JUDGMENT OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
11 March 1999 *

In Case T-134/94,

NMH Stahlwerke GmbH, a company incorporated under German law, established in Sulzbach-Rosenberg (Germany), represented by Paul B. Schäuble, Rechtsanwalt, Munich, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicant,

v

Commission of the European Communities, represented initially by Julian Currall and Norbert Lorenz, of its Legal Service, and Géraud de Bergues, a national civil servant on secondment to the Commission, and subsequently by Jean-Louis Dewost, Director-General of its Legal Service, Julian Currall and Guy Charrier, a national civil servant on secondment to the Commission, acting as Agents, assisted by Heinz-Joachim Freund, Rechtsanwalt, Frankfurt, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: German.

APPLICATION, principally, for the annulment of Commission Decision 94/215/ECSC of 16 February 1994 relating to a proceeding pursuant to Article 65 of the ECSC Treaty concerning agreements and concerted practices engaged in by European producers of beams (OJ 1994 L 116, p. 1),

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

composed of: C.W. Bellamy, acting as President, A. Potocki and J. Pirrung, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 23, 24, 25, 26 and 27 March 1998

gives the following

Judgment [1]

The facts giving rise to the action

A — *Preliminary observations*

1 The present action seeks the annulment of Commission Decision 94/215/ECSC of 16 February 1994 relating to a proceeding pursuant to Article 65 of the ECSC Treaty concerning agreements and concerted practices engaged in by European producers of beams (OJ 1994 L 116, p. 1, hereinafter 'the Decision'), by which the Commission found that seventeen European steel undertakings and one of their trade associations had participated in a series of agreements, decisions and concerted practices designed to fix prices, share markets and exchange confidential information on the market for beams in the Community, in breach of Article 65(1) of the ECSC Treaty, and imposed fines on fourteen undertakings operating within that sector for infringements committed between 1 July 1988 and 31 December 1990.

1 — Only the grounds of the judgment which the Court considers it appropriate to publish are reproduced here. The facts giving rise to the action and the procedure before the Court are described in paragraphs 1 to 70 of the judgment of 11 March 1999 in Case T-141/94 *Thyssen* v *Commission* [1999] ECR II-347. The applicant's pleas in law and arguments which are identical or similar to those put forward in *Thyssen* v *Commission* are examined, in particular, in paragraphs 121 to 170 (Breach of essential procedural requirements during the procedure for the adoption of the Decision), 366 to 412 (Exchanges of information within the Poutrelles Committee (monitoring of orders and deliveries) and through the Walzstahl-Vereinigung), 457 to 565 (The Commission's involvement in the infringement of which the applicant is accused) and 604 to 613 (The statement of reasons in the Decision explaining the fine) of that judgment.

2 Recital 11(f) of the Decision provides the following information concerning the applicant:

'Neue Maxhütte Stahlwerke GmbH (hereinafter referred to as "Neue Maxhütte") was founded in 1988 by the German Land of Bavaria (which at the relevant time held 45% of the shares), Thyssen (5,5%), Thyssen Edelstahlwerke AG (5,5%), Lech-Stahlwerke GmbH (11%), Krupp Stahl AG (11%), Klöckner (11%) and Mannesmannröhren-Werke AG (11%). This company took over the main assets of Eisenwerk-Gesellschaft Maximilianshütte mbH which had been declared bankrupt on 16 April 1987. In 1991 its turnover was DM 226 million. The company is now known as NMH Stahlwerke GmbH.'

...

D — *The Decision*

17 The Decision, which the applicant received on 3 March 1994 under cover of a letter of 28 February 1994 from Mr Van Miert, contains the following operative part:

'*Article 1*

The following undertakings have participated, to the extent described in this Decision, in the anti-competitive practices listed under their names which prevented, restricted and distorted normal competition in the common market.

Where fines are imposed, the duration of the infringement is given in months except in the case of the harmonisation of extras where participation in the infringement is indicated by "x".

...

Neue Maxhütte

(a) Exchange of confidential information through the Poutrelles Committee and the Walzstahl-Vereinigung (monitoring system) (27)

...

Article 4

For the infringements described in Article 1 which took place after 30 June 1988 (31 December 1989 [2] in the case of Aristrain and Ensidesa) the following fines are imposed:

...

