

ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)

10 January 2005 \*

In Case T-357/03,

**Bruno Gollnisch**, residing in Limonest (France),

**Marie-France Stirbois**, residing in Villeneuve-Loubet (France),

**Carl Lang**, residing in Boulogne-Billancourt (France),

**Jean-Claude Martinez**, residing in Montpellier (France),

**Philip Claeys**, residing in Overijse (Belgium),

**Koen Dillen**, residing in Antwerp (Belgium),

represented by W. de Saint Just, avocat,

applicants,

\* Language of the case: French.

**European Parliament**, represented by H. Krück and N. Lorenz, acting as Agents,  
with an address for service in Luxembourg,

defendant,

ACTION for annulment of the decision of the Bureau of the European Parliament of  
2 July 2003 concerning the amendment of the Rules on the use of appropriations  
from budget item 3701 of the general budget of the European Union,

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

composed of J. Pirrung, President, A.W.H. Meij and I. Pelikánová, Judges,

Registrar: H. Jung,

makes the following

## **Order**

### **Legal and factual background**

- 1 The 14th edition of the Rules of Procedure of the European Parliament, in force from 1 May 1999 (OJ 1999 L 202, p. 1), was replaced by the 15th edition of the Rules of Procedure of the European Parliament, in force from 1 February 2003 (OJ 2003 L 61, p. 1; ‘the Rules of Procedure’). The wording of Rule 22 is identical in both editions of the Rules of Procedure.
- 2 According to Rule 22(2) of the Rules of Procedure, ‘[t]he Bureau [of the Parliament] shall take financial, organisational and administrative decisions on matters concerning Members and the internal organisation of Parliament, its Secretariat and its bodies’.
- 3 Item 3701 of the general budget of the European Union covers secretarial costs, administrative operating expenditure, information activities and expenditure associated with the political groups and non-attached Members of the Parliament. In the 2003 financial year, appropriations against that item amounted to EUR 37 948 000 (OJ 2003 L 54, pp. 1, 201, 222).
- 4 On the basis of Rule 22 of the Rules of Procedure, the Parliament’s Bureau adopted the Rules on the use of appropriations from budget item 3701 (‘the Rules’).

- 5 The Rules were amended in an exercise that was initiated in 2002 and continued in 2003. At its meeting on 8 April 2003, the Conference of Presidents of the Parliament decided to approve the proposals for amending the Rules, to submit those proposals to the Parliament's Bureau and to invite the latter to consult the Committee on Budgetary Control and the Legal Service before finally adopting them. By notes of 21 and 22 May 2003, the Secretary-General of the Parliament asked the Committee on Budgetary Control and the Parliament's Legal Service to deliver to the Parliament's Bureau their respective opinions on the proposal to amend the Rules. By a note dated 16 June 2003 the Committee on Budgetary Control sent the President of the Parliament a preliminary opinion. The Legal Service gave its opinion on 25 June 2003.
  
- 6 The decision of the Parliament's Bureau of 2 July 2003 ('the contested measure') amends the Rules 'subject to the change to the Rules of Procedure of the Parliament and other modifications required in the light of further consultations'.
  
- 7 Following adoption of the contested measure, Article 1.1.1 of Part 1 of the Rules states that '[t]he appropriations made available from item 3701 are intended to cover ... the administrative and operational expenditure of the parliamentary groups/non-attached Members' secretariat'. Previously, that article stated:

'The appropriations, entered under item 3701, are intended to cover ... the parliamentary groups'/non-attached Members' secretarial, administrative and operational expenditure ...'

8 Article 1.3 of Part 1 of the Rules, as amended by the contested measure, states:

‘1.3.1 ... Where a non-attached Member joins a political group, the Administration shall submit a report on the statement of expenditure as at the date on which he or she joins the group. If appropriate, the appropriations not used by the non-attached Member shall be transferred to the group concerned.

1.3.2 ... Where a non-attached Member resigns, the Administration shall close the accounts of that Member, taking account of commitments previously entered into in writing.’

9 Before the adoption of the contested measure, Article 1.3 of Part 1 of the Rules required a non-attached Member who joined a political group or who resigned to submit a report on the statement of expenditure to the Director of Financial Affairs and to repay the unused appropriations if necessary. It also provided that any unjustified or non-compliant expenditure was to be repaid by the resigning non-attached Member.

10 With adoption of the contested measure, Article 1.4 of Part 1 of the Rules no longer applies to non-attached Members. As amended, that provision lays down the rules applicable to the political groups alone on responsibility for the use of appropriations.

