

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
26 February 2002 *

In Case T-17/00,

Willi Rothley, residing at Rockenhausen (Germany), and the 70 other applicants whose names appear in the Annex hereto, represented by H.-J. Rabe and G. Berrisch, lawyers,

applicants,

v

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

defendant,

* Language of the case: German.

supported by

Council of the European Union, represented by J. Aussant, M. Bauer and I. Díez Parra, acting as Agents,

by

Commission of the European Communities, represented by J.-L. Dewost, H.-P. Hartvig and U. Wölker, acting as Agents, with an address for service in Luxembourg,

by

Kingdom of the Netherlands, represented by H.G. Sevenster and J. van Bakel, acting as Agents, with an address for service in Luxembourg,

and by

French Republic, represented by G. de Bergues, S. Pailler and C. Vasak, acting as Agents, assisted by L. Bernheim, lawyer, with an address for service in Luxembourg,

interveners,

APPLICATION for annulment of the Parliament's decision of 18 November 1999 on the amendments to the Rules of Procedure following the Inter-institutional Agreement of 25 May 1999 between the Parliament, the Council and the Commission on the internal investigations conducted by the European Anti-Fraud Office (OLAF),

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

composed of: P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges,
Registrar: D. Christensen, Administrator,

having regard to the written procedure and further to the hearing on 10 July
2001,

gives the following

Judgment

The relevant provisions

*Protocol on the privileges and immunities of the European Communities of
8 April 1965*

- 1 Articles 8 to 10 of the Protocol on the Privileges and Immunities of the European Communities are devoted to the Members of the Parliament.

2 Article 9 provides that ‘Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties’.

3 Article 10 states:

‘During the sessions of the European Parliament, its members shall enjoy:

(a) in the territory of their own State, the immunities accorded to Members of their parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.’

Commission Decision establishing the European Anti-Fraud Office

- 4 On 28 April 1999 the Commission adopted Decision 1999/352/EC, ECSC, Euratom, establishing the European Anti-fraud Office (OLAF) (OJ 1999 L 136, p. 20, ‘the Decision establishing the Office’). The Decision is based, in particular, on Article 218 EC, paragraph 2 of which provides that, ‘[t]he Commission shall adopt its Rules of Procedure so as to ensure that both it and its departments operate in accordance with the provisions of [the EC] Treaty’.
- 5 It is provided in the second and third subparagraphs of Article 2(1) of the Decision establishing the Office that:

‘The [European Anti-Fraud] Office shall be responsible for carrying out internal administrative investigations intended:

- (a) to combat fraud, corruption and any other illegal activity adversely affecting the Community’s financial interests;

- (b) to investigate serious facts linked to the performance of professional activities which may constitute a breach of obligations by officials and servants of the Communities likely to lead to disciplinary and, in appropriate cases, criminal proceedings or an analogous breach of obligations by Members of the institutions and bodies, heads of the bodies or members of staff of the

institutions and bodies not subject to the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Communities.

The Office shall exercise the Commission's powers as they are defined in the provisions established in the framework of the Treaties, and subject to the limits and conditions laid down therein.'

- 6 Under Article 3, the European Anti-Fraud Office ('the Office') is to exercise the powers of investigation conferred upon it in complete independence.
- 7 Lastly, under Article 7, that decision is to take effect on the date of the entry into force of the European Parliament and Council Regulation (EC) concerning investigations carried out by the European Anti-fraud Office.

Regulation No 1073/1999

- 8 Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OJ 1999 L 136, p. 1) has, as its legal basis, Article 280 EC. Article 1(1) of the Regulation is worded as follows:

'In order to step up the fight against fraud, corruption and any other illegal activity affecting the financial interests of the European Community, the... Office... shall exercise the powers of investigation conferred on the Commission by the Community rules and regulations and agreements in force in those areas.'