2 — This is the date mentioned in the French and Spanish versions of the Decision; the German and English versions give the date as 31 December 1988.

NMH Stahlwerke GmbH ECU 150 000

...

Article 6

This Decision is addressed to:

...

— NMH Stahlwerke GmbH

...'.

...

The claim for annulment of Article 1 of the Decision

...

The applicant's liability for acts committed before 30 June 1990

94 It follows from Article 1 of the Decision that the Commission imposed on the applicant a fine in respect of its participation in an exchange of confidential information through the Poutrelles Committee and the Walzstahl-Vereinigung during a period of 27 months. According to recital 314 of the Decision, the Commission considers that fines should be imposed for 'anti-competitive behaviour after 1 July 1988'.

Summary of the parties' arguments

95 The applicant maintains that, whatever the 27-month period referred to in Article 1 of the Decision may be, the Commission was wrong to impose on it a fine for allegedly anti-competitive acts committed before 30 June 1990. Only Eisenwerk-Gesellschaft Maximilianshütte mbH, which was declared bankrupt on 16 April 1987 (hereinafter 'Eisenwerk-Gesellschaft' or, where appropriate, 'Eisenwerk-Gesellschaft (in compulsory liquidation)'), and not the applicant, could be held liable for the infringements allegedly committed during that period.

96 The applicant sets out the following facts, which are not disputed by the Commission.

97 Following the opening of the bankruptcy proceedings in 1987, Eisenwerk-Gesellschaft continued to manufacture and market steel products, including beams.

98 Subsequently, on 4 November 1987, the future founding members of the applicant (see recital 11(f) of the Decision) concluded a framework agreement

to set up the applicant as a 'rescue company' ('Auffanggesellschaft'). Paragraph 3 of that agreement provides as follows:

'The rescue company shall seek to guarantee and maintain the steel industry's presence in the central Upper Palatinate by acquiring and continuing the operation of certain production units of [Eisenwerk-Gesellschaft] in judicial liquidation, together with some of its staff.

The production units not taken over by the rescue company shall be disposed of as quickly as possible.

...'.

99 The applicant maintains that it was envisaged that the new company would operate with a smaller workforce (1 000 persons) and a reduced capacity (maximum capacity for hot rolled products: 386 000 tonnes per annum instead of 780 000 tonnes per annum). It was to take over one of the three blast furnaces, two of the three continuous casting plants, the hot rolling mill for cast steel ingots and one of the two section mills. The steel tube factory forming part of Eisenwerk-Gesellschaft (in compulsory liquidation) was to be operated by an independent company.

100 The applicant was formed under the corporate name 'NMH Stahlwerke GmbH (Vorgesellschaft Neue Maxhütte)' in January 1988. At that time the applicant's object was to determine and draw up the measures necessary from a technical and financial point of view, and in terms of staff, in order to form a company to take over from Eisenwerk-Gesellschaft (in compulsory liquidation).

101 From October 1988 the applicant made some of the employees of Eisenwerk-Gesellschaft offers of employment in which it was specified that, on current estimates, those concerned would begin to work for NMH Stahlwerke GmbH on 1 July 1990.

102 On 23 October 1989 the applicant concluded two agreements with Eisenwerk-Gesellschaft (in compulsory liquidation). By a so-called 'transitional' agreement it undertook, first, to acquire from that company the fixed assets necessary to continue production, with reduced capacity, in accordance with the concept of a rescue company. Under a 'contract for the lease of fixed assets' the applicant was, second, to grant to Eisenwerk-Gesellschaft (in compulsory liquidation), until 30 June 1990, all the tangible fixed assets transferred under the transitional agreement. Under the same contract Eisenwerk-Gesellschaft (in compulsory liquidation) was authorised to operate the undertaking in its own name and on its own behalf.

103 On expiry of that lease, Eisenwerk-Gesellschaft (in compulsory liquidation) returned the fixed assets to the applicant. On 1 July 1990 the applicant began to manufacture and market steel products. On 4 July 1990 its object and corporate name were amended accordingly. Since then the applicant has been called NMH Stahlwerke GmbH.

