JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)
17 June 1998 *

In Case T-174/95,

Svenska Journalistförbundet, an association governed by Swedish law, established in Stockholm, represented by Onno W. Brouwer, of the Amsterdam Bar, and Frédéric P. Louis, of the Brussels Bar, assisted by Deirdre Curtin, Professor at the University of Utrecht, with an address for service in Luxembourg at the Chambers of Loesch and Wolter, 11 Rue Goethe,

applicant,

supported by

Kingdom of Sweden, represented by Lotty Nordling, Director-General of the Legal Service of the Ministry of Foreign Affairs, acting as Agent,

Kingdom of Denmark, represented by Peter Biering, Head of Department in the Ministry of Foreign Affairs, and Laurids Mikælsen, Ambassador, acting as Agents, with an address for service in Luxembourg at the Danish Embassy, 4 Boulevard Royal,

and

Kingdom of the Netherlands, represented by Marc Fierstra and Johannes Steven van den Oosterkamp, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the Embassy of the Netherlands, 5 Rue C. M. Spoo,

interveners,

* Language of the case: English.

Council of the European Union, represented by Giorgio Maganza and Diego Canga Fano, Legal Advisers, 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,

supported by

French Republic, represented by Catherine de Salins, Assistant Director in the Legal Department of the Ministry of Foreign Affairs, and Denys Wibaux, Secretary for Foreign Affairs in the same Ministry, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

and

United Kingdom of Great Britain and Northern Ireland, represented by John Collins, of the Treasury Solicitor's Department, acting as Agent, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

interveners,

APPLICATION for the annulment of the Council's decision of 6 July 1995 refusing the applicant access to certain documents concerning the European Police Office (Europol), requested under Council Decision 93/731/EC of 20 December 1993 on public access to Council documents (OJ 1993 L 340, p. 43),

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

composed of: K. Lenaerts, President, P. Lindh, J. Azizi, J. D. Cooke and M. Jaeger, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 17 September 1997,

gives the following

Judgment

1 In the Final Act of the Treaty on European Union ('the EU Treaty'), signed in Maastricht on 7 February 1992, the Member States incorporated a Declaration (No 17) on the right of access to information, in the following terms:

'The Conference considers that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration. The Conference accordingly recommends that the Commission submit to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions.'

2 On 8 June 1993 the Commission published Communication 93/C 156/05 on public access to the institutions' documents (OJ 1993 C 156, p. 5), which had been submitted to the Council, the Parliament and the Economic and Social Committee on 5 May 1993. On 17 June 1993 it published Communication 93/C 166/04 on openness in the Community (OJ 1993 C 166, p. 4), which had also been submitted to the Council, the Parliament and the Economic and Social Committee on 2 June 1993.

3 On 6 December 1993 the Council and the Commission approved a Code of Conduct concerning public access to Council and Commission documents (OJ 1993 L 340, p. 41, hereinafter the 'Code of Conduct'), and each undertook to take steps to implement the principles thereby laid down before 1 January 1994.

4 In order to put that undertaking into effect, the Council adopted on 20 December 1993 Decision 93/731/EC on public access to Council documents (OJ 1993 L 340, p. 43, hereinafter 'Decision 93/731'), the aim of which was to implement the principles established by the Code of Conduct. It adopted that decision on the basis of Article 151(3) of the EC Treaty, which states that '[t]he Council shall adopt its Rules of Procedure'.

5 Article 1 of Decision 93/731 provides:

'1. The public shall have access to Council documents under the conditions laid down in this Decision.

2. "Council document" means any written text, whatever its medium, containing existing data and held by the Council, subject to Article 2(2).'

6 Article 2(2) provides that applications for documents the author of which is not the Council must be sent directly to the author.

7 Article 4(1) of Decision 93/731 provides:

'Access 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),

— the protection of the individual and of privacy,

— the protection of commercial and industrial secrecy,

— the protection of the Community's financial interests,

— the protection of confidentiality as requested by the natural or legal person who supplied any of the information contained in the document or as required by the legislation of the Member State which supplied any of that information.'

8 Article 4(2) adds that '[a]ccess to a Council document may be refused in order to protect the confidentiality of the Council's proceedings.'

9 Articles 2(1), 3, 5 and 6 of Decision 93/731 set out in particular the procedure for submitting applications for access to documents and the procedure to be followed by the Council when replying to such applications.

10 Article 7 provides:

'1. The applicant shall be informed in writing within a month by the relevant departments of the General Secretariat either that his application has been approved or that the intention is to reject it. In the latter case, the applicant shall also be informed of the reasons for this intention and that he has one month to make a confirmatory application for that position to be reconsidered, failing which he will be deemed to have withdrawn his original application.

2. Failure to reply to an application within a month of submission shall be equivalent to a refusal, except where the applicant makes a confirmatory application, as referred to above, within the following month.

3. Any decision to reject a confirmatory application, which shall be taken within a month of submission of such application, shall state the grounds on which it is based. The applicant shall be notified of the decision in writing as soon as possible and at the same time informed of the content of Articles 138e and 173 of the Treaty establishing the European Community, relating respectively to the conditions for referral to the Ombudsman by natural persons and review by the Court of Justice of the legality of Council acts.

4. Failure to reply within a month of submission of the confirmatory application shall be equivalent to a refusal.'

The facts

11 Following Sweden's accession to the European Union on 1 January 1995, the applicant decided to test the way in which the Swedish authorities applied Swedish citizens' right of access to information in respect of documents relating to European Union activities. For that purpose it contacted 46 Swedish authorities, among whom were the Swedish Ministry of Justice and the national Police Authority (Rikspolisstyrelsen), seeking access to a number of Council documents relating to the setting up of the European Police Office (hereinafter 'Europol'), including eight documents held by the national Police Authority and 12 held by the Ministry of Justice. In response to its requests the applicant was granted access to 18 of the 20 documents requested. It was refused access by the Ministry of Justice to two documents on the ground that they concerned the negotiating positions of the Netherlands and German Governments. Furthermore, certain passages in the documents to which access was granted had been deleted. In some documents it was difficult to ascertain whether passages had been deleted or not.