- 11 The contested measure adds the following paragraph to Article 1.5 of Part 1 of the Rules:

‘1.5.1 The parliamentary group’s name or the name of the non-attached Member(s) and the EP logo must be mentioned in connection with any political or information activity financed by the appropriations entered under item 3701.’

- 12 Article 1.6.1 of Part 1 of the Rules, as amended by the contested measure, provides that ‘[g]roups may support a European political party only within the terms of [certain measures]’. Prior to adoption of the contested measure, that provision stated:

‘Groups/non-attached Members may support a European Political Party only within the terms of [certain measures]’.

- 13 Article 1.6.2, amended by the contested measure, is worded as follows:

‘Groups or non-attached Members that are members of an external organisation may support it financially from item 3701 appropriations, in the form of a subsidy or a subscription, up to a maximum amount of five per cent of their annual appropriations received under budget line 3701 ...’

14 Previously, that provision stated:

‘Groups/non-attached Members may support an external activity or organisation financially, in the form of a subsidy (or a subscription if they are members of the organisation), up to a maximum of five per cent of their annual appropriations under budget line 3701.’

15 Article 1.7 of Part 1 of the Rules, as amended by the contested measure, provides that ‘[o]ther than staff employed in conformity with the Staff Regulations of officials and other servants of the European Communities, the political groups may employ staff using funds on budget line 3701’. Before being amended by the contested measure, that provision gave non-attached Members the same facility.

16 The contested measure substantially amends Articles 2.1 to 2.7 of Part 1 of the Rules which lay down inter alia the rules relating to the operation of the political groups’ annual budgets, purchases, inventories, accounting, financial control and the annual report on the use of appropriations. It is apparent from the contested measure that those provisions, as amended, no longer apply to non-attached Members.

17 On the other hand, non-attached Members are subject to the rules laid down in Article 2.9, which was inserted into the Rules by the contested measure. That provision, headed ‘Rules specific to the non-attached Members’, states:

‘2.9.1 Non-attached Members’ expenditure shall be effected either through direct payments to suppliers or through reimbursement by the Administration as soon as

possible, upon submission of the supporting and other documents required by these rules and after verification that they are in conformity with the rules. The Administration shall check that:

- (a) the expenditure is in accordance with the rules and is not covered by other allowances;
- (b) the rules have been observed;
- (c) the principle of sound financial management has been applied;
- (d) the expenditure is backed up by original supporting documents (or by certified true copies, as certified by the supplier or any other authority empowered to certify conformity).

Upon request, non-attached Members may obtain 10% advance on their annual allocation.

Before the close of a financial year, the Administration shall regularise advances paid on the basis of supporting documents submitted by Members ...

In connection with regularisation, any expenditure not justified or not complying with the rules shall be rejected and the corresponding appropriations repaid to the European Parliament within three months.



The financial year shall begin on 1 January and end on 31 December.

In the years in which European elections are held, the first budgeting period shall begin on 1 January and end on 30 June and the second shall begin on 1 July and end on 31 December.

2.9.2 Appropriations that are not used during the financial year may be carried over to the following financial year up to a maximum of 50% of the appropriations received from the European Parliament's budget.

Amounts exceeding 50% shall be cancelled, for the benefit of the European Parliament's budget, after the accounts have been closed.

2.9.3 Appropriations for non-attached Members shall be managed by the Administration of the European Parliament in accordance with the annexed accounting plan.

2.9.4 Any advance granted pursuant to Article 2.9.1 of these rules shall be paid into bank accounts specifically opened for that purpose by non-attached Members.

2.9.5 Assets purchased by non-attached Members from their item 3701 appropriations shall be entered in the European Parliament's inventory. Non-consumables with a useful life exceeding one year and an acquisition value equal to or greater than the threshold laid down for Parliament property shall be entered in the inventory. The inventory shall be kept in accordance with the detailed rules annexed hereto.

2.9.6 The Administration shall prepare a statement of income and expenditure and balance sheet for each Member, establishing the regularity of the accounts and their conformity with these rules. These documents shall subsequently be published on the website of the European Parliament.

2.9.7 The President of the European Parliament shall forward these documents, which he shall receive before 30 April of the following financial year, to the Bureau and the Committee on Budgetary Control, which shall deal with them in accordance with the powers conferred upon them under Parliament's Rules of Procedure.