9 Article 4 of Regulation No 1073/1999 provides:

‘1. ... These internal investigations shall be carried out subject to the rules of the Treaties, in particular the Protocol on privileges and immunities... under the conditions and in accordance with the procedures provided for in this Regulation and in decisions adopted by each institution, body, office and agency...

2. Provided that the provisions referred to in paragraph 1 are complied with:

— the Office shall have the right of immediate and unannounced access to any information held by the institutions, bodies, offices and agencies, and to their premises. The Office shall be empowered to inspect the accounts of the institutions, bodies, offices and agencies. The Office may take a copy of and obtain extracts from any document or the contents of any data medium held by the institutions, bodies, offices and agencies and, if necessary, assume custody of such documents or data to ensure that there is no danger of their disappearing,

...

3. ...

4. The institutions, bodies, offices and agencies shall be informed whenever employees of the Office conduct an investigation on their premises or consult a document or request information held by such institutions, bodies, offices and agencies.

5. ...

6. Without prejudice to the rules laid down by the Treaties, in particular the Protocol on privileges and immunities... the decision to be adopted by each institution, body, office or agency as provided for in paragraph 1 shall in particular include rules concerning:

- (a) a duty on the part of members... of the institutions and bodies... to cooperate with and supply information to the Office's servants;

- (b) the procedures to be observed by the Office's employees when conducting internal investigations and the guarantees of the rights of persons concerned by an internal investigation.'

Interinstitutional agreement of 25 May 1999 between the Parliament, the Council and the Commission

- 10 On 25 May 1999 the Parliament, the Council and the Commission concluded an agreement concerning internal investigations carried out by the Office (OJ 1999 L 136, p. 15, 'the interinstitutional agreement').

- 11 Under point 1 of that agreement, the institutions which are signatories thereto agreed 'to adopt common rules consisting of the implementing measures required to ensure the smooth operation of the investigations carried out by the Office within their institution'.

- 12 They also agreed to ‘draw up [common rules] and make them immediately applicable by adopting an internal decision in accordance with the model attached to [the] Agreement and not to deviate from that model save where their own particular requirements make such deviation a technical necessity’ (point 2 of the Agreement).
- 13 The date on which the Agreement and Regulation No 1073/99 were to enter into force was set at 1 June 1999.
- 14 The model decision attached to the Agreement was transposed by the Council and the Commission on 25 May and 2 June 1999 respectively (Council Decision 1999/394/EC, Euratom and Commission Decision 1999/396/EC, ECSC, Euratom concerning the terms and conditions for internal investigations in relation to the prevention of fraud and corruption and any illegal activity detrimental to the Communities’ interests, OJ 1999 L 149, p. 36 and p. 57 respectively). On 18 November 1999 the Parliament adopted the Decision on the amendments to the Rules of Procedure following the Interinstitutional Agreement (‘the contested measure’).

The contested measure

- 15 The contested measure adds to the Rules of Procedure of the European Parliament (OJ 1999 L 202, p. 1) Rule 9a, concerning the ‘Internal investigations conducted by the ... Office’, which is worded as follows:

‘The common rules laid down in the Interinstitutional Agreement... comprising the measures needed to facilitate the smooth running of investigations conducted by the Office shall be applicable within Parliament, pursuant to the Parliament Decision annexed to these Rules of Procedure.’

16 The contested measure also approves the European Parliament Decision concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests ('the Parliament Decision concerning the terms and conditions for internal investigations'), which reproduces the model decision attached to the Interinstitutional Agreement, with various adjustments required for its implementation within the Parliament.

17 The second paragraph of Article 1 of that decision provides:

'Without prejudice to the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, and of the texts implementing them, Members shall cooperate fully with the Office.'

18 The fourth paragraph of Article 2 of the Decision provides:

'Members who acquire knowledge of facts as referred to in the first paragraph [evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Communities, or of serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials or servants of the Communities or staff not subject to the Staff Regulations, liable to result in disciplinary or, where appropriate, criminal proceedings] shall inform the President of Parliament or, if they consider it useful, the Office direct.'

