JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
16 July 1998 *

In Case T-199/96,

Laboratoires Pharmaceutiques Bergaderm SA, a company incorporated under French law, in liquidation, established at Rungis (France),

Jean-Jacques Goupil, residing at Chevreuse (France),

represented by Jean-Pierre Spitzer, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicants,

v

Commission of the European Communities, represented by Pieter Van Nuffel, of its Legal Service, acting as Agent, assisted by Ami Barav, of the Paris Bar and Barrister of the Bar of England and Wales, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

APPLICATION pursuant to Articles 178 and 215, second paragraph, of the EC Treaty, for compensation for damage which the applicants purportedly suffered as a result of an investigation conducted by the Commission, pursuant to the 18th Commission Directive 95/34/CE of 10 July 1995 adapting to technical progress Annexes II, III, VI and VII to Council Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products (OJ 1995 L 167, p. 19), into the use of psoralens in sun creams and bronzing products,

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

composed of: V. Tiili, President, C. P. Briët and A. Potocki, Judges,

Registrar: Blanca Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 May 1998,

gives the following

Judgment

Legal Background

1 Pursuant to Article 4 of Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products

(OJ 1976 L 262, p. 169, hereinafter 'the cosmetics directive'), as amended in particular by Council Directive 93/35/EEC of 14 June 1993 (OJ 1993 L 151, p. 32), the Member States were required to prohibit the marketing, beyond the limits and outside the conditions laid down, of cosmetic products containing any of the substances specified in the 'List of substances which cosmetic products must not contain' (Annex II to the directive) or the 'List of substances which cosmetic products must not contain except subject to the restrictions and conditions laid down' (Annex III, Part 1).

2 Article 9 of the cosmetics directive sets up a Committee on the adaptation to technical progress of the directives on the removal of technical barriers to trade in the cosmetic products sector (hereinafter 'the Adaptation Committee'), consisting of representatives of the Member States, with a representative of the Commission as chairman.

3 Commission Decision 78/45/EEC of 19 December 1977 (OJ 1978 L 13, p. 24) established a Scientific Committee on Cosmetology (hereinafter 'the Scientific Committee') attached to the Commission. Under Article 2 of that decision, the Committee's task is to give the Commission an opinion on any problem of a scientific or technical nature in the field of cosmetic products and particularly on substances used in the preparation of cosmetic products and on the conditions of use of these products. The decision also provides that the members of the Scientific Committee are to be appointed by the Commission from among 'highly qualified leading scientific figures with competence in the field [of cosmetic products]' (Article 4); that the representatives of the Commission departments concerned are to attend the meetings of the Committee (Article 8(2)); that the Commission may also invite 'leading figures with special qualifications in the subjects under study' to attend those meetings (Article 8(3)); and that the Scientific Committee may also form working parties which are to meet when convened by the Commission (Articles 7 and 8).

4 Article 8(2) of the cosmetics directive provides that the amendments necessary for adapting Annex II to technical progress are to be adopted in accordance with the procedure laid down in Article 10.

5 That procedure comprises the following stages:

— the Adaptation Committee is convened by its chairman;

— the representative of the Commission submits a draft of the measures to be adopted;

— the Adaptation Committee delivers an opinion on the draft, to be adopted by a qualified majority vote, in which the chairman does not take part;

— where the proposed measures are in accordance with the opinion of the Committee, they are adopted by the Commission;

— where the proposed measures are not in accordance with the opinion of the Committee, or if no opinion is adopted, the Commission must without delay propose to the Council — which acts by a qualified majority — the measures to be adopted; if, however, within three months of the proposal being submitted to it, the Council has not acted, the proposed measures are to be adopted by the Commission.

Facts

6 Laboratoires Pharmaceutiques Bergaderm (hereinafter 'Bergaderm') is a company which carries on business in the field of para-pharmaceutical and cosmetic products. Its activities consist above all in the manufacture, purchase, sale and trade of sun creams and oils, *eaux de toilette* and perfumes. Jean-Jacques Goupil is its chief executive.