104 The liquidation of Eisenwerk-Gesellschaft was completed on 5 September 1994; however, the company was not removed from the register of companies.

105 On the basis of those facts, the applicant, relying on the judgments of the Court of Justice in Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73 *Suiker Unie and Others* v *Commission* [1975] ECR 1663, paragraphs 84 to 87, and in Joined Cases 29/83 and 30/83 *CRAM and Rheinzink* v *Commission* [1984] ECR 1679, paragraphs 6 to 9, and on the judgments of the Court of First Instance in Case T-6/89 *Enichem Anic* v *Commission* [1991] ECR II-1623, paragraphs 236 to 238, and in Case T-38/92 *AWS Benelux* v

Commission [1994] ECR II-211, paragraphs 26 to 30, claims that it cannot be considered liable for Eisenwerk-Gesellschaft's conduct, either as its successor in law or as its economic successor, during the period to 30 June 1990.

106 In the present case the applicant did not come into existence as a result of a change in the legal form of Eisenwerk-Gesellschaft (in compulsory liquidation), but was formed as a new company. Unlike Eisenwerk-Gesellschaft (in compulsory liquidation), it did not pursue any activities on the common market in steel products during the period to 30 June 1990. Furthermore, the two companies were never run by the same persons. Nor did the applicant acquire all of the rights and obligations of Eisenwerk-Gesellschaft (in compulsory liquidation). On the contrary, the transitional agreement defined their respective obligations by reference to the date on which the applicant's activities were scheduled to commence.

107 Furthermore, Eisenwerk-Gesellschaft continued to exist throughout the administrative procedure and still exists today, since it has been neither liquidated nor removed from the register of companies. In that context, it follows from an order of the Oberlandesgericht (Higher Regional Court) Frankfurt am Main of 20 December 1993 that in the absence of abuse or misuse the infringements allegedly committed by Eisenwerk-Gesellschaft cannot be attributed to the applicant.

108 In the present case the persons responsible for operating the applicant are different from those who carried out and carry out comparable duties at Eisenwerk-Gesellschaft (in compulsory liquidation). Furthermore, the applicant did not take over the 'main assets' of the latter company, but only 14.25% of its tangible fixed assets (DEM 63 199 401 out of DEM 443 339 291). In accordance with the concept of a rescue company, only part of the machinery and technical equipment was taken over, so that the annual production capacity of hot rolled products fell from 780 000 tonnes to 386 000 tonnes. The land and buildings belonging to Eisenwerk-Gesellschaft (in compulsory liquidation) were transferred to third parties in the context of the judicial liquidation. Furthermore, half of the book value of the applicant's technical equipment and machinery represents the applicant's own investments.

109 In those circumstances, the applicant considers that neither the punitive nature nor the dissuasive nature of the fines justifies the imputation made by the Commission. Furthermore, the applicant did not derive any advantage from the behaviour in question. Both German domestic law (Article 30 of the German Law on Administrative Offences (Gesetz über Ordnungswidrigkeiten)) and the principles 'no penalty save as provided for by law' and 'no criminal offence save as provided for by law', which are recognised by the German Basic Law and Penal Code, by the constitutions of other Member States and by Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, preclude the imputation made by the Commission.

110 Furthermore, it is not stated in either the relevant passages of the grounds or the operative part of the Decision why the Commission imputed to the applicant the infringements committed by Eisenwerk-Gesellschaft before 30 June 1990. In particular, the Commission did not reply to the detailed arguments which the applicant submitted in its reply to the statement of objections.

111 Finally, the applicant further stated at the hearing that the Commission's approach was such as to confer on it an undue advantage in comparison with Eisenwerk-Gesellschaft's other creditors.

112 The Commission refers to recital 11(f) of the Decision and to the facts set out by the applicant, and in particular to the specific factual circumstances in which the applicant took over the assets of Eisenwerk-Gesellschaft, and considers that the applicant is that company's economic successor and, as such, must answer for the infringements committed by that company prior to 30 June 1990.

Findings of the Court

113 The Court must examine, first, the grounds of the contested Decision relating to the attribution of the infringement for the period prior to 30 June 1990 and, second, the merits of the Decision in that regard.