19 Article 4 provides that '[r]ules governing Members' parliamentary immunity and the right to refuse to testify remain unchanged'.

20 Article 5 is worded as follows:

'Where the possible implication of a Member... emerges, the interested party shall be informed rapidly as long as this would not be harmful to the investigation. In any event, conclusions referring by name to a Member... may not be drawn once the investigation has been completed without the interested party having been enabled to express his views on all the facts which concern him.'

In cases necessitating the maintenance of absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the Member... to give his views may be deferred in agreement... with the President...'

Procedure and background to the dispute

21 By application lodged at the Court Registry on 21 January 2000, Willi Rothley and 70 other Members of the Parliament ('the applicants') brought an action under the fourth paragraph of Article 230 EC for annulment of the contested measure.

- 22 By separate document lodged at the Court Registry on the same day they also brought an application under Article 242 EC for suspension of the operation of the contested measure until disposal of the case in the main proceedings.
- 23 By letters dated 4 February 2000 and 10 February 2000 respectively, the Council and the Commission applied for leave to intervene in support of the form of order sought by the defendant in the proceedings for interim measures and in the main proceedings.
- 24 By order of the President of the Fifth Chamber of the Court of First Instance of 9 March 2000, the Council and the Commission were granted leave to intervene in the main proceedings.
- 25 By order of 2 May 2000 in Case T-17/00 R *Rothley and Others v Parliament* [2000] ECR II-2085, the President of the Court of First Instance ordered operation of Articles 1 and 2 of the contested measure to be suspended in so far as those articles require the applicants to cooperate with the Office and to provide information to the President of the Parliament or to the Office. He further ordered Parliament to inform the applicants without delay of any measure imminently to be taken against them by the Office and to grant agents of the Office access to the offices of the applicants only with the consent of the latter, pending delivery by the Court of final judgment in the main proceedings. Costs were reserved.
- 26 The statements in intervention of the Council and the Commission were lodged at the Registry of the Court of First Instance on 13 June and 31 May 2000 respectively. The applicants lodged their observations on those statements on 5 September 2000. The Parliament waived its right to submit observations.

- 27 By documents lodged on 21 June and 10 July 2000 respectively, the Kingdom of the Netherlands and the French Republic requested leave to intervene in support of the forms of order sought by the Parliament. Those requests were granted by order of the President of the Fifth Chamber of the Court of First Instance of 14 September 2000.
- 28 The statements in intervention of the Kingdom of the Netherlands and the French Republic were lodged on 24 November and 6 December 2000 respectively. The applicants lodged their observations on those statement on 8 February 2001. The Parliament waived its right to submit observations.
- 29 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber) decided to open the oral procedure.
- 30 The main parties, and the Council and the Commission, presented oral argument and their replies to the Court's questions at the hearing in open court on 10 July 2001.

Forms of order sought by the parties

- 31 The applicants claim that the Court should:

— annul the contested measure;

— order the Parliament to pay the costs.

32 At the hearing, the applicants stated that the purpose of their action was to have the contested measure annulled in so far as it concerned the Members of the Parliament.

33 The Parliament, the Council, the Commission, the Kingdom of the Netherlands and the French Republic contend that the Court should:

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

— order the applicants to pay the costs.

34 The Commission further contends that the Court should order the applicants to pay the costs of the proceedings for interim relief.

Law

35 The applicants put forward two pleas in law, alleging, first, infringement of legislative procedure and, second, breach of parliamentary immunity and of the independence of their mandate. They also raise the preliminary objection that the decision establishing the Office and Regulation No 1073/1999 are unlawful.

Although not raising a formal plea of inadmissibility under Article 114 of the Rules of Procedure of the Court of First Instance, the Parliament, supported by the interveners, maintains that the action is inadmissible. In consequence, the admissibility of this action falls to be examined.

