.

3 The Council submitted its observations on that application on 22 January 1998. The oral observations of the parties were heard on 4 February 1998.

4 By way of introduction, the background to the dispute, as described in the pleadings lodged by the parties, must be explained.

5 On 17 May 1993 the appellants brought an action before the Østre Landsret (Eastern Regional Court) on the question 'whether the Danish Prime Minister ... was entitled to ratify the Treaty on European Union of 7 February 1992', claiming that 'accession was contrary to Article 20 of the Danish Constitution'. Article 20 of the Danish Constitution is worded as follows: 'The powers which, under this Constitution, are vested in the authorities of the Kingdom may, to the extent specified, be delegated by law to international authorities set up by reciprocal agreement with other States for the purpose of promoting the international legal order and international cooperation.'

6 By judgment of 27 June 1997 the Østre Landsret dismissed the action.

7 By application of 22 July 1997 the applicants lodged an appeal with the Højesteret against that judgment.

8 In the course of the proceedings before the Højesteret the applicants asked the Council for access to certain documents in its possession. More specifically, the applicants' lawyer, by letter of 26 September 1997 addressed to the defendant, first of all recalled that 'by letter of 16 January 1997 the Council sent to the applicants a number of Council minutes and other documents, including a briefing from Coreper to the Council of 30 March 1979'. The briefing contained a declaration by the Danish Delegation, according to which, first, it was doubtful that the provisions of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) 'correspond to the objectives set out in Article 2 of the EEC Treaty and whether Article 235 [could] be used' and, secondly, '[e]ven though, in this specific case, the Danish Government [did] not wish to repudiate the grounds put forward by the other eight Member States and the Legal Services on this point, it nevertheless [wished] to point out that it [did] not consider that the adoption of that directive [could] constitute a precedent for the adoption of later Community measures of a similar character'. On the basis of the content of those declarations, the applicants' lawyer then requested the Council to send her 'the grounds put forward by the other Member States and the Legal Services' referred to in the declaration.

9 On 30 September 1997 the applicants' lawyer also asked the defendant institution for access to the minutes of other Council measures.

10 By decision of 3 November 1997 (hereinafter 'the decision') the Council granted the applicants' requests, refusing solely to release the views expressed by the Legal Services of the Council and the Commission on the legal basis of Directive 79/409. In justifying that refusal, the Council stated that 'in accordance with long-standing practice those views [will] not be communicated, on the ground that disclosure of the opinions of the Legal Service on issues being dealt with in the Council could be detrimental to the public interest in the maintenance of legal certainty and the stability of Community law and also to the public interest in the Council's being able to obtain independent legal advice'.

11 By order of the same date the Højesteret ordered the Danish Government to produce a number of documents concerning other Community measures, without making any express reference to the documents requested by the applicants from the defendant institution.

Law

12 Pursuant to the combined provisions of Article 186 of the Treaty and Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21) and Council Decision 94/149/ECSC, EC of 7 March 1994 (OJ 1994 L 66, p. 29), the Court of First Instance may in any cases before it, if it considers the circumstances so require, prescribe any necessary interim measures.

13 Article 104(2) of the Rules of Procedure provides that applications for interim measures must state the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measures applied for. Those measures must not prejudge the decision on the substance (see the order of the President of the Court of First Instance of 10 December 1997 in Case T-260/97 R *Camar* v *Commission* [1997] ECR II-2357, paragraph 27).

The subject-matter of the application for interim measures

14 This application for interim measures seeks, first, an injunction ordering the Council to release to the Højesteret and the parties in the case pending before that court three documents, namely, DOK. R/2026/77 (ENV.118) (AGRI 563), DOK. R/1867/77 (JUR.95) (ENV.106) and DOK. R/2048 dk/77 (ENV.119) (AGRI 568).

15 In its observations concerning that application for interim measures, the Council pointed out that, under cover of a letter of 3 November 1997, the applicants had received all the documents previously requested, 'apart from those which reproduced *in extenso* the written views of the Legal Services of the Council and the Commission, and an extract from document R/2048/77, namely pages 1 and 2'. The Council further stated that it was prepared to release to the applicants the remainder of DOK. R/2048 dk/77 (ENV.119) (AGRI 568).