— The grounds of the Decision

114 As the Court has previously held, the statement of reasons required under Article 15 of the Treaty must enable the person concerned to ascertain the matters relied upon to justify the measure adopted so that, if necessary, he can defend his rights and verify whether the decision is well founded, and, secondly, must enable the Community judicature to review the legality of the decision. The requirement of a statement of reasons must be considered in the light of the circumstances of the case, in particular the content of the measure in question, the nature of the reasons relied on and the context in which the measure was adopted (Case T-57/91 *NALOO* v *Commission* [1996] II-1019, paragraphs 298 and 300).

115 In the present case recital 11(f) of the Decision (see paragraph 2 above) states that the applicant, 'Neue Maxhütte', was founded in 1988 by the German Land of Bavaria, which at the relevant time held 45% of the shares, and a number of German steel companies, and that it 'took over the main assets of Eisenwerk-Gesellschaft Maximilianshütte mbh which had been declared bankrupt'.

116 It follows from recital 11(f) that, in so far as the Decision accuses 'Neue Maxhütte' of participating in the exchange of information found to have occurred during the period before 30 June 1990 (see, in particular, recitals 10, 39, 41, 213, 263 and 314), the applicant is deemed to assume responsibility for those infringements. The reference to the fact that it took over the 'main' assets of Eisenwerk-Gesellschaft, which had been declared bankrupt, also means that the

Commission regards the applicant as the economic successor of that company and, in that capacity, as liable for the infringements committed by it.

117 The Court considers that those points, albeit succinct, identify the essential factors that the Commission took into account to justify the imputation in issue.

118 The applicant has set out, both in its reply to the statement of objections and in its written submissions, all the elements of fact and of law which in its view will serve to refute the Commission's argument and, in particular, the factual evidence which will enable the Court to understand the circumstances in which it took over a part of Eisenwerk-Gesellschaft's assets.

119 The Court considers that in those circumstances there is nothing to prevent the Commission from explaining before it the reasoning set out in the Decision by referring to the factual background to the taking over of the assets of Eisenwerk-Gesellschaft described by the applicant itself (see also Case T-16/91 RV *Rendo and Others* v *Commission* [1996] ECR II-1827, paragraph 55).

120 The Court concludes that the grounds of the Decision enable the applicant to defend its rights and the Court to exercise its power of review.

121 The applicant's arguments alleging a lack of reasoning must therefore be rejected.

— The merits of the imputation at issue

122 Under Article 65(5) of the Treaty the Commission may impose fines on any undertaking which has entered into an agreement which is automatically void, or has engaged in practices prohibited by Article 65(1).

123 In the present case the period of the infringement of Article 65(1) of the Treaty in which the applicant stands accused of being involved is in part before 30 June 1990 and in part after that date.

124 The applicant has not disputed that it must answer for the part of the infringement committed after 30 June 1990. It is common ground that from that date it pursued on its own behalf the economic activity of beam production previously carried out by Eisenwerk-Gesellschaft (in compulsory liquidation).

125 As regards the period before 30 June 1990, the Commission has not disputed the applicant's assertion that it was Eisenwerk-Gesellschaft (in compulsory liquidation) that carried out the economic activity of beam production here in issue.

126 It is also common ground that under domestic law the applicant did not take over all the rights and obligations of Eisenwerk-Gesellschaft and is therefore not that company's successor in law. It follows that the condition concerning legal continuity between two legal persons, as defined by the Court of Justice in *Suiker Unie and Others* v *Commission*, cited above (paragraph 84), and *CRAM and Rheinzink* v *Commission*, cited above (paragraph 9), is not satisfied in the present case. Similarly, unlike the situation in *Suiker Unie and Others* v *Commission* (see paragraph 85), the Commission has not disputed the assertion that the applicant is not directed by the same persons as Eisenwerk-Gesellschaft (see, in that regard, the Opinion of Judge Vesterdorf, acting as Advocate General, in Case T-1/89

Rhône-Poulenc and Others v *Commission* [1991] II-867, at II-921 — joint Opinion in the *Polypropylene* judgments (T-2/89 [1991] ECR II-1087, T-3/89 [1991] ECR II-1177, T-4/89 [1991] ECR II-1523, T-6/89 [1991] ECR II-1623, T-7/89 [1991] ECR II-1711, T-8/89 [1991] ECR II-1833, and T-9/89 to T-15/89 [1992] ECR II-499, II-629, II-757, II-907, II-1021, II-1155 and II-1275).