2.9.8 Where the Bureau, having been consulted pursuant to the previous subparagraph and in agreement with the Committee on Budgetary Control, takes the view that the appropriations have not been used in accordance with the present rules, these appropriations shall be repaid to the European Parliament within three months of the date on which the irregularity was identified.'

18 Article 2.8 of Part 1 of the Rules, amended by the contested measure, provides that the groups and non-attached Members are to consult with each other concerning any matter regarding the application of the Rules.

19 The contested measure also amends Part 2 of the Rules, headed 'The Accounting Plan', and, more specifically, certain items of expenditure in the profit and loss account.

20 Thus, for non-attached Members, recruitment and staff entertainment costs as well as salaries and related costs are not authorised as staff expenditure on budgetary line 3701 (Part 2, Section 1.2, Chapter 1, items 2, 4 and 6).

- 21 The same applies to office rental costs (Part 2, Section 1.2, Chapter 2, item 7), accounting costs (Part 2, Section 1.2, Chapter 4, item 2) and the costs of group meetings (Part 2, Section 1.2, Chapter 5, item 1).
- 22 Furthermore, the contested measure amends Part 3 of the Rules which lays down guidelines for the interpretation of several provisions of Part 1 of the Rules.
- 23 Finally, the contested measure adds an annex to the Rules. That annex establishes the system of inventories.
- 24 By a note dated 15 July 2003 from the Director General of the Parliament's Directorate-General for Finances, the applicants were informed that the Bureau had adopted the amendments to the Rules on 2 July 2003. The revised text of the Rules was annexed to that note.

## **Procedure**

- 25 By application lodged at the Registry of the Court of First Instance on 23 October 2003, the applicants initiated the present action for annulment.
- 26 By a separate document, lodged at the Court Registry on 27 October 2003, the applicants applied for adjudication under the expedited procedure provided for in Article 76a of the Rules of Procedure of the Court of First Instance. That application was dismissed by decision of the Court of 18 February 2004.

- 27 By a document lodged at the Court Registry on 11 November 2003, the Parliament applied for the opinion of the Parliament's Legal Service of 25 June 2003, which the applicants annexed to their application, to be removed from the file.
- 28 Without lodging a defence, the Parliament, by a document lodged at the Court Registry on 27 November 2003, raised a plea of inadmissibility under Article 114(1) of the [Court's] Rules of Procedure. The applicants lodged their observations on that plea on 6 February 2004.
- 29 Upon hearing the report of the Judge-Rapporteur, the Court, considering sufficient information to be provided by the documents in the court file, decided pursuant to Article 114(3) of its Rules of Procedure not to open the oral proceedings.

### **Forms of order sought**

- 30 The Parliament claims that the Court should:
- order that the opinion of the Parliament's Legal Service of 25 June 2003 should be removed from the file;
  - dismiss the action as inadmissible;
  - order the applicants to pay the costs.

31 In their observations on the plea of inadmissibility, the applicants contend that the Court should:

- dismiss the Parliament's application for the removal of the document;
  
- dismiss the plea of inadmissibility;
  
- annul the contested measure;
  
- order the Parliament to pay costs amounting to EUR 10 000.

### **The Parliament's application for the removal from the file of the opinion of its Legal Service**

#### *Arguments of the parties*

32 The Parliament requests that the opinion of its Legal Service on the amendment of the Rules, produced in Annex 5 to the application, be removed from the file. It emphasises that that opinion was intended solely for the Parliament's Bureau whose meetings are held *in camera*. Therefore, the opinion in question is a confidential document, access to which is limited to members of the Bureau alone. It adds that the dissemination of legal opinions intended for the institutions risks prejudicing the proper working of those institutions and that, for that reason, the Community legislature expressly excluded public access to such opinions in the second indent of

Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43). It also adds, in essence, that it follows from the case-law that such documents cannot be produced in proceedings before the Community Courts unless such production has been authorised by the institution concerned or ordered by that Court (order in Case C-445/00 *Austria v Council* [2002] ECR I-9151, paragraph 12, and order in Case T-610/97 R *Carlsen and Others v Council* [1998] ECR II-485). In the present case, the Parliament did not authorise the production of the legal opinion in question in the present proceedings.