16 At the hearing the applicants acknowledged that they had received the extract to which the Council referred and, in view of the fact that the defendant had agreed to give them access to document DOK. R/2048 dk/77 (ENV.119) (AGRI 568) referred to in their application for interim measures, they stated that they would withdraw that part of the application concerning the said document but maintained the application as far as the remainder were concerned.

17 Accordingly, the present application for interim relief concerns two documents, namely documents DOK. R/2026/77 (ENV.118) (AGRI 563) and DOK. R/1867/77 (JUR.95) (ENV.106).

Arguments of the parties

Prima facie case

18 In their application for urgent measures, the applicants confine themselves to referring to the main application, in which they put forward two pleas in law alleging inadequacy of the statement of reasons and breach of both the Code of Conduct concerning public access to Council and Commission documents, approved by the Council and the Commission on 6 December 1993 (OJ 1993 L 340, p. 41, hereinafter 'the Code of Conduct') and Council Decision 93/731/EC of 20 December 1993 on public access to Council documents (OJ 1993 L 340, p. 43).

— First plea in law, alleging infringement of Article 190 of the Treaty

19 According to the applicants, the contested decision does not satisfy the requirement, under Article 190 of the Treaty, to state the reasons on which it was based since the sole reason which it mentions as justifying refusal to disclose the views of the Legal Services concerning the legal basis of Directive 79/409 is detriment to the 'public interest'. According to the applicants, a decision to such effect must 'specify individually and specifically the reason(s) for which it would in fact be detrimental to the public interest to disclose the actual legal assessments at issue'.

20 The Council contends that that plea in law is not well founded, pointing out that, as is made clear in the judgment of the Court of First Instance in Case T-105/95 in *WWF UK* v *Commission* [1997] ECR II-313, paragraph 65, the institution concerned is not obliged 'to furnish, in respect of each document, "imperative reasons" in order to justify the application of the public interest exception' since, in furnishing a full explanation of such reasons it would risk 'disclosing the content of the document and, thereby, depriving the exception of its very purpose'.

21 Consequently, according to the Council, if the statement of the reasons for rejecting a request for access to documents need only indicate, in a general way, the subject-matter of the document in question and the general considerations on the basis of which access to the document must, for imperative reasons, be refused, the Council complied with its obligation to state reasons and was not therefore in breach of Article 190 of the Treaty.

— Second plea in law, alleging breach of the Code of Conduct and of Decision 93/731

22 Under their second plea in law the applicants state that the Council was in breach of the Code of Conduct and of Decision 93/731 in so far as it interpreted the exceptions to the fundamental principle of transparency contained therein very broadly.

23 According to the applicants, the Council relied on reasons to justify its refusal which do not appear in the Code of Conduct or Decision 93/731. It referred, first, to the origin of the documents, in other words to the fact that they are opinions from the Legal Services, and, secondly, to the 'maintenance of legal certainty and the stability of Community law and also to the public interest in the Council's being able to obtain independent legal advice'. None of those reasons, according to the applicants, is mentioned in the list of exceptions to the principle of access to documents provided for in the Code of Conduct and Decision 93/731.

24 Compliance with fundamental principles such as 'transparency and openness, the maintenance of legal certainty and the stability of Community law', is ensured precisely by the right of access to all documents concerning the adoption of secondary legislation, including therefore the views of the Legal Service. Those views do not, according to the applicants, constitute independent legal advice, but rather assessments made by a service internal to the institution. If such assessments were kept secret, there would be a breach of the fundamental principle of equality of arms, since the Community institutions would enjoy a right to confidentiality that is broader than that allowed to private individuals (see Case 155/79 *AM&S* v *Commission* [1982] ECR 1575).

25 Moreover, in this case, the opinions of the Legal Services are of purely historical interest, since they concern an act adopted in 1979.