Arguments of the parties

- 36 The Parliament submits, first, that the applicants are not directly and individually concerned. The contested measure does not directly prejudice the Members' rights, because such prejudice can occur only when specific measures are implemented. In addition, that measure affects not only the elected representatives currently sitting in the Parliament but also those who will sit there in the future. Furthermore, the fact that it is possible to identify the persons to whom the measure may apply does not mean that they are individually concerned by the contested act. In the present case, since no specific investigation was conducted by the Office, the Members are only theoretically concerned.
- 37 Secondly, it submits that the contested measure remains within the framework of the internal organisation of the Parliament and cannot therefore, under the first paragraph of Article 230 EC, be subject to judicial review (orders in Case 78/85 *Group of the European Right v Parliament* [1986] ECR 1753 and Case C-68/90 *Blot and Front National v Parliament* [1990] ECR I-2101).
- 38 It is an internal act of the Parliament amending its Rules of Procedure and adopting new rules concerning the position of the Members. It reflects their duty, inherent in that position, to cooperate in the prevention of fraud, while respecting the Treaty provisions, Members' parliamentary immunity and the right to refuse to testify. Moreover, it does not produce legal effects going beyond the internal organisation of the Parliament, particularly since it does not adversely affect, either directly or individually, the Members' exercise of their mandate (order in

Case T-222/99 R *Martínez and de Gaulle v Parliament* [1999] ECR II-3397, paragraph 67).

- 39 Third, in so far as the action concerns the decision establishing the Office, the Parliament observes that the contested measure is not based on that decision, so that a plea of illegality may not be raised (Case 92/78 *Simmenthal v Commission* [1979] ECR 777, paragraph 36). Moreover, it points out that, in accordance with Article 7, the entry into effect of the decision is dependent on the entry into force of Regulation No 1073/1999.
- 40 With regard to the objection that Regulation No 1073/1999 is unlawful, the Parliament points out that, from a purely formal point of view, the contested measure has as its sole basis the Treaty provisions on the adoption of the Parliament's Rules of Procedure and thus its power of independent internal organisation. In addition, in the circumstances of this case it cannot be alleged that either the decision establishing the Office or Regulation No 1073/1999 is void, since the validity of those two legal acts is not the subject-matter of the dispute.
- 41 The Parliament adds that, even if the contested measure were based directly on Regulation No 1073/1999, the plea of illegality would fail because the action is inadmissible, inasmuch as the Members are not directly and individually concerned by that act.
- 42 Furthermore, since the contested measure does no more than reiterate the duties imposed on the institutions and bodies, and their officials, servants and Members, as listed in Regulation No 1073/1999, and lay down the terms and conditions upon which they apply, the action brought by the applicants does not, in the Parliament's submission, seek review of a specific issue but rather an abstract review of legal rules. Regulation No 1073/99 was adopted as a codecision of the Parliament and the Council in accordance with Article 251 EC. The applicants, who are part of the legislative body which is the Parliament, cannot challenge the validity of an act adopted by that institution and the Council.

- 43 The interveners concur with the Parliament's argument.
- 44 The applicants submit that they are directly and individually concerned within the meaning of the fourth paragraph of Article 230 EC, inasmuch as the contested measure affects their status as Members of the Parliament.
- 45 Their performance of their duties and their legal status as Members of the Parliament are directly limited by the contested measure. They submit that that decision represents the implementing measure required by Article 4(1) and (6) of Regulation No 1073/1999 in conjunction with point 2 of the Interinstitutional Agreement, which makes the Members directly subject to the Office's powers of investigation and requires them to comply at all times with various rules of conduct.
- 46 The applicants maintain that the contested measure prejudices their legal status as Members of the Parliament. They claim that Members have 'constitutional' status, being representatives directly elected by the citizens and invested with a direct democratic mandate (Article 190(1) EC).
- 47 Furthermore, the Members of the Parliament form a closed circle of persons identifiable by name to whom the contested measure is addressed. Even though the 'circle of Members' could change after the next elections, the Members are at present not only 'identifiable' collectively and by name, but also clearly identified.