12 On 2 May 1995 the applicant also applied to the Council for access to the same 20 documents.

13 By letter dated 1 June 1995, the Council's General Secretariat allowed access to two documents only, those being documents which contained communications by the future French Presidency of its priorities in the field of asylum and immigration and in the field of justice. Access to the other 18 documents was refused on the ground that 'documents 1 to 15 and 18 to 20 are subject to the principle of confidentiality as laid down in Article 4(1) of Decision 93/731'.

14 On 8 June 1995 the applicant submitted a confirmatory application to the Council in order to obtain reexamination of the decision refusing access.

15 The competent department of the Council's General Secretariat, together with the Council's Legal Service, then prepared a note for the attention of the Information Working Party of the Permanent Representatives' Committee (hereinafter 'Coreper') and the Council. A draft reply, together with the exchange of correspondence that had taken place previously between the applicant and the General Secretariat, was distributed with a note dated 15 May 1995 prepared by Mr Elsen, Director-General of the Council's Justice and Home Affairs Directorate (DG H), when the first application was being examined (hereinafter 'Mr Elsen's note'). That note provided a brief summary of the contents of the documents and a preliminary assessment as to whether they could be released. It was communicated to the applicant for the first time in the course of the present proceedings as an annex to the Council's defence. On 3 July 1995 the Information Working Party decided to release two other documents but to refuse access to the remaining 16. At a meeting on 5 July 1995 Coreper approved the terms of the draft reply proposed by the Working Party.

16 The Council points out that all the documents concerned were at the disposal of the members of the Council and that copies of the documents were also available for examination at the Information Working Party meeting of 3 July.

17 After the Coreper meeting, the Council replied to the confirmatory application by a letter dated 6 July 1995 (hereinafter 'the contested decision'), in which it agreed to grant access to two other documents but rejected the application for the remaining 16 documents.

18 It explained that:

'[i]n the Council's opinion access to those documents cannot be granted because their release could be harmful to the public interest (public security) and because they relate to the Council's proceedings, including the positions taken by the members of the Council, and are therefore covered by the duty of confidentiality.

Lastly, I would like to draw your attention to the provisions of Articles 138e and 173 of the EC Treaty concerning, respectively, the conditions governing the lodging of a complaint with the Ombudsman and the institution of proceedings before the Court of Justice by a natural person against acts of the Council.'

Procedure

19 By application lodged at the Registry of the Court of First Instance on 22 September 1995 the applicant instituted this action.

20 By a letter lodged on 9 February 1996, the European Parliament sought leave to intervene in the case in support of the applicant. It subsequently withdrew its intervention.

21 By order of the President of the Fourth Chamber of the Court of First Instance of 23 April 1996, the Kingdom of Denmark, the Kingdom of the Netherlands and the Kingdom of Sweden were granted leave to intervene in support of the applicant, and the French Republic and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the defendant.

22 By letter received on 3 April 1996 the Council drew the attention of the Court of First Instance to the fact that certain material documents, including the Council's defence, had been published on the Internet. The Council considered that the applicant's conduct was prejudicial to the proper course of the procedure. It requested the Court to take appropriate measures in order to avoid further such action on the part of the applicant.

23 The Court decided to treat this incident as a preliminary issue within the meaning of Article 114(1) of the Rules of Procedure, and accordingly invited the parties to submit observations on the matter. The written procedure was suspended in the meantime. Observations were received from the applicant and from the Danish, French, Netherlands, Swedish and United Kingdom Governments.

24 In the light of those observations the Court decided that the proceedings would be resumed, without prejudice to the consequences it would attach to that preliminary issue (see below, paragraphs 135 to 139).

25 By decision of 4 June 1996, the Court referred the case to the Fourth Chamber, Extended Composition. It did not accede to a request by the Council of 20 June 1996 that the case be referred to the Court sitting in plenary session.

26 The written procedure was concluded on 7 April 1997.

Forms of order sought by the parties

27 The applicant, supported by the Kingdom of Denmark and the Kingdom of the Netherlands, requests the Court to:

— annul the contested decision;

— order the Council to pay the costs.

28 The Kingdom of Sweden requests the Court to annul the contested decision.

29 The Council requests the Court to:

— declare the application inadmissible in its entirety;

— alternatively, declare the application inadmissible in so far as it relates to documents which have already been received by the applicant and do not contain deleted passages;

— in the further alternative, reject it as unfounded;

— order the applicant to pay the costs.

30 The French Republic requests the Court to:

— dismiss the application;

— order the applicant to pay the costs.

31 The United Kingdom requests the Court to dismiss the application as inadmissible or, in the alternative, as unfounded.

Admissibility

32 The Council claims that the application is inadmissible on several grounds, relating to the identity of the applicant, non-compliance with the time-limit for bringing an action, the applicant's lack of interest in bringing the action and the Court's lack of jurisdiction. Each of those grounds will be examined in turn.

The identity of the applicant

33 Svenska Journalistförbundet is the Swedish Journalists' Union. It owns and publishes a newspaper entitled *Tidningen Journalisten*. The application is headed 'Svenska Journalistförbundets tidning' and 'Tidningen Journalisten'. The application states that the applicant is the magazine of the Swedish Journalists' Union, but the link between the two entities is not clearly explained. During the written procedure *Tidningen Journalisten* was therefore designated as 'the applicant'.

Arguments of the parties

34 In reply to a written question from the Court, the applicant's lawyers indicated by fax message of 4 August 1997 that the application should be regarded as having been lodged by the Swedish Journalists' Union as the proprietor of the magazine, since it alone of the two entities had capacity to sue under Swedish law.

35 At the hearing they added that any distinction between the Swedish Journalists' Union and *Tidningen Journalisten* was artificial. The application and confirmatory application sent to the Council had been presented on headed paper of *Svenska Journalistförbundet* and *Tidningen Journalisten* and the Council replied to *Svenska*

Journalistförbundets Tidning. Svenska Journalistförbundet was thus a party to the case from the outset.

36 The Netherlands Government considers that it would be too formalistic to consider that an action instituted by an independent division of a legal person could not be attributed to that legal person, given that it is now clear that adequate proof of authority was produced when the action was instituted and the interests of the parties to the proceedings have not been injured in any way.