26 The Council points out, first, that the legal basis of the contested decision is not Decision 93/731 but rather Article 5(2) of its Rules of Procedure (adopted by Decision 93/662/EC of 6 December 1993, OJ 1993 L 304, p. 1), pursuant to which it 'may authorise the production of a copy or an extract from its minutes for use in legal proceedings'. In any event, the Council considers that the reasons justifying its refusal to authorise disclosure of an opinion of its Legal Service are the same in both measures, namely in Article 5(2) of its Rules of Procedure and the provisions of Decision 93/731.

27 In that connection, the defendant states that not all documents emanating from its Legal Service require confidentiality within the meaning of Article 4 of Decision 93/731. However, the documents from that service containing opinions on legal issues, as is the case here, are by their very nature documents to which the Council is obliged to refuse access on the basis of Article 4(1). That provision lists exceptions in respect of which 'access .. shall not be granted'. According to the defendant, those opinions constitute 'an important instrument enabling it to ensure that its legal acts are lawful and to encourage discussion on the legal aspects of a particular matter'. If the Council disclosed those opinions, that instrument would lose its value, with an adverse effect of the efficiency of its work and the legality of its acts. It would prove impossible to preserve the independence of the Legal Service in the opinions it gives on the measures to be adopted by the Council. If those interests of the institution were compromised, that would be detrimental to the public interest in legal certainty and the stability of the Community legal order. It is precisely to safeguard such an interest that the Council has available to it independent legal opinions, notwithstanding the fact that the 15 Member States may also have available to them opinions produced by the legal services of their own administrative authorities.

28 The Council adds that, contrary to the applicants' argument, even though the first indent of Article 4(1) of Decision 93/731 refers solely to public security, international relations, monetary stability, court proceedings, inspections and investigations, the definition of the public interest must be interpreted broadly. Any interpretation which excluded in principle certain aspects of the public interest would be likely to disturb the balance between safeguarding the right to access to documents and safeguarding that same public interest.

29 Lastly, with regard to the allegedly historical nature of the opinions of the Legal Services concerning the legal basis of Directive 79/409, the defendant emphasises that, although those opinions concern an act adopted in 1979, the legality of such an act could still be challenged by way of a reference for a preliminary ruling or a plea of illegality. Moreover, since Article 235 of the Treaty, which constitutes the legal basis of the Directive, has remained unchanged since the Treaty of Rome

entered into force, the arguments put forward in the opinions in question would still be relevant in a dispute concerning the legality of that Directive.

Urgency

30 The applicants state that the hearing in the proceedings before the Højesteret has been set down for 5 March 1998. Since the case raises the question whether the transfer of powers resulting from the accession of the Kingdom of Denmark to the Communities was contrary to the Danish Constitution and whether the Danish Prime Minister was entitled, on behalf of Denmark, to ratify the Treaty on European Union, according to the applicants it is extremely important for them to have access to the documents in question in order to expose the alleged breach of the Constitution on the part of the Danish authorities when 'the competence of the Community in the area of environmental protection was accepted'.

31 Those circumstances are, in the Council's view, manifestly insufficient to justify urgency.

32 According to the Council, the applicants have neither shown nor even claimed that the interim measures are necessary in order to avoid serious and irreparable damage. They confine themselves to stating that the hearing before the Højesteret is set down to commence on 5 March 1998, without, however, explaining how the opinions of the Legal Services have any relevance in the case before the Højesteret. Nor have they pleaded any direct relationship of cause and effect between the refusal to grant access to the said documents and the possibility of serious and irreparable

damage. At all events, if the Højesteret had considered that the documents in question constituted important evidence in the case before it, it could itself have requested the Council to produce them.

Provisional nature of the measures applied for

33 The Council points out that measures ordered in proceedings for interim relief must be provisional, meaning that they must not neutralise in advance the consequences of the judgment in the main proceedings.

34 The measure sought in the present application for interim relief would, in the Council's view, have definitive effects, since it would neutralise the consequences of the judgment in the main proceedings. Such a measure would indeed go beyond the scope of such a judgment, since it would enjoin the Council to release certain documents, whereas the Council could not be required to do so by the Court of First Instance when delivering judgment in the main proceedings brought pursuant to Article 173 of the Treaty. The Court of First Instance can solely annul the contested decision; it cannot order disclosure of the documents in question.