The rules of conduct contained in the contested measure are addressed to each of the current Members of the Parliament individually, and restrict the independence of their mandate as well as their immunity.

- 48 The applicants maintain, next, that the legal effects of the contested measure go beyond the internal organisation of the work of the Parliament, within the meaning of the judgment of the Court of Justice in Case C-69/89 *Nakajima v Council* [1991] ECR I-2069, paragraph 49.
- 49 According to the applicants, the Court confirmed in Case C-314/91 *Weber v Parliament* [1993] ECR I-1093, paragraph 9 et seq., that the Parliament's internal rules are amenable to judicial review where they affect the personal situation, in that case financial, of Members of Parliament. The independence of the mandate and immunity are even more important attributes of the Member's personal status and may be defended by recourse to law (*Martínez and de Gaulle v Parliament*, paragraph 64 et seq.).
- 50 The legal effects of the contested measure *vis-à-vis* the Members do not fall within the scope of the Parliamentary mandate or the political activities relating thereto. It does not relate to the internal workings of the Parliament; its essential purpose is rather to facilitate the proper conduct of the internal investigations which the Office might carry out in that institution.
- 51 Lastly, as regards the objection that the decision establishing the Office and Regulation No 1073/99 are unlawful, the applicants argue that those measures, together with the Interinstitutional Agreement and the related implementing decisions, form a coherent whole the various constituents of which would have no legal meaning were they to be separated one from another.

- 52 They maintain that, contrary to the Parliament's submission, those legislative acts constitute the 'legal basis' of the contested measure and that the issue of their illegality may therefore be raised pursuant to Article 241 EC, in accordance with the judgment in *Simmenthal v Commission*.

Findings of the Court

- 53 The first question to be considered must be whether the contested measure may be the subject of an action for annulment. Under the first paragraph of Article 230 EC, the Community judicature is to review the legality 'of acts of the European Parliament intended to produce legal effects *vis-à-vis* third parties'. In certain circumstances, the Members may be third parties within the meaning of that provision and may bring an action against an act of the Parliament, provided that that act goes beyond the internal organisation of its work (*Weber v Parliament*, paragraph 9).
- 54 The Court of Justice has stated that acts concerning only the internal organisation of the work of the Parliament are measures of the Parliament which either do not have legal effects or have legal effects only within the Parliament as regards the organisation of its work and are subject to review procedures laid down in its Rules of Procedure (*Weber v Parliament*, paragraph 10). Furthermore, the Court has held that the purpose of the rules of procedure of a Community institution is to organise the internal functioning of its services in the interests of good administration. The rules laid down, particularly with regard to the organisation of deliberations and the adoption of decisions, have therefore as their essential purpose to ensure the smooth conduct of the procedure while fully respecting the prerogatives of each of the Members of the institution (*Nakajima v Council*, paragraph 49).

- 55 It must therefore be established whether it is possible for the contested measure to have legal effects which go beyond the internal organisation of the work of the Parliament.
- 56 The contested measure amends the Rules of Procedure of the Parliament by adding Rule 9a, concerning the internal investigations conducted by the Office, and it approves the Parliament's decision concerning the terms and conditions for internal investigations. The fifth recital in the preamble to the latter decision, and five of its eight articles, expressly refer to Members as possessing rights and being subject to duties, which include the duty to cooperate (Article 1) and the duty to supply information (Article 2) (see paragraphs 17 and 18, above). The contested measure sets out, in particular, the manner in which the duties to cooperate and to supply information imposed on the Members of the Parliament are to be complied with in order to ensure the smooth operation of those investigations. The contested measure forms part of the measures intended to protect the financial interests of the Communities and to combat fraud and any other illegal activities detrimental to those interests. It is intended to lay down the conditions upon which the Office may conduct such investigations within the Parliament.
- 57 Accordingly, the contested measure, in both its object and its effects, goes beyond the internal organisation of the work of the Parliament. It may therefore be the subject of an action for annulment under the first paragraph of Article 230 EC.
- 58 Secondly, it must be established whether the applicants have *locus standi* to bring proceedings and, more especially, whether the contested measure constitutes a 'decision' of individual concern to them within the meaning of the fourth paragraph of Article 230 EC, it being understood that the subject of that examination must be not the form in which the measure was adopted but rather its substance (Case 60/81 *IBM v Commission* [1981] ECR 2639, paragraph 9). The Court has held, since the judgment in Joined Cases 16/62 and 17/62