- 33 The applicants maintain, first, that the opinion in question was disseminated by electronic mail to all the members of the Parliament's Committee on Budgetary Control, which includes one of the applicants, and that it was available to any Member of the Parliament who requested it. Accordingly, that document cannot be confidential. They add that the case-law to which the Parliament refers is irrelevant, since it relates to the production by third parties of legal opinions addressed to the Council or to the Commission, which does not apply in the present case. They argue further that the Legal Service did not raise any objection to the communication of the opinion in question to parliamentarians who actually requested it. Lastly, according to the applicants, respect for the 'fundamental principles of publicity, transparency, protection of legal certainty and the stability of Community law' cannot mean that the applicants — Members of the Parliament — should, in a case such as this, be prevented from having access to the opinions of the Legal Service of that institution. Those opinions, by definition, concern issues of law relating to the working of the Parliament and, as a result, concern its constituent Members. The applicants are therefore entitled to access to the legal opinion concerned and to produce it before the Community Courts.

### *Assessment by the Court*

- 34 As the Parliament rightly argues, it is contrary to public policy, which requires that the institutions can receive the advice of their legal service, given in full

independence, to allow such internal documents to be produced by persons other than the services at whose request they have been prepared in proceedings before the Court, unless their production has been authorised by the institution concerned or ordered by the Court (see, in particular, the order in *Austria v Council*, cited in paragraph 32 above, paragraph 12, and Case T-44/97 *Ghignone and Others v Council* [2000] ECRSC p. I-A-223 and II-1023, paragraph 48).

35 In the present case, it is common ground that the legal opinion in question was drawn up at the request of the Secretary-General of the Parliament on behalf of the Parliament's Bureau, and that the latter did not authorise the production of that advice.

36 Furthermore, it must be said that the question whether the Members of the Parliament or some of them have access to the opinion of its Legal Service is not relevant to the assessment of the Parliament's application, which concerns the issue whether the opinion in question is likely to appear in the documents on file which are taken into consideration by the Court for the purpose of its assessment of the action.

37 Accordingly, the Parliament's application must be allowed and the advice of the Legal Service produced in Annex 5 to the application removed from the file.

### **Admissibility**

38 The Parliament raises two pleas of inadmissibility. The first relates to the allegation that the action was lodged out of time. The second relates to the applicants' lack of standing to bring the action. The Court considers that it is necessary in the present case to examine, first, the plea of inadmissibility based on the applicants' lack of standing to bring the action.

*Arguments of the parties*

- 39 The Parliament argues first that the contested measure is not of direct concern to the applicants. In its view, the obligations to which non-attached Members are subject as a result of the amendment of the Rules by the contested measure are of a general and abstract nature and have to be implemented by the Administration.
- 40 It follows from the case-law concerning the requirement of direct effect which is laid down by the fourth paragraph of Article 230 EC that the Community measure at issue must directly affect the legal position of the individual and leave no discretion to the addressees of that measure who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules (Joined Cases 41/70 to 44/70 *International Fruit Company and Others v Commission* [1971] ECR 411, paragraphs 23 to 29; Case 92/78 *Simmenthal v Commission* [1979] ECR 777, paragraphs 25 and 26; Case 207/86 *Apesco v Commission* [1988] ECR 2151, paragraph 12; Case C-152/88 *Sofrimport v Commission* [1990] ECR I-2477, paragraph 9, and Case C-386/96 P *Dreyfus v Commission* [1998] ECR I-2309, paragraph 43; orders in Case T-223/01 *Japan Tobacco and JT International v Parliament and Council* [2002] ECR II-3259, paragraph 45 and in Case T-45/02 *DOW AgroSciences v Parliament and Council* [2003] ECR II-1973, paragraph 35).
- 41 In the present case, only Part 1 of the Rules produces legal effects. However the provisions of Part 1 are, for the most part, general and abstract and require implementation by a further measure. This applies to Articles 1.1, 1.3, 1.4, 1.5 and 2.8. Articles 1.6.1, 1.7 and 2.1 to 2.7 concern only the political groups and cannot therefore affect the rights of the applicants.