35 The applicants reply that, even if the measures sought were granted, their interest in obtaining 'general access' to the documents would remain and that access can be established solely after the contested decision has been annulled. The purpose of the application for interim measures is different from that of the main proceedings, since the measures sought concern solely disclosure of the documents to the Højesteret and the parties concerned and would prohibit the documents from being divulged to the public, whereas in the main proceedings the applicants seek the annulment of the decision relating specifically to public access to those documents.

Findings of the President of the Court

Prima facie case

— First plea in law, alleging infringement of Article 190 of the Treaty

36 As regards the first plea in law alleging infringement of Article 190 of the Treaty, it must be observed, as a preliminary point, that the Council cited, as its reason for rejecting the application for access to the documents which the applicants ask to have disclosed to the Højesteret and the parties to the case pending before that court, the fact that the documents are the opinions of the Legal Services and, as such, confidential. It declared that in accordance with 'long-standing practice' those views would not be released, on the ground that disclosure of the opinions of the Legal Service on issues being dealt with in the Council could be detrimental 'to the public interest in the maintenance of legal certainty and the stability of Community law, and also to the public interest in the Council's being able to obtain independent legal advice'.

37 The applicants submit that the statement of reasons is generic in nature, and consequently insufficient.

38 In this regard, it must be borne in mind that it is settled case-law that the statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the institution which enacted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review (see, most recently, Joined Cases C-9/95, C-23/95 and C-156/95 *Belgium and Germany* v *Commission* [1997] ECR I-645, paragraph 44, and Joined Cases C-71/95, C-155/95, C-271/95 *Belgium and Germany* v *Commission* [1997] ECR I-687, paragraph 53).

39 In this case it is first to be noted, that in its decision the Council refuses access to the two documents in question not because of their specific content but because they are opinions from the Legal Services of the Community institutions. Given the tenor of the decision, and in particular the fact that the two documents concerned contain opinions on legal matters from services internal to the administration, it would appear that a reference in the statement of reasons to the specific effects of releasing documents having such a content, as requested by the applicants, is not absolutely necessary in this case, and hence the fact that the Council did not examine the content of each document is not, taken alone, *prima facie* such as to render the statement of reasons inadequate. That conclusion is confirmed by the case-law of the Court of First Instance holding that the statement of the reasons for a decision refusing access to documents must contain 'by reference to categories of documents' the specific reasons for which it considers that the documents detailed in the request fall under one of the exceptions precluding such disclosure (in particular the exceptions provided for in Article 4(1) of Decision 93/731 and the first paragraph of the provision entitled 'Exceptions' of the Code of Conduct) but that such a statement of reasons need not furnish, in respect of each document, the 'imperative reasons' justifying the application of the public interest exception, inasmuch as it might seem impossible to give the reasons justifying the need for confidentiality in respect of each individual document without disclosing the content of the document and, thereby, depriving the exception of its purpose (see *WWF UK* v *Commission*, cited above, paragraphs 64 and 65).

40 Secondly, it should be noted that, in the statement of reasons for the decision the Council refers to the public interest which could be harmed if the opinions of the Legal Service were divulged. According to the Council, that interest relates both to the 'maintenance of legal certainty and the stability of Community law' and to the 'Council's being able to obtain independent legal advice'. It follows clearly from the terms of the decision that, as it explained in both its written and oral observations, the Council considers that disclosure of legal opinions, as documents containing merely technical advice, could give rise to doubt as to the legality of Community acts and thus be detrimental to 'legal certainty' and the 'stability of the Community law'. Such disclosure could, accordingly, give rise to difficulties with regard to the consultative role of those services and lead to the impoverishment of an instrument important to the Council's activities.

41 On the basis of those considerations, it must be held that the reasons given for the decision are sufficiently clear and consequently in no way prevented the applicants from challenging or the President of the Court from reviewing the legality of the contested decision.