Confédération nationale des producteurs de fruits et légumes v Council [1962] ECR 471, at p. 478, that the term ‘decision’ used in the fourth paragraph of Article 230 EC has the technical meaning employed in Article 249 EC (order in Case C-168/93 *Gibraltar and Gibraltar Development v Council* [1993] ECR I-4009, paragraph 11).

- 59 A decision so defined is distinct from a measure of a legislative nature. The criterion for distinguishing them lies in the general application or otherwise of the measure in question (*Gibraltar and Gibraltar Development v Council*, paragraph 11). An act cannot be considered to be a decision if it is applicable to objectively determined situations and produces its legal effects with respect to categories of persons envisaged in the abstract (judgments in *Confédération nationale des producteurs de fruits et légumes*, p. 479, and Case 307/81 *Alusuisse v Council and Commission* [1982] ECR 3463, paragraph 9; order of the Court of Justice in Case C-87/95 P *CNPAAP v Council* [1996] ECR I-2003, paragraph 33; order of the Court of First Instance in Case T-107/94 *Kik v Council and Commission* [1995] ECR II-1717, paragraph 35; judgment of the Court of First Instance in Case T-482/93 *Weber v Commission* [1996] ECR II-609, paragraph 55, and order of the Court of First Instance in Case T-114/96 *Biscuiterie-Confiserie LOR and Confiserie du Tech v Commission* [1999] ECR II-913, paragraph 26.
- 60 In the present case, the contested measure was adopted on the basis of the first paragraph of Article 199 EC, Article 25 CS and Article 112 EA by a vote carried by a majority of the Members of the Parliament at the plenary session of 18 November 1999. The contested measure adds to the Parliament’s Rules of Procedure Rule 9a concerning ‘Internal investigations conducted by the Office’, to the effect that ‘the common rules laid down in the Interinstitutional Agreement... comprising the measures needed to facilitate the smooth running of the investigations conducted by the Office shall be applicable within Parliament, pursuant to the Parliament Decision annexed to these Rules of Procedure’. The last-mentioned decision essentially reproduces the model decision annexed to the Interinstitutional Agreement, adding to it Article 4 to the effect that ‘[r]ules governing Members’ parliamentary immunity and the right to refuse to testify shall remain unchanged’.

- 61 The general purpose of the contested measure is to lay down the conditions upon which the Parliament will cooperate with the Office in order to facilitate the smooth operation of investigations within that institution. In keeping with that object, it perceives the Members as having rights and duties and it lays down special provisions for them where, in particular, they are implicated in an investigation conducted by the Office or where they have acquired knowledge of facts which give rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Communities, or of serious situations relating to the discharge of professional duties which may constitute a failure to comply with obligations liable to result in disciplinary or, where appropriate, criminal proceedings. The contested measure applies without distinction to the Members of the Parliament in office at the time of its entry into force and to any other person subsequently coming to perform the same duties. Thus it applies without temporal limitation to objectively determined situations and has legal effects with respect to categories of persons envisaged generally and in the abstract.
- 62 It follows from those considerations that the contested measure, although called a ‘decision’, constitutes a measure of general application.
- 63 Nevertheless, it has been held that, in certain circumstances, a provision in a measure of general application may be of individual concern to some interested persons (Case C-358/89 *Extramet Industrie v Council* [1991] ECR I-2501, paragraph 13, and Case C-309/89 *Codorniu v Council* [1994] ECR I-1853, paragraph 19). In such a case, a Community measure can be of a legislative nature and, at the same time, *vis-à-vis* some of the individuals concerned, in the nature of a decision (Joined Cases T-481/93 and T-484/93 *Vereniging van Exporteurs in Levende Varkens and Others v Commission* [1995] ECR II-2941, paragraph 50). Such is the case where the measure in question affects natural or legal persons by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (*Codorniu v Council*, paragraph 20).