7 Bergasol is a sun oil containing, in addition to vegetable oil and filters, bergamot essence. Some of the molecules to be found in bergamot essence are 'psolarens', otherwise known as 'furocoumarines'. One of these is 'bergapten', also referred to in scientific circles as 5-methoxypsoralen (hereinafter '5-MOP').

8 On exposure to the sun, the human skin undergoes physical reactions enabling it to adjust to exposure to ultra-violet rays. Cells known as melanocytes secrete a filtering pigment which gradually rises to the epidermis, where it causes the stratum corneum to thicken, giving the appearance of a sun tan. 5-MOP, which strongly induces photodynamism, enhances those physical reactions. Thus, the presence of bergamot essence in Bergasol considerably accelerates the tanning process.

9 Apart from its use in the manufacture of Bergasol, 5-MOP has been used for the treatment of various skin disorders, notably psoriasis.

10 In its chemically pure state, 5-MOP is suspected of being potentially carcinogenic. Several scientific studies have therefore been carried out in order to determine whether that is also the case when 5-MOP is present in the bergamot essence used in a tanning product.

11 Of those studies, the most favourable towards Bergasol was carried out by Thomas B. Fitzpatrick, Professor of Dermatology at Harvard Medical School (USA). In his view, Bergasol is the safest and most effective sun oil ever developed because it boosts significantly the body's protective mechanisms against ultraviolet rays, and the risk of 5-MOP having carcinogenic effects is negligible. According to Professor Fitzpatrick, the appearance of melanomas is less probable when Bergasol is applied than in cases where sun oils not containing bergamot essence are used.

12 Other studies, on the other hand, have warned of the potentially carcinogenic effects of bergamot essence when used in sun oil. One such study led the French committee on consumer protection to issue a warning in September 1986 against the use of such products. Shortly thereafter, in March 1987, the German Government asked the Commission to consider — by way of the Adaptation Committee — the possibility of restricting to 1 mg/kg the maximum level of naturally occuring psoralens in sun oil. The Commission thereupon sought the opinion of the Scientific Committee, which asked Mr Fielder, one of its members, to carry out a study. On completion of his investigations, Mr Fielder concluded that, in the presence of ultraviolet rays, 5-MOP is highly phototoxic and photomutagenic, hence potentially carcinogenic.

13 At a meeting of the Scientific Committee on 2 October 1990, Mr Fielder's findings were challenged by some Committee members. However, the Committee recommended that the maximum level of 5-MOP in sun oils should be set at 1 mg/kg.

14 On 24 September 1991 the Scientific Committee held another meeting, to which several outside experts were invited. Its main aim was to discuss the outcome of a seminar on the effects of psoralens which the applicants had organised in Brussels on 3 and 4 June 1991. At the end of that seminar, a number of scientists had signed a document in which they stated that when 5-MOP is combined with other sun filters, the risk of photomutagenic and photocarcinogenic effects is negligible.

15 The experts invited to the meeting described their experimental research on sun oils made with bergamot essence containing 15-50 mg/kg of 5-MOP.

16 Mr Combre, Head of the Physiology Department and Dean of the Faculty of Pharmacy at Nantes University (France) came to the following conclusion: 'de manière manifeste, ce sont les [rayons ultraviolets] qui entraînent les lésions, et la présence de bergaptène à des doses importantes associée à des filtres et des antioxydants n'augmente pas la production de papillomes; au contraire on a une diminution importante de ces papillomes' ['clearly, the lesions are caused by the [ultraviolet rays], and the presence of heavy doses of bergapten together with filters and antioxidants does not increase the production of papillomas; on the contrary, there is a significant reduction in the incidence of papillomas'].

17 According to Dr Cohen of the Toxicology Advisory Services at Sutton (United Kingdom):

'in my view there is no reason to believe that especially in skin types I and II sunscreens without 5-MOP are any safer than those with 5-MOP'.

18 Professor Fitzpatrick took the following view:

'... I would say ... that it is a safe and, I think, an effective way of converting the high risk skin cancer population of skin types I and II so that they are more resistant to the development of sun-induced skin cancers like phototypes III and IV and therefore giving an equality to those individuals in developing new defences ...'.