42 In the light of the foregoing considerations, the plea alleging infringement of Article 190 of the Treaty must be rejected.

— Second plea in law, alleging breach of the Code of Conduct and of Decision 93/731

43 The applicants plead a breach of the Code of Conduct and of Decision 93/731, claiming, first, that, contrary to what can be concluded from the Decision, the fact that the documents which they ask to have disclosed contain legal opinions does not, taken alone, exclude the possibility that the public should have access to them, and, secondly, that there is no exception, either in the Code of Conduct or Decision 93/731, expressly concerning the public interests relied upon in the decision, namely 'the maintenance of legal certainty and the stability of Community law' and 'the Council's being able to obtain independent legal advice'.

44 In that connection, it is first necessary to establish the scope of the documents in question in order then to determine whether the Council's refusal to grant access to them is justified in the light of the provisions which the applicants allege have been infringed.

45 The opinions of the Legal Services are clearly internal documents — which is not, in principle, sufficient to ensure confidential treatment — primarily intended to provide the institution called upon to adopt a measure with an opinion on legal issues. They are, in other words, merely working instruments.

46 Moreover, were documents of that nature to be disclosed, the discussions and exchange of views within the institutions on the legality and scope of the legal measure to be adopted would be made public and hence, as it stated, the Council might lose all interest in requesting the Legal Services for written opinions. In other words, it appears, at least on an initial examination, that disclosure of those documents could give rise to uncertainty with regard to the legality of Community measures and have a negative effect on the functioning of the Community institutions. The stability of the Community legal order and the proper functioning of the institutions, which are matters of public interest for which it is unquestionably necessary to have due regard, would suffer as a result.

47 Consequently, given the special nature of the two documents in question, it *prima facie* appears that the grounds put forward by the defendant institution, namely, the requirement of ensuring 'maintenance of legal certainty and stability of Community law' and also of ensuring that 'the Council [is] able to obtain independent legal advice' must be regarded as legitimate, with regard to both the letter and the spirit of the provisions relied upon by the applicants.

48 More specifically, on the question whether the protection of those interests is provided for in the Code of Conduct and in Decision 93/731, it should be noted that they state that '[a]ccess to a Council document shall not be granted where its disclosure could undermine ... the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations) ...' (Article 4(1) of Decision 93/731 and the first paragraph of the provision entitled 'Exceptions' of the Code of Conduct). The formulation of the provision shows that although, on the one hand, it sets out in the first indent, in brackets, five categories of interests entitled to absolute protection, on the other hand it refers, at the beginning of that indent, to the general concept of 'the public

interest'. It is clear from the tenor of the provision that it is the protection of the public interest in general which may justify refusal to grant access to documents, and accordingly it would not be right to limit, contrary to the actual wording of that provision, the scope of the concept of the public interest by reducing it to the five cases set out in brackets.

49 The applicants claim that, according to the case-law of the Court of First Instance, the list of exceptions to the general right of access to documents must be construed strictly (see *WWF UK* v *Commission*, cited above, paragraph 56). However, that judgment cannot cast doubt on the reading of Article 4(1) of Decision 93/731 and the first paragraph of the provision entitled 'Exceptions' of the Code of Conduct as set out above, which is based on a literal interpretation of those provisions. The latter are characterised, first, by an express reference to the general requirement that the public interest should be protected and enumerate, in brackets certain specific cases where it applies, while clearly and unequivocally attaching secondary importance to those cases.

50 The applicants maintain, furthermore, that in any case the opinions which they ask to have disclosed to the Højesteret and the parties concerned are now only of historic interest and consequently may no longer be regarded as confidential. In that connection, it must be pointed out that, given the special nature of opinions of the Legal Services, it would not appear that those documents are bound, over the years, to lose their confidential character. Their disclosure could still be detrimental to the public interest in the stability of the Community legal order and the proper functioning of the Community institutions, inasmuch as time is not likely to alter the reasons, mentioned above, justifying such an exception to the right of access. Moreover, there is nothing in the file in support of the applicants' argument that would enable it to be established, from that point of view, that there was no justification for confidentiality in respect of the documents in question.