37 In a letter of 9 September 1997, the Council contends that in the light of the replies of the applicant's lawyers *Tidningen Journalisten*, which it had regarded as the applicant in the case, had no capacity to sue under Swedish law.

38 It further contends that even if the Swedish Journalists' Union could be substituted for *Tidningen Journalisten*, the former could not be regarded as the addressee of the Council's reply of 6 July 1995, nor as directly and individually concerned by that decision.

39 It therefore asks the Court to dismiss the application as inadmissible.

Findings of the Court

40 The first page of the application refers to both Tidningen Journalisten and 'Svenska Journalistförbundets tidning'.

41 The proof of authority granted to the applicant's lawyers as required by Article 44(5)(b) of the Rules of Procedure was signed on behalf of the Swedish Journalists' Union by Lennart Lund, Editor in Chief of the magazine *Tidningen Journalisten*. In that regard, the applicant has lodged, as an annex to its fax message of 4 August 1997 (see paragraph 34 above), a certificate confirming that the Swedish Journalists' Union had instructed Lennart Lund to bring the present application before the Court.

42 In those circumstances it is clear that the application has, in reality, been brought by the Swedish Journalists' Union as proprietor of *Tidningen Journalisten*.

43 The Swedish Journalists' Union being a legal person entitled to sue under Swedish law, the Council cannot object to the admissibility of the application on this basis.

44 Moreover, given that the Council had addressed the two negative replies of 1 June 1995 and 6 July 1995 to 'Mr Christoph Andersson, Svenska Journalistförbundets tidning', it cannot at this stage argue that the Swedish Journalists' Union was not the addressee of the contested decision.

The time-limit for bringing the action

Arguments of the parties

45 The Council questions whether the action was brought within the prescribed time-limit. It maintains that the applicant received the contested decision on 10 July 1995. It then had two months from that date to bring an action for its annulment.

46 The Council points out that Article 1 of Annex II to the Court's Rules of Procedure, in the version then applicable, provided that procedural time-limits were to be extended for parties not habitually resident in the Grand Duchy of Luxembourg by the following:

— for the Kingdom of Belgium: two days,

— for the Federal Republic of Germany, the European territory of the French Republic and the European territory of the Kingdom of the Netherlands: six days,

— for the European territory of the Kingdom of Denmark, for the Hellenic Republic, for Ireland, for the Italian Republic, for the Kingdom of Spain, for the Portuguese Republic (with the exception of the Azores and Madeira) and for the United Kingdom: 10 days,

— for other European countries and territories: two weeks.

47 The Council, supported by the French Government, doubts that the rule applicable to non-Member States should also apply to Member States of the European Union and considers that the applicant should have brought its action in compliance with a time-limit extended on account of distance by ten days, in order to avoid any discrimination between applicants from countries that are further away from Luxembourg than Sweden, which are entitled only to a ten-day extension.

48 The applicant relies on the actual terms of Article 1 of Annex II in the version reproduced above, and considers that they do not support the Council's contention. There is no reference to 'Member States' or 'non-Member States'. In the absence of any specific extension for Sweden, that country was entitled to the extension of two weeks applicable to all the European States not specifically mentioned. The Council's argument concerning discrimination does not carry conviction, since numerous places in Belgium are further away from Luxembourg than

certain places in the Netherlands, yet all inhabitants of Belgium are entitled to a two-day extension while all inhabitants of the Netherlands are entitled to a six-day extension. Only the applicant's interpretation satisfies the requirement of legal certainty.

49 The Swedish and Netherlands Governments support that interpretation. At the hearing the Swedish Government's Agent pointed out that it was formerly entitled to an extension of two weeks.

Findings of the Court

50 It is settled law that the Community rules governing procedural time-limits must be strictly observed both in the interest of legal certainty and in order to avoid any discrimination or arbitrary treatment in the administration of justice (Case C-59/91 *France* v *Commission* [1992] ECR I-525, paragraph 8).

51 The wording of Article 1 of Annex II to the Rules of Procedure, in the version in force when the application was brought, does not support the submission that the extension for distance applicable in the case of Sweden was ten days and not two weeks. In fact, the ten-day extension applied only to certain designated countries, of which Sweden was not one. The extension of two weeks thus applied to all European countries and territories for which a shorter period was not laid down, including Sweden.

52 It follows that the action was commenced within time.

The applicant's interest in seeking annulment

Arguments of the parties

53 The Council also doubts that the application is admissible inasmuch as it concerns documents that the applicant had already received from the Swedish authorities, at least to the extent that those documents do not contain deleted passages. The Council was not informed that the purpose of the applicant's request was to identify any passages in those documents which had been deleted. The applicant's interest is general and political in nature, its intention being to ensure that the Council gives proper effect to its own Code of Conduct and Decision 93/731.

54 In the circumstances, although the Council is conscious of the fact that the applicant is the addressee of the contested decision, it questions whether the applicant is really affected by that decision within the meaning of Article 173 of the EC Treaty. That article does not allow individual actions in the public interest, but only permits individuals to challenge acts which concern them in a way in which they do not concern other individuals.

55 In this case the applicant cannot derive any benefit from obtaining access to documents which are already in its possession. Its insufficient interest in the outcome of the proceedings constitutes an abuse of procedure.

56 Supported by the French Government, the Council further contends that the release of the documents in question by the Swedish authorities to the applicant constitutes a breach of Community law, since no decision had been taken to authorise such a disclosure. It is contrary to the system of legal remedies provided for by Community law to take advantage of a breach of Community law and then to ask the Court to annul a decision whose effects have been circumvented as a consequence of such a breach. The fact that the documents in question were

brought into the public domain following an act contrary to Community law should therefore preclude the applicant from bringing an action in this case.

57 The applicant replies that the Council is confusing the rules on the admissibility of actions for the annulment of decisions brought by their addressees with the rules on the admissibility of actions for the annulment of regulations brought by certain individuals. Addressees must show that they have an interest in bringing their action but do not have to prove that they are individually concerned.

58 In this case the applicant considers that it has a sufficient interest in bringing the action and that that interest is neither political nor general in nature. It points out that *Tidningen Journalisten* publishes articles on specific subjects of general interest and on the functioning of public authorities and other matters concerning the way in which Swedish journalists can go about their job. It therefore has a direct interest in gaining access to Council documents and, if it is refused access for reasons which demonstrate that the Council is misapplying the relevant rules, in obtaining the annulment of the decision concerned so as to ensure that the Council rectifies its approach in the future. The fact that it has received documents from another source does not therefore mean that it has no interest in bringing the action.