127 It follows from the case-law of the Court of Justice and of this Court, however, that in certain circumstances an infringement of the rules on competition may be imputed to the economic successor of the legal person responsible, so that the effectiveness of those rules will not be compromised owing to the changes to, *inter alia*, the legal form of the undertakings concerned (see *Suiker Unie and Others* v *Commission*, *CRAM and Rheinzink* v *Commission*, *Enichem Anic* v *Commission* and *AWS Benelux* v *Commission*, all cited above).

128 In that regard, it is also common ground that the applicant was formed in January 1988 — even before the period of infringement commenced — specifically to guarantee and maintain the continuing operation of certain production units of Eisenwerk-Gesellschaft. More specifically, its corporate purpose was to determine and draw up the measures necessary to take over from Eisenwerk-Gesellschaft.

129 For that purpose, in October 1988 the applicant made some employees of Eisenwerk-Gesellschaft offers of employment to take effect from 1 July 1990. Similarly, by a 'transitional' agreement and the 'contract for the lease of fixed assets' of 23 October 1989 the applicant, first, undertook to acquire from Eisenwerk-Gesellschaft the fixed assets necessary to continue production, with reduced capacity, and, second, transferred to Eisenwerk-Gesellschaft the use, until 30 June 1990, of all the tangible fixed assets in question.

130 Nor is it disputed that, even though the applicant did not take over all the assets and staff of Eisenwerk-Gesellschaft, it none the less took over the main part of

those physical and human elements that were employed in the manufacture of beams and therefore contributed to the commission of the infringement in question (see *Enichem Anic* v *Commission*, cited above, paragraph 237).

131 The applicant has also not alleged that the conduct of the undertaking in question altered after 30 June 1990. It follows from the documents listed in Annexes I and II to the Decision, moreover, that the figures relating to monitoring by the Poutrelles Committee relevant to the present case (see above) refer to 'Maxhütte' both for the period before 30 June 1990 and for the period after that date and draw no distinction between Eisenwerk-Gesellschaft and the applicant.

132 Consequently, and having regard in particular to the fact that the applicant was formed for the specific purpose of maintaining the steel industry's presence in the central Upper Palatinate and to guarantee, to that end, the continuation of the Eisenwerk-Gesellschaft undertaking, the applicant must be considered to be Eisenwerk-Gesellschaft's economic successor and, as such, it must answer for the infringements committed by that undertaking during the period prior to 30 June 1990.

133 Since the specific scope of the rules on competition is that they are addressed to economic entities and since, in the present case, the applicant absorbed the main part of the economic activity concerned by the infringements, the Court takes the view that Article 65(5) of the Treaty does not prevent the Commission from penalising the applicant not only for the part of the infringement committed on its own behalf after 1 July 1990 but also for the part of the infringement committed by the same economic entity, acting under the name of Eisenwerk-Gesellschaft, before that date, *a fortiori* where, as here, the applicant was specifically set up, even before the infringement commenced, to be the economic successor of Eisenwerk-Gesellschaft and where it facilitated the continuation of that undertaking's economic activities until 30 June 1990.

134 Since the solution to the problem posed must be sought exclusively in the rules of Community law (see the Opinion of Advocate General Rozès in *CRAM and Rheinzink* v *Commission*, cited above, at p. 1718), the rules of domestic law defining the liability of companies for actions of their organs are of no relevance here. Likewise, for the reasons set out above, the Court considers that the Commission has not infringed the principles of 'no penalty save as provided for by law' and 'no criminal offence save as provided for by law'.

135 The conclusion which the Court has thus reached is not affected by the fact that Eisenwerk-Gesellschaft (in compulsory liquidation) still existed when the Decision was adopted.

136 Although it follows from *Enichem Anic* v *Commission*, cited above (paragraph 238), that where the legal person which controlled the undertaking when the infringement was committed has not ceased to exist on the date on which the decision finding the infringement is adopted, but the undertaking is controlled by another person on that date, it is to the former person, the person responsible for the infringement, rather than to the latter, the person now running the undertaking, that the infringement will normally be imputed (see also *AWS Benelux* v *Commission*, cited above, paragraphs 25 to 36), that case-law does not mean that a different solution cannot be justified by the particular circumstances of a specific case.