- 42 Article 1.6.2 fixes a threshold for support for external organisations to which the Members belong and restricts the applicants in the management of funds received under item 3701. However those restrictions have an effect only in terms of verifying the propriety of the expenditure of non-attached Members, as provided for in Article 2.9.1. As such, Article 1.6.2 does not produce a direct effect in regard to non-attached Members.
- 43 Implementation of Article 2.9.1 requires an administrative measure to be adopted to ensure the payment of non-attached Members' bills, namely, the Administration's decision, taken either when the supplier requests payment or when the non-attached Member requests reimbursement. Consequently, it is only the implementing measure that is of direct concern to the applicants.
- 44 Article 2.9.2, which allows for appropriations to be carried over, is also of a general and abstract nature. It is only a specific decision on a possible carry-over that is of direct concern to the non-attached Member in question.
- 45 As regards Article 2.9.4 on the payment of sums under budget item 3701 into an account which a non-attached Member has opened for that purpose, Article 2.9.5 on the inventory of assets purchased by non-attached Members using funds from budget item 3701, Article 2.9.7 on information provided to the Bureau and to the Committee on Budgetary Control by the President of the Parliament, the Parliament maintains, in essence, that implementation of those provisions requires a further decision by the Administration, that decision alone being of direct concern to non-attached Members.
- 46 Articles 2.9.3 and 2.9.6 establish the rights of non-attached Members in relation to the management of the funds allocated to them and to the preparation of a statement of such funds. Those provisions are not therefore an infringement of non-attached Members' existing rights. In any event, the application of those provisions

is itself subject to further administrative acts, namely the acts of managing the funds allocated and the preparation of a financial statement. It is only those acts that are of direct concern to non-attached Members.

47 Finally, Article 2.9.8, which establishes the obligation to repay sums unduly paid is not of direct concern to the applicants, since the implementation of that provision is subject to the adoption of a decision by the Bureau establishing the irregularity and of a decision by which reimbursement is effectively claimed by the Parliament.

48 Accordingly, the applicants' contention that the contested measure laying down new budgetary and accounting obligations is of direct concern to them must be dismissed.

49 As regards the applicants' contention that the contested measure removes their right to support a political party (Article 1.6.1), the right to conclude employment contracts (Article 1.7.1) and the right to finance the rental of office space (Part 2) by means of appropriations from item 3701, the Parliament maintains that whilst the removal of those rights could potentially be of direct concern to the applicants, it is not in any event of concern to them individually.

50 The Parliament argues next that it is settled case-law that an act of general application, such as a rule, can be of individual concern to natural or legal persons only if it affects them by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee of the measure (Case C-451/98 *Antillean Rice Mills v Council* [2001] ECR I-8949, paragraph 49; Case C-50/00 P

*Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, paragraph 36; Case C-312/00 P *Commission v Camar and Tico* [2002] ECR I-11355, paragraph 73; Case T-158/00 *ARD v Commission* [2003] ECR II-3825, paragraph 62).

- 51 It adds that a person is not individually concerned by a measure if he is affected by it only as a member of a group — albeit a limited group — the composition of which, whilst it can be readily determined, is not fixed permanently at the date of adoption of the measure. In that regard it maintains, as Advocate General Jacobs pointed out in his Opinion in Case C-167/02 P *Rothley and Others v Parliament* [2004] ECR I-3149, paragraph 42, although the composition of the Parliament is determined by and changes in accordance with a specified set of rules and procedures, it still cannot be regarded as fixed.
- 52 According to the Parliament, the political groups and non-attached Members to whom the rules apply can be identified from among the current Members of the Parliament. However, the rules are addressed to an unspecified and indeterminable number of political groups and non-attached Members. First of all, the rules are addressed to any political group formed within the Parliament and to any Member who is not affiliated to a political group, or who leaves one group and does not become affiliated to another. Next, those rules apply not only to all existing political groups and current non-attached Members, but also to those to come in the future.
- 53 It also argues that the possibility of determining more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them as long as it is established that that application takes effect by virtue of an objective legal or factual situation defined by the measure in question (*Commission v Camar and Tico*, cited in paragraph 50 above, paragraph 74, and *Antillean Rice Mills v Council*, cited in paragraph 50 above, paragraph 52).

- 54 Accordingly the applicants are not distinguishable from present or future Members or political groups, all of whom are subject to the Rules. They are not therefore individually concerned by the contested measure.
- 55 The applicants argue, first, that although the contested measure falls within the ambit of internal matters for the Parliament, it can still be challenged because it produces legal effects vis-à-vis the applicants who, as representatives of the peoples of the States brought together in the Community, must, in regard to an act emanating from the Parliament and producing legal effects as regards the conditions under which the electoral mandate is exercised, be regarded as third parties within the meaning of the first paragraph of Article 230 EC (Joined Cases T-222/99, T-327/99 and T-329/99 *Martinez and Others v Parliament* [2001] ECR II-2823, paragraph 61).
- 56 Next they maintain that they are directly and individually concerned by the contested measure.
- 57 In that regard, they claim, first, that the contested measure directly produces legal effects as regards non-attached Members, because it no longer allows them to use appropriations from budget item 3701 to finance a European political party (Article 1.6.1), staff (Article 1.7.1), accounting costs (Part 2, Section 1.2, Chapter 4) or the cost of holding group meetings (Part 2, Section 1.2, Chapter 5). Furthermore the contested measure does not allow them to open a bank account for applying appropriations under item 3701 (Article 2.5.4).
- 58 In their view, the acts of applying and implementing the contested measure will, contrary to the Parliament's assertions, be purely automatic, leaving no discretion to the authors of those implementing measures.