59 In so far as the Council considers that the documents obtained from the Swedish authorities without its prior authorisation were obtained unlawfully, the applicant has a further ground for the application to be held admissible even as regards documents obtained in full from the Swedish authorities. Any use which the applicant may make of those documents will otherwise be thrown into doubt.

60 The applicant also rejects the Council's argument that the insufficient interest the applicant has in the present proceedings makes the application an abuse of pro-

cedure. It points out that at the time when it requested access to the Council's documents it had asked for and obtained from the national Police Authority only 8 of the 20 documents in question. The other 12 documents were requested from the Swedish Ministry of Justice on the same day as it sent its request for the 20 documents to the Council. Furthermore, many of the documents obtained appeared to have deleted passages and the applicant could not, therefore, be sure that it had received all the documents in full. The Council itself has not indicated to the Court which documents contain deleted passages, although it has asked the Court to declare the application inadmissible to the extent that it concerns documents which the applicant has obtained and which do not contain deleted passages. The applicant is therefore not in a position to know which documents do not contain any such passages.

61 The Swedish Government supports the applicant's arguments as to admissibility. It does not share the Council's view that the release of the documents in Sweden constituted a breach of Community law. There is no implied Community rule based on a common legal tradition whereby only the author of a document may decide whether a document is to be released or not.

62 The Netherlands Government rejects the Council's argument as regards the applicant's lack of interest in bringing proceedings. It states that it was precisely in the public interest that Decision 93/731 was adopted. The applicant is not required therefore to show a particular interest in order to be able to rely on it. The application seeks to preserve the applicant's rights as the addressee of the contested decision and is not an action in the general interest. The applicant has an interest in seeking to prevent the Council from applying a restrictive policy in regard to requests by the applicant for access to documents in the future. Moreover, the Council's allegation that the applicant is in possession of documents in breach of Community law is sufficient to show that the latter does have a legitimate interest. It goes without saying that the interest recognised by Decision 93/731 relates to legally obtained access to a document.

63 The United Kingdom Government contends that the application is inadmissible because the applicant has no sufficient interest in the outcome of the proceedings. The application is therefore an abuse of procedure. None of the reasons given by the applicant is sufficient to give rise to an interest in bringing proceedings under Article 173 of the EC Treaty.

Findings of the Court

64 The applicant is the addressee of the contested decision and, as such, is not obliged to prove that the decision is of direct and individual concern to it. It need only prove that it has an interest in the annulment of the decision.

65 In the case of Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents (OJ 1994 L 46, p. 58, hereinafter 'Decision 94/90'), the Court has already held that from its overall scheme, it is clear that Decision 94/90 is intended to apply generally to requests for access to documents, and that, by virtue of that decision, any person may request access to any unpublished Commission document, and is not required to give a reason for the request (Case T-124/96 *Interporc* v *Commission* [1998] ECR II-231, paragraph 48).

66 The objective of Decision 93/731 is to give effect to the principle of the largest possible access for citizens to information with a view to strengthening the democratic character of the institutions and the trust of the public in the administration. Decision 93/731, like Decision 94/90, does not require that members of the public must put forward reasons for seeking access to requested documents.

67 It follows that a person who is refused access to a document or to part of a document has, by virtue of that very fact, established an interest in the annulment of the decision.

68 In this case the contested decision denied access to 16 of the 20 documents requested. The applicant has therefore proved an interest in the annulment of that decision.

69 The fact that the requested documents were already in the public domain is irrelevant in this connection.

The jurisdiction of the Court

Arguments of the parties

70 The French Government states that the contested decision concerns the arrangements for access to documents adopted on the basis of Title VI of the EU Treaty. No provision of Title VI governs the conditions of access to documents adopted on the basis of its provisions. In the absence of an express provision, Decision 93/731, which was adopted on the basis of Article 151(3) of the EC Treaty, is not applicable to acts adopted on the basis of Title VI of the EU Treaty.

71 The United Kingdom Government contends that the jurisdiction of the Court of First Instance does not extend to the matters covered by Title VI of the EU Treaty, and therefore to the question of access to the documents concerning those matters. Justice and Home Affairs fall outside the scope of the EC Treaty and are matters for inter-Governmental cooperation. It is clear from Article E of the EU Treaty

that in relation to Justice and Home Affairs the institutions in question are to exercise their powers under the conditions and for the purposes provided for by Title VI of the EU Treaty. In exercising those powers they are acting within the scope of Title VI, not of the EC Treaty. It follows from Article L of the EU Treaty that the provisions of the EC Treaty concerning the powers of the Court do not apply to Title VI of the EU Treaty. Accordingly the jurisdiction of the Court is excluded as much in procedural matters as in matters of substance. In any event, it is frequently impossible to draw a clear-cut distinction between the two.

72 The United Kingdom Government accepts that Decision 93/731 applies to Title VI documents, but considers that it does not follow that the Court may exercise jurisdiction over a refusal to allow access to such documents. In particular, the Court does not acquire jurisdiction simply because Decision 93/731 was adopted pursuant to Article 151 of the EC Treaty. Article 7(3) of Decision 93/731 is irrelevant in that connection, since reference to the possibility of an action under Article 173 of the EC Treaty cannot enlarge the jurisdiction of the Court.

73 According to the applicant, Decision 93/731 itself expressly confirms that the Court has jurisdiction in cases concerning application of that decision, since it specifies that its provisions are applicable to any document held by the Council. The criterion for application of Decision 93/731 is therefore the fact that the document is held by the Council, irrespective of its subject-matter, with the exception of documents drawn up outside the Council. In Case T-194/94 *Carvel and Guardian Newspapers* v *Council* [1995] ECR II-2765, the Court of First Instance annulled a decision whereby the Council had refused the applicants access to the decisions adopted by the 'Justice and Home Affairs' Council; the Council did not contest the jurisdiction of the Court to adjudicate on access to documents falling under Title VI of the EU Treaty in that case.