19 At a further meeting on 4 November 1991, the Scientific Committee confirmed its opinion that the level of 5-MOP in sun oils should not exceed 1 mg/kg.

20 The Adaptation Committee met for the first time on 17 December 1991 to discuss psoralens as ingredients of cosmetic products and, specifically, of sun oils. On that occasion, however, it did not reach any conclusions. It therefore decided to hold another meeting on 1 June 1992. With that in mind, the Commission asked the Adaptation Committee to adopt a position as to whether the level of psoralens in sun products should be restricted to 60 mg/kg or to 1 mg/kg. At the meeting on 1 June 1992, half of the members voted for the former figure, and half for the latter.

21 On 2 June 1992 the Scientific Committee issued a 'supplementary opinion' confirming its opinion of 4 November 1991.

22 The controversy concerning the presence of bergamot essence in sun products continued throughout 1993. During that year, Dr Autier, the doctor in charge of research on behalf of the Belgian campaign against cancer, delivered a paper to the effect that the use of sun products containing bergamot is one of the risk factors associated with malignant melanomas. That finding was subsequently challenged by Dr Sancho-Garnier, Director of the Institut National de la Recherche Médicale (Belgium) and by the Conseil Supérieur d'Hygiène Publique (France), according to whom '[les] produits de la gamme Bergasol sont acceptables sur le plan de la santé publique, dans leur formulation actuelle, du fait de l'association d'essences naturelles contenant des psoralènes à des filtres solaires et à des excipients adaptés' ['[the] Bergasol range of products, in their current composition, is acceptable from the public health angle because of the fact that the natural oils containing psoralens are combined with solar filters and compatible excipients'].

23 On 24 June 1994 the Scientific Committee once again reaffirmed its opinion.

24 On 28 April 1995 the Adaptation Committee made a recommendation that the level of psoralens in sun products should not exceed 1 mg/kg. All the delegations within the Committee voted in favour of that opinion save for the French delegation, and the Finnish delegation was absent.

25 On 10 July 1995 the 18th Commission Directive 95/34/EC adapting to technical progress Annexes II, III, VI and VII to Directive 76/768 (OJ 1995 L 167, p. 19) was adopted. That directive required the Member States *inter alia* to take all the necessary measures to ensure that, as from 1 July 1996, neither manufacturers nor importers established in the Community place on the market sun creams or bronzing products containing 1 mg/kg or more of psoralens and that, as from 1 July 1997, such products can no longer be sold or otherwise supplied to the final consumer.

26 During the administrative procedure which led to the adoption of Directive 95/34, the applicants regularly submitted observations on their own initiative, sending the Commission and members of the Scientific Committee letters and documents containing data and scientific evaluations on Bergasol. On 5 November 1990, moreover, Mr Goupil addressed the working party on 'cosmetic products'. That working party met to discuss Bergasol on a number of occasions between 1990 and 1995, at times on the basis of written or oral observations submitted by Bergaderm. At a meeting on 16 February 1995, with the sole exception of the French representative, it endorsed the proposal to limit psoralen levels in sun products to 1 mg/kg.

27 By judgment of the Tribunal de Commerce (Commercial Court), Créteil, of 6 July 1995, a procedure was initiated with a view to placing Bergaderm in liquidation. On 10 October 1995 Bergaderm was formally put into liquidation.

Procedure and forms of order sought

28 By application lodged at the Registry of the Court of First Instance on 4 December 1996, the applicants brought the present proceedings.

29 After hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure. By way of measures of organisation of procedure, it asked the parties to reply to certain questions in writing before the hearing and to produce certain documents.

30 At the hearing on 14 May 1998, the parties presented oral argument and answered oral questions put to them by the Court.

31 The applicants claim that the Court should:

— order the Commission to pay damages in the sum of FF 152 867 090 to Laboratoires Pharmaceutiques Bergadem and in the sum of FF 161 309 995.33 to Jean-Jacques Goupil;

— order the Commission to pay the costs.

32 The Commission contends that the Court should:

— dismiss the application;

— order the applicants to pay the costs.