- 64 In light of that case-law, it must be established whether there are such circumstances in this case which make it possible to distinguish the applicants in a way similar to that in which the addressee of a decision could be identified.
- 65 The applicants have argued that because they are Members of the Parliament holding office at the time when the contested measure was adopted they belong to a closed circle of persons identifiable by name. The mere fact, however, that the number and even the identity of the persons to whom a measure applies can be determined in no way implies that those persons must be regarded as individually concerned by that measure, where that measure applies to them as a result of an objective situation of law or fact specified by the measure at issue (see, for example, the judgment in Case 6/68 *Zuckerfabrik Watenstedt v Council* [1968] ECR 409, at p. 415, and the orders in Case C-10/95 P *Asocarne v Council* [1995] ECR I-4149, paragraph 30, and *CNPAAP v Council*, paragraph 34).
- 66 As stated above, the contested measure affects the applicants only because they belong to a category of persons which is defined generally and in the abstract. The contested measure does not express the Parliament's intention to deal with a particular case, specifically that of the applicants. Furthermore, the applicants have neither claimed, nor adduced evidence to demonstrate, that adoption of the contested measure alters their legal situation or affects them, more particularly than other Members of the Parliament.
- 67 Likewise, merely belonging to one of the two categories of persons to whom the contested measure is addressed — all the Parliament's staff, whether subject to

the Staff Regulations or not, on the one hand, and its Members, on the other — is not sufficient to distinguish the applicants, since those two categories are defined generally and in the abstract. The contested measure does no more than implement and adjust, within the framework of the Parliament's Rules of Procedure, some of the provisions concerning the rights and duties of the Members of the Community institutions provided for by Regulation No 1073/1999 and the Interinstitutional Agreement. Those instruments, like the decision establishing the Office, describe the Members and all the staff of the institutions as categories of persons who are required to cooperate with the Office or who may be the subject of investigation by the Office.

- 68 The 'model decision' annexed to the Interinstitutional Agreement lays a number of rules for its application which are specific to the Members of the institutions. With regard to the duty to cooperate with the Office, the second paragraph of Article 1 of the model decision provides: 'Without prejudice to the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, and of the texts implementing them, Members shall cooperate fully with the Office.' As regards the duty to supply information, the fourth paragraph of Article 2 of the model decision states: 'Members who acquire knowledge of facts as referred to in the first paragraph shall inform the President of the institution (or body) or, if they consider it useful, the Office direct.'
- 69 The contested measure imposes on the staff of the Parliament and its Members a duty to supply information to, and to cooperate with, the Office. The duty to supply information is subject, however, to conditions which vary according to the persons on whom the duty is imposed. Thus, staff are required to inform their Head of Service, Director-General, Secretary General or the Office, or the President of the Parliament, depending on whether the facts in question concern a member of staff or a Member of the Parliament, whereas the Members of the Parliament must declare the facts of which they have become aware to the President of the Parliament or the Office.