74 That argument is supported by the Swedish, Danish and Netherlands Governments. Although the Court has no jurisdiction to review the legality of Title VI documents, it does have jurisdiction over matters concerning public access to those documents.

75 The Netherlands Government adds that the contested decision was not adopted on the basis of Title VI of the EU Treaty, nor does that Title constitute the legal basis of Decision 93/731. The Court will not therefore be required to adjudicate on cooperation in Justice and Home Affairs as such.

Findings of the Court

76 Before considering the objection raised by the French and United Kingdom Governments, it is appropriate to consider its admissibility in the light of the Rules of Procedure.

77 This objection was not raised by the Council in the written pleadings. Furthermore, an application to intervene is to be limited to supporting the form of order sought by one of the parties (final paragraph of Article 37 of the EC Statute of the Court of Justice, applicable to the Court of First Instance by virtue of Article 46 of that Statute).

78 It follows that the French and United Kingdom Governments are not entitled to raise an objection to admissibility and that the Court is not therefore obliged to consider the submissions they have made in that regard (see Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraph 22).

79 However, under Article 113 of the Rules of Procedure, the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case, including any raised by interveners (Case T-239/94 *EISA* v *Commission* [1997] ECR II-1839, paragraph 26).

80 In this case the issue as to admissibility raised by the French and United Kingdom Governments does involve an absolute bar to proceeding in that it turns upon the jurisdiction of the Court to entertain the application. It can accordingly be examined by the Court of its own motion.

81 In this regard, Decision 93/731, in Articles 1(2) and 2(2), expressly provides that it is to apply to all Council documents. Decision 93/731 therefore applies irrespective of the contents of the documents requested.

82 Moreover, pursuant to Article K.8(1) of the EU Treaty, measures adopted pursuant to Article 151(3) of the EC Treaty, which is the legal basis for Decision 93/731, are applicable to measures within the scope of Title VI of the EU Treaty.

83 Thus, Council Decision 93/662/EC of 6 December 1993 adopting the Council's Rules of Procedure (OJ 1993 L 304, p. 1), which was adopted on the basis of *inter alia* Article 151(3) of the EC Treaty, also applies to meetings of the Council relating to Title VI of the EU Treaty.

84 It follows that, in the absence of any provision to the contrary in Decision 93/731 itself, its provisions apply to documents relating to Title VI of the EU Treaty.

85 The fact that the Court has, by virtue of Article L of the EU Treaty, no jurisdiction to review the legality of measures adopted under Title VI does not curtail its jurisdiction in the matter of public access to those measures. The assessment of the legality of the contested decision is based upon its jurisdiction to review the legality of decisions of the Council taken under Decision 93/731, on the basis of Article 173 of the EC Treaty, and does not in any way bear upon the intergovernmental

cooperation in the spheres of Justice and Home Affairs as such. In any event, in the contested decision the Council itself drew the applicant's attention to its entitlement to appeal under Article 173 of the EC Treaty (see above, paragraph 18).

86 The fact that the documents relate to Title VI only is relevant in so far as the contents of the documents might possibly come within the scope of one or more of the exceptions provided for in Decision 93/731. That fact is thus relevant only to the examination of the substantive lawfulness of the decision taken by the Council and not to the admissibility of the application as such.

87 It follows from the foregoing that the application is admissible.

Substance

88 The applicant puts forward five pleas in law in support of its application for the annulment of the contested decision, namely: breach of the fundamental principle of Community law that citizens of the European Union should be granted the widest and fullest possible access to Community institutions' documents; breach of the principle of protection of legitimate expectations; infringement of Article 4(1) of Decision 93/731; infringement of Article 4(2) of Decision 93/731; and infringement of Article 190 of the EC Treaty.

89 The Court will first examine the third and fifth pleas together.

Third and fifth pleas in law: infringement of Article 4(1) of Decision 93/731 and infringement of Article 190 of the EC Treaty

Arguments of the parties

— Infringement of Article 4(1) of Decision 93/731

90 The applicant claims that the Council did not make a real assessment of the likely impact that granting access to the documents requested might have on public security in the European Union. On the contrary, the fact that a confirmatory application was necessary before the Council agreed to release one of the documents which had already been handed over to the European Parliament and was thus fully in the public domain is particularly disturbing in that respect.

91 In the absence of a definition of public security in Decision 93/731, the applicant suggests the following definition:

'documents or passages of documents whose access by the public would expose Community citizens, Community institutions or Member States' authorities to terrorism, crime, espionage, insurrection, destabilisation and revolution, or would directly hinder the authorities in their efforts to prevent such activities, shall not be accessible by virtue of the public security exception'.

92 The applicant then gives a precise description of the contents of all the documents requested that are in its possession, in support of its argument that the public security exception was applied in an unlawful manner by the Council.

93 It rejects the Council's assertion that it would not be in the interest of public security to allow those involved in illicit activities to obtain detailed knowledge of the structures and means available to police cooperation in the European Union. That assertion simply bears no relation to the actual content of the documents in question. The applicant points out that the two documents to which the Swedish authorities refused access concerned not public security but the negotiating positions of the Kingdom of the Netherlands and the Federal Republic of Germany.

94 The Council denies that it considered all the documents relating to Europol to be covered by the public security exception. The fact that four documents were disclosed shows that a real assessment was carried out, the outcome of which was that some of the requested documents could be released, whilst others could not.

95 The Council, supported by the French and United Kingdom Governments, contends that there is in any case no need to adopt a restrictive definition of public security for the purposes of the application of Decision 93/731. 'Public security' must be defined in a flexible way in order to meet changing circumstances. In any event, an assessment as to whether the release of a specific document could undermine the protection of the public interest (public security) can only be made by the Council itself.

96 That applies particularly as regards documents dealing exclusively with issues which fall under Titles V and VI of the EU Treaty. The Council trusts that, should the Court consider that it has jurisdiction in matters concerning access to documents dealing exclusively with matters falling under Title VI of the EU Treaty, it would nevertheless refrain from substituting its assessment for that of the Council in this regard.

97 The Council considers that the applicant's summary of the documents in question is neither objective nor precise.

98 The Swedish Government takes issue with the description given by the Council of the way in which the Information Working Party and Coreper dealt with the request for access to the documents in question.