Substance

The parties' arguments

Nature of Directive 95/34/EC

33 Although the applicants maintain that the Commission's conduct may be classed as a 'sufficiently clear breach' of Community law, as defined by the Court of Justice when considering the issue of non-contractual liability arising from legislative measures, they argue by way of a preliminary point that Directive 95/34 must be regarded as an administrative act, not a legislative measure, since it deals exclusively with the use of psoralens in sun products and, accordingly, concerns only Bergasol. On that point, they refer to the case-law of the Court of Justice to the effect that legislative measures must concern a category of persons (Case C-119/88 *AERPO and Others* v *Commission* [1990] ECR I-2189, paragraph 17). They submit that any breach of Community law committed by the Commission during the preparation or adoption of Directive 95/34 amounts to a fault which may attract a penalty in these proceedings.

34 According to the Commission, Directive 95/34 is of general application, which means that, if the Commission is to be held liable, it must be shown to have committed a sufficiently clear breach of Community law.

The first plea in law: procedural defects

35 The applicants argue that, in the field governed by the cosmetics directive, the Commission does not enjoy its usual broad discretion, since it must consult experts and can adopt only such adaptation measures as are approved by the Adaptation Committee. That is the clear effect of the procedural rules laid down in Article 10 of the cosmetics directive.

36 In the present case, the Commission disregarded those rules, since, instead of returning to the Council when the Adaptation Committee delivered an unfavourable opinion on 1 June 1992 concerning its proposal to restrict the maximum level of psoralens in sun products, it submitted the same proposal to the Adaptation Committee some years later. In so doing, it also infringed the procedural rule *non bis in idem*.

37 Moreover, according to the applicants, the Commission showed no regard for the rights of the defence. It failed to pass on to the members of the Adaptation Committee the scientific information which the applicants had submitted to the members of the Scientific Committee. Thus, as the procedure had not been *inter partes*, the Adaptation Committee had been unable to reach a conclusion on an objective basis.

38 The Commission points out that Directive 95/34 was adopted following a favourable opinion from the Scientific Committee and the Adaptation Committee. It states that the Adaptation Committee failed to adopt any opinion at all at its meeting on 1 June 1992.

39 The Commission considers that the procedure for the adoption of legislation need not be *inter partes*. In any case, the applicants' views were heard by the working party, and both the Scientific Committee and the Adaptation Committee received the information which the applicants provided.

The second plea in law: manifest error of assessment and breach of the principle of proportionality

40 The applicants maintain that the Commission did not wish to acknowledge the obvious distinction between 5-MOP as a chemical substance in its pure state and 5-MOP as an ingredient in a sun product. Consequently, its findings regarding Bergasol were inevitably disproportionate, and it adopted a measure without providing or obtaining evidence of a scientific nature that the measure in question was necessary in order to protect the health of consumers. The Commission had thus in effect transferred to the applicants the *onus* of proving that 5-MOP — and, consequently, Bergasol — was safe, so that it could adopt a measure which had no scientific basis.

41 According to the applicants, normal eating habits easily cause the human body to absorb in a single day up to 10 times the amount of 5-MOP derived from Bergasol over the same length of time. Various food products, such as grapefruit, limes, bitter oranges, figs, fennel, celery and parsley, contain high levels of 5-MOP. This shows that 5-MOP, which is potentially dangerous in its chemically pure state, is not harmful to health when present in natural essences. In that connection, the applicants refer to the original version of Annex II to the cosmetics directive, which, while prohibiting the use of furocoumarines such as trioxysalen and 8-methoxypsoralen, except for normal content in natural essences, drew precisely that distinction, that is to say, between psoralens in their chemically pure state and psoralens as contained in natural essences.

42 The applicants argue that the restriction of 5-MOP levels to 1 mg/kg in sun products is out of all proportion to the objective purportedly pursued by the Commission, namely protection of the health of consumers.

43 The Commission points out that the fundamental purpose of the cosmetics directive is to protect public health. In its view, the adaptation of that directive was proportionate to that objective, bearing in mind the disquieting reports concerning the photomutagenic and photocarcinogenic character of psoralens, particularly their presence in sun products in combination with protective filters, and the unfavourable opinions issued by the Scientific Committee and the Adaptation Committee on sun products containing bergamot essence. Clearly, in those circumstances the risks to the consumer could not be overlooked. Accordingly, the restriction of 5-MOP levels to 1 mg/kg was an appropriate measure.