- 70 None of those provisions supports the conclusion that there are any factors which may enable the applicants to be distinguished individually.
- 71 In addition, the Court must consider whether, in the circumstances, the case-law is applicable by virtue of which actions for annulment of measures of a legislative nature are admissible where a superior rule of law required the body responsible for it to take into account the applicants' particular circumstances (see, to that effect, Case 11/82 *Piraiki-Patraiki and Others v Commission* [1985] ECR 207, paragraphs 11 to 32; Case C-152/88 *Sofrimport v Commission* [1990] ECR I-2477, paragraphs 11 to 13; Case C-390/95 P *Antillean Rice Mills and Others v Commission* [1999] ECR I-769, paragraphs 25 to 30, and Case T-135/96 *UEAPME v Council* [1998] ECR II-2335, paragraph 90).
- 72 The applicants in the present case have argued in essence that the contested measure compromises both their independence and the immunity conferred upon them by the Protocol on privileges and immunities of the European Communities. However, the Protocol refers to Members of the Parliament only in a general fashion and contains no provision explicitly governing internal investigations in the Parliament. Moreover, the Parliament endeavoured to have special regard to the immunity enjoyed by its Members, inasmuch as the contested measure adds to the provisions of the model decision annexed to the Interinstitutional Agreement Article 4, to the effect that '[r]ules governing Members' parliamentary immunity and the right to refuse to testify remain unchanged.'
- 73 As the President of the Court of First Instance was able to observe in paragraph 107 of the order in *Rothley and Others v Parliament*, the risk cannot be excluded a priori that, in conducting an investigation, the Office might perform an act prejudicial to the immunity enjoyed by every Member of the Parliament.

However, if that were to occur, any Member of the Parliament faced with such an act could, if he considered it damaging to him, avail himself of the judicial protection and the legal remedies provided for by the Treaty.

- 74 In any event, the existence of such a risk cannot warrant altering the system of remedies and procedures established by Articles 230 EC, 234 EC and 235 EC which is designed to give the Community judicature the power to review the legality of acts of the institutions. It cannot by any means serve to make an action for annulment brought by a natural or legal person who does not satisfy the conditions laid down by the fourth paragraph of Article 230 EC to be declared admissible (orders in *Asocarne v Council*, paragraph 26, and *CNPAAP v Council*, paragraph 38).
- 75 Finally, the fact that the contested measure affects the applicants in the same way as any other Member of the Parliament, current or future, means that the inadmissibility of this action cannot create inequality as regards the judicial protection afforded to the applicants compared with that afforded to other Members of the Parliament.
- 76 On this point, the facts in the case are distinguishable from those which gave rise to the Court's judgment in Case 294/83 *Les Verts v Parliament* [1986] ECR 1339, paragraph 36. That case dealt with unequal allocation of public moneys for the information campaign of the political groups involved in the election of the Parliament in 1984. The budget decisions under challenge concerned all the political groupings although the treatment of those groupings varied, depending on whether or not they were represented in the Assembly elected in 1979. The groupings which were represented took part in adopting the decisions concerning

both their own treatment and that of the rival groupings which were not represented. The Court replied in the affirmative to the question whether the decisions were of individual concern to a political grouping which was not represented but which was likely to put up candidates for the election in 1984. The Court considered that the opposite approach would give rise to unequal judicial protection, since groupings not represented could not prevent the allocation of the budget appropriations for the election campaign before the elections took place. In the circumstances of the present case, there is no such disparity between the situation of the applicants and that of the other Members of the Parliament.

- 77 In consequence, the applicants have not established that there exist any factors distinguishing them individually in the light of the contested measure.
- 78 It follows that the contested measure is not of individual concern to the applicants within the meaning of Article 230 EC and, therefore, that the action must be dismissed as inadmissible, with the result that there is no need to consider whether that decision is of direct concern to the applicants within the meaning of the same article.

Costs

- 79 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. In this case, since the applicants have been unsuccessful, they must be ordered to pay the costs, including those of the application for interim relief, in accordance with the forms of order sought by the Parliament. Under Article 87(4) of those Rules of Procedure, the Council, the Commission, the Kingdom of the Netherlands and the French Republic, which have intervened in these proceedings, are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber),

hereby:

1. Dismisses the action as inadmissible;
2. Orders the applicants to pay their own costs and those incurred by the defendant in the main proceedings and in the application for interim relief;
3. Orders the interveners to bear their own costs.

Lindh

García-Valdecasas

Cooke

Delivered in open court in Luxembourg on 26 February 2002.

H. Jung

Registrar

J.D. Cooke

President