99 In particular the documents requested were not made available to the Swedish representative in the Information Working Party before its meeting. The matter could not be dealt with satisfactorily in the short time available.

100 As far as Coreper was concerned, the only matter addressed by it was whether a decision concerning the request for disclosure could be taken by written procedure. When Coreper voted on 5 July 1995, the Swedish Government and four other Member States abstained. The Swedish Government made a statement expressing its dissatisfaction at the way the case had been handled.

101 The Danish Government shares to a large extent the Swedish Government's criticism of the way the case was handled. It considers that the Council's assessment of the various documents was purely formalistic. In the Council Secretariat the possibilities of derogation in Article 4(1) of Decision 93/731 were first examined and it was thought that considerations of public security could justify withholding of documents relating to Europol in general. When the confirmatory application was being examined, doubts arose as to whether public security considerations could really be applied generally as a ground for withholding Europol documents. Accordingly, it was then decided to retreat to a statement of reasons based on the very general considerations of Article 4(2) of Decision 93/731. The discussion in the Council Secretariat did not focus on whether publication would entail a risk of

real adverse consequences either for public security or the requirement of confidentiality.

102 The Netherlands Government, having examined the documents in question, considers that the refusal to grant access to the documents cannot under any circumstances be justified by the requirements of public security. However, it reserves its opinion as far as a document which is not in its possession is concerned. In its view, in order to establish whether the Council was justified in refusing access to the documents in question on the ground of public security, it is necessary to examine, document by document, whether access to them would undermine the fundamental interests of the Community or of the Member States to the extent that their existence would be jeopardised. It points out that the Council later agreed to make available at least four of those documents to a journalist, Mr T., and that the refusal to grant the applicant access to those documents therefore constitutes arbitrary discrimination.

103 The Council insists that the content of the documents was in fact examined. It considers that there is no evidence that the other members of the Council who abstained did so for the same reasons as the Swedish Government. No Member State voted against the confirmatory decision or associated itself with the Swedish Government's statement.

— Infringement of Article 190 of the EC Treaty

104 The applicant claims that the refusal, expressed in a single sentence, to grant access to 16 of the 20 documents does not satisfy the requirements of Article 190 of the EC Treaty or Article 7(3) of Decision 93/731. It was impossible for it to assess whether the refusal should be challenged before the Court, and equally impossible for the Court to assess whether the Council had made proper use of the exceptions referred to above. It was only because the applicant had in its possession most of the documents concerned, in full or in part, that it was able to show that the Council had applied those exceptions unlawfully in the present case. It asks the Court to examine the documents concerned in order to assess whether the Council was justified in availing itself of the exceptions cited.

105 The Council, supported by the French and United Kingdom Governments, contends that the statement of reasons for the contested decision discloses the essential objective pursued by the Council and its decision is therefore duly reasoned. It would be excessive to require a specific statement of reasons for each of the technical choices made by the institution. If it were necessary to provide a very detailed statement of reasons in the case of negative responses to requests for access, the underlying objectives of Article 4(1) would be compromised. Decision 93/731 lays down very tight time-limits for replying to applications. Consequently, when applications cover many documents involving large numbers of pages, the statement of reasons which can be provided will inevitably be rather briefer than the statement of reasons given in reply to applications of a more limited scope. Furthermore, the requested documents clearly had an essentially common subject-matter.

106 The Swedish Government maintains that the balancing of the Council's interest in maintaining the confidentiality of its proceedings and the public's interest in having access to documents should be undertaken in relation to each separate document and that the decision does not state sufficient reasons. It claims that the Council does not indicate whether both the reasons given for maintaining confidentiality are applicable to all the documents or, if that is not the case, which reason or reasons for maintaining confidentiality are applicable to each particular document. The public is entitled to know, from the particular circumstances surrounding each separate action or matter, why a specific document is to be kept confidential.

107 The Danish Government states that it is not sufficient to refer in general to the possibilities of derogation and to reproduce the terms of Decision 93/731. Refusal under Article 4(1) of that decision cannot lawfully be explained by indicating that a particular interest which is included therein can be regarded generally as affected, just as the option of derogation with regard to the duty of confidentiality in Article 4(2) cannot form the basis of a refusal in general terms. The principle of

assessment on the facts is applicable and in certain cases the Council might be required to produce a document with any information requiring protection under Article 4 deleted.

108 The Netherlands Government also states that the Council's reason for refusing access to the various documents is obscure. The contested decision confines itself to repeating the criteria in Article 4 of Decision 93/731 and does not reveal which documents were withheld on the basis of Article 4(1) and which withheld on the basis of Article 4(2). As regards the documents to which access was refused on the ground of confidentiality of the Council's proceedings, it does not appear, moreover, from the contested decision, that the requisite balancing of interests took place.

Findings of the Court

109 Decision 93/731 is a measure which confers on citizens rights of access to documents held by the Council. It is clear from the scheme of the decision that it applies generally to requests for access to documents and that any person is entitled to ask for access to any Council document without being obliged to put forward reasons for the request (see above, paragraph 65).

110 There are two categories of exception to the principle of general access for citizens to Council documents set out in Article 4 of Decision 93/731. These exceptions must be construed and applied restrictively so as not to defeat the general principle enshrined in the decision (see, in relation to the analogous provisions of Decision 94/90, Case T-105/95 *WWF UK* v *Commission* [1997] ECR II-313, paragraph 56).

111 The wording of the first category of exceptions, drafted in mandatory terms, provides that access to a Council document cannot be granted if its disclosure could undermine the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations) (see above, paragraph 7). Accordingly, the Council is obliged to refuse access to documents which come within any one of the exceptions in this category once the relevant circumstances are shown to exist (see Case T-194/94 *Carvel and Guardian Newspapers* v *Council*, cited above, paragraph 64).

112 Nevertheless, it follows from the use of the verb 'could', in the present conditional, that in order to demonstrate that the disclosure of particular documents could undermine the protection of the public interest, the Council is obliged to consider in respect of each requested document whether, in the light of the information available to it, disclosure is in fact likely to undermine one of the facets of public interest protected by this first category of exceptions. If that is the case, the Council is obliged to refuse access to the documents in question (Case T-124/96 *Interporc*, cited above, paragraph 52, and Case T-83/96 *van der Wal* v *Commission* [1998] ECR II-545, paragraph 43).