137 In the present case, even supposing that the judicial liquidation of Eisenwerk-Gesellschaft was not completed until 5 September 1994, whereas the Decision was adopted on 16 February 1994, and that the company has not been removed from the register of companies, it is common ground that from 1 July 1990 the main part of the physical and human resources that enabled Eisenwerk-Gesellschaft to pursue its steel-making activities was transferred to the applicant. From that date Eisenwerk-Gesellschaft ceased trading and thus confined itself to completing its judicial liquidation.

138 In those circumstances, since, first, the concept of an undertaking, for the purposes of Article 65 of the Treaty, has an economic scope, second, on the date on which the Decision was adopted it was the applicant that was pursuing the economic activity concerned by the infringements and, third, on that date the person responsible, in the formal sense, for the infringements had ceased trading, the Court considers that the Commission was entitled to impute the infringement in question to the applicant, even though when the Decision was adopted, seven years after Eisenwerk-Gesellschaft had been placed in judicial liquidation, and four years after the main part of its assets had been sold, that company still existed in law.

139 For the same reasons, the applicant's argument that in imputing to it the infringements found to have occurred the Commission obtained an advantage in comparison with the bankrupt company's other creditors must be rejected. On the contrary, by declining to impose a fine on Eisenwerk-Gesellschaft the Commission increased the amount available to these other creditors, and at the same time safeguarded the Community interest by ensuring that the undertaking concerned by the infringements would be required to answer for them.

140 Furthermore, the fine was not calculated on the basis of Eisenwerk-Gesellschaft's turnover but rather on the basis of the applicant's, so that the basis for the calculation, including for the period before 1 July 1990, corresponds to the economic effects of infringements committed by an undertaking of its size, which is smaller than that of Eisenwerk-Gesellschaft.

141 For all those reasons, the arguments whereby the applicant disputes the lawfulness of the imputation made by the Commission must be rejected.

...

The claim for annulment of Article 4 of the Decision or, at least, reduction of the amount of the fine

...

The Court's exercise of its unlimited jurisdiction in regard to the amount of the fine

277 Although the applicant and its economic predecessor, Eisenwerk-Gesellschaft, actually took part in the exchanges of statistical information, including that organised by the Poutrelles Committee, they did not attend the meetings of that committee and therefore did not participate in the discussions held at those meetings on the basis of those statistics.

278 The Court considers that those discussions not only provided evidence of the anti-competitive nature of the exchange but also aggravated it by strengthening the effect of mutual control inherent in the exchange. The various criticisms made at the meetings enabled those responsible to advise their competitors in specific cases of conduct that was deemed excessive and also served to remind their competitors of the existence of a control and of the possibility that targeted retaliatory measures would be taken.

279 Although the coefficient of 1.5% used by the Commission is justified in the case of an exchange together with such a system of discussion, the same percentage cannot be applied where an undertaking such as the applicant did not participate in that system, but merely in the exchange of statistics, and did not attend any of the meetings in question.

280 The Court considers, therefore, in the exercise of its unlimited jurisdiction pursuant to the second paragraph of Article 36 of the Treaty, that in the applicant's case the coefficient should be reduced to 1% of its turnover. This coefficient should be applied to a period of 27 months out of a theoretical period of 30 months. The applicant's fine will be reduced accordingly.

...

On those grounds,

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

hereby:

1. **Fixes the amount of the fine imposed on the applicant by Article 4 of Commission Decision 94/215/ECSC of 16 February 1994 relating to a proceeding pursuant to Article 65 of the ECSC Treaty concerning agreements and concerted practices engaged in by European producers of beams at EUR 110 000;**

2. **Dismisses the remainder of the action;**

3. **Orders the applicant to bear its own costs and to pay half of the defendant's costs. The defendant shall pay half of its own costs.**

Bellamy Potocki Pirrung

Delivered in open court in Luxembourg on 11 March 1999.

H. Jung C.W. Bellamy

Registrar President