44 The Commission adds that the presence of 5-MOP in sun products cannot be compared with its presence in fruit or vegetables. In the former case, its effects are enhanced by the consumer's exposure to the sun, a factor which is clearly not at work in the latter case.

The third plea in law: misuse of powers

45 The applicants maintain that, by excluding Berdaderm from the market, the Commission merely aided its competitors. Already, by acting on the German Government's request of 27 March 1987, the Commission had deliberately — or, at least, with inexcusable lack of vision — played into the hands of Bergaderm's German competitors.

46 Thus, by taking a measure which had not been shown to be necessary, the Commission had misused its powers.

47 The Commission disputes the allegation that it acted in the interest of Bergaderm's competitors. Its sole aim was to safeguard public health.

Findings of the Court

The conditions governing Community liability

48 Under the second paragraph of Article 215 of the Treaty and the general principles to which that provision refers, Community liability depends on fulfilment of a set of conditions regarding the unlawfulness of the conduct alleged against the institution concerned, the fact of damage and the existence of a causal link between the conduct in question and the damage complained of (Case C-257/90 *Italsolar* v *Commission* [1993] ECR I-9, paragraph 33, and Case T-336/94 *Efisol* v *Commission* [1996] ECR II-1343, paragraph 30). As regards liability arising from legislative measures, the conduct with which the Community is charged must constitute a breach of a higher-ranking rule of law for the protection of individuals (Joined Cases T-195/94 and T-202/94 *Quiller and Heusmann* v *Council and Commission* [1997] ECR II-2247, paragraph 49).

49 In the present proceedings, compensation is sought for damage related to the Commission's conduct in connection with the preparation and adoption of a directive amending the cosmetics directive.

50 The application is manifestly concerned with legislative measures. The directive is a Community measure of general application, and the fact that the number or even the identity of the persons to whom such a measure applies can be determined is not such as to call in question its legislative character (order of the Court of Justice

of 23 November 1995 in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 30). Directive 95/34 concerns, in a general and abstract manner, all the traders in the Member States who, on expiry of the time-limits set for its transposition into the various national legal systems, are operating in the sector in question.

51 It is necessary therefore to determine whether or not the Commission disregarded a higher-ranking rule of law for the protection of individuals.

The first plea in law: procedural defects

52 Contrary to the applicants' assertion, the Adaptation Committee did not, at its meeting on 1 June 1992, issue an unfavourable opinion on the Commission's proposal to restrict the maximum level of psoralens in sun products. As is apparent from the minutes of that meeting, in particular, the delegations of the Member States were divided between those in favour of a maximum level of 5-MOP of 1 mg/kg and those in favour of a maximum level of 60 mg/kg. It is also clear from the minutes that, in view of those circumstances, the Commission decided to withdraw its proposal concerning measures to be adopted.

53 A situation of that kind is not covered by Article 10(3)(a) of the cosmetics directive, which provides that 'the Commission shall adopt the proposed measures when they are in accordance with opinion of the Committee'; nor is it covered by Article 10(3)(b) which provides that 'where the proposed measures are not in accordance with the opinion of the Committee, or if no opinion is adopted, the Commission shall without delay propose to the Council the measures to be adopted ...'.

54 In the circumstances of the present case, the 'proposed measures' no longer exist since, after the Adaptation Committee had met, the Commission withdrew its proposal.

55 The Commission cannot be criticised for doing so since — in cases concerning public health, which are both delicate and controversial — it must have a sufficiently broad discretion and enough time to enable it to arrange for the scientific issues which will determine its decision to be examined afresh (see, on that point, Case T-105/96 *Pharos* v *Commission* [1998] ECR II-285, paragraphs 65 and 68).

56 Consequently, without there being any need to rule on the question whether Article 10 of the cosmetics directive contains higher-ranking rules of law for the protection of individuals, it must be concluded that the Commission did not infringe that provision.