113 By way of contrast, the wording of the second category, drafted in enabling terms, provides that the Council may also refuse access in order to protect the confidentiality of its proceedings (see above, paragraph 8). It follows that the Council enjoys a margin of discretion which enables it, if need be, to refuse access to documents which touch upon its deliberations. It must, nevertheless, exercise this discretion by striking a genuine balance between on the one hand, the interest of the citizen in obtaining access to the documents and, on the other, any interest of its own in maintaining the confidentiality of its deliberations (Case T-194/94 *Carvel and Guardian Newspapers*, cited above, paragraphs 64 and 65).

114 The Council is also entitled to rely jointly on an exception derived from the first category and one relating to the second category in order to refuse to grant access to documents which it holds, there being no provision in Decision 93/731 which precludes it from so doing. The possibility cannot be ruled out that the disclosure

of particular documents by the Council could cause damage both to the interest protected by the first category of exception and to the Council's interest in maintaining the confidentiality of its deliberations (Case T-105/95 *WWF UK*, cited above, paragraph 61).

115 In the light of these considerations, it is necessary to consider whether the contested decision satisfies the criteria laid down by Article 190 of the Treaty regarding the statement of reasons.

116 The duty to state reasons in individual decisions has the double purpose of permitting, on the one hand, interested parties to know the reasons for the adoption of the measure so that they can protect their own interests and, on the other hand, enabling the Community court to exercise its jurisdiction to review the validity of the decision (see, in particular, Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR 1-395, paragraph 15, and Case T-85/94 *Branco* v *Commission* [1995] ECR II-45, point 32).

117 The statement of reasons for a decision refusing access to a document must therefore contain — at least for each category of documents concerned — the particular reasons for which the Commission considers that disclosure of the requested documents comes within the scope of one of the exceptions provided for in Decision 93/731 (Case T-105/95 *WWF UK*, cited above, paragraphs 64 and 74, and Case T-124/96 *Interporc*, cited above, paragraph 54).

118 In the contested decision (see above, paragraph 18) the Council indicated only that the disclosure of the 16 documents in question would prejudice the protection of the public interest (public security) and that the documents related to the proceedings of the Council, particularly the views expressed by members of the Council, and for that reason fell within the scope of the duty of confidentiality.

119 Although the Council was at once invoking both the mandatory exception based upon the protection of the public interest (public security) and also the discretionary exception based upon protection of the confidentiality of its proceedings, it did not specify whether it was invoking both exceptions in respect of all of the documents refused or whether it considered that some documents were covered by the first exception while others were covered by the second.

120 In that respect, the Court notes that although the initial refusal contained in the letter of 1 June 1995 was based only upon 'the principle of confidentiality as set out in Article 4(1) of Decision 93/731' the Council was nevertheless able to grant access to two further documents in the course of its consideration of the confirmatory request, namely a report on the activities of the Europol Drugs Unit (document No 4533/95) and a provisional agenda for a meeting of Committee K.4 (document No 4135/95), documents clearly relating to the activities of the Council within the scope of Title VI of the EU Treaty. If the fact that such documents related to Title VI of the EU Treaty meant that they were automatically covered by the exception based upon the protection of the public interest (public security), the Council had no entitlement to grant access to the documents. Moreover, given that the Council considered that it was entitled to grant access to these two documents, having first balanced the interests involved, it follows that the Council must necessarily have considered that all of the documents relating to Title VI did not automatically fall within the scope of the first exception based upon the protection of the public interest (public security). Furthermore, the Council itself admitted that it had not considered that all of the documents connected with Europol were covered by the exception relating to public security.

121 The case-law of the Court of Justice shows that the concept of public security does not have a single and specific meaning. Thus, the concept covers both the internal security of a Member State and its external security (see Case C-70/94 *Werner* v *Germany* [1995] ECR I-3189, paragraph 25), as well as the interruption of supplies of essential commodities such as petroleum products which may threaten the very existence of a country (Case 72/83 *Campus Oil* v *Minister for Industry and Energy* [1984] ECR 2727, paragraph 34). The concept could equally well encompass situations in which public access to particular documents could obstruct the attempts of authorities to prevent criminal activities, as the applicant has argued.

122 Mr Elsen's note (see above, paragraph 15) demonstrates that most of the documents to which access was refused were concerned only with negotiations on the adoption of the Europol Convention, in particular the proposals of the Presidency and of other delegations with regard to those negotiations, and not with operational matters of Europol itself. Thus, in the absence of any explanation on the part of the Council as to why the disclosure of these documents would in fact be liable to prejudice a particular aspect of public security, it was not possible for the applicant to know the reasons for the adoption of the measures and therefore to defend its interests. It follows that it is also impossible for the Court to assess why the documents to which access was refused fall within the exception based upon the protection of the public interest (public security) and not within the exception based upon the protection of the confidentiality of the Council's proceedings.

123 Nor can the Council claim that, in this instance, it was unable to explain why the exception applied without undermining the essential purpose of the exception, given the very nature of the interest to be protected and the mandatory character of the exception. In fact, Mr Elsen's note clearly shows that it was possible to give an indication of the reasons why certain documents could not be disclosed to the applicant without at the same time disclosing their contents.

124 Finally, so far as concerns the exception in favour of the protection of the confidentiality of its proceedings, the Council did not specifically indicate in the contested decision that all of the documents included in the applicant's request were covered by the exception based upon the protection of the public interest (see paragraph 119, above). The applicant could not therefore rule out the possibility that access to some of the documents in question was being refused because they were covered only by the exception based upon the protection of the confidentiality of its proceedings.

125 The terms of the contested decision do not, however, permit the applicant and, therefore, the Court to check whether the Council has complied with its duty to carry out a genuine balancing of the interests concerned as the application of Article 4(2) of Decision 93/731 requires. In fact, the contested decision mentions

only the fact that the requested documents related to proceedings of the Council, including the views expressed by members of the Council, without saying whether it had made any comparative analysis which sought to balance, on the one hand, the interest of the citizens seeking the information and, on the other hand, the criteria for confidentiality of the proceedings of the Council (see Case T-194/94 *Carvel and Guardian Newspapers*, cited above, paragraph 74).