59 Secondly, they argue in essence that they are individually concerned by the contested measure by reason of their status as non-attached Members, since that measure imposes on them, and on them alone, new budgetary and accounting obligations and removes a certain number of their rights, which further highlights the discrimination which exists between non-attached Members and Members who belong to a political group.

### *Assessment of the Court*

60 According to the fourth paragraph of Article 230 EC any natural or legal person may bring an action for annulment against a decision addressed to that person and against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

61 Since it is not disputed that the applicants are not the addressees of the contested measure, it is necessary to examine whether that measure is of direct and individual concern to them.

62 In so far as the applicants seek to argue that, where a decision of the Parliament goes beyond merely the internal organisation of that institution and has a direct effect on its Members, those Members are entitled to take action without having to consider whether they are individually concerned by the act in question, it is sufficient to note that the Court has expressly dismissed that argument. In that regard, the Court has pointed out that it follows from the wording of the fourth paragraph of Article 230 EC itself, as well as from settled case-law, that a natural or legal person is entitled to pursue the annulment of an act which does not constitute a decision addressed to that person only if that person is not only directly but also individually concerned by such act, so that the interpretation of that provision cannot have the

effect of setting aside that last condition, expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community Courts (see, in particular *Unión de Pequeños Agricultores v Council*, cited in paragraph 50 above, paragraph 44).

63 It is therefore necessary to examine whether the applicants are individually concerned by the measure in question. In that regard, it follows from settled case-law that persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person to whom the measure is addressed (Case 25/62 *Plaumann v Commission* [1963] p. 95, at p. 107, and *Unión de Pequeños Agricultores v Council*, cited in paragraph 50 above, paragraph 36).

64 In the present case the applicants plead their status as non-attached Members, discriminated against in relation to Members belonging to a political group.

65 As regards their status as non-attached Members, clearly that is not a feature which distinguishes the applicants individually just as in the case of the person to whom the measure is addressed.

66 It must be pointed out that the contested measure amends the conditions for use of appropriations from budget item 3701 by the political groups, as is particularly apparent from paragraph 16 above, and by the non-attached Members, as is particularly apparent from paragraphs 12, 15 and 17 above. That measure applies generally and in the future to the political groups and non-attached Members. It is

therefore capable of affecting future political groups and non-attached Members as well as those of whom the Parliament was constituted at the time the measure was adopted, even though it does not concern any of them individually (see, to that effect, the order in Case C-10/95 P *Asocarne v Council* [1995] ECR I-4149, paragraph 30).

- 67 Nor is the claim of discrimination between the applicants, as non-attached Members, and the Members who belong to a political group any more likely to establish that the applicants are individually concerned by the contested measure.
- 68 First of all, for the applicants to belong to one of the two categories of persons to whom the contested measure applies is not enough to distinguish them individually, since each of those two categories — the political groups and the non-attached Members — are defined generally and in the abstract by the contested measure.
- 69 Next, the facts in the present 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.

70 In the present case, in terms of the procedural issues, there is no distinction of that kind between the applicants' situation (non-attached Members) and that of the Members of political groups since, as has been pointed out in paragraph 66 above, the contested measure is of individual concern neither to the non-attached Members nor to the political groups.

71 It follows that the applicants are not individually concerned by the contested measure for the purposes of the fourth paragraph of Article 230 EC and therefore that the action must be dismissed as inadmissible without any need to raise the question whether the applicants are directly concerned by the measure in question within the meaning of that provision, or whether the present action was brought within the time-limit prescribed by the fifth paragraph of Article 230 EC.

## Costs

72 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay the costs as applied for by the defendant.



On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

- 1. The opinion of the Parliament's Legal Service, produced by the applicants in Annex 5 to the application, is removed from the file.**
- 2. The action is dismissed as inadmissible.**
- 3. The applicants will pay their own costs in addition to those incurred by the Parliament.**

Luxembourg, 10 January 2005.

H. Jung

Registrar

J. Pirrung

President