51 Lastly, the applicants claim that there is discrimination, in this case, between the confidentiality accorded to the legal opinions of services internal to the Community institutions and that accorded to legal opinions issued within entities of a different nature which have their own organisation and services, including a legal service. As far as the institutions are concerned, internal opinions are regarded as confidential, whereas, according to the case-law of the Court, only written communications with an independent lawyer 'not bound to the client by a relationship of employment' and which concern the client's defence enjoy such confidentiality (*AM&S* v *Commission*, cited above).

52 The President of the Court finds that that case-law may not be relied upon in the present case. The judgment in *AM&S* did not concern public access to the documents of private individuals but rather disclosure to the Commission of the documents of an undertaking which was the subject of an investigation under the Community competition rules. In other words, it concerned the interpretation of rules of administrative procedure in competition cases, specifically the Commission's powers of investigation. Moreover, the interests underlying the confidentiality of written communications between lawyer and client in the course of the administrative procedure before the Commission are quite different from those which justify refusal to grant public access to legal opinions emanating from the services of the institutions. That same judgment makes clear that, in protecting written communications between lawyer and client 'care is taken to ensure that the rights of the defence [of the undertaking] may be exercised to the full' and that protection extends only to an independent lawyer in so far as his role is conceived 'as collaborating in the administration of justice by the courts and as being required to provide, in full independence, and in the overriding interests of that cause, such legal assistance as the client needs' (*AM&S* v *Commission*, cited above, paragraphs 23 and 24). In this case, however, what is involved is the protection of the public interest in the stability of Community law and the proper functioning of the institutions. That requirement entails, for the reasons already set out, that opinions of the Legal Services must remain confidential. Accordingly that complaint by the applicants also appears to be lacking in any foundation.

53 It follows from the foregoing that the second plea, alleging a breach of Decision 93/731 and the Code of Conduct, must be rejected.

The provisional nature of the measures sought

54 Furthermore, the President of the Court finds that the objection raised by the Council as regards the definitive nature of the measures sought is not without foundation. The Council maintains that disclosure to the Højesteret and to the parties to the proceedings pending before that court would neutralise in advance the consequences of the judgment to be given later in the main proceedings before the Court.

55 It must be borne in mind that, on the one hand, according to settled case-law, the measures which may be ordered in interlocutory proceedings are provisional, in the sense that they must in principle cease to produce their effects as soon as final judgment is given in the case and must not in any way anticipate the Court's decision on the substance, and that, on the other hand, they are ancillary in the sense that they must only seek to safeguard, during the course of the procedure before the Court, the interests of one of the parties to the proceedings in order to prevent the judgment in the main proceedings from being rendered illusory by being deprived of any practical effect (see the order of the President of the Court of Justice in Case C-313/90 R *CIRFS and Others* v *Commission* [1991] ECR I-2557, paragraphs 23 and 24, and the orders of the President of the Court of First Instance in Case T-164/96 R *Moccia Irme* v *Commission* [1996] ECR II-2261, paragraph 29, and Case T-6/97 R *Comafrica and Dole Fresh Fruit Europe* v *Commission* [1997] ECR II-291, paragraph 51).

56 In this case, although it is not excluded that, as the applicants maintained at the hearing, even if the measures sought were granted they would still have some interest in the continuation of the main proceedings — the purpose of which, according to their submissions, is not completely identical — it is evident, first, that disclosure of the documents in question to the Højesteret and the parties concerned would anticipate the judgment of the Court of First Instance on the action for annulment, which is directed specifically against the decision rejecting the request for access to those documents, and, secondly, that disclosure would have effects which could not be definitively brought to an end when the judgment is delivered.

57 For all the foregoing reasons the application for interim measures must be dismissed, without there being any need to examine the condition relating to urgency.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The application for interim measures is dismissed.

2. Costs are reserved.

Luxembourg, 3 March 1998.

H. Jung — A. Saggio

Registrar — President