126 Moreover, the first reply from the Council — sent to the applicant in French although the applicant had written the initial request in German — confined itself to citing the provisions of Article 4(1) of Decision 93/731, in support of its view that the documents were subject to 'the principle of confidentiality'. It did not therefore permit the applicant or the Court to confirm that the Council had genuinely balanced the interests involved at the stage of its consideration of the applicant's first request.

127 It follows from all of the foregoing that the contested decision does not comply with the requirements for reasoning as laid down in Article 190 of the Treaty and must therefore be annulled without there being any need to consider the other grounds raised by the applicant or to look at the contents of the documents themselves.

The request of the Netherlands Government that the Court of First Instance invite the Court of Justice to produce a note drafted by its services

128 The Netherlands Government requests that the Court of First Instance invite the Court of Justice to produce a note drafted by the Research and Documentation service of the Court for the purposes of that Court's judgment of 30 April 1996 in Case C-58/94 *Netherlands* v *Council* [1996] ECR I-2169.

129 As the present judgment is not based upon that note, there is no need to rule on this request.

Publication of the defence on the Internet

Arguments of the parties

130 As indicated in paragraph 22 above, by letter received on 3 April 1996 the Council drew the attention of the Court to the fact that certain pertinent documents, including the Council's defence, had been published on the Internet. It considers that the applicant's conduct was prejudicial to the proper course of the procedure. The Council laid particular stress on the fact that the text of the defence had been edited by the applicant before it was placed on the Internet. Furthermore, the names and contact details of the Council's Agents in the case were given and the public encouraged to send their comments on the case to those Agents. The Council requested the Court to take any measures which might be appropriate in order to avoid further such action on the part of the applicant.

131 By letter received on 3 May 1996, the applicant's lawyers explained that they had played no role in the placing of the defence and other documents concerning the case on the Internet. They had no knowledge of those facts before receiving the letter from the Registry of the Court of First Instance. They had immediately asked the applicant to remove all the documents from the Internet, and informed it that they would no longer be able to represent it if that was not done.

132 In its observations received on 24 May 1996, the applicant confirmed that it had placed the documents on the Internet without informing its lawyers. It explained that the editing of the defence had been carried out for purely practical reasons and that its intention was not to alter its contents or weaken the Council's case. It simply wanted to shorten the defence by not reproducing certain passages in view of the time required to put the defence on the Internet. It had no intention of putting pressure on the Council and added that the names and contact details of the

Council's Agents were included simply because they knew about the case, not to encourage the public to contact them directly as individuals.

133 The applicant undertook to refrain from placing on the Internet or in any other way making available to the public any further documents exchanged between the parties in the case. It would thenceforth restrict itself to normal media reports on the case. The applicant further indicated that it had taken the decision to have the defence withdrawn from the Internet. However, the document had been placed on the Internet by an independent organisation, Grävande Journalister (an association of Swedish investigative reporters and editors), which refused to withdraw it. Under Swedish law the applicant had no legal means of forcing that association to withdraw the document and the latter was therefore responsible for keeping the defence on the Internet.

134 By letter received on 28 May 1996, the Swedish Government explained that the Legal Director at the Ministry of Justice had received a copy of the defence from the applicant and the Legal Director had subsequently released a copy to a journalist without any objection on the applicant's part. In doing so, the Legal Director had taken into account the fact that the applicant had already published a detailed report on the main elements of the defence and had given the names of the representatives of the Council concerned. Another factor in that decision was that the document had not been transmitted to the Swedish Government by a Community institution, but by a private individual who had the right to dispose of the document and had already demonstrated his willingness to disseminate it. The Ministry was in no way involved in the publication of the defence on the Internet and the newspaper's action in that respect was regarded as a provocation.

Findings of the Court

135 Under the rules which govern procedure in cases before the Court of First Instance, parties are entitled to protection against the misuse of pleadings and evi-

dence. Thus, in accordance with the third subparagraph of Article 5(3) of the Instructions to the Registrar of 3 March 1994 (OJ 1994 L 78, p. 32), no third party, private or public, may have access to the case-file or to the procedural documents without the express authorisation of the President, after the parties have been heard. Moreover, in accordance with Article 116(2) of the Rules of Procedure, the President may exclude secret or confidential documents from those furnished to an intervener in a case.

136 These provisions reflect a general principle in the due administration of justice according to which parties have the right to defend their interests free from all external influences and particularly from influences on the part of members of the public.

137 It follows that a party who is granted access to the procedural documents of other parties is entitled to use those documents only for the purpose of pursuing his own case and for no other purpose, including that of inciting criticism on the part of the public in relation to arguments raised by other parties in the case.

138 In the present case, it is clear that the actions of the applicant in publishing an edited version of the defence on the Internet in conjunction with an invitation to the public to send their comments to the Agents of the Council and in providing the telephone and telefax numbers of those Agents, had as their purpose to bring pressure to bear upon the Council and to provoke public criticism of the Agents of the institution in the performance of their duties.

139 These actions on the part of the applicant involved an abuse of procedure which will be taken into account in awarding costs (see below, paragraph 140), having regard, in particular, to the fact that this incident led to a suspension of the proceedings and made it necessary for the parties in the case to lodge additional submissions in this respect.

Costs

140 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 the applicant asked that the Council be ordered to pay the costs. However, under Article 87(3) of the Rules, the Court may, where the circumstances are exceptional, order that the costs be shared or that each party bear its own costs. In view of the abuse of procedure found to have been committed by the applicant, the Council will be ordered to pay only two-thirds of the applicant's costs.

141 Pursuant to Article 87(4) of the Rules of Procedure, the interveners will be ordered to pay their own costs.

On those grounds,

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

hereby:

1. Annuls the Council's decision of 6 July 1995 refusing the applicant access to certain documents relating to the European Police Office (Europol);

2. Orders the Council to pay two-thirds of the applicant's costs as well as its own costs;

3. Orders the Kingdom of Denmark, the French Republic, the Kingdom of the Netherlands, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.

Lenaerts Lindh Azizi

Cooke Jaeger

Delivered in open court in Luxembourg on 17 June 1998.

H. Jung P. Lindh

Registrar President