57 The applicants also allege a breach of the principle that the procedure must be *inter partes*.

58 In that regard, it should be recalled that the aforesaid principle, which applies in all administrative proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person is a fundamental principle of Community law (Case T-450/93 *Lisrestal and Others* v *Commission* [1994] ECR II-1177, paragraph 42), but it does not apply in the context of the legislative process (Case T-521/93 *Atlanta and Others* v *European Community* [1996] ECR II-1707, paragraph 70).

59 By way of an exception and subject to express provisions (see, in particular, Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community

(OJ 1996 L 56, p. 1)), certain rights of the defence must be guaranteed during the adoption of a legislative act. However, the cosmetics directive does not contain any such provision.

60 In any event, it is clear from the facts that the applicants had ample opportunity to express their views to the members of the Scientific Committee and the Commission, and that they were allowed to address the *ad hoc* group of experts (see paragraph 26 above).

61 The first plea in law must therefore be rejected.

The second plea in law: manifest error of assessment and breach of the principle of proportionality

62 Contrary to the applicants' assertion, the Commission evaluated the potential effects of 5-MOP in combination with the more traditional ingredients of sun products, including, in particular, solar filters. That is apparent, for example, from the first recital in the preamble to Directive 95/34, which states as follows:

'whereas furocoumarines are recognised to be photomutagenic and photocarcinogenic; whereas the Scientific Committee on Cosmetology has not been able to conclude from the available scientific, technical and epidemiological data that the association of protective filters with furocoumarines would guarantee the safety of sun protection and bronzing products containing furocoumarines above a minimum level ...'.

63 Furthermore, there is nothing in the documents before the Court to support the conclusion that the Commission misunderstood the scientific arguments concerning the extent of the risk involved in the use of sun oil containing bergamot essence.

64 The protection of public health is one of the objectives of the cosmetics directive and the Commission is not in a position to carry out itself the scientific assessments needed to further that objective (Case C-212/91 *Angelopharm* v *Hamburg* [1994] ECR I-171, paragraphs 32 and 38). The Scientific Committee has the task of assisting the Community authorities on scientific and technical issues in order to enable them to determine, in full knowledge of the facts, which adaptation measures are necessary (*Angelopharm*, paragraph 34).

65 In the light of those factors, the Commission cannot be criticised for placing the matter before the Scientific Committee or for complying with that body's opinion, which was drawn up on the basis of a large number of meetings, visits and specialist reports.

66 Furthermore, where there is uncertainty as to the existence or extent of risks to the health of consumers, the institutions may take protective measures without having to wait until the reality and the seriousness of those risks become fully apparent (Case C-157/96 *National Farmers' Union and Others* [1998] ECR I-2211, paragraph 63).

67 Having regard to the above considerations, the Commission's conduct and the measure adopted by it cannot be regarded as vitiated by a manifest error of assessment or as disproportionate.

68 The second plea in law must therefore be rejected as well.

The third plea in law: misuse of powers

69 It is settled case-law that an act of a Community institution is vitiated by misuse of powers if it was adopted with the exclusive or main purpose of achieving an end other than that stated (Case C-285/94 *Italy* v *Commission* [1997] ECR I-3519, paragraph 52). However, a finding of misuse of powers may be made only on the basis of objective, relevant and consistent evidence (Joined Cases T-551/93, T-231/94, T-232/94, T-233/94 and T-234/94 *Industrias Pesqueras Campos and Others* v *Commission* [1996] ECR II-247, paragraph 168).

70 In the present case, the applicants have failed to provide such evidence in support of their plea in law. In particular, they have not shown that, during the legislative procedure in question, the Commission sought to achieve an objective other than the protection of public health.

71 It follows that the third plea in law cannot be upheld either.

72 It follows from all the foregoing considerations that the application must be dismissed, there being no need to examine whether the applicants have established the existence of damage or of a causal link between the conduct alleged against the Commission and such damage.

Costs

73 Pursuant to 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 in their pleadings, they must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicants to pay the costs.

Tiili Briët Potocki

Delivered in open court in Luxembourg on 16 July 1998.

H. Jung V. Tiili

Registrar President